Boyle & Birds’
Company Law

9th edition
2014

Editors
John Birds LLM
Emeritus Professor in the School of Law, University of Manchester and
Honorary Professor in the School of Law, University of Sheffield

Bryan Clark BA, LLM, PhD
Professor of Law, University of Strathclyde

Gerard McCormack BCL, LLM, PhD
Professor of International Business Law, University of Leeds

Matteo Solinas LLB, LLM, PhD
Lecturer in Corporate and Financial Law, University of Glasgow

Michael R Varney LLB, PhD
Lecturer in Law, University of Hull

Charlotte Villiers LLM, Solicitor
Professor of Company Law, University of Bristol

Consultant Editor
A. J. Boyle LLM, SJD, Barrister
Emeritus Professor of Law, Queen Mary, University of London

JORDAN
PUBLISHING
## CONTENTS

Preface to the 9th Edition v  
Table of Cases xxvii  
Table of Statutes lxxvii  
Table of Statutory Instruments xcvi

### Chapter 1

**The Development of the Registered Company**  
1.1 Introduction 1  
1.2 Historical background 1  
1.3 The incorporation of joint-stock companies by registration 2  
  - Legislative control 2  
  - Limited liability 4  
1.4 Developments in the late nineteenth and twentieth centuries 5  
1.5 Other types of corporate business organisation 7  
1.6 The Companies Acts: consolidation and reconsolidation in the 1980s 8  
1.7 The Companies Act 2006 10  
1.8 The impact of law and economics theory 13  
1.9 The market for corporate control 15  
  - Venture capital and private equity 17

### Chapter 2

**The European Union and Company Law**  
2.1 Introduction 19  
2.2 Fundamental freedoms: the free movement of companies 21  
  - A fundamental problem 21  
  - The jurisprudence of the ECJ 23  
  - The impact of the ECJ’s case-law 28  
  - Further developments regarding the freedom of establishment of companies 29  
2.3 The harmonisation programme: company law directives 30  
  - First Company Law Directive 30  
  - Second Company Law Directive 31  
  - Third and Sixth Directives: mergers and divisions of public companies 33  
  - Tenth Directive: cross-border mergers 34  
  - Fourth, Seventh and Eighth Directives: accounting and audit 34  
  - Thirteenth Directive: Takeovers 35

---

Letterpart Ltd • Typeset in XML • Division: BBCL_Contents-citi • Sequential 1
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.4</td>
<td>Harmonisation of securities regulation</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>2.5</td>
<td>The European Company Statute</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Introduction</td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>The consequences of incorporation</td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>‘The veil’ of incorporation</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>3.4</td>
<td>Criminal liabilities of companies</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td>Chapter 4</td>
<td>Registration, Formation and Promotion of Companies</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>Introduction</td>
<td>87</td>
<td></td>
</tr>
</tbody>
</table>
Contents

4.2 The classification of private and public companies 88
4.3 Forming a company 89
4.4 The articles of association 90
4.5 Registration 90
4.6 The certificate of incorporation 92
4.7 Trading certificate for public companies 94
4.8 Unlimited companies 95
4.9 Companies limited by guarantee 96
4.10 The re-registration of companies 98
4.11 The re-registration of private companies as public 98
4.12 Public companies re-registering as private 100
4.13 Re-registration of private and public limited companies as unlimited companies 101
4.14 Re-registration of unlimited companies as private limited companies 102
4.15 Promoting companies 103
4.16 Duties of promoters 104
4.17 The remuneration of promoters 107
4.18 Underwriting commission 107
4.19 Pre-incorporation contracts 108
4.20 The liability of promoters or other ‘agents’ to third parties 110
4.21 Overseas companies 112
4.22 Company names 114
4.23 Trading disclosures 117

