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## LAW OF TAKE OVER

### A CRITICAL ANALYSIS OF PAKISTANI AND UK STATUTES REGARDING TAKE OVER

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Accession No. 109.53

MS

340

ZEL

1. Law ; Sources

2. Jurisprudence

DATA ENTERED

Am 31/07/13



## Approval Sheet

# **LAW OF TAKE OVER A CRITICAL ANALYSIS OF PAKISTANI AND UK STATUTES REGARDING TAKE OVER**

By

**ZEBA DAWOOD**

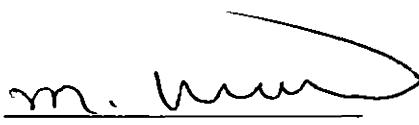
Accepted by the Faculty of Shariah & Law, International Islamic University (IIUI) in partial fulfillment of the requirements for the award of the degree of Master of Law (LL.M) Corporate Law.

**Master's (LL.M) Committee:**



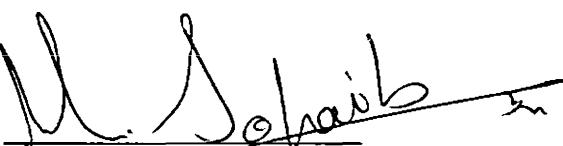
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**Title: LAW OF TAKE OVER-----**

**A CRITICAL ANALYSIS OF PAKISTANI AND UK STATUTES  
REGARDING TAKE OVER**

**Thesis Statement:** The process of acquisition of shares and *take over* law in Pakistan is ambiguous and uncertain. This law is not capable of protecting shareholders' interest effectively, while UK law regarding take over is a lot better and under a process of constant reforms

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## **Acknowledgement**

I am thankful to Allah, the Almighty, for enabling me to do this work. I would like to express my profound gratitude to respected Sir Yousaf Amanat faculty member, Faculty of *Shariah* and Law, International Islamic University Islamabad, for his whole hearted and exemplary guidance and assistances. It is my great pleasure to acknowledge my sense of gratitude to him for his encouragement, valuable comments, and suggestions on this academic front and for helping me throughout my research.

I would also like to express my thanks to my colleagues in Faculty of *Shariah* and Law, International Islamic University Islamabad for encouragement and assistance in my research work. I express my indebtedness to my parents and my teachers for encouragement during my whole educational span. I am grateful to my parents, my father-in-law, mother-in-law, my husband, brothers, sister and friends without whose affectionate cooperation and support this work would have been impossible.

## **Preface**

The present work is my LL.M thesis submitted to the Faculty of *Shariah* and Law, International Islamic University, Islamabad in 2011. The subject matter of the thesis is “A critical Analysis of Pakistani and UK Statutes regarding Takeover”. When a company approaches another company, taking control over the assets and management of another company, it can be said a takeover of company. While performing Takeover, different stages of the process have followed by the parties, the acquirer and the target company. If we compare UK takeover with Pakistani takeover we see a great difference between them. UK City Code has protect the interest of minority shareholder in a very broad way on other hand Pakistani law also protect the interest of share holder but needs of more improvement.

The Legislature and Judiciary in UK carried out tremendous efforts to reduce the rigors of takeover. But, we see no efforts on the part of judiciary and legislatures in Pakistan, which aim to protect the interest of minority shareholder dealing with the company in a bona fide manner.

## Chapter 1:

### INTRODUCTION

The term *take over* literally means to assume control, management, or responsibility. It can be defined, in terms of corporate law, as when one company approaches another company, making an offer to the shareholders of the later, seeking to acquire their shares in sufficient quantities to take control. We can say that *take over* means the acquisition of ownership or control of a corporation or change in the controlling interest of a corporation. *Takeover* is a process in which one company (the *acquirer*, or *bidder*) purchases the other company (the *target*). It is usually completed by purchase of shares or assets. *Take over* consists of mainly three kinds i.e., friendly takeover, hostile takeover and third form is known as bailout takeover. There may be different modes for procuring funds for the purposes of take over. This thing is very much possible that the company possesses money in its accounts, and this amount may be utilized for the takeover. Most of the times, the companies get loan from the bank or procure money by issuing shares or debentures.

There are some advantages and some disadvantages of *take over* as well. There is a difference between merger and take over. The impact of merger and take over is similar in a number of ways. For example, in both of these actions two distinct entities are united and resultantly a new single entity emerges. These two actions are also distinct from each other in some aspects e.g., merger is the union of two equals, it can be said so because the decision regarding merger is taken by the unanimous consent of the respective managements of the companies desirous of being merged into one. The element of unanimous decision of the two companies/entities is missing in an action of take over. In takeover, it is normally the decision of a larger company to acquire the smaller company.

In UK corporate law, the expression *take over* denotes the acquisition of a public company whose shares are listed on a stock exchange. The City Code on Takeovers and Mergers, also known as the "City Code" or "Takeover Code" governs the process of *take over*. I would also discuss the historical back ground of the UK City Code on Takeovers and Mergers. This law is made just to make sure that the shareholders are treated in a transparent and clear manner. This Code provides

frame work within which takeovers would take place. The Code requires that all shareholders in a company should be treated equally. The essential features of UK city code will be discussed in chapter 2.

Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 was promulgated in Pakistan to address the issue of *take over*. Although, this law has encountered a number of issues regarding *take over*, but when we compare this law with UK company law we find that this law does not encompasses many aspects of the corporate *takeover*. This law will be discussed in the light of decisions rendered by higher judiciary of Pakistan.

The outcome of what has been said above is this that the concept of takeover in Pakistan and UK would be comparatively discussed in the instant dissertation. Further, the measures taken by the Pakistani and UK company law to protect the rights of shareholders while the takeover is in progress would also be discussed.

## THE TERM TAKEOVER

### 2.1.1 Introduction:

Takeover is a business term. If we put a glance over the history of corporate sector it is difficult to find out that where from it arose and when did it exactly start. But from some aspects its history can be derived. In the world of economy the highest intensity of corporate takeover activities started in early 1950s. But with the passage of time takeover grew complex. Takeover became trend among entrepreneurs. They made it as agenda for the growth of their businesses as they knew that the outcome would be more attractive and beneficial.

Different companies may acquire other companies to enhance their business in size and efficiency. When a company takes control over a profitable competitor, it gets control over its valuable markets, customers, brands or/and underexploited corporate assets. The option of takeover remains one of the most effective ways of expending a business.

Takeover arose in different forms, some time it occurs with mutual consent of the parties (acquirer and acquiree) which is called friendly takeover, some time it occurs in aggressive form i.e. when acquirer gets control over business by coercion which is called hostile takeover, and in third case it occurs when a company stuck in an adverse situation then takeover gives freedom from this adversity. Such takeover is known as bailout. But at any case it plays its role in the economic world.

With the complexity in takeover the need was felt to introduce regulations to oversee takeover. The first set of rules was announced in 1968 with the name of **The City Code on Takeover and Merger** in Great Britain.<sup>1</sup> Later on in early 1970s most of the European countries legislated to regulate takeover and merger. For the first time a European legislator did research on the potential of coordination in this area, resulting in Pennington report.<sup>2</sup> The basic purpose of these regulations was to establish fair trading and to protect

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<sup>1</sup> A., Haan-Kammmga, *Supervision on Takeover Bids: A Comparison of Regulatory Arrangements*, (Kluwer 2006), pp.7

<sup>2</sup> Pennington, Report on Takeover Offers and Other Offers, 1974.

the interest of the shareholders. In different countries the transactions are conducted according to the codes and statutes present in those countries.<sup>3</sup>

## 2.2 Meaning:

The term takeover means to take control over business, assets, liabilities and management. The term *take over* means and includes an action of a person (natural or artificial) manages to establish control over the properties of the other company.

It is a corporate action in which one company makes bid for another company i.e. the acquiring company will make an offer for the outstanding shares. Classically takeover attempts are made by purchasing stock of a company through tender offer in open market. (Open market is a platform for every investor where they have an equal chance to run their business by selling and purchasing shares).<sup>4</sup>

## 2.3 Definitions:

As a business term takeover can be defined as follows.

### **Business Definition: Takeover**

It has been defined as,

“The acquisition of ownership or control of a corporation”. A takeover typically accomplish by a purchased of shares or assets a tender offer, or a merger<sup>5</sup>”.

Another definition of take over from business point of view is

“A takeover is Change in the controlling interest of a corporation<sup>6</sup>”.

It has also been referred to as a proposal,

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<sup>3</sup> Supra 1.

<sup>4</sup> Tatiana Nenova, *Takeover Laws and financial development*: (World Bank), pp.4

<sup>5</sup> Bryan A. Garner, Black’s Law Dictionary,(8<sup>th</sup> ed), p1591.

<sup>6</sup> [<http://www.allbusiness.com/glossaries/takeover/4942168-1>] last accessed on 5<sup>th</sup> may 2009.

“A takeover bid or tender offer is a proposal made by one company to purchase shares of stock of another company, in order to acquire control thereof<sup>7</sup>”.

It has also been explained as,

“Acquiring control of a corporation, called a target, by stock purchase or exchange, either hostile or friendly<sup>8</sup>”.

Afore mentioned definitions depict that takeover is an action in which one company takes hold over another company.<sup>9</sup> A corporation makes an offer to purchase the shares of another corporation or invest by purchasing majority stock of the other company; such action is known as takeover i.e., if a company manages to get more than fifty percent shares of another company, then the company, whose shares have been acquired, would become the subsidiary of the company, who has acquired the shares, this sort of action would be termed as *take over*. Investors are mostly interested in taking over private companies. Takeovers occur in exchange for cash, stock, or both.<sup>10</sup>

Takeover bids take place in multiple ways. Takeover bids have their own motives. These motives vary from case to case.

- i) Some takeovers are strategic. The reason is that the bidder may seek to acquire the target company for his strategic growth and development of his business, On the other hand the owner of the acquiree company may have the problems of insufficiency of finance, absence of specialized administration, lack of directorial powers, or meeting running expenses of company. There are other distinctive reasons which become the major reason for the owner to sell control of the company<sup>11</sup>.

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<sup>7</sup> [<http://legal-dictionary.thefreedictionary.com/Corporate+takeover>] last accessed on 5<sup>th</sup> May 2009.

<sup>8</sup> [<http://www.investorwords.com/4868/takeover.html>] last accessed on 5<sup>th</sup> May 2009.

<sup>9</sup> *Supra 1*

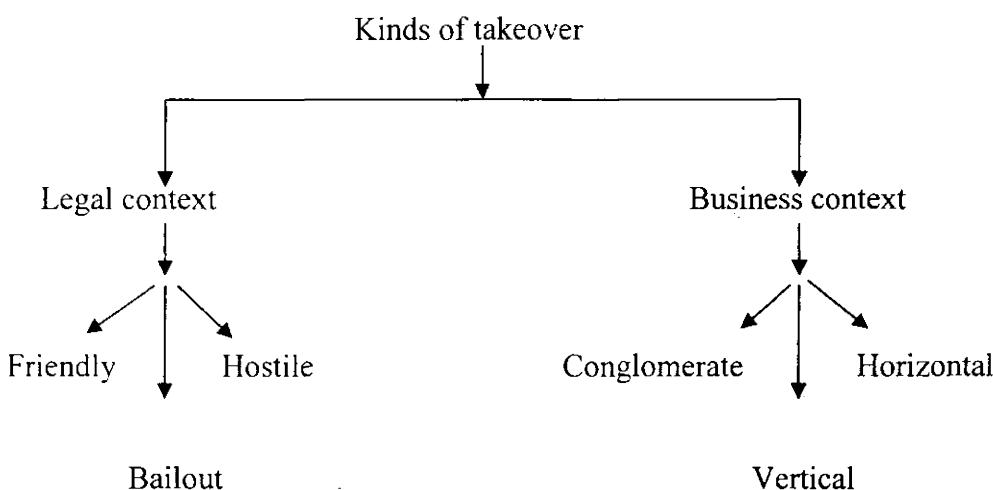
<sup>10</sup> Farlex Financial Dictionary. © 2009 Farlex, Inc.

<sup>11</sup> Tatiana Nenova, *Takeover Laws and financial development*, (World Bank, 2006) p-3

- ii) Some takeovers are opportunistic. In these takeovers the acquiring company wants to avail the opportunity in those areas where the target company has good reputation in business. In this way the target company becomes the source of more profit for the acquiring company.<sup>12</sup>
- iii) Sometimes family businesses takeover another company. This type of takeover is related to succession issues or family relation in business. In such business the directors and management is the same people. The descendants of the original business want to break out their family business ties for the natural growth cycle of their company. When one family business takeover another business then risks loss becomes less, they proportionate control among themselves.<sup>13</sup>
- iv) A multinational company may also takeover another company which gives a major which supports it in marketing, and distribution channels to make their strong position in open market.

Generally takeover does not mean that the acquiring company is forced to take over the work force also. It is the acquirer's discretion to keep the former employees or to fire them. In order to protect the interest of stakeholders, takeover can be classified as follows.

