

The benefit of experience

A prominent British authority has shared with the Securities Institute his knowledge of UK takeover regulation, touching on areas that are under close scrutiny in Australia.

The Institute recently sponsored a visit by Peter Lee, deputy director-general of the UK Takeover Panel and internationally acknowledged expert on takeover regulations.

The purpose of his visit was twofold: first, to appear before the parliamentary joint committee on corporations and securities to support the concept of a mandatory bid rule and its importance to a well functioning market; second, to inform the members of the newly reconstituted Panel for Corporations and Securities of the operation of the UK panel. Lee was also a key speaker at Institute seminars held in Melbourne and Sydney, at which he addressed these two issues.

MANDATORY BID RULE

The Institute has always considered the mandatory bid rule to be an integral part of any takeover reforms in Australia and was pleased when it was included in the Corporate Law Economic Reform Bill.

Based on a similar rule that has operated successfully in the United Kingdom for more than three decades, the mandatory bid rule will facilitate a more competitive market for corporate control by encouraging more efficient management and allocation of assets.

It will also provide an alternative for investors and bidders who are reluctant to participate in contested bids or “public auctions” because of the uncertainty of outcome and the unwelcome prospect of

litigation or other hostile action. Despite safeguards to ensure investor protection, which were endorsed by the Australian Securities and Investments Commission (ASIC) and included in the bill, and the fact that it was not opposed by the Australian Shareholders Association, the rule was dropped in the Senate because of fears that it would deprive shareholders of the opportunity to get the best price at public auction.

The government subsequently referred it to the parliamentary joint committee for consideration.

In his address to the committee, Lee said the mandatory bid rule had always been an essential part of takeover regulations in the UK and that in his experience, when control of a company passed into one hand it usually involved a price premium for the shares, rather than disadvantaging small shareholders by lowering bid prices.

He also attempted to dispel fears that the mandatory bid rule would provide opportunities for bidders and vendors to enter into undisclosed side deals, informing the committee that he was aware of no evidence in the UK of side deals being entered into between vendors and purchasers.

TAKEOVER PANEL

In his discussions with panel members, Lee confirmed that unlike the Australian model,

the UK panel is a non-government, non-statutory body that regulates the conduct of bids. It is quite independent from the Securities and Investments Board and the Department of Trade and Industry.

Its main purpose is to ensure that the target company shareholders are fairly and equitably treated. It is not concerned with the merits of a bid. Its membership is wide — it includes all the associations representing the main investor bodies whose members practice in the field and the companies themselves represented by the Confederation of British Industry, so most of those involved in bids directly or indirectly owe allegiance to the system.

Lee said the UK panel administers the London Takeover Code, which can be amended or altered at great speed. He said the system is flexible and speedy. The panel has regulated many thousands of bids in three decades of operation, and its rulings and decisions have virtually never been disregarded, despite its having no statutory power. The sanction of public censure and the consequences that may flow from it are extremely powerful.

The Institute is grateful to Peter Lee for his generosity in taking time from an already demanding schedule to bring us his experience. We look forward to the continuation of an important and fruitful relationship.