Chapter 5
The Company’s Constitution 121
5.1 From memorandum and articles to constitution 121
5.2 The articles of association 122
5.3 The contents of the articles of association 122
5.4 Drafting articles: adoption of model articles 123
5.5 Drafting articles: examples of invalid provisions 124
5.6 Statement of company’s objects 125
5.7 Entrenched provisions 125
5.8 Provisions of memorandum to be treated as provisions of articles 126
5.9 Amendment of articles: s 21 127
5.10 Effect of amendment: s 25 128
5.11 Notification of amendments to registrar 128
5.12 Filing of amendments to the articles: enactments and orders 129
5.13 Requirements as to publicity of amendment of articles 129
5.14 Agreements not to amend the articles and voting agreements 130
5.15 Acting on amended articles 132
5.16 ‘Bona fide for the benefit of the company as a whole’ 134
5.17 A malicious amendment 135
5.18 An amendment outside the bounds of reasonableness 136
5.19 The discrimination test and the ‘interests of the company as a whole’ 137
5.20 Legal effect of constitution: contract 140
5.21 Outsiders’ rights and the articles as a contract 144
5.22 Contracts incorporating provisions in the articles 147
5.23 The character of obligations in the constitution 147

Chapter 6
Company Contracts 149

6.1 Introduction 149
6.2 Ultra vires: a brief overview 151
    The doctrine stated and its impact mitigated 151
    Reaffirming the doctrine 154
    Restating the law: Rolled Steel 155
    The decline of the ultra vires doctrine 157
6.3 Corporate gifts 158
    Pensions 159
    Charitable or political donations 160
    Redundancy payments 162
6.4 Corporate Capacity – the current law: s 39 of the Companies Act 2006 163
6.5 Just and equitable winding-up 164
6.6 Authority to bind the company 165
6.7 The protection of persons dealing with the company in good faith: s 40 166
6.8 A person dealing with a company in good faith 170
    ‘Person dealing with a company’ 171
    ‘Good faith’ 173
6.9 No duty to enquire 174
6.10 Directors who deal with their company 175
6.11 The ‘internal’ aspects of s 40 176
6.12 A failed reform proposal 177
6.13 The Turquand rule: the indoor management principle 177
6.14 ‘Outsiders’ 178
6.15 General agency principles and the Turquand rule 179
6.16 Usual authority 180
6.17 Directors, executive directors and chairmen 181
6.18 When an outsider cannot rely on usual authority 182
6.19 The ‘holding out’ principle 183
6.20 Knowledge of the articles 185
6.21 ‘Self-authorising’ agents 185
6.22 Forgery, the Turquand rule and agency principles 187
6.23 Statutory provisions affecting appointments 188
6.24 Publication in the Gazette of returns relating to the register of directors 189
6.25 The form of contracts by companies 189
6.26 The execution of company documents 189
6.27 Protection for purchasers 190

Chapter 7
Share Capital – Allotment and Maintenance 193
7.1 Introduction 193
7.2 Methods of capitalising companies 193
7.3 Allotment of shares 195
7.4 Authority required to allot shares 196
7.5 Pre-emption rights 197
When authority under s 551 overrides pre-emptive rights 200
7.6 Other controls on allotments 201
7.7 The contract of allotment 202
7.8 Letters of allotment 202
7.9 Restrictions on allotment of shares by public companies 204
7.10 Return and registration of allotments 205
7.11 Maintenance of capital 205
7.12 Price of allotted shares 207
7.13 Allotments of shares for non-cash consideration by private companies 208
7.14 Allotments of shares for non-cash consideration by public companies 209
Prohibited non-cash consideration 210
Future non-cash consideration 210
Valuation of non-cash consideration 210
Non-cash assets acquired from subscribers and others 212
7.15 Issue of shares at a premium 213
Relief from s 610 214
7.16 Acquisition by a company of rights in respect of its own shares 214
7.17 The redemption or purchase of a company’s own shares 215
Redeemable shares 216
Purchase by a company of its own shares 217
Authority required for off-market purchases 218
Conditional contracts 220
Authority required for market purchase 220
Assignments and releases of a company’s right to purchase its own shares 221
Payments other than of the purchase price 221
Publicity for purchases 222
The capital redemption reserve 222
Private companies redeeming or purchasing shares out of capital 223
Procedure and publicity 224
Applications to the court 225
Chapter 7