#### 2.4 Kinds of takeover:



<sup>12</sup> [<http://en.wikipedia.org/wiki/Takeover>] last accessed on 2<sup>nd</sup> may 2009

<sup>13</sup> Supra 10

## 2.4.1 Legal context:

### 2.4.1.1 Friendly Takeover

1. "A takeover that is appointed by the target corporation board of directors<sup>14</sup>".
2. "Acquisition of one firm by another where the owner of both firms agree to the terms of the takeover transaction<sup>15</sup>".
3. "The acquisition of one company by another with the full knowledge and consent of the target company's board of directors. Generally speaking, a friendly takeover requires the approval of shareholders in addition to the board of directors, but, in this case, shareholders tend to follow the board's lead. This is because, in a friendly takeover, the acquiring company offers a premium to the current stock price for each share<sup>16</sup>".

Friendly takeover is a kind of agreement. The most important aspect of friendly takeover is that the consent of target Company is necessary i.e it should be with the approval of shareholder and management both. The first step of friendly takeover; a negotiated settlement is presented before the target company. This settlement is characterized by bargaining arguments, in case the target company feels that accepting the offer is more appropriate for the company as compared to rejecting it they enter into an agreement to combine their business with the offeror<sup>17</sup>. "The tools of agreement depend upon the premium offered to the target's current stock price, the composition of the board of directors, the composition and response of current shareholder of the target company"<sup>18</sup>. The premium price usually expresses the actual value of shares of target company. The premium price is not constant. It is negotiated between the target company and the

<sup>14</sup> Bryan A. Garner, Black's Law Dictionary,(8<sup>th</sup> ed), p1591.

<sup>15</sup> [http://www.businessdictionary.com/definition/friendly-takeover.htm] last accessed on 7<sup>th</sup> May 2009

<sup>16</sup> Farlex Financial Dictionary. © 2009 Farlex, Inc.

<sup>17</sup> Doneald M. and DePaphilis, *Merger, Acquisition, and Other Restructuring activities: An Integrated Approach to Process, Tools, Cases, and Solutions*, (Academic press, 2009)pp.95

<sup>18</sup> H.R.Machiraju, *Merger, Acquisition and Takeover*, (New Age International,2007) ch-4, p.78

acquiring company i.e. it's arrived at with the mutual consent of the parties. If share prices rise then the total amount of all shares purchased automatically rise.<sup>19</sup>

In other words a friendly takeover is most effective process, whenever a company faces a serious financial problem or threats of the hostile takeover then in such situation two companies workout in an amicable way to satisfy the needs of each company's stakeholders<sup>20</sup>. Besides this, one of the great benefits of friendly takeover is that it reduces the risk of hostile takeover. The current management of the target company has a lesser risk of losing their jobs.

Friendly takeover usually happen in private company as shareholders and management is same.

#### **2.4.1.2 Bailout**

Bail out is another form of take over. It is a substantial acquisition in which acquirer takeover of shares in a financial weak company to help out his financial weak status. In this situation the acquirer presents a rehabilitation scheme approved by a public financial institution<sup>21</sup>. In this way the acquirer bailout the financial weak company from his losses.

##### **Definitions:**

"A situation in which a business, individual or government offers money to a failing business in order to prevent the consequences that arise from a business's downfall. Bailouts can take the form of loans, bonds, stocks or cash. They may or may not require reimbursement<sup>22</sup>".

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<sup>19</sup> H.R.Machiraju, *Merger, Acquisition and Takeover*, (New Age International,2007) ch-4, p.96

<sup>20</sup> Charles Hill, and Gareth Jones, *Strategic Management Theory: An Integrated Approach*, (Cengage Learning 2009).

<sup>21</sup> G. Ramesh Babu, *Financial Services in India*, (Concept Publishing Company, 2005) pp 373.

<sup>22</sup> Investopedia financial dictionary

[<http://www.investopedia.com/terms/b/bailout.asp#axzz1iTZmosmE>] last accessed on 22<sup>nd</sup> May 2009.

“To provide emergency financial help to keep a firm afloat<sup>23</sup>”.

Such type of takeovers come under provision of (special provision) Act, 1985<sup>24</sup>. Securities And Exchange Board Of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 also describe bailout takeover. The following section says:

*“The lead institution shall appraise the financially weak company taking into account the financial viability, and assess the requirement of funds for revival and draw up the rehabilitation package on the principle of protection of interests of minority shareholders, good management, effective revival and transparency”<sup>25</sup>.*

The regulations also describe the manners in which bailout can take place.

*“The scheme may provide for acquisition of shares in the financially weak company in any of the following manner:*

- a. *Outright purchase of shares, or*
- b. *Exchange of shares, or*
- c. *A combination of both :*

*Provided that the scheme as far as possible may ensure that after the proposed acquisition the erstwhile promoters do not own any shares in case such acquisition is made by the new promoters pursuant to such scheme”<sup>26</sup>.*

Here financially weak company means the company whose financial gains at the end of financial year accumulated in more than 50% losses, but less than 100% as compared to its previous financial year's losses. In this scheme acquirer makes a formal offer to the management of the financially weak company. After negotiations they determine the price of shares. and then they publically announce it with specific details. Share holders are also informed. Once the bid has been accepted after a public announcement, no other bid can be

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<sup>23</sup> Business dictionary. [ <http://www.businessdictionary.com/definition/bail-out.html> ] last accessed on 22<sup>nd</sup> May 2009.

<sup>24</sup> [ [http://www.takeovercode.com/kinds\\_of\\_takeover.php](http://www.takeovercode.com/kinds_of_takeover.php) ] last accessed on 25<sup>th</sup> may 2009.

<sup>25</sup> Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers)Regulations,1997 (As Amended Upto 13-04-2010) S 30(3) chapter iv

<sup>26</sup> Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers)Regulations,1997 (As Amended Upto 13-04-2010) S 30(5), chapter iv.

made<sup>27</sup>. This acquisition of shares can be in any form, either by purchase of shares, or exchange of shares, or a combination of both.<sup>28</sup>

In this case the target company is financially weak, not industrially sick. The basic reason behind this takeover is to save the company from bankruptcy, insolvency or total liquidation and ruin. It is done for mere profit and nourishment of the company.

Sometime the concept of bailout is misused. But the point is that the acquirers are the actual gainers of the market.<sup>29</sup> The poor financial condition of the company is just because of poor management. The over burden of corporate activities and mismanagement leads them to the danger of failing. In this case bailout is actually the act which boosts up the existing condition of the company to face the challenges.

#### 2.4.1.3 Hostile takeover

Definition:

“A hostile takeover that resisted by the target corporation board of directors<sup>30</sup>”.

“Acquiring a firm despite the disapproval of, or open resistance from, its board of directors. The acquirer usually takes the takeover offer direct to the target firm’s stockholders or seeks their approval to remove the obstructing board members<sup>31</sup>”.

“Attempts to take over management and/or ownership of a corporation without the consent of its directors and shareholders<sup>32</sup>”.

“A takeover attempt that is strongly resisted by the target firm<sup>33</sup>”.

<sup>27</sup> M.. Rangantham. *Investment Analysis and Portfolio management*, (Pearson Education India, 2004) p-38.

<sup>28</sup> *ibid*

<sup>29</sup> H.R.Machiraju, *Merger Acquisition and Takeover*, (New Age International, 2007) p110.

<sup>30</sup> Bryan A. Garner, *Black’s Law Dictionary*,(8<sup>th</sup> ed), p1591.

<sup>31</sup> Business dictionary, <http://www.businessdictionary.com/definition/hostile- takeover.html> last accessed on 3<sup>rd</sup> April 2009

<sup>32</sup> Margaret Bartschi, *Foundation Of Business organization For Paralegals*, (Cengage Learning, 2000) p148

<sup>33</sup> Investopedia financial dictionary. [<http://www.investopedia.com/terms/h/hostiletakeover.asp#axzz1imLkZ4aG>] last accessed on May 2009

“A takeover which goes against the wishes of the target company’s management and board of directors. Opposite of friendly takeover<sup>34</sup>”.

Hostile takeover was almost unknown before 1980. “*It was particularly existent in the mid 1980s in Great Britain and the US, especially when investors detected a big enough discrepancy between company assets and the correspondent stock market valuation. Those transactions aimed at obtaining control over a company*”.<sup>35</sup>

Hostile takeover means the acquisition which is done forcefully i.e. the acquisition made against the will of the target company. The features of hostile takeover are quite opposite to those of friendly takeover. The important aspect of this kind of acquisition is that the consent of the target firm is not obtained.<sup>36</sup>

In hostile takeover process the acquirer makes an unwanted, unfriendly offer to the target company.<sup>37</sup> The method of purchasing is a form of bid in which the acquirer first buys a small percentage of shares and then he waits for rejection of the board.<sup>38</sup> The acquirer makes an offer to the target company to buy their shares at the price higher than the usual market price. This price is usually high enough to compete other bidders involved in bid and attractive enough to encourage the target to sell their shares. Once the highest price is final the bid is closed.<sup>39</sup> In hostile takeover the sufferer thus ends up giving his own putting to death.<sup>40</sup>

The acquirer of hostile takeover is known as “raider”. For this purpose the raider may use any of the following method for a successful acquisition:<sup>41</sup>

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<sup>34</sup> [www.investorwords.com.\[http://www.investorwords.com/231/hostiletakeover.html\]](http://www.investorwords.com/231/hostiletakeover.html) last accessed May 2009.

<sup>35</sup> Jan Stenbacher, *Defense Strategies Against Hostile Takeovers: Emerging Trends and Development of Country-specific Defense Strategies Against Hostile Takeovers*, (GRIN Verlag, 2007) p6

<sup>36</sup> ibid

<sup>37</sup> Jeannete Gorzala, *The Art Of Hostile Takeover Defense*, (BoD - Books on Demand, 2010)p7

<sup>38</sup> Peter F. Drucker, *The Frontiers of Management: Where Tomorrow's*

*Decisions Are Being Shaped Today*, (Harver Business Review press, 2010) p214.

<sup>39</sup> Neal. Bill. Milsom. Tony. Hills. Carl. Sharples, Jane, *Hostile Takeover process: A case Study of Garanda Verses Forte*,(Elsevier B.V.1998. review by Anand Wadadeker).

<sup>40</sup> supra 28

<sup>41</sup> Supra 32

- Tender Offer
- Dawn Raid
- Proxy Fight
- Bear Hug

The company, which is being purchased doesn't want to be purchased or doesn't want to be purchased by particular company or acquirer.<sup>42</sup> The acquirer has already got an adequate amount of shares from stock market, but still he wants to purchase a large number of stock or voting shares, by making an offer. This offer is known as **tender offer**. The acquiring of such shares without the approval of the board or shareholders, makes clear that the takeover depends upon the management and directors, shareholders are not directly involved in the process.<sup>43</sup>

A **Dawn raid** takes place when the acquirer secretly picks up majority shares of target company to gain control over the target company without disclosing his intentions.<sup>44</sup>

There is another form of taking control over a company known as **Proxy fight**. It happens in a case where a supporter shareholder presents his or her own nominee, who works in the place of supporter shareholder and when this nominee gets elected as director of the company and succeeds in getting the control over the company on behalf of his shareholder. But the completion of this kind of takeover requires longer time, much work and significant cost.<sup>45</sup>

**Bear hug** is considered as one of the initial stage of hostile takeover. It works out in a situation where friendly approach is considered unsuitable or target Company is not

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<sup>42</sup> Ed Grabianowski, *How Hostile takeover Work*, (30th dec 2005) [<http://money.howstuffworks.com/hostile-takeover.htm>]

<sup>43</sup> Patrick A.Gaughan, *Merger: What Can Go wrong and How to prevent it*, (John Wiley and Sons, 2005) p14.

<sup>44</sup> Kay-Oliver Bunn, Jess Puthenpurackal, *Corporate Instrument to Fend Off Unwanted Shareholders*, (GRIN Verlag, 2009) p-9

<sup>45</sup> Edward P. Halibozek, Gerald L. Kovacich, *Merger and Acquisitions Security: Corporate restricting and security management*. (Butterworth-Heinemann, 2005) p-156

strongly resistance to takeover<sup>46</sup>. In this case proposal is made to the board of directors of a target company without concurrent public announcement<sup>47</sup>. “*Their intention is to move the board to a negotiation settlement. The board may be motivated to do so because it is fiduciary responsibility to the target's shareholder. Once the bid is made the company is effectively put into play*”<sup>48</sup>.

