contracts, agreements, or arrangements, but the parties in contravention will nevertheless be subject to the Act's provisions that impose criminal liability.

VI. Indonesia

A. United States-Indonesia Bilateral Agreement on Copyright

The United States-Indonesia Bilateral Agreement on Copyright (the Agreement) took effect on August 1, 1989. The Agreement gives protection to works produced by U.S. nationals or domiciliaries under Indonesian copyright law and vice versa. The Agreement also protects works in which a national or domiciliary of one country has an interest and that are first published in the other country.

The Agreement also extends reciprocal copyright protection to works first published in any Berne Union or Universal Copyright Convention member country, where a U.S. or Indonesian individual or company has an interest in such works. For example, a work first published in the United Kingdom by a U.K. company will be protected under Indonesia's copyright law where a U.S. company has a majority or controlling interest in that U.K. company. The Agreement gives retroactive protection to U.S. works covered by its provisions, but acts of infringement prior to August 1, 1989, will not be actionable under the Agreement.

Switzerland*

I. The New Swiss Take-over Code: A First Step to Regulate Public Offers

The transfer of registered and/or bearer shares in a Swiss stock company as well as any restrictions to such transfer are exclusively regulated by the provisions of the Swiss Code of Obligations regarding Swiss company law.[1] There are no securities regulations in Switzerland comparable to those in the United States or the United Kingdom and consequently, there are no reporting or disclosure requirements with regard to the acquisition of substantial sharehold-

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1. As a matter of fact, most rules regarding the acquisition of Swiss companies and their organization may be found in the Swiss Code of Obligations as follows: (i) arts. 620–762 regarding the organization of corporations; (ii) arts. 748–751 regarding mergers of corporations; (iii) arts. 184–215 regarding the purchase of movables which apply by analogy to the purchase of shares; and (iv) art. 181 regarding the transfer of a business.

ings in a Swiss company.[2] Neither cantonal (i.e., state) stock exchange regulations nor the Federal Cartels law or other Swiss (federal or state) laws, with the exception of the so-called "Lex Friedrich" regulating the acquisition of Swiss real property by foreigners,[3] will be applicable and no public authority has any power of intervention provided that the company is not engaged in banking, insurance, or similarly regulated business.

The new Swiss Take-over Code may then be viewed as the first important attempt to restrict certain practices of acquirers and offerees by providing certain rules regarding public offers.

II. Nature of the Take-over Code and Authority

A. The Swiss Take-over Code, (the Code), effective September 1, 1989, was issued by the Association of Swiss Stock Exchanges. Thus, even though various professional advisers or financial institutions were consulted before its introduction, one should note that the Code will not have the same effect as statutory regulations since only members of the Stock Exchanges (namely banks) are expressly bound by it. The Code therefore applies only to shares of companies listed on the Swiss Stock Exchanges or to rights to acquire such shares.[4]

The Code regulates offers in a way comparable to the U.K. City Code. It is narrow in its proposed field of application, and, like its British counterpart, its main purpose is to ensure that the target company's shareholders are fairly and equitably treated. The main objectives of the Code are to provide shareholders of target companies with equal and adequate information, to avoid market manipulations, and generally to define what is considered fair behavior for all parties involved (art. 1). The Code also aims to give shareholders the possibility of accepting an offer even if the target company management rejects it.

B. The Code provides for an authority to enforce its provisions called the Commission dé Régulations. It is a nongovernment, nonstatutory body seated in Zürich. According to the Code, the seven members of the Commission dé Régulations should be independent from the Stock Exchanges. In fact, the Commission actually includes two representatives of banks, one representative of auditing firms and of insurance companies, and law professors.

2. There are prospectus requirements only if the acquirer offers shares or bonds in exchange for the shares of the offeree company (arts. 651 and 1156). These rules rarely apply because most tender offers are made against a cash payment.

3. The Federal Law on the Acquisition of Real Property by Foreigners of December 16, 1983, Lex Friedrich, applies if the market value of the real property is more than one-third of the market value of the total assets of the company and if the foreign acquirer holds a controlling position. This condition is usually met, inter alia, if foreign ownership exceeds one-third of all shares.

4. On December 1, 1989, 196 Swiss corporations were listed on the three major Swiss Stock Exchanges in Zürich, Geneva, and Basel. Many of these corporations have their bearer and registered shares listed. Furthermore, some companies have issued, and listed, so-called participation certificates, a type of nonvoting stock.