7.18 Financial assistance by a company for the acquisition of its own shares
   Prohibitions under s 678
   Exceptions

7.19 The holding by a subsidiary of shares in its holding company

7.20 Serious loss of capital by public companies

7.21 Dividends
   The relevant accounts
   Determination of profits
   Public companies
   Improperly paid dividends

7.22 Reserves

7.23 Capitalisation of profits

7.24 Mode of distribution of profits

Chapter 8

Rights and Liabilities Attached to Shares: Reorganisations of Capital

8.1 Shares

8.2 Classes of shares

8.3 Ordinary shares

8.4 Preference shares
   Preferential rights

8.5 Other classes of shares

8.6 Voting rights

8.7 Variation and abrogation of the class rights of shareholders
   The concept of a ‘class right’
   The meaning of ‘varying’ or ‘abrogating’ class rights
   Procedure for variation
   Notice for class meetings and filing requirements
   Protection for minority in class

8.8 Liabilities on shares

8.9 Initial payments on shares

8.10 Calls

8.11 Liens on shares

8.12 The reorganisation of capital

8.13 Reduction of capital
   The solvency statement
   Matters incidental to a reduction
   Matters relevant to confirmation by the court
   Shareholders’ class rights
   Reduction not in accordance with class rights
   Rights of creditors
   Procedure on a reduction of capital

8.14 Forfeiture and surrender of shares
   Reissue of forfeited shares
Chapter 9
Transfer and Transmission of Shares
9.1 The transfer of shares
9.2 Transferability of shares
   Power to refuse registration
   Pre-emption clauses
   Compulsory transfer
   Restrictions not arising out of the articles
9.3 The mode of transfer of shares
   The Stock Transfer Act 1963
   Procedure on transfer of unlisted shares
   Procedure on transfer of listed shares
9.4 The position as between transferor and transferee
9.5 Sales of shares
9.6 Gifts of shares
9.7 Mortgages of shares
9.8 Priorities in England
   Notice to the company
9.9 Forged transfers
9.10 Share certificates
   Evidence of title
9.11 Certification of transfers
9.12 Share warrants
9.13 The transmission of shares
9.14 Trustees in bankruptcy
9.15 Executors and administrators