There are several reasons behind hostile takeover, but the main reason is purely financial reason. the acquirer may think that they can generate more finance from target Company in the future. For example, the bidder's management may want to buy the target because expanding or diversifying the firm may generate larger salaries, more perks, and greater job security.<sup>49</sup>

The management of Target Company is unhappy with this takeover because they are at the risk of losing their jobs and the entire control goes in other hands. They feel that after acquisition the company might face the danger of going out of the business.<sup>50</sup> Sometimes the company wants to work independently and to ensure the protection of their independence they try to resist this takeover. They use different kinds of tactics. These tactics are

- (i) Poison pill
- (ii) Scorched earth policy
- (iii) Golden parachutes

#### **2.4.2 Business context**

##### **2.4.2.1 Horizontal:**

“Merging of companies with similar functions in the production or sale of comparable products”. Depending upon the total market share, a horizontal merger

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<sup>46</sup> Patrick A. Gaughan, *Merger, Acquisitions, and Corporate Restructurings*, (John Wiley and Sons, 2007) p-234

<sup>47</sup> Supra 15

<sup>48</sup> H.R.Machiraju, *Merger, Acquisition and Takeover*, (New Age International,2007) ch-4, p 79

<sup>49</sup> Grinblatt, M., Titman, S., 2002, *Financial market and corporate strategy*,(McGraw-Hill, 2<sup>nd</sup> Ed,2002)

<sup>50</sup> Ed Grabianowski, *How Hostile takeover Work*, (30th dec 2005) [<http://money.howstuffworks.com/hostile-takeover.htm>]

is considered by the Federal Trade Commission to be the most blatantly anticompetitive merger strategy<sup>51</sup>”.

Horizontal incorporation refers to amalgamation, merger or takeover. In this process one company takes over other company at the time when production process of both the companies is at same stage - this would imply that the horizontal takeover is primarily for the purposes of market dominance or diversification.<sup>52</sup> In other words when two companies are competing in same market they join together. This kind of joining of two companies put a great effect on the market. It usually happens in small size companies, but it may also happen in large businesses which creates ripple effect on the whole economy.<sup>53</sup> “*The main purpose behind this takeover is to achieving the economic scale or increasing the market share*”<sup>54</sup>.

#### 2.4.2.2 Vertical :

“A merger between two companies producing different goods or services for one specific finished product<sup>55</sup>”.

Vertical integration refers to amalgamation, merger or takeover where companies involved are the producers of same good but at its different stage of production.<sup>56</sup> In this kind of takeover both the companies have a relationship of buyer and seller.<sup>57</sup> Or one of the companies is engaged in providing the services on the goods manufactured or conditioned by the other company. This kind of takeover has great outcomes on improving the flow of production. It also helps in reducing stock

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<sup>51</sup> Dictionary of finance and business terms: [www.allbusiness.com](http://www.allbusiness.com)

<sup>52</sup> Mind your business: 1<sup>st</sup> march 2004, Takeover and business growth, [www.bized.co.uk](http://www.bized.co.uk)

<sup>53</sup> [www.learnmergers.com](http://www.learnmergers.com)

<sup>54</sup> Ankur Kashyap, *takeover, A Critical analysis*, dated: 29-2-2008,  
<http://www.legalserviceindia.com/article/1183-Takeovers.html>

<sup>55</sup> Investopedia dictionary: <http://www.investopedia.com/terms/v/verticalmerger.asp#axzz1jKG19JUe>

<sup>56</sup> Mind your business: 1<sup>st</sup> march 2004, Takeover and business growth, [www.bized.co.uk](http://www.bized.co.uk)

<sup>57</sup> Gurusamy, *Financial Services*, (Tata McGraw-Hill, 2<sup>nd</sup> ed) p-373

holding and handling cost.<sup>58</sup> “This type of merger can be viewed as anti competitive because it can often rob supply of business from its competition<sup>59</sup>”.

#### **2.4.2.3 Conglomerate:**

Conglomerate takeover is opposite to vertical takeover. It is taking over of one company by another, which is from different industries. Such industries are unrelated in their venture.<sup>60</sup> These companies are not directly in competition with one another neither they have a relation of seller and buyer as in case of a vertical takeover<sup>61</sup>. The main purpose behind this kind of takeover is diversification<sup>62</sup>.

#### **2.4.2.4 Differences Between Merger and Takeover:**

The basic concept of merger and takeover is almost similar, but they are slightly different from each other. A merger is synonymous with combination or absorption of one thing into another. It has been defined as arrangement of the two companies where assets, liabilities, business and shareholders of both the companies combine resulting in formation of single strong entity.<sup>63</sup> Usually in this combination the same size companies combine to form one large company. They are given a new name and new stocks are issued from that new company instead of two Separate Companies.<sup>64</sup> One of the benefits of merger is that the amalgamation of two organizations is voluntary so both share their information, assets, liabilities, and

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<sup>58</sup> ibid

<sup>59</sup> [www.learnmergers.com/mergers-vertical.shtml](http://www.learnmergers.com/mergers-vertical.shtml) last accessed on 6th Aug 2009

<sup>60</sup> Eugene F. Brigham, Joel F. Houston, *Fundamentals of Financial Management* (Cengage Learning, 2011), p-659

<sup>61</sup> Supra 54

<sup>62</sup> Bhattacharyya, *Cross-Cultural Management: Text And Cases*, (PHI Learning Pvt. Ltd) p-194

<sup>63</sup> Merger and Acquisitions: An Indian perspective. Economic Times 31July 2009

<sup>64</sup> [www.learnmergers.com](http://www.learnmergers.com)

responsibilities freely.<sup>65</sup> There joint investment enhances the earning capacity of organization.

On other hand if we compare takeover with merger the difference is, takeover is also combination of two firms or organizations but in a way where one company takes over other company becoming the new owner. In this case the bid is a complex transaction in regards to securities of companies. Legally a company (acquirer) buys the other one (target) resulting in loss of identity of the target company as the new organization appears with the name of acquirer. Usually the size of companies involved is different but it can be same in some circumstances. Normally the larger company takes control over the assets and management of the smaller one. Takeover can be friendly i.e. done by negotiation between the companies involved or it can be forceful i.e. one company taking control over the other without her consent or prior information. Takeovers occur in exchange for cash, stock, or both. In takeover an investor is mostly interested in taking over a private company.

“An assets purchase by the buyer company makes an offer to the directors of the target company to buy its business assets. On the other hand, with a share purchase of takeover bid, the offeror is not dealing direct with the target company itself, but makes its offer to the shareholder of the target to buy their shares”<sup>66</sup>.

To bring this chapter to an end takeover affects economy of the companies involved greatly. Most of the time it is advantageous for the companies as share prices automatically climb and economies of scale are achieved. But contrary can also happen making this process disadvantageous for the companies involved. Especially when with the emergence of new company the target loses her original identity. Besides these aspects takeover, in the modern corporate sector, has become the most effective medium of market capitalization and extension of business activities.

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<sup>65</sup> Andrew Gillespie, *Foundations of Economics*, (Oxford University press 2007) p-205

<sup>66</sup> Andrew Hicks, S. H. Goo, *Cases and Material On Company Law*, (Oxford University Press, 2008), p-291.

## UK LAW REGARDING TAKE OVER

### 3.1 Historical Background of UK City Code

The twentieth century brought a great revolution in business world. Before this revolution, the governments had more control over the economies of their respective countries. This revolution has brought freedom for the businesses to exploit opportunities available worldwide. The policy of globalization enhanced these opportunities for investors. But at the same time it augmented the rivalry among investors to grab international market thus achieving economies of scale became essential for the business. In this situation takeovers and mergers were the best options available for businesses in corporate sector.

This new strategy brought a great maturity in economic world, but on other hand some people tried to misuse these strategies. The rights of shareholders and investors did not remain that secure. In this situation there was a need for laws and regulations to oversee the process of takeover and merger to ensure the security of interest of shareholders and to prevent the disruption in securities market.

### 3.2 The UK City Code:

In UK the government is not interested in making statutory laws to govern mergers and takeovers rather governments has encouraged self regulation of this process. For this purpose UK city Code is present. This city code is one of the specific code which deals with takeover and merger in UK. The Code was established by the city working party (a body established by the Governor of Bank of England in 1959).<sup>67</sup> It sets rules for the companies how to preside over and vote in bidding during takeover and merger. It also sets out rules and regulation for incorporate

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<sup>67</sup> Cynthia Day wallance. *The multinational Enterprise And Legal Control: Host State sovereignty in an Era of Economic Globalization*, (Martinus Nijhoff Publishers, 2002), p-517.

companies which take part in bidding and trading shares in securities markets of UK.<sup>68</sup> This code is also applicable to the European countries in a very limited manner.<sup>69</sup> Even the officials of the Financial Services Authority (FSA) would be questioned and enquired by the panel constituted in pursuance of UK City Code for not adopting suitable measures and action if a company is exploiting the other<sup>70</sup>

The responsibility of the implementation of this Code rests with the *take over* panel. The members of the panel are appointed by the Bank of England and other major City institutions. It does not work as a force of law, but there are varieties of sanctions which ensure the implementation of its various provisions by takeover Panel.<sup>71</sup> Their regulatory functions are under the administration of EU Takeover Directives.<sup>72</sup> The code describes a systematic framework within which takeover is conducted. This framework is planned in such a way that it endorses other regulatory regimes, the integrity of the financial market with the help of conjunctions.<sup>73</sup> It is projected to provide “a codification of good standards of commercial behavior”<sup>74</sup>

#### **Legal status:**

The panel on takeover and merger is an independent body. The code does not have a force of law, but its statutory functions are enforced by the panel. The responsibility of general administration is on the head of panel. Their responsibilities include keeping an eye on relevant dealing, investigating sensitive matters in their jurisdiction wherever required, the establishment of disciplinary proceedings and giving the ruling on points of interpretation. They provide

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<sup>68</sup> Perti Mantysaari, *The Law of Corporate finance: General Principle and EU Law: Volume III: Funding, Exit, Takeovers*, page 521.

<sup>69</sup> *ibid*

<sup>70</sup> The City code On Takeover and Merger, (Freshfield Bruckhaus Deringer, Summer 2006)

<sup>71</sup> J.M.M. Maeijer, Koen Geens, *Defensive Measure against Hostile Takeovers in the Common Market: with an Introduction in French*, (Martinus Nijhoff Publishers, 1990) p-213.

<sup>72</sup> The City Code On Takeover and Merger (Freshfield Bruckhaus Deringer, Summer 2006)

<sup>73</sup> The Takeover Code (9<sup>th</sup> ed 2009)

<sup>74</sup> Chnythina Day Wallace, *The multinational Enterprise And Legal Control: Host State sovereignty in an Era of Economic Globalization*, (Martinus Nijhoff Publishers, 2002)

consultation in the process of takeover and merger.<sup>75</sup> The panel is constable before the rulings of administrative upon the request of a party to relevant transaction.<sup>76</sup> Their main objective is to make sure the fair treatment for all shareholders in takeover bids.<sup>77</sup> The Panel evaluates the collective views of the persons who have expertise in the field of takeover. They show that how to appropriate the business standards and to ensure fair treatment to shareholders during mergers and takeovers.<sup>78</sup>

One of the characteristic of the instant Code is its flexibility. The instant code also prescribes the civil and criminal liabilities in case of various wrong doings. The panel, which is constituted under this Code has been empowered to take all the steps necessary for the implementation of this Code.<sup>79</sup>

The instant Code comprises of six basic principles, which are as follows,

- i. "All holders of the securities of an offeree company of the same class should be given equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected<sup>80</sup>;
- ii. "The holder of the securities of an offeree company must have a sufficient time and information to enable them to make a rational decision on the bid; where it advises the holder of securities, the board of the offeree company must give their views on the effects of implementation of the bid on employment, conditions of employment and the location of the company's places of business<sup>81</sup>".

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<sup>75</sup> Paul Barnes, *Stock Market Efficiency, Insider Dealing and Market Abuse*, ( Gower Publishing, Ltd., 2009)p-140.

<sup>76</sup> Claude Samson, Jeremy McBride, *Solution De Rechange Au Reglement Des Conflicts*, ( Presses Université Laval, 1993) p 483.

<sup>77</sup> [www.takeoverpanel.org.uk](http://www.takeoverpanel.org.uk)

<sup>78</sup> [www.thetakeoverpanel.org.uk/the-code/download-code](http://www.thetakeoverpanel.org.uk/the-code/download-code)

<sup>79</sup> The City Code on Takeover and Merger, (Freshfield Bruckhaus Deringer, Summer 2006)

<sup>80</sup> Ibid

<sup>81</sup> Ibid

- iii. “The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities opportunity to decide on the merits of the bid<sup>82</sup>”.
- iv. “False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the market distorted<sup>83</sup>”.
- v. “An offeror must announce a bid only after ensuring that he/she can fulfill any cash consideration, if such is offered and after taking all reasonable measures to secure the implementation of any other type of consideration<sup>84</sup>”.
- vi. “An offeree company must not be hindered in the conduct of its affairs for longer than reasonable by a bid for its securities<sup>85</sup>”.

The Code contains a series of rules. Contrary to General Principles most of the Rules are communicated in less General terms, they are not structured in technical language, but the basic purpose of the Code can be easily figured out. The Rules and the notes thereto provide comprehensive guidance on the application of these General Principle in specific circumstances.

