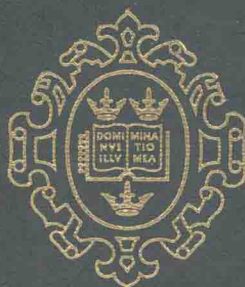

MERGERS AND TAKEOVERS IN THE US AND UK

Law and Practice

STEPHEN KENYON-SLADE



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MERGERS AND TAKEOVERS IN THE US AND UK LAW AND PRACTICE

by

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PREFACE

Although the US and the UK have relatively similar capital markets and business practices, each jurisdiction has adopted a strikingly different approach toward takeover regulation. In both the US and the UK, policy judgments were made as early as the mid-1960s on how best to protect shareholders from the coercion generated by aggressive acquisition techniques. Both jurisdictions, of course, drew up laws requiring detailed disclosure to enable shareholders to reach properly informed investment decisions. As to the substantive regulation of takeovers, there was a great divergence—the UK opted for self-regulation where certain ‘bright line’ rules and assumptions were incorporated into the City Code and applied by the Panel on Takeovers and Mergers in accordance with the ‘spirit’ of the City Code and best business practices. This ‘gentlemanly’ approach was made possible by the relatively homogenous nature of the City of London in the 1960s. The success of the UK system under the efficient and pragmatic stewardship of the Panel is borne out by the fact that the basic approach to takeover governance has remained largely unchanged for over 30 years.

In the US, a huge body of law and regulation exists at both the federal and state law level. The Securities Exchange Act of 1934 and the SEC’s rules and regulations thereunder have set the principal disclosure and procedural requirements for the acquisition of publicly listed companies. Substantive company law in the US is dominated by the judgments of the Delaware courts which have developed the most sophisticated corporate jurisprudence in the world. By contrast, the UK’s system of self-regulation has stifled common law developments and has ensured that takeover litigation seldom reaches the UK courts.

The goal of this book was to give an overview of the principal laws and regulations referred to above which govern the acquisition of publicly listed companies in the US and the UK. This book has been written principally for corporate law practitioners involved in public company takeovers. Part I covers applicable US federal law and Delaware state law, while Part II covers UK regulation under the City Code and applicable provisions under the Companies Act 1985, the Financial Services and Markets Act 2000, and the UK Listing Authority’s Purple Book. Both Parts I and II start with an overview of the regulatory structure in the US and UK, respectively, as well as the acquisition methods used in each jurisdiction. The US chapters in Part I then discuss the principal federal laws in detail, as well as the principal Delaware statutory law and the huge body of Delaware

case law. The UK material in Part II focuses principally on the City Code and governance under the Panel on Takeovers and Mergers. Part III gives a very brief overview of issues which arise in UK-US cross border transactions. Certain related areas of law are discussed only briefly (for example, antitrust and competition law matters, and stock exchange regulation), or fall outside the scope of this book (for example, tax law matters and industry specific laws affecting mergers and acquisitions).

Historically, the idea for this book stems from the Ph.D. thesis I wrote at Cambridge University on US and UK takeover law between 1987 and 1991. In 1991, I was a Visiting Researcher at Harvard Law School where I completed the US research for my Ph.D. I am most grateful for the assistance I received as a W. M. Tapp Scholar at Gonville and Caius College, Cambridge, and for the guidance of my supervisor and friend, Professor Barry Rider. During this time I was fortunate to work for a year as a visiting associate at the law firm of Richards Layton & Finger in Wilmington, Delaware where, as a very junior lawyer, I witnessed first hand a part of the takeover boom of the late 1980s. I am particularly grateful to R. Franklin Balotti for the learning I gained during this time. After I completed my Ph.D. thesis at Cambridge, I had the very happy experience of being appointed a Fellow and Lecturer in Law at Selwyn College, Cambridge, where I taught law until 1993. For most of the 1990s I worked in the M & A group of Shearman & Sterling, first in New York and later in London. It was a privilege to work alongside such a knowledgeable and professional group of lawyers who, together, make up one of the world's foremost corporate practices. I am especially grateful to Jeff Lawrence and Pam Gibson for their support of this book during my time with Shearman & Sterling in London, and also to Brian Chadwick who helped me enormously as a research associate over the past years. In February 2000, I moved to Monaco to join the asset management and investment firm, Marint Limited, and I sincerely thank my friends and colleagues here for all their encouragement with this book. Finally, a special word of thanks to Chris Rycroft and his colleagues at Oxford University Press who have been so tremendously helpful and patient during the years it took me to write this book.

SKS
Monte Carlo
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