

Introduction

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Twelve years have passed since the European Union's 13th Directive on Takeover Bids came into force. As the second edition of this book appears on the scene, we note that the epoch-defining events of the interim period include the great financial crisis and the Brexit vote in the United Kingdom. The former has had a significant impact on European financial regulation, while it appears too early to elaborate on the impact of the latter. Thus, it is as an appropriate time as ever to revisit the constantly evolving framework of European takeover regulation. We would suggest these events have placed a break on the efforts to create a unified European M&A market. However, much remains to be done in terms of clarifying the current rules of the game in the key European jurisdictions and adapting to the introduction of emerging financial techniques and innovations.

The book was originally conceived as a roadmap to the shifting European M&A environment. At the time of the first edition, this was driven by two powerful forces: the economic drive for pan-European consolidation across sectors and the increasingly complex set of M&A regulations which shaped takeover activity on the continent. The directive was effective in subjecting national regulatory regimes to a certain degree of harmonisation. As always, the devil was in the detail. Implementation at the national level left member states a degree of leeway in the manner in which they implemented the provisions of the directive into national laws and regulations. The implementation phase was further complicated by the ability of member states to opt out of certain provisions, primarily related to takeover defences such as board neutrality and the breakthrough rule.

The successes of the directive were elaborated upon in the introduction to the first edition by the 'father' of the directive, Jaap Winter. Foremost among these were enhanced protections for minority shareholders through the directive's emphasis on mandatory bids, best price rules and squeeze-out/sell-out provisions. Jaap also identified the 'ugly' elements of the directive which related primarily to the ability of member states to opt out of regulations related to takeover defences. One of the initial intentions of the directive was to create a level playing field between listed firms in the European M&A market. To the extent that this was ever a realistic aspiration, it has not been achieved. Political imperatives stemming from the diversity of ownership structures across the continent perhaps make this an unrealistic goal.

As in the previous edition, we begin with a new set of thematic chapters. While mandatory bid rules are now more effectively implemented and concert parties

identified by financial market regulators, further issues which disadvantage minority shareholders have arisen. Luca Enriques and Matteo Gatti provide an insightful examination of the issue of creeping control, whereby large shareholders exert influence over management despite the preponderance of mandatory bid rules to prevent this from happening without a takeover bid. Other chapters examine the increasing use of litigation by minority shareholders (private enforcement) to protect their rights and the issue of the status of convertible bonds in takeover offers. The latter chapter well illustrates the complexity of the many unresolved issues related to the directive. It presents a case study of private enforcement which went all the way to the German Federal Court of Justice for resolution. Throughout the book, we use case studies to illustrate deficiencies in the rules themselves or the manner in which they are interpreted and applied.

The thematic chapters are followed by country chapters which examine the current state of the takeover regimes in most member states. To my great regret, we lost a couple of contributors (and countries) from this edition. However, the second edition also gained new contributors. This edition contains a chapter on Switzerland for the first time. While it is not a member of the European Union, Switzerland is a European economy subject to significant cross-border M&A activity, as the recent takeovers of Syngenta and Actelion illustrate.

I would like to express my thanks to all of the contributing authors for their excellent work. The book would not exist without their willingness to share expertise. Particular thanks for strong support of both editions to Simon Jay, Valérie Lemaitre and Sophie de Beer at Cleary Gottlieb Steen & Hamilton, Alejandro Fernández de Araoz at Araoz & Rueda and Charles Demoulin at Deminor.

As in the previous edition, we present a chapter on the US takeover regime for comparative purposes. It examines the US patchwork of limited federal regulation of M&A transactions and the extensive precedents of the Delaware courts defining directors' fiduciary duties. As with the first edition, I owe a great debt of gratitude to Martin Lipton for his contribution to this chapter.

The first edition grew out of a research project undertaken by Professor Tom Kirchmaier and myself at the London School of Economics (LSE). I must thank Tom for very kindly hosting me at the LSE for a second time while I worked on this edition.

At Globe Law and Business, I would like to thank Sian O'Neill and Lauren Simpson for their hard work and patience in coordinating the diverse array of contributors. The coordination of over 30 lawyers was at times a difficult task.

Finally, I would like to thank my wife Nadia for her patience and dedicate this book to her and our sons, Aiden and Callen.

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