Chapter 10
Debentures, Charges and Registration
10.1 Introduction
10.2 Borrowing powers
10.3 Borrowing on debentures
10.4 Significance of the term 'debenture'
10.5 Main terms of loans
   Principal
   Interest
10.6 Debentures issued at a discount
Part 2: Charges
10.7 Fixed and floating charges
10.8 The nature of a floating charge
10.9 Charges on book debts
10.10 Floating charges and the Bills of Sale Acts
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.11</td>
<td>Crystallisation of the floating charge</td>
<td>319</td>
</tr>
<tr>
<td></td>
<td>Notices of crystallisation</td>
<td>320</td>
</tr>
<tr>
<td>10.12</td>
<td>Automatic crystallisation</td>
<td>321</td>
</tr>
<tr>
<td>10.13</td>
<td>Crystallisation and rights of set-off</td>
<td>323</td>
</tr>
<tr>
<td>10.14</td>
<td>Priorities and the floating charge</td>
<td>323</td>
</tr>
<tr>
<td>10.15</td>
<td>The effect of registration on priorities</td>
<td>325</td>
</tr>
<tr>
<td>10.16</td>
<td>Further advances and subsequent charges</td>
<td>326</td>
</tr>
<tr>
<td>10.17</td>
<td>Purchase money, security interests and floating charges</td>
<td>326</td>
</tr>
<tr>
<td>10.18</td>
<td>Postponement and avoidance of floating charges by statute</td>
<td>327</td>
</tr>
<tr>
<td>10.19</td>
<td>Priority agreements</td>
<td>328</td>
</tr>
<tr>
<td>10.20</td>
<td>Retention of title clauses and floating charges</td>
<td>329</td>
</tr>
<tr>
<td>10.21</td>
<td>Execution creditors and floating charges</td>
<td>331</td>
</tr>
<tr>
<td>Part 3</td>
<td>The Registration of Charges</td>
<td>332</td>
</tr>
<tr>
<td>10.22</td>
<td>Legislative framework</td>
<td>332</td>
</tr>
<tr>
<td>10.23</td>
<td>Charges requiring registration</td>
<td>333</td>
</tr>
<tr>
<td>10.24</td>
<td>Effect of failing to register a charge</td>
<td>335</td>
</tr>
<tr>
<td>10.25</td>
<td>The particulars of a charge to be registered</td>
<td>335</td>
</tr>
<tr>
<td>10.26</td>
<td>The ‘date of creation’ for purposes of registration</td>
<td>337</td>
</tr>
<tr>
<td>10.27</td>
<td>The registration obligation</td>
<td>338</td>
</tr>
<tr>
<td>10.28</td>
<td>The registrar’s certificate as conclusive evidence</td>
<td>339</td>
</tr>
<tr>
<td>10.29</td>
<td>The transfer of charges</td>
<td>340</td>
</tr>
<tr>
<td>10.30</td>
<td>Property acquired subject to a charge</td>
<td>341</td>
</tr>
<tr>
<td>10.31</td>
<td>Registration and priorities</td>
<td>341</td>
</tr>
<tr>
<td>10.32</td>
<td>Rectification of the register of charges</td>
<td>341</td>
</tr>
<tr>
<td>10.33</td>
<td>Effect of a winding-up</td>
<td>343</td>
</tr>
<tr>
<td>10.34</td>
<td>Entry of satisfaction and release</td>
<td>344</td>
</tr>
<tr>
<td>10.35</td>
<td>Charges on property in Britain created by an overseas company</td>
<td>345</td>
</tr>
<tr>
<td>10.36</td>
<td>The company’s recording obligations: ss 859P and 859Q</td>
<td>346</td>
</tr>
<tr>
<td>10.37</td>
<td>The reform of the law of security over personal property</td>
<td>347</td>
</tr>
<tr>
<td>Chapter 11</td>
<td>Corporate Governance</td>
<td></td>
</tr>
<tr>
<td>11.1</td>
<td>Introduction</td>
<td>351</td>
</tr>
<tr>
<td>11.2</td>
<td>Corporate structure</td>
<td>352</td>
</tr>
<tr>
<td>11.3</td>
<td>Defining corporate governance</td>
<td>353</td>
</tr>
<tr>
<td>11.4</td>
<td>How is this system to be achieved?</td>
<td>354</td>
</tr>
<tr>
<td>11.5</td>
<td>The corporate governance committees</td>
<td>357</td>
</tr>
<tr>
<td></td>
<td>The Cadbury Committee</td>
<td>358</td>
</tr>
<tr>
<td></td>
<td>The Greenbury Committee</td>
<td>359</td>
</tr>
<tr>
<td></td>
<td>The Hampel Committee</td>
<td>359</td>
</tr>
<tr>
<td></td>
<td>The Combined Code and the UK Corporate Governance Code</td>
<td>360</td>
</tr>
<tr>
<td></td>
<td>Disclosure</td>
<td>363</td>
</tr>
<tr>
<td></td>
<td>Non-executive directors</td>
<td>364</td>
</tr>
<tr>
<td></td>
<td>The auditors and institutional investors</td>
<td>367</td>
</tr>
<tr>
<td>11.6</td>
<td>The narrow framework of corporate governance in the UK</td>
<td>371</td>
</tr>
<tr>
<td>11.7</td>
<td>Corporate governance outside the UK</td>
<td>382</td>
</tr>
</tbody>
</table>
Chapter 12
Membership of a Company
12.1 Introduction
12.2 The members of a company
   Subscribers to the memorandum
   Entry in the register of members
12.3 The termination of membership
12.4 Minors as members
12.5 The register of members
   The register, equitable interests and notice
   Inspection and copies of the register
   Rectification of the register
12.6 Single member companies
12.7 The annual return
12.8 Disclosure of interests in voting rights in public companies
12.9 The company’s right to investigate who has an interest in its shares
12.10 Notification of major shareholdings
12.11 Disclosing use of votes
12.12 Exercise of members’ rights by beneficial owners
   Information rights
   Voting rights
   Status of information rights
   Formalities
   Exercise of rights in different ways
   Special rights

Chapter 13
Shareholders’ Meetings and Resolutions
13.1 Introduction
13.2 Informal agreement
13.3 Resolutions
13.4 Written resolutions of private companies
   Agreement to a written resolution
   Written resolution proposed by directors
   Written resolution proposed by members
   Electronic means
13.5 Meetings
13.5.1 General meetings
   Nature of a meeting
13.5.3 General meeting requisitioned by members
13.5.4 Annual general meetings of public and traded companies
   Members’ resolutions at annual general meetings
   Rights of members of traded companies
   Court’s power to order a meeting
13.5.8 Class meetings
   Court’s powers in respect of meetings
13.6 Notice of meetings
   Notices of meetings of traded companies
   Form of notice
   Accidental failure to give notice
   Length of notice
   Short notice
   Notice of adjourned meeting
   Misleading notices

