The divergence of u.s. and uk takeover regulation

Law

The Divergence of U. S. and UK Takeover Regulation The article that has been selected for summary of its content is titled “ The Divergence of U. S. and UK Takeover Regulation”, which is written by John Armour and David A. Skeel and it was published in Fall 2007 edition of Regulation.

There are significant differences in hostile takeover regulations between the United Kingdom and the United States. The underlying difference between both countries is that target managers in the UK are not allowed to undertake defensive moves as opposed to the practices in the US under Delaware Law. The authors of the article take an approach of focusing on the “ supply side” i. e. who decides the rules of takeover in both countries. Rules of takeover in the UK are the outcome of the self regulation where interests of institutional investors play an important role while on the other hand the US judicial setup holds the responsibility of takeover rules and thus, limiting the influence of shareholders over making of rules. In the UK, shareholders’ perspectives play an important role in deciding about takeover bids and thus, takeover regime is “ privatized”. Easterbook and Fischel proposed limited capability of managers to defend takeovers which did not become part of practice in the US after its dismissal by the Delaware Court and takeover decisions are still based on decisions made by those who manage businesses and they are allow to undertake several types of defense actions such as the “ poison pill” or shareholder rights plan to undermine bidder’s stake. These tactics are prohibited in the UK and without the consent of shareholders managers cannot maneuver any tactic in defense. However, in the UK managers are allowed to make use of “ embedded defenses” which may involve issuance of dual-class voting stock or several other ways to take action before any bidder takes an offensive position (Armour and Skeel).

Takeovers do not always result in higher returns for shareholders therefore it seems more appropriate to leave the decision in case of takeover to shareholders as in the UK. However, it is noted that the number of takeovers in the US has been greater than the UK. There could be several reasons including the veto power of directors who may feel that they are not entitled to sufficient incentives from the shareholders. In the UK, bidder can lodge a protest against managers' actions to the Takeover Panel comprising of representatives from LSE, BOE, major banks and institutional investors. There is a greater flexibility in dealing of this Panel and limited role of lawyers exist as compared to the US where the SEC, Supreme Court and Delaware's Chancery Judges are responsible for deciding about manager's response to takeover bid (Armour and Skeel).

Thus, it can be concluded that despite of the acceptance of the fact that takeover enhance corporate governance but the ways in which rules are made considering the interests of shareholders is completely different in the US and UK. The differences between US and UK approaches could be looked upon by developing economies to decide which form is suitable and possible in their own setup.

Works Cited

Armour, John and David A. Skeel. " The Divergence of U. S. and UK Takeover Regulation." Regulation (2007): 50-59. Print.