4.7 Evaluating the ‘Attenuated’ Principle of Shareholder Protection in Chinese Takeover Law ........................................ 57
  4.7.1 Justifications for Protecting the Lawful Interests of Securities Investors in Chinese Takeover Law .............. 57
  4.7.2 The Meanings of ‘Protecting the Lawful Interests of Securities Investors’ .................................................. 62

4.8 Conclusion ........................................................................................................................................ 64

5 Mandatory Bid Rule and Shareholder Equality: Legal Transplantation and Local Divergence ......................... 67
  5.1 Introduction ........................................................................................................................................ 67
  5.2 Mandatory Takeover Bid Rule and the Equal Treatment of Shareholders ..................................................... 68
  5.3 The Mandatory Takeover Bid Rule Provided in Takeover Regulation 2006 .............................................. 69
  5.4 General Permission of Partial Bids ...................................................................................................... 70
    5.4.1 Potential Inequality Among Shareholders Due to the Use of Partial Bids ........................................... 71
  5.5 Exempting Important Local Transactions from the Rule .................................................................... 72
    5.5.1 Exempting Rescue Operations from the Mandatory Takeover Bid Rule ........................................... 73
    5.5.2 Exempting Complete Listing from the Mandatory Takeover Bid Rule ........................................... 75
    5.5.3 Exempting SOE-involved Takeovers from the Mandatory Takeover Bid Rule ................................ 79
  5.6 Inequality Among Shareholders: Discretionary Exemption of the Rule Exercised by the CSRC .................. 82
    5.6.1 Lack of Substantive and Procedural Constraints ............................................................................. 82
  5.7 Creative Compliance and Violation of the Rule ................................................................................. 85
  5.8 Explaining the Divergence and Proposals for Improvements .............................................................. 89
    5.8.1 The Costs for Complying with the Mandatory Bid Rule in China ..................................................... 89
    5.8.2 Proposed Changes to the Mandatory Bid Rule .............................................................................. 91
  5.9 How to Evaluate the Divergence and Reform Proposals ...................................................................... 91
    5.9.1 Principle for Evaluation: The Fair Treatment of Shareholders ......................................................... 91
    5.9.2 The Necessity to Have the Mandatory Bid Rule ............................................................................. 92
    5.9.3 The General Permission of Partial Bids .......................................................................................... 93
    5.9.4 Amending the Mandatory Bid Exemption Rules ........................................................................... 93
    5.9.5 Expanding the Exemption of the Mandatory Takeover Bid Rule ................................................... 94
    5.9.6 Permitting Flexibility to the Price Offered in a Takeover Bid .......................................................... 96
  5.10 Conclusion ........................................................................................................................................ 97
6 Miscellaneous Shareholder Protection Rules: The Influence of Legal Culture, Local Demand and Institutional Capacity in Transplantation

6.1 Introduction .............................................. 99
6.2 Preserving Openness Through Defining Acting in Concert, Control, and Disclosure Requirements ........................................ 100
  6.2.1 The Chinese Regulation of Acting in Concert ............... 100
  6.2.2 The Definition of Control Provided in Takeover Regulation 2006 .............................................. 107
  6.2.3 Summary: The Cultural Element Behind the Divergence .............................................. 109
6.3 Intensified Disclosure for Share Acquisitions Below 30 % ........ 110
  6.3.1 The Differentiated Disclosure Requirements ............... 110
  6.3.2 The Divergence and Features of the Chinese Regulation .............................................. 111
  6.3.3 Justifications for the Enhanced Disclosure Regulation .............................................. 112
6.4 Preserving Impartiality Through Addressing Conflicts of Interest in Management Buyouts .............................................. 113
6.5 Imposing Obligations on the Controlling Shareholder and Acquirer .............................................. 117
  6.5.1 Three Common Forms of Minority Shareholder Oppression in Negotiated Takeovers .............................................. 118
  6.5.2 The General and Specific Obligations in Chinese Law .............................................. 118
  6.5.3 The US Law: The Three Regulatory Areas, Uncertainty, and Theories .............................................. 119
  6.5.4 The Convergence and Divergence Between the Chinese Law and the US Law .............................................. 123
  6.5.5 Evaluation of the Current Chinese Regulatory Rules .............................................. 124
6.6 The Missing Link in Chinese Shareholder Protection Rules .............................................. 125
  6.6.1 The Constrained Criminal Liability and Evaluation .............................................. 126
  6.6.2 The Most Developed Administrative Liability and Evaluation .............................................. 127
  6.6.3 The Largely Missing Civil Liability .............................................. 129
6.7 Conclusion .............................................. 136

7 Regulating Takeover Defences: The UK Model in Books and the US Model in Action .............................................. 137
7.1 Introduction .............................................. 137
7.2 Two Approaches for Regulating Takeover Defences: Shareholder Decision-Making Vs Management Decision-Making .............................................. 138
  7.2.1 The US Business Judgment Rule .............................................. 139
  7.2.2 The Allocation of Decision-Making Powers in the US .............................................. 142
7.2.3 The UK Board Neutrality Rule ........................................ 143
7.2.4 The Fiduciary Duty of Management in the UK .............. 144
7.2.5 Summary and Discussion ............................................. 146

7.3 Chinese Regulation of Takeover Defences: The UK Model in Books and the US Model in Regulatory Effects .......................... 147

7.3.1 The Fiduciary Duty of Management in Chinese Company Law and Takeover Law .................................................. 147
7.3.2 The Chinese Version of the Board Neutrality Rule ........ 150
7.3.3 Relevant Provisions in the Chinese Corporate Law ........ 151

7.4 Takeover Defences Used in Chinese Practice: Management Discretion in Adopting Takeover Defences .............................. 153

7.4.1 The Use of Pre-bid Defences in Chinese Practice .......... 154
7.4.2 The Use of Post-bid Defences in Chinese Practice .......... 160

7.5 What Is the Future for Chinese Takeover Defence Regulation? .... 165

7.5.1 Allocating the Primary Decision-Making Powers to Shareholders ................................................................. 166
7.5.2 Protecting the Fundamental Rights of Shareholders .......... 168
7.5.3 A Shifted Burden of Proof ............................................. 170
7.5.4 Broadening the Application Areas of the Board Neutrality Rule ................................................................. 171
7.5.5 Shareholder Veto as a Precondition for Giving a Board of Directors Discretion to Adopt Defensive Measures .......................... 172

8 Conclusion ........................................................................ 175

8.1 Introduction .................................................................... 175
8.2 The Justification for Selective Transplantation .................. 176
8.3 The Right Approach to Achieve Efficiency ....................... 177
8.4 Problems with Shareholder Protection and How to Improve Them ................................................................. 178

8.5 Conclusion .................................................................... 180

Bibliography ........................................................................ 183