### **3.2.1 Companies, transactions and persons subject to the Code:**

### **3.2.2 Companies:**

The City Code on Takeover and Merger is a set of rules and regulations applicable to the companies which take part in the bids and trading shares in regulated markets of UK. “It applies to all over the UK, Channel Island and Isle of men AIM

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<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> Ibid

<sup>85</sup> Ibid

companies.”<sup>86</sup> It also applies to all the companies listed on London Stock exchange and all statutory and chartered companies of *Societas Europaea*. Such companies may run business in their registered\* offices anywhere in UK, Channel Islands or the Isle of Man. The job of the authorized offices is to deal with and standardize the securities of relevant companies or statutory bodies in stock exchange in UK, Channel Islands or the Isle of Man.<sup>87</sup>

From this aspect it is considered that the Code regulates all types of listed companies, but it is not a hard and fast rule of the Code. It is also applicable to those companies who are self-regulatory bodies.<sup>88</sup> It means that it also applies to unlisted public companies.

Some other companies also come under the provisions of UK City code. These other companies include all private and public companies which have their authorized offices and trade their shares in stock markets of UK, Isle of Man or Channel Island. But there are certain conditions applicable to the private companies only.<sup>89</sup> These conditions are described in section 3 of Takeover Code.

- (a) The Code applies to Securities of company have been admitted to the official List. It also applies in those companies which are listed on AIM (Alternative Investment Market) and OFEX or the companies previously admitted to the official list at any time during the last ten years.
- (b) Securities of private company that prices are fixed have been published on regular basis through any form of media whether newspaper, electronic price quotation system or any other way of publication. The reasonable time of publication should be a continuous period of at least six months in the 10 year aforementioned to the pertinent date.

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<sup>86</sup> Andreas Beyer, Claudius Schikora, Alexander Dibelius (vorwort), Claudius Schikora, *Regulation Light-Germany's Standard*, (Herbert Utz Verlag, 2010) p-127. \*in case of a UK unregistered company, the reference to “registered office” shall be read as a reference to the company’s principle office in the UK.

<sup>87</sup> The Takeover Code (9<sup>th</sup> ed 2009) S3.a(i)

<sup>88</sup> Christine Rossini, *English as a Legal Language*, ( Martinus Nijhoff Publishers, 2<sup>nd</sup> ed, 1998) p-128

<sup>89</sup> The Takeover Code (9<sup>th</sup> ed 2009) S3.a(i)

- (c) All those securities which are mentioned in section 693(3) (b) of the act have been subject matter to a marketing arrangement at any time during 10 years aforementioned to the relevant date.
- (d) There is one important function that is performed by the private company for the purpose of issuance of its own shares, a company must be register a prospectus from a competitive authority such as registrar of the companies or Companies House or any other relevant authority in the UK, the Channel Island or Isle of Man with in last ten years.<sup>90</sup> If in any situation the prospectus is not registered by the registrar, then it must be approved by the UKLA at any time during 10 years aforementioned to the relevant date.<sup>91</sup>

Here the specific date on which the company announces their prospectus for public or makes public offer is known as relevant date. This relevant date is likely to be the date of some specific event which occurs in the company. This specific event must be mentioned in the code.

The code is very wide and beneficial for companies, but in some cases the provision of the code may not be suitable for all companies such as statutory and chartered companies. Besides this the code sets forth some conditions for private companies as mentioned above. But in certain circumstances these conditions are not appropriate for private companies; in such case the panel provides relaxation in the application of code.<sup>92</sup>

The code applies to Shared jurisdiction companies. It means that it also applies to those private companies which are resident\*. Such companies are described in the code as following:

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<sup>90</sup> Jonathan Reuvid, *The Corporate Finance Handbook*, (Kogan Page Publishers, 3<sup>rd</sup> ed, 2002) page 106

<sup>91</sup> The Takeover Code (9<sup>th</sup> ed 2009) S 3a(ii)

<sup>92</sup> *Ibid*

\*Those companies which are registered on the UK regulated market or stock exchange, their main offices is in the UK but they have also their branches or franchise offices in another member state of the European Economic Area.

- (a) “A company which has its registered office in the UK whose securities are admitted to trading on a regulated market in one or more member states of the European Economic Area but not on a regulated market on the UK<sup>93</sup>”.
- (b) “A company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading only on a regulated market in the UK<sup>94</sup>”.
- (c) “A company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on regulated markets in more than one member state of the European Economic Area including the UK, but not on a regulated markets in the member state of the European Economic Area in which it has its registered office, if the securities of the company were first admitted to trading only in the UK or the securities of the company are simultaneously admitted to trading on more than one regulated market on or after 20 may 2006, if the company notifies the panel and the relevant regulatory authorities on the first day of trading that it has chosen the panel to regulate it or the panel is the supervisory authority pursuant to the second paragraph of Article 4(2)(c) of the Directive<sup>95</sup>”.

In general the panel of City Code demands a company resident in that case if it is incorporated in UK, the Channel Island or the Isle of Man. It must have their executive office in one of those jurisdictions.<sup>96</sup> It is the responsibility of the panel to implement the provisions of the Code according to the article 4(2) (e) of directives. In simple words we can say that the code will be applicable to the companies mentioned in paragraph (a) above. The basic purpose behind the application of these provisions is those matters which are involving information and matters speak about company law. It also relates to those matters which are involving in consideration of offer and procedure of the offer. The supervisory authority apply their regulations on member state according to the Article 4(2)

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<sup>93</sup> The Takeover Code (9<sup>th</sup> ed 2009) S 2 a (ii)

<sup>94</sup> Ibid

<sup>95</sup> The Takeover Code (9<sup>th</sup> ed 2009) S 3 a (iii)

<sup>96</sup> Gil Brazier, *Insider Dealing: Law and Regulation*, (Routledge, 1996) p-217.

(b) and (c) of the directive. The Code will apply on those companies which are above-mentioned in paragraph (b) or (c). The reasons behind the appliance of above-mentioned provision for these companies are “employee information and company Law matters”. Member state companies will come under the rules of supervisory authority if the offeree company has its registered office.<sup>97</sup>

There is an exception to this provision.

*“The code does not apply to offers for open ended Investment companies as defined in Article 1(2) of the directive”.*<sup>98</sup>

### 3.2.2.1 Transactions:

The UK City Code does not have a force of law, but its statutory functions are enforced by the panel. As mentioned above, the responsibility of general administration is on the head of the panel; his responsibilities include keeping an eye on dealings and transactions related to all relevant companies. The nature of transaction is not specified; it may be in the form of takeover bid or merger of two companies or any form of transaction *“where a control of a company is to be obtained or consolidate”*.<sup>99</sup> Here the control means the “interest” or “interest in shares”. The company demonstrates control by obtaining 30% or more than 30% voting rights. Any offer that results in getting more than 30% voting share will be subject to the code.

There are various types of transactions which are regulated by City Code in the form of offer. The nature of these offers may be appropriate offers, partial offers and offers by a company for shares in its subsidiary, dual listed company transactions, new shares issue, share assets reestablishment and offer to minority shareholders. The consequence of these offers comes out in the form of taking control which shows their intention. All these types of offers are subject to the Code. *“It should be noted that if the Code applies to a transaction, then it will*

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<sup>97</sup> The Takeover Code (9<sup>th</sup> ed 2009), S 3, para (a)(iii)

<sup>98</sup> The Takeover Code (9<sup>th</sup> ed 2009), S 3 para (a)(iv)

<sup>99</sup> Gil Brazier, *Insider Dealing: Law and Regulation*, (Routledge, 1996) p-217.

*apply to all parties involved with that transaction regardless of where the offeror is incorporated or based".<sup>100</sup>*

Some other kind of transactions known as "Unitisation proposals" is also subject to the Code. The main function of these transactions is usually to beat other transactions which are in competition with the same class of transactions.<sup>101</sup> Besides this the transactions which come under the provision of paragraph (a) (iii) i.e. public offers are also subject to the Code.

It is clear that all above mentioned-transaction are subject to the code but the completion of these transactions is not mandatory. The Code can be applied at any stage of transaction. The stage where the code provokes varies from transaction to transaction. Some transactions which have not yet been announced also come under the provisions of this code.

There is an exception to this rule. This code is not applicable to the transactions related to an offer for non-voting, non equity capital. But it is applicable only in case these offers come under the provision of Rule 15.<sup>102</sup>

### **3.2.2.2 Persons:**

Many of the rules are not just applicable to an offer but also to the people. These persons are authorised in wide range, which are, or deemed to be, acting in concert\* with an offeror, or seek to influence, in any kind of issue or matters which come under the provisions of the Code.

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<sup>100</sup> An Overview on *The Panel On Takeover and Mergers (THE "PANEL") AND The City Code On Takeover and Mergers (THE "CODE")*.

<sup>101</sup> The Takeover Code (9<sup>th</sup> ed 2009), S 3(b)

<sup>102</sup> *Ibid*

\*Person acting in concert comprise person who, pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control of a company or to frustrate the successful outcomes of an offer for a company. A person and each of its affiliated persons will be deemed to be acting in concert all with each other.

The Code panel has certain powers of enforcement. It represents the collective views of those people who are professionally skilled in the field of takeover. They guide businesses to appropriate business standards and to ensure fair treatment of all shareholders.<sup>103</sup> These advisers are also subjects to the Code. The Code is applicable to all the financial advisers and directors who are well-aware of duties and responsibilities as per their appointment.<sup>104</sup>

Besides directors there are some other persons also to whom the Code applies. These persons include employees of company, spokespersons of any corporate organization, members of partnership, or persons related to the business world. But the most important is that the business should be accomplished in accordance with the code. The directors, employees, agents, partners and corporate entities should be well aware with the rules and regulations of the Code. Their actions and omissions should be in accordance with the provisions of the Code.

The code is a statutory body, it provides a frame work in which the role of directors and bidders is clearly mentioned. Their duties and responsibilities have been designated as the supervisory authority to deal with all kinds of matters. The Code never gives free hand to the directors; there are certain limitations on the role of the directors in association as far as takeovers are concerned. These limitations are imposed to obligate the directors of offeror and offeree companies to protect the interest of shareholders thereof. The act and omissions of all the persons involved in the process of are in association with takeover are connected to any matter or issue on which the Code applies, "*notwithstanding that the offer company may since have ceased to be subject to the Code*".<sup>105</sup>

If there is any ambiguity in any matter, it is the responsibility of the panel to consult the specialised person of the field.

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<sup>103</sup> Supra 43

<sup>104</sup> The Takeover Code (9<sup>th</sup> ed 2009). S 3 (f)

<sup>105</sup> *ibid*

### **3.2.3 The Code Panel and Committee**

The city code is a precise code which deals with takeovers and mergers in the UK. The Code was established by the city Working party, a body established by the Governor of Bank of England in 1959.<sup>106</sup> The code panel and committee works out the frame work within which they have to function in accordance with the City Code on takeover and merger. It is an independent body, which is established in 1968<sup>107</sup>. It describes how to preside over and voted for the bid in takeover and merger. It sets out rules and regulations for incorporate companies which take part in bidding and trading shares in a regulated market of UK.<sup>108</sup>

The Code Panel is a statutory body. It has not a force of law, but it is a self regulatory body, its statutory functions regulate the issues and matters to which the Code applies. The Panel also administers Takeovers and mergers to supervise them according to the rules and regulation laid down in the Code.

“It has been designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers pursuant to the Directive on Takeover Bids 2004/25/EC. Its statutory functions are set out in and under Chapter 1 of Part 28 of the Companies Act 2006”<sup>109</sup>.

The UK City Code Panel on Takeover is independent from government and other facilitating institutions as compared to the panels of other countries.

Generally the Code demands a company to be resident to carry takeover bids and merger transactions. The panel regulates the companies whose securities must be admitted on regulated trade markets of the UK, in that case if it is incorporated in the UK, the Channel Island or the Isle of Man, it must have their executive office in

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<sup>106</sup> Supra 64.

<sup>107</sup> [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk), *The panel on Takeover and Merger*

<sup>108</sup> Supra 65.

<sup>109</sup> [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk), *About the Panel*.

one of those jurisdictions.<sup>110</sup> In some cases the panel also regulates the companies of “Member states” (The companies which come under another member state of the European Economic Area), For example “*where the offeree company is registered in the United Kingdom and has its securities admitted to trading only on a regulated market in a Member State other than the United Kingdom*”<sup>111</sup>.

The panel is designed in such a way that it can easily facilitate the matters related to takeover bid and merger. The Panel is composed of the persons who are highly skilled in their respective fields. These persons are normally taken from major financial and business institutions.

The Panel consists of 35 members<sup>112</sup>. It is said that there are some bodies who appoint the members of the panel, which are,

“These bodies are The Association for Financial Markets in Europe, The Association of British Insurers, The Association of Investment Companies, The Association of Private Client Investment Managers and Stockbrokers, The British Bankers’ Association, The Confederation of British Industry, The Institute of Chartered Accountants in England and Wales, The Investment Management Association, The National Association of Pension Funds<sup>113</sup>”.

