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摘　　要

本文以開發金控敵意收購金鼎證券所涉及刑事實務案例為主軸，介紹我國於參考外國立法例，國內法令環境逐步解除管制情形下，企業興起以股權收購展開公司併購等積極作為，成為企業向上提昇之選項，又為保障受收購公司之股價及全體股東之平等權益，對於強制公開收購所訂定之相關法令規定等，且對本案例之併購情節列出時序，彰顯惡意併購攻防，及公開收購公開發行公司有價證券管理辦法第11條第1項，此系爭法令規定之構成要件爭點部分，臺灣高等法院基於文義解釋及目的性解釋等擴張解釋「預定」、「取得」，而未採被告等之辯解，認定被告等構成違反預定取得公開發行公司已發行股份總額達一定比例者，應採公開收購方式為之之規定論罪科刑。但經由系爭判決之事實及理由的分析與探討後，以我國強制收購規定之闕漏及爭議仍多，且相較英國法制，對小股東之權益保障仍有不足，至於對違反現行強制收購制度者，立法者以刑罰作為違反強制公開收購義務之法律效果並不妥適，有再行斟酌之必要，應為未來修法之參考。

Analyses on Criminal Liabilities of Offenses Against Tender Offer in Global Securities Finance Corporation When China Development Financial Was Merged With Taiwan International Securities---Discussions on A Taiwan High Court Case of No. 99 Gim Sun Zon Su 61

Liu, Pang-Hsiu

Abstract

This study focuses on the criminal liability in the case of hostile takeover when China Development Financial was merged with Taiwan International Securities. It also discusses the legislative history of hostile takeover, including its foreign counterparts, and examines the policy behind public tender offer in order to protect the rights of shareholders. Taking the related laws into consideration, this study claims that the Taiwan High Court, in a case of No. 99 Gim Sun Zon Su 61, incorrectly over explained the term of "propose to acquire" to incriminate the accused although the defense already presented a strong argument. Since the legal loopholes in hostile takeover remain to be amended comparing to its UK counterpart, the Taiwan High Court Judgment of No. 99 Gim Sun Zon Su 61 needs further consideration and the Congress should re-promulgate to exculpate those who disobey rules of public tender offer.