

M&A DEALMAKERS LAUNCH PRE-EMINENT BOOK AND CALL FOR REFORMS TO SCHEMES OF ARRANGEMENT

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Firm news

The much anticipated 4th edition of *Schemes, Takeovers and Himalayan Peaks: The Use of Schemes of Arrangement* from Herbert Smith Freehills partners and leading M&A dealmakers [Tony Damian](#) and [Andrew Rich](#), has today been released in conjunction with the Ross Parsons Centre of Commercial, Corporate and Taxation Law at the University of Sydney.

Schemes, Takeovers and Himalayan Peaks has been described by Chief Justice of New South Wales T F Bathurst AC as the “pre-eminent text” on schemes of arrangement, with previous editions of the book being cited in more than 40 Court decisions.

The new edition, which covers developments since 2013 and details around 800 new cases, comes at a time of potential reform to the scheme of arrangement regime. Treasury is expected to soon consult on the potential expansion of the Australian Takeovers Panel’s remit to include shareholder schemes of arrangement.

Authors Tony Damian and Andrew Rich — who have acted on many of Australia’s most significant public M&A and corporate restructuring deals, including on the current proposed A\$23 billion acquisition of Sydney Airport — are strong advocates of reform to the scheme of arrangement regime. The new book outlines their views on what reforms are needed, including reducing the ASIC pre-vetting period from 14 days to 7 days, and the notice period for shareholder meetings from 28 to 21 days.

However, the authors do not support any proposal to transfer jurisdiction over schemes of arrangement from the Courts to the Takeovers Panel.

Tony Damian explained, “Reform is important, but there is not a strong case for transferring jurisdiction from the Courts to the Takeovers Panel. The scheme process works well, but we would streamline the process, reducing the amount of evidence and other materials that are required to be prepared and delivered to the Court.

“Other reforms that would deliver cost and efficiency benefits include reducing the shareholder meeting notice period to 21 days, harmonising the liability provisions of prospectuses, takeovers and schemes to better protect diligent directors would be useful, and removing the head count test so that one share equals one vote.”

Andrew Rich added, “The scrutiny applied to schemes by the Court is an important check on a scheme of arrangement. The Courts have demonstrated leadership and filled the legislative void by developing sensible approaches to a number of important aspects of schemes of arrangement.

“The commercial judges that preside over schemes of arrangement are doing an excellent job - they have developed deep expertise in schemes. Without their experience and expertise, we would lose the significant policy and practice contributions that the courts have made to listed company M&A.”

Schemes, Takeovers and Himalayan Peaks is an essential work for lawyers, barristers, directors, executives, investment bankers, insolvency practitioners and others involved in change of control transactions and corporate restructurings. It is also useful for students, and for those interested in the policies that underpin the laws and practices regulating change of control transactions and corporate restructurings.

This fourth edition discusses trust scheme mergers, reverse takeovers, private equity deals, demergers, stub equity structures, joint bids, redomiciliations and amalgamation and reconstruction transactions. In addition to its detailed analysis of schemes of arrangement in Australia, the book also examines the scheme of arrangement procedure in England and certain other foreign jurisdictions.

The book contains a foreword from leading company director Ilana Atlas AO, who stated, “...this book is indispensable to directors, investors and creditors as well. Fortunately, in addition to being comprehensive and erudite, it is a good read, clear and easily navigable. These are all qualities that the non-expert in the scheme process - but a participant nonetheless - will value highly.”

Schemes, Takeovers, and Himalayan Peaks IV: The Use of Schemes of Arrangement is available now from the following websites:

Soft cover: <https://sydneyuniversitypress.com.au/products/187499>

Hard cover: <https://sydneyuniversitypress.com.au/products/187498>

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If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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