The structure of Panel comprises of the following committees,

- (1) Hearing Committee
- (2) Code Committee
- (3) Nomination Bodies
- (4) Remuneration Committee

### 3.2.3.1 Hearing Committee:

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<sup>110</sup> Supra 85

<sup>111</sup> Supra 98

<sup>112</sup> The Takeover Code, (9<sup>th</sup> ed 2009), S 4(a)

<sup>113</sup> [www.thetakeoverpanel.org.uk/structure/panel-membership](http://www.thetakeoverpanel.org.uk/structure/panel-membership)

The hearing Committee is established by the Panel. There are certain functions delegated to the Committee by the Panel. Besides functions, certain authorities are also delegated to the hearing Committee to enable it to perform its functions. These authorities are to seek external legal or other independent professional advice from an experienced person and to ensure the presence of the relevant expert at the time of hearing or at the time of meeting, if it is deemed necessary. The expenses related are to be borne by the head of the panel<sup>114</sup>.

### **Functions of the Committee**

The principle functions which are delegated to the Committee by the Panel are making rules which are related to the disciplinary proceedings and in proceedings related to the interpretation, application or effect of the City Code on takeovers and Mergers. The Committee organizes these proceedings at its own movement or it can be activated by the Executive. These proceedings may also be initiated on the request of the party involved in takeover or any other person who was affected by Executive rulings<sup>115</sup>. The committee “*conducts all hearings in accordance with the rules of Procedure*”<sup>116</sup>.

The Committee also reviews the certain matters from time to time. These matters are related to the conduct of proceeding including directing the Executive, and making recommendations to make amendments to the Rules of Procedure which it deems necessary. The Hearing Committee may call its meeting at a short notice, where appropriate<sup>117</sup>.

### **Composition of Committee:**

The Committee comprises of:

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<sup>114</sup> The Takeover Panel, Hearing Committee, Rule1(1.3), amended by the panel 14 October 2009.

<sup>115</sup> The Takeover Panel, Hearing Committee, Rule2(2.1), amended by the panel 14 October 2009.

<sup>116</sup> The Takeover Panel, Hearing Committee, Rule4(4.1), amended by the panel 14 October 2009.

<sup>117</sup> [www.thetakeoverpanel.org.uk/structure/committees/hearings-committee](http://www.thetakeoverpanel.org.uk/structure/committees/hearings-committee)

- a) Chairman
- b) Three Deputy Chairmen
- c) Twenty other members

The Chairman and three Deputy Chairmen are appointed by the Panel; up to 8 members are also appointed by the Panel as a member of Committee; while rests of the members are appointed by the Nomination Bodies<sup>118</sup>. The members of the Panel if appointed by the above mentioned Bodies become the member of hearing Committee also but without any further title<sup>119</sup>.

The number of members of the Committee is not fixed. It is changes from time to time, but in any case the number should not exceed twenty two. All matters related to the members such as appointment, tenure, removal etc. are governed by the Panel<sup>120</sup>.

### **3.2.3.2 Code Committee:**

The Code Committee is also established by the Penal. It has various authorities and functions. Its major authority is to establish a procedure to ensure smooth running of the functions of committee. The Committee is also authorized by the Penal to seek professional advice from experts, to collect necessary information from the members of Penal, to specify the circumstances in which the chairman may act on behalf of committee.<sup>121</sup> It also authorized to issue a certificate related to the rules endorse by the code.<sup>122</sup>

#### **Function of the Code Committee:**

The functions of the committee are to make rules for the panel, to keep the code under review to establish where amendments are needed, to propose amendments

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<sup>118</sup> [www.thetakeoverpanel.org.uk/structure/about-the-panel/organisation- Chart](http://www.thetakeoverpanel.org.uk/structure/about-the-panel/organisation- Chart)

<sup>119</sup> Supra 101

<sup>120</sup> The Takeover Panel, Hearing Committee, Rule3(3.4), amended by the panel 14 October 2009.

<sup>121</sup> The Takeover penal, Code Committee :Terms Of Reference 2006 (amended on 20<sup>th</sup> jan 2010), Rule 5

<sup>122</sup> The Takeover penal, Code Committee :Terms Of Reference 2006 (amended on 20<sup>th</sup> jan 2010), Rule 7.3

either on its own initiative or on the direction of the Panel, to consult on proposed amendments to the Code and to respond to these consultations with the conclusions of the committee, to amend the Code whenever it is appropriate, to propose and adopt amendments in the rules of procedures of hearing committee in consultation with the hearing committee and to make arrangements to publish the Code.<sup>123</sup>

Set up to keep under review and confer upon and make amendments in any such procedure for the Code.<sup>124</sup> Matters which are related to amendments may arise from various sources. These matters could be specific cases such as market developments or matters in operation within the markets.<sup>125</sup>

The major function of the Code Committee is to carry out the Rule making functions of the Penal. The Committee is responsible for making amendments whenever it is needed. For the purpose of these amendments the Committee formulates and composes proposals at his own end.<sup>126</sup> Proper consultation for such amendments and acts in response to such consultation is also included in the functions of committee.

“The Code Committee usually consults publicly on proposed amendments to the Code via Public Consultation Papers. Following the end of the consultation period, the Code Committee publishes its conclusions and the final Code amendments in a Response Statement<sup>127</sup>”.

In case of necessity, after proper consultation with hearing Committee, the Code Committee may adopt the rules of procedure of hearing Committee. In any case where the Code Committee feels necessary the Panel can provide its assistance.<sup>128</sup>

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<sup>123</sup> The Takeover panel, Code Committee :Terms Of Reference 2006 (amended on 20<sup>th</sup> Jan 2010)

<sup>124</sup> A. Haan-Kammga, *Supervision on Takeover Bids: A Comparison of Regulatory Arrangements*, (Kluwer 2006) page-146

<sup>125</sup> [www.thetakeoverpanel.org.uk/structure/committees/code-committee](http://www.thetakeoverpanel.org.uk/structure/committees/code-committee)

<sup>126</sup> The Takeover panel, Code Committee :Terms Of Reference 2006 (amended on 20<sup>th</sup> Jan 2010), Rule 2.2

<sup>127</sup> Supra 111

<sup>128</sup> The Takeover panel, Code Committee: Terms Of Reference 2006 (amended on 20<sup>th</sup> Jan 2010), Rule 2.7

### **Composition of Code Committee:**

Generally the Code Committee consists of 12 members. The number of Committee members varies from time to time, but in any case the number should neither exceed twelve nor should it be less than five.<sup>129</sup> The designations of the members are granted by the Panel. The selection of chairman is a responsibility of Committee's members.<sup>130</sup>

The Panel appoints the member of Code Committee as regular member. Once a member appoint as regular member or an alternative member, then he cannot become a regular or as an alternative member of hearing Committee, neither at the time of nor afterwards appointment<sup>131</sup>. The Panel also appoints the members of both hearing committee and Code Committee on alternative designations in case the member concerned is not available. The alternative members perform their duties as they are the genuine members rather than working as agent or delegate. They perform their functions and award their own judgments on disputed matters. They may also use the voting right.<sup>132</sup>

### **3.2.3.3 Nomination Committee:**

The Penal on Takeover and merger establishes a committee to be known as Nomination Committee. As like other committees the Penal delegates various functions and authorities to the Nomination Committee also.

#### **Purpose of the Committee:**

The basic purpose of the Committee is to monitor the size, composition and balance of the penal. The main object of the Committee is to give approval of the appointment of chairman, deputy chairman and members of Panel. It also gives the approval of any renewal and alternative appointments: These nominations may be for any committee, either Hearing Committee or Code Committee but it does not

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<sup>129</sup> The Takeover penal, Code Committee :Terms Of Reference 2006 (amended on 20<sup>th</sup> Jan 2010), Rule 3.2

<sup>130</sup> The Takeover penal, Code Committee :Terms Of Reference 2006 (amended on 20<sup>th</sup> Jan 2010), Rule 3.3

<sup>131</sup> Supra 102

<sup>132</sup> ibid

include the members who are to be appointed by the Nominating Bodies. The recommendation for appointment of the Director General of the Panel is also responsibility of the Committee. These recommendations are valid if made after 20<sup>th</sup> May 2006<sup>133</sup>.

The Committee recommends the appointment or renewal of appointment of the following;

- (a) Chairman
- (b) Deputy Chairman
- (c) Independent members of the Panel and their designated alternates (where applicable)
- (d) Director General of the Panel
- (e) Independent members of the Panel and their designations that are sitting in Code Committee and hearing Committee.

The Nomination Committee helps out Remuneration Committee to prepare the terms of standard “Letters of Appointment”. The standards are related to incorporation of terms of service and confidentiality undertakings. It also considers any necessary amendments in the standard of Appointment.<sup>134</sup>

### **Composition of the Nomination Committee:**

The Nomination Committee comprise of the people who are members of panel and are nominated by the Bank of England. The Nomination Committee consists of following members;<sup>135</sup>

- The Chairman
- one of the Deputy Chairmen

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<sup>133</sup> [www.thetakeoverpanel.org.uk/structure/committees/nomination-Committee](http://www.thetakeoverpanel.org.uk/structure/committees/nomination-Committee), last accessed on 25<sup>th</sup> July 2009

<sup>134</sup> The Takeover Panel, Nomination Committee: Terms of Reference 2006, Rule 2.4

<sup>135</sup> The Takeover Panel, Nomination Committee: Terms of Reference 2006, Rule 3.1

- a member appointed by the Panel and designated to serve on the Hearings Committee
- a member appointed by the Panel and designated to serve on the Code Committee
- a member appointed by one of the Nominating Bodies
- a Bank of England nominee

“Members of the Committee shall be appointed by the Panel.”<sup>136</sup>

After every six months the Committee determines the number of its members. In case Deputy Chairman is not available and there is some urgency, the Chairman is allowed to work as Deputy Chairman.<sup>137</sup>

In any case the Nomination Committee continues to perform its functions. Sometimes there are vacancies within the Committee due to various reasons but it does not affect progress of the Committee.<sup>138</sup>

#### **3.2.3.4 Remuneration committee:**

As like others Committees, the Remuneration Committee is also established by the Panel on takeover and merger. There are various authorities and functions of the Committee.

The Panel authorizes the Chairman of Committee to do any act which he considered essential for performance of Committee’s functions. He develops a systematic procedure for this purpose. He has the authority to review this procedure according from time to time. Committee arranges external legal and professional

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<sup>136</sup> The Takeover Panel, Nomination Committee : Terms of Reference 2006, Rule 3.2

<sup>137</sup> The Takeover Panel, Nomination Committee :Terms of Reference 2006, Rule 3.4

<sup>138</sup> The Takeover Panel, Nomination Committee :Terms of Reference 2006, Rule 3.6

advice and presence of these experts in meetings if deemed necessary, at the expense of Panel.<sup>139</sup>

### **Functions of Committee:**

The first and foremost function of the Committee is to arrange a crystal clear procedure to provide services in department of salary or fees payable, other benefits and make a strategy on Compensation in expenditure of members.<sup>140</sup> In particular, it considers and determines the remuneration of;

- i. Chairman of the Panel
- ii. Deputy Chairmen of the Panel
- iii. independent members of the Panel
- iv. Director-General of the Panel Executive.

The committee sends a report on the above-mentioned determinations to the Panel in such a manner as per employment agreement of that person with the Panel.

The Remuneration Committee works together with Nomination Committee in matters relating to the services. Letter of appointment, terms of services, confidentiality undertakings and other related matters are settled by coordination of both the Committees. All kinds of matters related to remuneration of the Panel members are referred to the Committee from time to time.<sup>141</sup>

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<sup>139</sup> The Takeover Panel, Remuneration Committee :Terms of Reference 2005 (Amended by Panel on 15 April 2009), Rule 5

<sup>140</sup> [www.thetakeoverpanel.org.uk/structure/committees/remuneration-committee](http://www.thetakeoverpanel.org.uk/structure/committees/remuneration-committee)

<sup>141</sup> The Takeover Panel, Remuneration Committee :Terms of Reference 2005 (Amended by Panel on 15 April 2009), Rule 2

### **Composition of Committee:**

The Committee is composed of all those members who are determined by the Panel from members of the Panel or otherwise from alternates of Panel members. All these members are appointed by the Nomination Committee.<sup>142</sup>

The size of Committee's member is not fixed. It changes from time to time; but in any case it should not be less than four. The members of the Committee appoint chairman at their own choice. Before completion of service duration, their job may be terminated in the following cases<sup>143</sup>;

- i. If they resign,
- ii. If ceasing to be a member of the panel,
- iii. Any member of the Committee who is not a member of the panel, until the appointment is terminated by the Panel.

### **2.2.3 Profit Forecast**

The main function of City Code is not to regulate the commercial aspects of takeover or merger or it doesn't describe the way how to run the business, Rather it is broadly concerned to ensure that shareholder are fairly treated and they never lose an opportunity to decide the takeover on merits.