13.6.8 Notices and amendments
   Special notice
   Members’ statements

13.7 Conduct of meetings
   General meetings of traded companies
   Quorum at general meetings
   Quorum at class meetings
   Abuse of quorum provisions and the court’s power to order
   a meeting

13.7.5 Adjourned meetings
13.7.6 Votes and polls
   Right to demand a poll
   Conduct of a poll

13.7.9 Representatives of corporate members
13.7.10 Proxies
   Proxies at meetings of traded companies
   Proxy votes
   Solicitation of proxies
   Records of meetings, resolutions and polls
   Right to inspect records of resolutions and meetings

13.8.2 Publication of reports of meetings
13.9 Polls of quoted and traded companies
   Website publication of poll results
   Independent report on a poll
   Independent assessor’s report
   Website publication
   Disclosing use of votes by institutional investors

Chapter 14
Accounts and Reports
14.1 Introduction
14.2 The small companies regime
   Qualification as a small company
   Exclusion from the small company regime

14.3 Quoted companies
14.4 Accounting records
   The duty to keep accounting records
   The custody of accounting records

14.5 Financial years and accounting periods
Contents

14.6 Annual accounts 492
14.7 Individual accounts: applicable accounting framework 493
14.8 Group accounts 494
   Group accounts: applicable accounting framework 496
   Companies Act group accounts 496
   IAS group accounts 497
   Consistency of financial reporting within group 497
   Individual profit and loss account where group accounts prepared 498
14.9 Information to be provided in accounts 498
   Related undertakings 498
   Employee numbers and costs 499
   Directors’ benefits: remuneration 500
   Information about directors’ benefits: advances, credit and guarantees 501
   Approval and signing of accounts 501
14.10 The directors’ report 502
   Contents of directors’ report: general 502
   The strategic report 503
   Contents of strategic report: general 503
   Recent developments beyond the UK 505
   Statement on disclosure to auditors 506
   Approval and signing of directors’ report 506
14.11 Quoted companies: directors’ remuneration report 507
   Contents of the directors’ remuneration report 507
   Approval and signing of the directors’ remuneration report 508
   Members’ approval of the directors’ remuneration report 508
14.12 Publication of reports and accounts 509
14.13 Option to provide summary financial statements 510
14.14 Quoted companies: annual reports and statements to be made available on website 511
14.15 Rights of members or debenture holders to copies of accounts and reports 512
14.16 Requirements in connection with publication of reports and accounts 512
   Publication of accounts 512
14.17 Public companies: laying of accounts before general meeting 513
14.18 Filing of accounts and reports 514
14.19 Filing obligations: companies subject to the small companies regime 515
14.20 Filing obligations: medium-sized companies 516
14.21 Filing obligations: unquoted and quoted companies 517
14.22 Filing requirements for unlimited companies 518
14.23 Abbreviated accounts: special auditors’ report 518
   Approval and signing 518
14.24 Failure to file accounts and reports 519
14.25 Defective accounts 519
   Directors’ voluntary revision 519
Chapter 14
Managing a Company
14.26 False or misleading statements in reports
14.27 Power to make further provisions about accounts and reports
14.28 Auditors
  Appointment of auditors in private companies
  Public companies
  Qualifications
  Auditors’ remuneration
  Disclosure of terms of audit appointment
  Disclosure of services by the auditor or associates and related remuneration
  Removal or resignation
  Resignation of auditor
  Statement by auditor on ceasing to hold office
  Duty of auditor to notify appropriate audit authority
14.29 The rights and duties of an auditor
  Right to information
  Attendance at meetings
  The auditors’ report
  The contents of the auditors’ report
  The auditor as an officer of the company
14.30 Liability for negligence
  Liability in contract
  Liability in tort for negligent misstatement
  Duty of auditor valuing shares
  The limitation or exclusion of liability

