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Mergers and Acquisitions is the eleventh and final issue in 2019 of the Student/Alumni Sub-Series of the Victoria University of Wellington Legal Research Paper Series.

The Student/Alumni Sub-Series was launched in 2015. It distributes a selection of Honours and Postgraduate papers from Victoria University of Wellington Law School. The Sub-Series includes both general and thematic issues.

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VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"A Comparison of the Law Relating to Schemes of Arrangement and Takeover Offers in New Zealand"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 41/2019

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This paper explores the increasing popularity of schemes of arrangement under the Companies Act

1993 as an alternative mechanism to effect corporate takeovers by comparing schemes with traditional takeover offers under the Takeovers Code.

Parts I and II of this paper introduce and provide background on the rationale for the regulation of takeovers. Parts III and IV explain the law relating to takeover offers and schemes, including an explanation of the process for effecting a takeover under both mechanisms. Part V of this paper considers whether shareholders are adequately protected when a takeover occurs by way of a scheme in comparison to the Code's paradigm of shareholder protection. Part V submits that shareholders are sufficiently protected as the result of several additional protections that form part the scheme process. Part VI of this paper discusses the advantages and disadvantages of a scheme when compared to a takeover offer to understand why a bidder may choose to structure a takeover as one over the other. As a result of this comparison, this paper submits that while there are arguable advantages and disadvantages to both mechanisms, on balance, both can produce a successful outcome for a bidder. Finally, this paper explores the potential to reform the Companies Act to make the scheme process more efficient.

"Regulating the Regulators: A Comparative Analysis of Takeover Law"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 42/2019

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This dissertation examines takeover regulation in New Zealand, the United Kingdom and the United States of America. It outlines the three systems of regulation before seeking to explain why differences exist between jurisdictions. The paper focuses on the non-frustration rule and self-regulation as two differences which set the systems apart. It evaluates theoretical merits as potential reasons for the divergence in regulatory approaches. Three jurisdiction-specific factors are also cited as reasons for differences in regulation: the competition generated through federalism, the influence of institutional shareholders and political ideology. The paper uses this analysis of the systems and influences on these systems as a platform to suggest reform to the New Zealand regulatory model. The reforms are centered on two parts of takeover regulation: active institutional investment and panel-lead regulation. It advocates for institutional investors to take a more active role in monitoring directors through the creation of a "Stewardship Code". Further, the paper suggests the judiciary should exercise more restraint in its review of the Takeover Panel's decisions. This would help foster commercial certainty as well as the cooperative relationship between the regulator and industry. The purpose of these reforms are to proactively ensure takeover regulation in New Zealand is well-supported and efficient as it faces progressively more commercial activity.

"Competing Views on Media Mergers: A Comparative Analysis of New Zealand Competition Law"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 43/2019

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Recent merger activity and academic commentary has renewed public interest in the treatment of media mergers around the world. Yet, it is difficult to formulate robust competition policy for media mergers when there is a fierce divergence in views between businesses and regulators as to the current competitiveness of the media industry. This paper engages with this issue by examining two recent media mergers in New Zealand, the NZME/Fairfax and SKY/Vodafone mergers, which were controversially declined by the Commerce Commission. Through taking a comparative approach with United States antitrust law and how it was applied in the AT&T/Time Warner merger, the paper suggests there are weaknesses in the New Zealand competition law framework and how it is applied. These exacerbate already challenging conditions for New Zealand media firms, faced with tough competition from large international competitors, by limiting their ability to merge and seek economic efficiencies. The paper concludes that Government intervention is required to address these issues in competition policy.

"New Zealand's Mandatory Bid Provisions: Fit for Purpose?"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 44/2019

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Takeovers aimed at obtaining control of listed companies are subject to regulation across the world. A cornerstone of many takeover regulatory regimes is the mandatory bid rule, which obligates the

offeror to extend a takeover offer to all shareholders in the target company once control is obtained. Mandatory bid rules are controversial. Arguments for mandatory bid rules suggest they deter exploitative takeovers and guarantee exit rights for shareholders and so incentivise investment in the first place. Arguments against mandatory bid rules suggest they increase the cost of takeovers, deterring value or efficiency increasing takeovers. Ultimately, the question of whether a mandatory bid rule is beneficial is seen as an empirical one. This paper argues that the empirical question cannot be divorced from the particular characteristics of the capital market in which a mandatory bid rule is imposed. New Zealand's capital markets are small by international standards, are relatively dependent on foreign investment and characterised by concentrated ownership. These characteristics suggest the incidence of takeovers in general may be lower, which in turn suggests that its takeover regime should be wary of increasing the costs of takeovers, notwithstanding the benefits a mandatory bid rule may provide. This paper finds that New Zealand's mandatory bid rules, owing to the allowance of partial bids, largely responds to this concern and appears to be appropriate given the characteristics of New Zealand's capital markets.

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About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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