### **Meanings of Profit Forecast:**

Profit forecast means the prediction of the future profit of a company. Profit forecast are usually made by a market analyst. These people may be experts from the financial industry or company or Company officials. *“Some companies try to sway predictions by providing lots of data to show that the company is a good*

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<sup>142</sup> The Takeover Panel, Remuneration Committee :Terms of Reference 2005 (Amended by Panel on 15 April 2009), Rule 3.2

<sup>143</sup> The Takeover Panel, Remuneration Committee :Terms of Reference 2005 (Amended by Panel on 15 April 2009), Rule 3.5

*investment. The predictions issued by analysts are used by investors when deciding to purchase or sell shares of a specific company".<sup>144</sup>*

Every management is required to make profit forecast for their business survival. Tough competition among the firms makes it an essential part of their business. It has great impact on the profitability of the company.<sup>145</sup> Forecasting is always planned on a short-term basis. The duration for forecast may be from one year to three years. To calculate the performance of future business, the performance prior periods must be examined by the analyst. While reviewing performance of prior period the analysts ignore all kinds of unexpected losses and major financial problems.<sup>146</sup>

Forecast foresees expected behavior of revenues of the firm. It is considered a foundation of business plans. It projects how much the firm will sell out and how much profit will it gain from it.<sup>147</sup> From this aspect it shows the direct relationship between the cost, output and Profit. The profits depend on its total sale and total cost.<sup>148</sup>

While making profit forecast it is obviously the duty of directors to maintain high standard of accuracy. "*The financial advisor must satisfy themselves that forecast has been prepared in this manner by the directors*".<sup>149</sup>

The profit forecasting is very important for investors to make rational decisions. Their final decision to buy or sell shares of any company is based on this forecast. Due to this reason the companies often guide analysts to keep forecast not too high or not too low. If the companies adopt this way they can easily protect themselves from any unwelcome shocks.<sup>150</sup>

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<sup>144</sup> [www.investorwords.com/8194/profit\\_forecast.html](http://www.investorwords.com/8194/profit_forecast.html)

<sup>145</sup> TR Jain, OP Khanna. *Business Economics (for BBA-1)*, page 217.

<sup>146</sup> [www.zeromillion.com/business/financial/forecasting-profits.html](http://www.zeromillion.com/business/financial/forecasting-profits.html)

<sup>147</sup> Mike McKeever, *How to write a Business Plan*, (Nolo, 2010) p 102.

<sup>148</sup> Bhattacharyya Debarshi, *Management Accounting*, (Pearson Education India 2011) p-634

<sup>149</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 28.1

<sup>150</sup> John Downes, Jordan Elliot Goodman, *Barron's Finance & Investment handbook*, (Barron's education series, 2003) p-706.

## **Legal status in Takeover Code:**

The takeover code emphasises the procedure and documentation of the profit forecast. The procedure of profit forecast made in course of an offer is described by the Code. In this scenario the Takeover Code especially assigns the responsibility for this to Directors in course of an offer. The directors are obligated for fair representation in all communications in this regard to all shareholders during an offer.<sup>151</sup> The documents prepared for shareholders in connection with an offer containing profit forecast must state the assumption including commercial assumptions on which the directors have based the forecast. In case of any announcement which contains a profit forecast, same procedure needs to be applied.<sup>152</sup> It is said that,

“If the offer is particularly related to cash, all the relevant accounting policies and calculations for forecast must be examined and reported on by the auditors or consultant accountants, and financial advisers<sup>153</sup>”.

The Code categorizes a variety of statements which are used as profit forecast. These forecasts are used for specific purposes such as, a general statement that “profit will be somewhat higher than the last year’s” here the profit for the period which has already expired has been used as an estimate.<sup>154</sup>

If unaudited profit figures are being published during an offer period must be reported with the consent of Panel. This provision is not applicable on the unaudited statements of annual or interim results which,

“have already been published”,<sup>155</sup>;

“comply with the requirements of preliminary statements of annual result as set out in UKLA Rules”<sup>156</sup>;

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<sup>151</sup> Jonathan Fisher, the law of investors Protection, (Sweet & Maxwell, 2003) p-180.

<sup>152</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 28.2

<sup>153</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 28.3

<sup>154</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 28.6

<sup>155</sup> ibid

“comply with the requirements of half-yearly report as set out in UKLA Rules in cases where the offer has been publicly recommended by the board of the offeree Company”<sup>157</sup>;

“Whether or not the offer has been publicly recommended by the board of the offeree company but provided the offer could not result in the issue of securities which would represent 10% or more of the enlarged voting share capital of the offeror”<sup>158</sup>

A dividend forecast is not normally considered as profit forecast unless, for example, it is accompanied by an estimate of dividend cover.<sup>159</sup>

#### **2.2.4 Asset Valuation**

##### **Meaning:**

The term Asset Valuation gives its meaning itself. Valuation means to find out the worth of something or to analyse or estimate the potential value of Asset. This term is most of the time used in finance. Basically Asset valuation is the process of determining the market value of a financial asset or liability.

##### **Legal status of Asset valuation in Takeover Code:**

The Takeover Code emphasises the Assets valuation in the course of an offer. For this purpose the Code gives some Rules which describe the particulars of Asset valuation. The Code Rules also apply on contracts, stocks, intangible assets and individual parts of a business. The Company should consult the panel in advance if other forms of assets are involved.<sup>160</sup>

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<sup>156</sup> ibid

<sup>157</sup> ibid

<sup>158</sup> ibid

<sup>159</sup> ibid

<sup>160</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 29(a)

In case of tangible assets and intangible assets the valuer should be corporate member of The Royal Institution of Chartered surveyors or The Institution of Revenues Rating and valuation or some other person approved by the Panel. He must be qualified to meet legal or other requirements, according to the circumstances. He must have sufficient knowledge, skill, and understanding to provide the assistance.<sup>161</sup>

The basis of valuation must be stated according to the Rules of Code. “*There should normally be a statement regarding any potential tax liability which would arise if the assets were to be sold at the amount of the valuation, with a comment about the likelihood of the liability crystallizing*”.<sup>162</sup> The process of valuation started from the date at which the assets were valued, and the professional qualifications and address of the valuer.<sup>163</sup>

Public opinion of value must be contained in the document of asset valuation. Along with all necessary requirements in the documentation of valuation there is a condition stated that once the valuer has given his consent, he cannot go back from his consent or and cannot withdraw the publication of the valuation report.<sup>164</sup>

## **2.2.5 Enforcement of Code**

The purpose of the city code is to ensure fair business practices during the conduct of takeover and merger. The Code has to provide sufficient information and advice which enable shareholders to reach up to date decision about the merits or demerits of an offer.<sup>165</sup> Generally the city Code has not the force of law.<sup>166</sup> To make sure its enforcement, “*the Panel introduces disciplinary proceeding when it considers that*

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<sup>161</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 29(b)

<sup>162</sup> Supra 139

<sup>163</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 29.2

<sup>164</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 29.5

<sup>165</sup> Andreas Cahn, David C. Donald, *Comparative Company Law: Text and Cases on the Laws Governing Corporation in Germany, the UK and USA*, (Cambridge University Press 2010) p-759.

<sup>166</sup> Supra 68

*there has been a breach of the city Code".<sup>167</sup>* The Panel is, however, authorized to take action against convict for committing breach of the code. The Panel is responsible to provide appropriate remedy or compensatory action in the consequences of any breach of the Code. The Panel's remedies could be in any form, such as the removal of authorization, public censure, fines, the imposition of injunctions and orders for restitution.<sup>168</sup>

In case of any report of breach of Code by a person, the following rules of Code need to be followed:

- (i) The Complaint must be carried out on proper time.
- (ii) In case of default the Executive of the Code will decide whether it is complaint or not.
- (iii) If the complainant fails to meet the terms of complaint within reasonable time, the Executive may decide the complaint in question.

The Code will be enforced if a person does some act against the rules of Code or omits some act for which was mandatory or forces a person to do some act against the rules of code or restrains any person from doing a particular act that was mandatory. The nature of the act would be a breach of rules.<sup>169</sup> If the breach arises in case of Rules 6, 9, 11, 14, 15, 16.1, or 35.3 of the Code, the Panel compensates the aggrieved party by paying a reasonable amount in the consequences of these breaches.<sup>170</sup>

The provision of section 955 of the Act authorizes the Panel to seek enforcement by the courts if any person does some act against the rules of Code or omits some act which was mandatory or forces any person to commit breach of code or if a person does some act against the provision of section 947 of the Act. The court orders will be considered a final decision.<sup>171</sup>

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<sup>167</sup> Paul Barnes, *Stock Market Efficiency, Insider Dealing and Market Abuse*, (Gower Publishing Ltd, 2009)p-140  
<sup>168</sup> *ibid*

<sup>169</sup> The City Code on Takeover Mager, (9<sup>th</sup> ed 2009) S 10

<sup>170</sup> The Takeover Code. (9<sup>th</sup> ed 2009), S 10(c)

<sup>171</sup> The Takeover Code. (9<sup>th</sup> ed 2009), S 10 (d)

## 2.2.6 Disciplinary Powers:

The instant part relates to the disciplinary provisions regarding the violation of the code.

The matters which are related to disciplinary actions are dealt by Executive committee. If the breach of the Code arises in any other case the Executive may commence disciplinary proceeding before the Hearing Committee. The notice of the alleged breach is served to the offender. The Hearing Committee conducts the disciplinary action according to the rules of procedure.<sup>172</sup>

If the alleged breach is proven, the Hearing Committee gives sanction or remedies for the breach of code. These sanctions or remedies may be in any form such as a private statement of censure or a public statement of censure. The Hearing Committee has a power of suspension or withdrawal of any exemption, approval or other special status which the Panel has granted to that person earlier or put some conditions on such status. If the breach is committed in any region of the United Kingdom, the powers of disciplinary action transfer to overseas regulatory authority or professional body such as FSA. These authorities have power to take action against those people who fail to observe proper standards of market conduct. They can also take a fine from those people as penalty.

The Hearing committee publishes a Panel statement which declares the nature of offence. The Committee defines offender who is likely to be the person whose actions do not comply with the rules of the code. In some cases FSA and certain professional bodies restrain their members, from dealing with the people who have committed breach of the code, For example,

“The FSA’s rules require a person authorized under the Financial services and Market Act 2000 not to act, or continue to act, for any person in connection with a transaction to which the code applies if the firm has reasonable grounds for

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<sup>172</sup> The Takeover Code. (9<sup>th</sup> ed 2009), S11(a)

believing that the person in question, or his principle, is not complying or is not likely to comply with the Code<sup>173</sup>”.

## **2.2.7 Provisions regarding Offer:**

The city code on Takeover Panel contains provisions regarding offer

### **(a) Mandatory Offer and its terms:**

The city code has recommended mandatory offer, in which any person who acquires the shares of 30% or more of the voting rights of a company to buy the remaining shares on terms as good as its most recent purchases such as at the highest price of the past 12 months.<sup>174</sup> In other words when mandatory offer takes place it may unfavorably affect the share price. In this case the interests of minority shares holders are also affected. Above mentioned rule this allows minority shareholder to sell out their shares at the highest price paid to them by the new controlling shareholders before the change of control.<sup>175</sup> In this transaction the offeror makes a cash offer to the target company, to pay the highest price for the target shares.<sup>176</sup> The shares are acquired by a series of transactions with different time period. This offer can also be made by a person with the coordination of another person and take the acquisition of shares in the form of aggregate shares in which the shares are not less than 30% or more than 50% voting rights.<sup>177</sup>

In some cases such person will extend offers to the holders of all classes of shares, including voting or non-voting shares. But the offer should not be extended to the willing shareholders who have transferable securities carrying voting right.<sup>178</sup>

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<sup>173</sup> The takeover Code, (9<sup>th</sup> ed 2009), S11(b)(v)

<sup>174</sup> Tatiana Nenova, *Takeover Law and Financial Development*, (World bank publication 2006).

<sup>175</sup> [www.moneyterms.co.uk/mandatory-offer/](http://www.moneyterms.co.uk/mandatory-offer/)

<sup>176</sup> The City Code on Takeover and Merger (Freshfield Bruckhaus Deringer, Summer 2006)

<sup>177</sup> The Takeover Code, (9<sup>th</sup> ed 2009); Rule 9

<sup>178</sup> *ibid*

The major responsibility of an offer lies with the person who makes the acquisition. The offeror may be a principal member or other member of a group. In exceptional circumstances all responsibilities of an extended offer lie with each principal member of the group.<sup>179</sup>

The basic reason behind the concept of holding 30 % shares or more is that the Panel believes that such type of holding gives the effective control over affairs of the company, but not a legal control to the holder. The Panel takes such type of control as a change of control which provides opportunity to the remaining shareholders to sell their shares.<sup>180</sup>

#### **(b) Partial Offers:**

Partial offer includes all those offers made with the purpose to acquire control of a target company by purchasing shares amounting less than the total share capital of the company. In this case consent of Panel is required; which is granted in exceptional cases only.<sup>181</sup> Normally the Panel does not grant such consent to the offeror where the shares have been acquired during the 12 months preceding the application for consent.<sup>182</sup> If the shares of the target company have been acquired or the offer is pending in the course of partial offer, no one can acquire any interest in such shares during a period of 12 months after the end of the offer period. There is only exception to this rule that if the acquirer gets the consent of the panel, then he can acquire interest in such shares.<sup>183</sup>

When an offer is made for the shares comprising 30% to 50% of the total share capital “*the precise number of shares offered for must be stated and the offer may*

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<sup>179</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 9.2 of

<sup>180</sup> Supra 160

<sup>181</sup> Per-Olof Bjuggren, Dennis C. Mueller, *The Modern Firm, Corporate Governance and Investment*, (Edward Elgar Publishing, 2009) p-194.