Chapter 15
Management of a Company
15.1 Introduction
15.2 The meaning of director
  De facto director
  Shadow director
15.3 Appointment of directors
  Statutory requirements
15.4 Remuneration of directors
15.5 Directors’ service contracts and the articles
15.6 Disclosure of directors’ service contracts
15.7 Retirement and termination of appointment of directors
15.8 Resignation
15.9 Removal by ordinary resolution 562
15.10 Alternate directors 564
15.11 Directors’ meetings 564
  Quorum 564
  Notice 565
  Directors’ decision-making under the model articles 566
  Minutes of directors’ meetings 567
15.12 A director’s right to inspect company books 567
15.13 Delegation and the validity of directors’ acts 567
15.14 The registers of directors and of directors’ residential addresses 569
  Non-disclosure of directors’ residential addresses 570
15.15 The relationship between board and general meeting 571
15.16 The officers of a company 574
  The managing director or chief executive 574
  The secretary 576
  The register of secretaries 577
15.17 Disqualification and other sanctions against miscreant directors and others involved in company management 577
15.18 Disqualification of directors and others 578
  The meaning of disqualification 578
  Application for disqualification 579
  Grounds for disqualification 580
  Disqualification for unfitness 581
  Register of disqualification orders 584
15.19 Liability of directors (and others) to contribute to the assets or for the debts of their companies 585
  Fraudulent trading 585
  Wrongful trading 587
  Liability for acting while disqualified 593
  Summary remedy 593

Chapter 16
The Duties of Directors – General 595
16.1 Introduction 595
  The legal nature of the office of director 596
16.2 The scope of directors’ duties 597
16.3 Introduction to directors’ general duties 599
16.4 Duty to act within powers 600
16.5 Duty to promote the success of the company 604
  Interests other than those of the members 607
  Interests of creditors 609
16.6 Duty to exercise independent judgment 610
16.7 Duty to exercise reasonable care, skill and diligence 612
16.8 Duties to avoid conflicts of interest and not to accept benefits from third parties 615
  Conflicts of interest and secret profits 616
  Consequences of a breach of the no conflict duty 620
16.9 Duty not to accept benefits from third parties 621
Consequences of a breach of the no benefits rule 622

16.10 Duty to declare interest in proposed transaction or arrangement 624
Interest 626

16.11 Relationship between the general duties and other rules 627

16.12 Statutory duties supplementing the general duties 627
Declarations of interest in existing transactions or arrangements 628
Companies with a sole director 629

16.13 Directors’ trusteeship of the company’s assets 630
The scope of the trusteeship 631
Further examples of misapplications 632

Chapter 17
The Duties of Directors – Specific Duties, Relief from Liability and Consequences of Breach 635

17.1 Introduction 635

17.2 Specific rules regarding directors’ interests in transactions and arrangements 635
Persons connected with a director 636

17.3 Directors’ service contracts 636

17.4 Substantial property transactions 638
Exceptions 639
Approval 640
Remedies 640

17.5 Loans to directors and others 642
Requirements applying to all companies 643
Requirements applying to public companies 643
Exceptions 644
Remedies 646

17.6 Payments for loss of office 647
Exceptions 649
Remedies 650

17.7 Power to provide for employees 650

17.8 Liability for false and misleading statements in reports 650

17.9 Factors relieving a director from liability for breach of duty 651
Ratification 651
Provisions in the articles 654
Discretionary relief from liability by the court 657