The Commission's main purpose is to ensure that public offers are made in conformity with the Code. The Commission's role may be likened to the one played by the British Panel. The offeror may apply to the Commission simultaneously to the offer, in which case the target company is consulted. If the offeror applies to the Commission earlier than this, then the target company may only be consulted if the offeror consents to it and if the target company subscribes to the confidentiality required by the offeror. The Commission's activity is deemed to be flexible and speedy and its decisions must be given within eight working days after the publication of the offer. No specific sanctions are provided, but the Commission is authorized to make any appropriate decision with respect to a transaction that breaches a provision of the Code and to publish it.

III. The Most Significant Provisions of the Code

A. One of the main duties of the acquirer is the equal treatment of the offeree shareholders. This principle implies that the price offered per share be identical for each shareholder regardless of the number of shares sold by the shareholder. This rule also prohibits the offeror from paying a price higher than the one proposed in the offer for transactions conditional on the outcome of the offer or transaction subsequent to the publication of the offer.

The Take-over Commission has already ruled that the acquirer should also not pay the price above the one offered for deals concluded off-the-floor within the last three months prior to the publication of the offer.

Equality of treatment applies solely for all shareholders of the same class. If the acquirer gains 50 percent or more of the votes of the target company, it must offer to acquire all classes of shares of the target company.

B. All relevant information on the offeror must be made available to shareholders to enable them to reach a decision on the offer. Fairness and clarity of information concerning the offer is a fundamental requirement of the Code. The offer therefore must disclose the identity of the acquirer and the group of people acting in concert with it, the description of the class and the number of the shares to which the offer relates, the shareholding that the offeror already has in the target company, the price offered per share, and the period during which the offer remains open. A report prepared by an accounting firm confirming that the acquirer abided by the rules of the Code and has the financial capacity to comply with its offer must be made available to the offeree shareholders and must be filed with the Commission.

C. To ensure that the offeree shareholders have sufficient time in which to absorb the information, seek advice, and come to a decision, the Code provides that the offer must remain open for at least one month but for no more than two months. The one-month term starts running ten days after the publication of the offer in specialized newspapers. As a rule, the offer may not be withdrawn or modified except to raise the price offered, to extend the offer within the two-month period authorized, or unless a competing offer is launched. When accepted, the offer shall be extended for a ten-day period.

D. Partial offers, where the offeror offers to purchase only the same percentage of every shareholder's holding, are permitted by the Code, but the acquirer must accept the shares on a pro rata basis. The Code provides, however, for a mandatory offer for all shares if the offeror purchases more than 50 percent of all outstanding shares.[5]

In such an event the offer shall be extended to every class of shares if the offer was initially limited to a certain class only. This rule applies not only for bearer and registered shares, but also for the so-called participation certificates when issued in the same way as shares (i.e., issued for par value and against payment).

E. Market manipulation by the offeror (e.g., by selling shares into the market during the offer) is prohibited.

F. Once an offer has been made, the management of the target company may take certain actions, within the limits of the law and the Articles of Association. In particular, the target company could frustrate an offer by refusing to enter the purchaser of registered shares into the company's register of shareholders.[6]

If requested by an acquirer holding at least 10 percent (including any prior shareholding and the shares already tendered) of the share capital (which is not necessarily identical with 10 percent of the votes), the management of the target company is under a duty according to the Code to call a shareholders meeting in order to allow the shareholders to express their opinion on the actions taken by the management. This rule enables the shareholders to amend the provision of Articles of Association that give the Board of Directors full discretion to refuse to record the acquirer as a shareholder of the corporation.

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5. The fact that a mandatory offer for all shares is only provided in this case has been criticized. In fact, one must admit that shareholders should also be given the chance to sell out of the company or to sell at the highest price paid by the new controller where a majority of the voting rights are acquired on the stock exchange or off-the-floor. See Rule 9 of the U.K. Take-over Code, which requires any person or group of people acting in concert who acquire 30 percent or more of the voting rights of a company to make an offer for all the other shares of that company; see also the new regulations of the French Conseil des Bourses de Valeurs (Stock Exchanges Council), which require any shareholder, including shareholders acting in concert, who, following an acquisition of voting shares, comes to hold more than 33. 33 percent of a company's voting shares, to launch a tender offer to increase its shareholding of such company's voting shares to at least 66 percent in excess of such percentage. Failure to do so results in the shareholders' loss of voting rights.

6. *See Regional Developments: Switzerland,* 23 INT'L LAW. 571 (1989) (recent developments in limitations on transferability of shares in Swiss companies).