<sup>182</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 36.2

<sup>183</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 36.3

*not be declared unconditional unless acceptances are received for not less than that number*”<sup>184</sup>

**(c) Documents from the offeror and offeree board:**

There are some rules which impose obligations on the document related to offer. These obligations compel the offeror to provide proper information for the purpose of first major circular from the offeree company’s board, and in subsequent document to the shareholder.<sup>185</sup>

The general rule for the documentation that the shareholder prepared the documents contains sufficient information and advice which openly discuss the qualities or inferiorities of the offer. A vigilant shareholder collects all these information at their early stages of preparation of the documents. In this respect the offeror’s obligation to the shareholder of the offeree company are equal to obligation to its own shareholder.<sup>186</sup>

The offer document must contain a detailed information regarding offeror. The offeror’s intention must be clear in the document. It should be clear that what offeror is thinking towards the business of the offeree company and what is his motive towards the employees of the offeree company. The offer document should contain proper information about the financial position of the offeror and the offeree company, and it should also explain how the offer will be financed.<sup>187</sup>

Once the offer is circulated burden of responsibility shifts to the board of the Offeree Company. It is prior responsibility of the offeree company to circulate its observations on the offer. The circular should explain all the contents of offer and the other offer made to the offeree company if any should also be motioned in the same circular. If the board gives any independent advice in case of Rule 3, Rule 25.2 to Rule 25.6 of the takeover Code, the information about this particular advice should be mentioned in the first circular of the offeree company’s board.

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<sup>184</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 36.4

<sup>185</sup> Jonathan Fisher, *The Law of Investors Protection*, (Sweet & Maxwell, 2003) p-179

<sup>186</sup> *ibid*

<sup>187</sup> The Takeover Code, (9<sup>th</sup> ed 2009), Rule 24

Code obligates the offeror and BOD of Offeree Company to make available the following documents for inspection and publish the same on a website from the date of publication of offer document or offeree board circular to the end of offer period. The documents from the offeror and the circular from the BOD of the offeree company should contain the list of the documents so available and the place where the inspection can be held and the address of the above-mentioned website:-

- (i) Memorandum and article of association
- (ii) Audited consolidate account
- (iii) Any report, letter, valuation or other document any part of which is exhibited or published
- (iv) Written consent of financial advisers
- (v) Any material contract
- (vi) Report of profit forecast
- (vii) Report of Asset valuation
- (viii) Documents of evidencing
- (ix) Full list of dealing
- (x) Documents relating to the finance arrangements
- (xi) All derivative contracts
- (xii) Receipts of inducement fee
- (xiii) Any other type of agreement which come under the provision of Rule 24.2(d)(ix)
- (xiv) Any revised offer document of the offeror company
- (xv) Any revised opinion on the offeree board circular

There is one exception to this Rule that if inspection is held out of the city of London, then in such case the Panel consent must be required.<sup>188</sup>

If any material changes occur in the above information during the offer period then the offeree company must be published and sent information to the shareholders.<sup>189</sup>

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<sup>188</sup> The Takeover code, (9<sup>th</sup> ed 2009), Rule 26

<sup>189</sup> Supra 170

#### 4 Conduct During Offer:

The conduct of the offeror and offeree has a great importance in the course of offer. Their main aim is to provide the proper and accurate information, which is uniformly available to all the shareholders. The attitude of both parties during an offer period enables shareholders to analyse the merits or demerits of an offer and to reach an up-to-date decision.<sup>190</sup>

In the course of offer various types of documents, statements and advertisements are issued. It is most important that each document must be prepared with the highest standards of care and accuracy. The information that is given in the documents should be based on the principle of fairness and accuracy so that the shareholders can build up their trust on the bases of all these documents as their final decision entirely depends upon the legitimacy of these documents. The party can either directly publish these documents or on behalf of its advisor.<sup>191</sup>

The Panel assigns responsibility to financial advisors also. The financial advisors should provide proper guidance to their client during the course of offer. If any misleading impression arises then the financial advisor should try to simplify the matters. Any ambiguous statement regarding future profit forecast, asset valuation and prospects must be avoided with great care and vigilance.<sup>192</sup> The language of the documents should be simple and explicit. The sources from where the information is collected should be accessible and must be stated. It must be reliable and authentic.

There are some responsibilities on the head of directors of offeror and Offeree Company. The authenticity of information provided in documents and advertisements issued to the shareholders is given by the directors in the form of statement.<sup>193</sup> If any statement contains any uncertain material which misleads the

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<sup>190</sup> Supra 150

<sup>191</sup> The takeover Code, (9<sup>th</sup> ed 2009), Rule 19.1

<sup>192</sup> Jonathan Fisher. *The Law of Investors Protection*. (Sweet & Maxwell, 2003) p-178

<sup>193</sup> The takeover Code, (9<sup>th</sup> ed 2009), Rule 19.2

shareholders or the market or depicts misrepresentation of intentions, the parties to an offer and their advisors should discontinue publishing of such statement.<sup>194</sup>

The publication of advertisement of offer is banned except reminder about closing times or the value of an offer. Even such advertisement is also prohibited if it contains any controversial information. In case such advertisement is necessary the advance approval from the Panel should be taken.<sup>195</sup> Further requirements apply to telephone campaigns, interviews and debates, distribution and availability of documents and announcements.

Once the offer period expires, all related matters come to an end automatically. The duties of the parties terminate to issue any information regarding offer documents. In some situation the offer period is terminated on a reference of Competition Commission. At this stage the code requirements are not applicable to the offer period regarding issuance of any information. In the same way the offer period is initiated on a reference of European Commission.<sup>196</sup> “*However, if thereafter the merger is allowed and, as a result, the offeror announces a further offer, the panel may require that statement (including valuation of assets) made during the competition reference period be substantiated or, if this is not possible withdrawn*”.<sup>197</sup>

The information about the offer should be based on the principle of equality. It means that the information about offer is equally accessible to all of the offeree companies’ shareholders and other related persons.<sup>198</sup>

If any one of the competing offerors gets the information about the offer, then the other offerors also have the equal right to get information in the same way. It can be said that the same information should be given to other offerors also as they

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<sup>194</sup> The takeover Code, (9<sup>th</sup> ed 2009), Rule 19.3

<sup>195</sup> The takeover Code, (9<sup>th</sup> ed 2009), Rule 19.4

<sup>196</sup> The takeover Code, (9<sup>th</sup> ed 2009), Rule 19.7

<sup>197</sup> *ibid*

<sup>198</sup> The takeover Code, (9<sup>th</sup> ed 2009), Rule 20.1

have a bona fide right. This requirement is applicable when the existence of the former party is publicly announced or authoritatively disclosed to the later.<sup>199</sup>

*“If the offer or potential offer is a management buy-out or similar transaction, the offeror or potential offeror must, on request, promptly furnish the independent directors of the offeree company or its advisers with all information which has been furnished by the offeror or potential offeror to external providers or potential providers of finance for the buy-out”.*<sup>200</sup>

During the course of offer some restrictions are imposed on the ability of the offeree company's board to take steps to frustrate an offer or expected offer. Before the acceptance of an offer, if the offeree company considers that an offer is not completed or there are some loop holes in an offer then it is necessary for the board to stop immediately further proceedings. But there is an exception to this provision that if the board has signed the contract earlier, then they cannot step back from the proceedings related to offer without the approval of shareholders in a general meeting ( which must be convened by a notice that includes information about the offer or anticipated offer):

- (a) “Issue any authorized but unissued shares<sup>201</sup>,”
- (b) “Issue or grant options in respect of any unissued shares<sup>202</sup>,”
- (c) “Create or issue or permit the creation or issue, of any securities carrying rights of conversion into or subscription of shares<sup>203</sup>,”
- (d) “Sell, dispose of or acquire assets of material amount, or agree to do so<sup>204</sup>,”
- (e) “Enter into contracts otherwise in the ordinary course of business<sup>205</sup>. ”

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<sup>199</sup> The takeover Code. (9<sup>th</sup> ed 2009), Rule 20.2

<sup>200</sup> The takeover Code, (9<sup>th</sup> ed 2009), Rule 20.3

<sup>201</sup> Supra 192, 193 & 194

<sup>202</sup> ibid

<sup>203</sup> ibid

<sup>204</sup> ibid

<sup>205</sup> ibid

During the course of offer where both parties the offeror and offeree make arrangements for related matters, in the same manner the fee structure is also discussed along with these necessary matters. In all cases where an inducement fee is proposed, certain safeguards must be observed. In these arrangements they put condition that if any uncertain event occurs which has effect of preventing the offer from proceeding or make it fail, in this situation the fee payment will be made in cash. Any such fee must be *de minimis* (which is in normal terms not more than one percent of the value of the offeree company calculated by reference to the offer price). In such situation it is responsibility of the offeree company and its adviser to ensure the Panel that the fee in cash is more beneficial for the company's shareholders. The inducement fee structure must be disclosed by the offeree company at the time of announcement of the offer. The Panel must be consulted at earliest whenever such an arrangement is proposed.<sup>206</sup>

Hence the UK City Code is one of precise and specific Code which deal with all aspects of takeover. The basic purpose of this Code is to provide a fair and equal treatment to all the shareholders, investors, and companies. The Code provides an orderly framework from which every businessman can take advantage at any stage of business. It enhances opportunities of development and growth in business.

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<sup>206</sup> Rule 21.2 of The takeover Code, (9<sup>th</sup> ed 2009)

## **CHAPTER 4**

# **PAKISTANI LAW REGARDING TAKE OVER**

### **4.1 INTRODUCTION:**

Pakistan is a developing country. Historically Pakistani corporate entities have developed by step in shoe of English corporate entities. That is way Pakistani Companies were established and governed according to the provisions of the Companies Act. 1913. Pakistan's economy developed a lot over time. Traditionally Pakistan's economy is a market based economy governed by Common law. Situation remained the same till 1984 when then president of Pakistan promulgated Companies Ordinance which deals all kinds of matters of both private and public companies. Before this in 1969 Securities and Exchange Ordinance (SEO) had already been introduced to regulate securities market. While in 1997 an institution Securities and Exchange Commission of Pakistan (SECP) was established under SECP Act to work as watch dog for all listed entities and non-bank companies. At that time our stock Market was quite immature and these laws were not sufficient to meet the challenges of a fast growing economy.

In that situation there was a need of some specific law which will be effective in dynamically changing economic situation and circumstances which resulted in promulgation of "Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002" on October 29 2002. This law ensures the equitable treatment with all of the investors. In additions it endeavors to provide a mechanism for the acquisition of voting shares, and other matters regarding listed companies.

The proposals for the enactment of the instant legislation were forwarded by the leading business tycoons of Karachi in special meeting with the then President of

Pakistan, who directed the SECP to prepare a draft of the said law within one month.

The Securities and Exchange Commission of Pakistan submitted the draft of the instant Ordinance in March, 2000, which was drafted after co-ordination with the concerned department of government and all the stakeholders including the listed Companies

The instant enactment was promulgated to ensure the equitable and transparent treatment with the security holders, the availability of authentic and timely information to everyone, prescribing the process of offer to the shareholders etc.

#### **4.2 ESSENTIAL FEATURES OF LISTED COMPANIES (SUBSTANTIAL ACQUISITION OF VOTING SHARES AND TAKEOVERS) ORDINANCE, 2002.**

The main purpose behind the enactment of this law is to remove the flaws prevailing in the security market of Pakistan. This enactment was a huge stride on part of the legislature to protect the rights of minority shareholders of listed companies. This enactment also empowers the minority shareholders in many ways.

Price discovery is another important characteristic of the instant law. Presently, there are very few securities, which are being traded in the security market of Pakistan.

#### **4.3 Disclosure of shareholding in a listed company.**

Take over Ordinance has been patterned on the lines of UK City Code, but there are procedural differences. The procedure is not complicated that much. It has some requirements which are compulsory. The most important thing in its procedure is the acquisition of shares. The ordinance states rules for the acquisition of shares. If anybody has 10% of Voting share of a public listed company, the acquirer is not

subject to the takeover law<sup>207</sup>, but when an acquirer takes hold of share which are more the 10% voting shares, then he is liable to follow up the rules of takeover ordinance.

The primary rule of the procedure is disclosure of shareholdings in a listed company.<sup>208</sup> When the acquirer gets more than 10 % voting shares then acquirer must disclose his aggregate shareholding within two working days of such acquisition to the relevant company and stock exchange.<sup>209</sup> Such disclosure should be made within two working days of the date at which the acquirer gets the receipt of intimation of allotment of voting shares. After this 10% disclosure, an investor may acquire up to 25% voting shares of a listed company within 12 months without making any further disclosure to the exchange. But once an investor has acquired 25% (but less than 51%); it's essential as per law to make a public announcement of offer to acquire any additional holdings.<sup>210</sup>

#### **4.5 Obligations of the board of directors of the target company**

The ordinance obligates the board of directors of the target company in certain aspects during offer period. The board of directors fulfills their responsibilities in the following manner;

1. The directors' first duty is to restrain themselves from any kind of transaction during offer period.
  - a. They are bound not to sell or transfer their shares.
  - b. They cannot dispose of their shares.
  - c. They cannot sign any kind of agreement, such as agreement for sale, transfer during offer period.

