

Regulation of securities markets

Corporations act

- ASIC oversees implementation and regulation under corporations act

ASX Listing Rules

Takeovers

- Acquisition of a company, where one company takes over another
- Mergers imply equal partners

Bidder → the one taking control

Target → the one being taken over

Friendly = welcomed, both are receptive to takeover

Hostile = target does not want to be taken over

Control → full or partial

Regulation of takeovers

S602 rationale

- Efficient, competitive and informed market
- Shareholders and directors
 - o Sufficient info of identity of bidder
 - o Time to consider proposal
 - o Enough info to assess merits of proposal
- All shareholders given reasonable and equal opp to participate

Restrictions on takeovers

Takeover rules apply to listed companies and unlisted companies (with > 50 members)
(i.e. all public companies > 50 members OR listed)

general prohibition s606

- Prohibition of takeovers unless it falls within these ranges:
 - o Increase from < 20% to > 20%
 - o Or > 20% to < 90%

Exceptions

- Creeping takeover **s611(9)**
 - o 19% for 6 mths
 - o 3% every 6 mths
- downstream acquisition **s611(14)**
- GM meeting approval **s611(7)**
- Full takeover bid – comply with detailed disclosure regime **s611(1)**

off-market bids	On-market bids
<ul style="list-style-type: none">- Unlisted or listed company- Can be partial- Offer period- Can be conditional	<ul style="list-style-type: none">- listed company only- cannot be partial- offer period- unconditional

<ul style="list-style-type: none"> - Flexible consideration (maybe offer shares in own company) - If the offer increases it applies to all 	<ul style="list-style-type: none"> - consideration is cash only - if offer increases it does so only for future acceptances
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Information requirements

Bidder's stmt s636

- identity of bidder and their relationship with the target company
- details of consideration (Cash, shares, etc)
- bidder's intentions for the company (employees, the board)

target stmt s638

- all info necessary to make informed decision
- a response to the bidder's stmt – recommendation to target company shareholders (if they think they should accept)

compulsory offers s662A	compulsory acquisitions 661A
<ul style="list-style-type: none"> - if acquired at least 90% of target's shares - offer to the remaining shareholders - same terms as takeover bid - 1 month after bid period 	<ul style="list-style-type: none"> - If acquired <ul style="list-style-type: none"> o more than 90% of target's shares o at least 75% securities offered to acquire - offer to the remaining shareholders - same terms as takeover bid - 1 month after takeover bid

Obligations of directors

- director's duties still apply
 - o cannot prefer own interests
 - o must act in the best interests of the company
- defensive tactics
 - o to make it more difficult to takeover
 - o amendments to constitution

elements of insider trading

trading	trading themselves
procuring	doesn't trade themselves but organises someone to do so on their behalf
tipping	passes along inside info

S1043A

- possess information
- information not generally available
- person knows/ought to know info not generally available
- info likely to have material effect on value of shares
- person knows/ought to know likely to have material effect
- person trades, procures or tips

when is info generally available?

S1042C either

- readily observable OR
- made known in a way which would bring it to attention of people who usually trade in those shares and reasonable time elapsed OR
- deductions, conclusions, inferences

R v FIRNS

- PNG mining case
- Initially found guilty
- Later decided that the court case was readily observable, just others chose not to

When is information material?

S1042D

- If likely to influence trading decisions of people who usually trade in such shares
- **ASIC v CITIGROUP**

Exceptions/defences

- Chinese walls **s1043F ASIC v CITIGROUP**
 - Electronically and geographically separate
- Knowledge of own activities **s1043H**
- Underwriters **s1043C**
- Legal obligation **s1043D**
- Other party to transaction aware of info **s1043M**

Penalties and consequences

- Criminal offence and civil breach
- Max criminal penalties **s1311 and schedule 3**
 - Individual – 10 years jail and/or fine
 - Fine = greater of \$810,000 or 3xprofit
 - Body corporate
 - Fine = greater of \$8.1m, 3xprofit, 10% annual turnover for 12mth period in which offence committed
- Maximum civil penalties **s1317G**
 - Individual \$200k fine
 - Body corporate \$1m fine
- Compensation order
 - **S1317HA**
 - **S1043L**