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<sup>207</sup> Arif Habib Securities op. cit., note 91

<sup>208</sup> Takeover ordinance 2002, S 4(1)

<sup>209</sup> Takeover ordinance 2002, S 4(1), note 3

<sup>210</sup> ibad

- d. They cannot take any kind of under taking for disposal of sizable part of shares.<sup>211</sup>
- 2. “They cannot encumber any asset of the company or its subsidiary<sup>212</sup>”.
- 3. “They are prohibited from the issuance of any right or bonus voting shares during offer period<sup>213</sup>”.
- 4. “They are also prohibited to enter into any material contract<sup>214</sup>”.
- 5. “It is also the duty of director of the target company to provide data about the convertible security holders and shareholder with complete details and data of those persons whose applications for registration of transfer of the securities are pending with the company, within seven days of the offer or within seven days from the specified date mentioned in the public announcement<sup>215</sup>”.
- 6. “After making public announcement the board of directors cannot appoint any person that has interest in the acquirer as a director till the date of certification by the manager to the offer<sup>216</sup>”.
- 7. If the BODs wish they should extend their impartial opinion and recommendations regarding any public offer for the shareholders<sup>217</sup>.
 

“It is also their responsibility to facilitate the acquirer in verification of securities tender for acceptance<sup>218</sup>”.

“In case directors conceal any fact or statement or try to misrepresent any material fact, in this situation directors are liable to penalty in accordance with the ordinance<sup>219</sup>”.

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<sup>211</sup> Takeover ordinance 2002, S 14(1)(a)

<sup>212</sup> ibid

<sup>213</sup> ibid

<sup>214</sup> ibid

<sup>215</sup> Takeover ordinance 2002, S 14(2)

<sup>216</sup> ibid

<sup>217</sup> Takeover ordinance 2002, S 14 (4)

<sup>218</sup> Takeover ordinance 2002, S 14 (5)

<sup>219</sup> Takeover ordinance 2002, S 14(4)

8. Once the acquirer fulfills all the requirements according to the ordinance then the manager to the offer must certify it. Then it becomes the duty of directors to transfer required securities, either in the form of agreement or in the form of open market purchase, in the name of acquirer.<sup>220</sup>
9. The directors of target company shall allocate the proportionate representation to the acquirer on the board of directors of the company as per Companies Ordinance, 1984 (XLVII of 1984).<sup>221</sup> In case the acquirer gets at least 30% of voting shares of the target company according to the rules of Companies ordinance the acquirer has a right to represent himself on the board of directors of the target company.<sup>222</sup>
10. The acquirer sends one copy of notice of voting power to target company and one copy to commission. On receipt of such notice, the directors of Target Company are compelled to arrange a meeting of board of directors within 10 days of receipt of such notice.<sup>223</sup>
11. If any vacancy of directors of Target Company is vacant by the resignation of director may filled by the director of Acquirer Company with mutual consent if his entitlement fulfill the requirements of that vacant post.<sup>224</sup> In certain circumstances the acquirer does not get proportionate seats on the board of directors then the acquirer may forward a notice for fresh election to the directors of Target Company and to the commission.<sup>225</sup> In such situation it becomes the duty of directors of Target Company to arrange election of directors within 30days of the receipt of notice.<sup>226</sup> This election would be held according to the subsection (2)(5) of section 178 of the Companies Ordinance 1984

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<sup>220</sup> Takeover ordinance 2002, S 14(6)

<sup>221</sup> Takeover ordinance 2002, S 14(7)

<sup>222</sup> Takeover ordinance 2002, S 14(8)

<sup>223</sup> Takeover ordinance 2002, S 14(10)

<sup>224</sup> Takeover ordinance 2002, S 14(11)

<sup>225</sup> Takeover ordinance 2002, S 14(12)

<sup>226</sup> Takeover ordinance 2002, S 14(13)

12. The new elected directors will complete the remaining time period of outgoing director<sup>227</sup> and if there is any reservation regarding election of directors from any side either target company or he acquirer, the aggrieved party should bring this into the notice of the commission within seven days of such election.<sup>228</sup>
13. In case any irregularity proved, the commission will declare these elections null and void and will make an order for fresh election under the supervision of independent persons.<sup>229</sup>
14. The Commission may also impose penalty on the outgoing directors in their individual capacity for intervening the elections.<sup>230</sup>

#### **4.5 Obligations of the Manager to the Offer:**

In the process of acquisition of voting shares there are certain duties of manager to the offer likewise directors of the target company. In the course of his responsibility he should perform his duty before the date of public announcement.

1. His first duty is to guarantee that the acquirer is able to put into practice the public offer<sup>231</sup> and make sure that all the requirements of provisions relating to security referred in section 19 of the ordinance are fulfilled.<sup>232</sup>
2. It is also his duty to ensure that under the public offer all arrangements for funds and money to meet the obligations have been made.<sup>233</sup>
3. The manager to the offer should be able to fulfill all the obligation of section 9.<sup>234</sup>

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<sup>227</sup> Takeover ordinance 2002, S 14(15)

<sup>228</sup> Takeover ordinance 2002, S 14(16)

<sup>229</sup> Takeover ordinance 2002, S 14(17)

<sup>230</sup> Takeover ordinance 2002, S 14(18)

<sup>231</sup> Takeover ordinance 2002, S 15(1)(a)

<sup>232</sup> Takeover ordinance 2002, S 15(1)(b)

<sup>233</sup> Takeover ordinance 2002, S 15(1)(c)

<sup>234</sup> Takeover ordinance 2002, S 15(1)(d)

4. It is his duty to file with the commission a diligence certificate along with copy of proposed offer letter.<sup>235</sup> Proposed public announcement and offer letter should be sent to target company and to the stock exchange.<sup>236</sup>
5. It's also his duty to make sure all the information provided in public announcement and offer letter is true and fair and is taken from authentic sources.<sup>237</sup>
6. It is his duty to fulfill all the requirements of the bank with which the security has been deposited to discharge the balance amount to the acquirer in time.<sup>238</sup>
7. He should also furnish a report to the commission within forty-five days of closure of public offer or withdrawal.<sup>239</sup>

#### **4.6 Procedure of Making Bid:**

After public announcement from the acquirer any person who is interested in bidding against the acquirer should also follow the procedure as devised by this ordinance.

1. Competitive bid should be made within twenty one days of the announcement of the first offer to acquire the same voting shares<sup>240</sup> and the number shares for which the competitive offer is being made should at least be the same for which the initial offer exists.<sup>241</sup>
2. After a bid from the competitor, the acquirer may revise or withdraw the original offer with the prior approval of the commission within ten days of the announcement of competitive bid otherwise the original offer will stand binding on the acquirer<sup>242</sup>.
3. The acquirer also reserves the right to make upward revision of either the price or quantity of shares in his offer within seven working days prior to the date of

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<sup>235</sup> Takeover ordinance 2002, S 15(1)(e)

<sup>236</sup> Takeover ordinance 2002, S 15(1)(f)

<sup>237</sup> Takeover ordinance 2002, S 15(1)(g)

<sup>238</sup> Takeover ordinance 2002, S 15(1)(i)

<sup>239</sup> Takeover ordinance 2002, S 15(1)(j)

<sup>240</sup> Takeover ordinance 2002, S 16(1)

<sup>241</sup> Takeover ordinance 2002, S 16(3)

<sup>242</sup> Takeover ordinance 2002, S 16(4)

closure of the last subsisting public offer without changing other terms of the original offer.<sup>243</sup>

4. The afore mentioned upward revision should be made in all the newspapers where original public announcement was made and it should be brought into the notice of commission, stock exchange and the target company<sup>244</sup>.
5. In the presence of competitive bids the date of closure of the last competitive bid will be considered as the date of closure of all the bids made earlier for the acquisition of the same voting shares.<sup>245</sup>

Once a public offer has been made it can be withdrawn in case of the death of acquirer if he is a natural person or in any other circumstances but withdrawal of offer should be published in all the newspapers where the public announcement for the offer was made.<sup>246</sup>

The acquirer should open a special account with a scheduled bank and deposit therein the amount payable in respect of voting shares to be acquired and the amount of security within twenty one days from the date of closure of the public offer.<sup>247</sup>

#### **4.7 Enquiry and related matters**

The Commission has authority to appoint enquiry officers in any of the following cases:-

1. To investigate complaints received from investors who own more than one-tenth of the voting power regarding any allegations of substantial acquisition voting shares or takeovers.<sup>248</sup>
2. On *suo motu* action upon receiving information that interests of the investors are at stake or that provisions of the ordinance had been breached.<sup>249</sup> Or

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<sup>243</sup> Takeover ordinance 2002, S 16(6)

<sup>244</sup> Takeover ordinance 2002, S 16(7)

<sup>245</sup> Takeover ordinance 2002, S 16(8)

<sup>246</sup> Takeover ordinance 2002, S 18

<sup>247</sup> Takeover ordinance 2002, S 20

<sup>248</sup> Takeover ordinance 2002, S 21(a)

<sup>249</sup> Takeover ordinance 2002, S 21(b)

3. To ascertain the provision of ordinance are being complied with or not.<sup>250</sup>

The Commission should give at least seven days' notice to the acquirer, the seller, the target company or the manager of the offer whoever is being suspected for the offence.<sup>251</sup>

The acquirer, the seller, the target company or the manager of the offer whoever is being enquired is bound to provide every information, books, documents, records etc asked by the enquiry officer; the enquiry officer should be provided with the access to the premises occupied by such person and all the records of such person.<sup>252</sup>

The enquiry officer will submit the report of the findings to the commission upon completion of the enquiry and after the consideration of the findings of the report the commission would communicate the same to the acquirer, the seller, the target company, the manager to the offer as the case may be and upon the receipt of the reply from the party the commission may take any action to protect the interests of the investor or for the compliance with the provision of this ordinance.<sup>253</sup>

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<sup>250</sup> Takeover ordinance 2002, S 21(c)

<sup>251</sup> Takeover ordinance 2002, S 22 (1)

<sup>252</sup> Takeover ordinance 2002, S 23

<sup>253</sup> Takeover ordinance 2002, S 25

## Conclusion

As we are aware that the laws are usually evolved and made in accordance with the growing needs of the society. The laws are usually made to condemn the mal-practices prospering in a Society. We can hardly quote any society, which makes it laws anticipating a future wrong. This myth of law is applicable equally to Pakistan and UK as well.

The corporate structure of Pakistan, as compared to UK, is not much complex and complicated. In UK, as we are aware that the stock markets, money markets are much efficient, developed and due to the complex and complicated corporate structure, the legislature remains constantly busy to amend the corporate law in accordance with the growing needs, and to fill in the lacunas, which are left in the legislation. If we carefully observe the City Code of UK, we would see the efforts on behalf of the legislature to update the law, and ensuring it competent enough to cope with the new and novel challenges. A careful perusal of The City Code reveals that UK law regarding take over substantially endeavours to protect the rights of minority shareholders, and attempts to make every effort necessary for the protection of minority share holder.

In Pakistan most of the companies are still run by owner entrepreneurs which generally means that over 51% shares are held by the sponsors. That is no bad thing in itself but unfortunately it is often bad news for the minority shareholders. The biggest problem of the law was that it prevented the subject of takeover from being regulated under the listing rules. In that situation it become responsibility of the competent authorities such as our leading stock markets, that they make a mechanism in which all shareholders got fair treatment and benefited ratably from the built-in price premium whenever a “takeover” or “substantial acquisition” bid was mounted. It also does not make any provision for a

mandatory offer to all shareholders after a certain trigger point of control is crossed or for a mandatory sale to the acquirer after an overwhelming ownership percentage has been acquired.

To protect the rights of minority shareholders, the Securities and Exchange Commission of Pakistan (SECP) needs to amend the Take-Over regulations. However, the amendments were made in the law in 2008 which were too harsh for the investors and as a result the change of hands at the listed companies have not been up to the mark. During the era of economic crises there are chances of flow of investments from major economies to places where cheaper bargains are available.

A bird's eye view of the corporate structure of Pakistan would unveil the fact that the tendency of selling and purchasing of stocks/shares is not very common and this tendency leads us to formulate an opinion that the stock markets are not very efficient, and only a meager amount of population involves itself in such sort of transactions. The corporate law is, therefore, not much up-dated and the legislature in Pakistan does not seem interested to make such a legislation, which is likely to counter the up-coming challenges. Pakistan came into being in 1947, whereas the law regarding take over was enacted in 2002. The reference mentioned before is just to strengthen my argument regarding a myth that the laws are usually made when some wrong is done. The legislature in Pakistan is not efficient enough to make/amend the laws by anticipating something wrong, which is likely to happen in future.

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