17.10 Enforcement of civil liabilities against directors 658

Chapter 18
Shareholders’ Remedies 659

18.1 Introduction 659

Part 1: Minority Shareholders’ Claims 660

18.2 Common law claims 660

18.3 Permitted common law claims 661
<table>
<thead>
<tr>
<th>Section</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.4</td>
<td>Non-ratifiable breaches of directors’ duties</td>
</tr>
<tr>
<td>18.5</td>
<td>The enforcement of statutory ‘fiduciary’ duties</td>
</tr>
<tr>
<td>18.6</td>
<td>The statutory derivative claim</td>
</tr>
<tr>
<td>18.7</td>
<td>The key requirements for a derivative claim</td>
</tr>
<tr>
<td>18.8</td>
<td>The criteria to guide the court</td>
</tr>
<tr>
<td>18.9</td>
<td>Authorisation or ratification</td>
</tr>
<tr>
<td>18.10</td>
<td>Authorisation</td>
</tr>
<tr>
<td>18.11</td>
<td>Ratification</td>
</tr>
<tr>
<td>18.12</td>
<td>Members with no personal interest</td>
</tr>
<tr>
<td>18.13</td>
<td>Comment</td>
</tr>
<tr>
<td>18.14</td>
<td>Remedies in derivative claims</td>
</tr>
<tr>
<td>18.15</td>
<td>Power to amend s 263</td>
</tr>
<tr>
<td>18.16</td>
<td>Transitional provisions</td>
</tr>
<tr>
<td>18.6</td>
<td>Overlapping personal and corporate claims</td>
</tr>
<tr>
<td>18.7</td>
<td>Minority shareholders’ right to an indemnity in a derivative action</td>
</tr>
<tr>
<td>18.8</td>
<td>Shareholders’ claims to enforce rights against the company</td>
</tr>
<tr>
<td>18.9</td>
<td>Proceedings in the company’s name</td>
</tr>
<tr>
<td>18.10</td>
<td>Power of the court to grant relief on a petition alleging unfair prejudice</td>
</tr>
<tr>
<td>18.11</td>
<td>The concept of unfair prejudice</td>
</tr>
<tr>
<td>18.12</td>
<td>O’Neill v Phillips</td>
</tr>
<tr>
<td>18.13</td>
<td>Breach of directors’ duties</td>
</tr>
<tr>
<td>18.14</td>
<td>‘Legitimate expectations’</td>
</tr>
<tr>
<td>18.15</td>
<td>Meaning of ‘quasi-partnership’</td>
</tr>
<tr>
<td>18.16</td>
<td>Limited Liability Partnerships and unfair prejudice</td>
</tr>
<tr>
<td>18.17</td>
<td>‘Member qua member’</td>
</tr>
<tr>
<td>18.18</td>
<td>The ‘alternative remedy’</td>
</tr>
<tr>
<td>18.19</td>
<td>The offer to buy as a bar to winding up</td>
</tr>
<tr>
<td>18.20</td>
<td>The offer to buy as a bar to an unfair prejudice petition</td>
</tr>
<tr>
<td>18.21</td>
<td>The remedies available to the court: s 996</td>
</tr>
<tr>
<td>18.22</td>
<td>Shareholder protection and the ECHR</td>
</tr>
<tr>
<td>18.23</td>
<td>Just and equitable winding up as a minority shareholder’s remedy</td>
</tr>
<tr>
<td>18.24</td>
<td>Earlier cases consistent with Westbourne</td>
</tr>
<tr>
<td>18.25</td>
<td>Loss of ‘substratum’</td>
</tr>
<tr>
<td>18.26</td>
<td>Fraudulent and illegal companies</td>
</tr>
<tr>
<td>18.27</td>
<td>Part 3: The Business Department’s Powers to Investigate Companies and Their Securities</td>
</tr>
<tr>
<td>18.28</td>
<td>Introduction</td>
</tr>
<tr>
<td>18.29</td>
<td>Investigation of the affairs of the company</td>
</tr>
<tr>
<td>18.30</td>
<td>Informal investigations under s 447</td>
</tr>
<tr>
<td>18.31</td>
<td>The conduct of proceedings by inspectors</td>
</tr>
<tr>
<td>18.32</td>
<td>The role of the Secretary of State in inspections</td>
</tr>
<tr>
<td>18.33</td>
<td>The inspectors’ report and subsequent proceedings</td>
</tr>
<tr>
<td>18.34</td>
<td>The power to examine on oath and obtain documents</td>
</tr>
<tr>
<td>18.35</td>
<td>Proceedings by the Department</td>
</tr>
</tbody>
</table>
Chapter 19
The Public Issue of Securities
19.1 Legislative background 719
19.2 The regulatory framework 725
19.3 Private and public companies 726
19.4 The UK Listing Authority and the London Stock Exchange 728
19.5 Criteria for admission to listing 730
19.6 Criteria for admission to trading on the London Stock Exchange 732
19.7 Offers of securities otherwise than through the London Stock Exchange 732
19.8 ‘Offers for subscription’ and ‘offers for sale’ 733
19.9 Placings, intermediaries offers, rights issues and open offers 734
19.10 Convertible issues 736
19.11 The function of the sponsor 736
19.12 Underwriting and bookbuilding 736
19.13 Official Listing: the function of the ‘competent authority’ 737
19.14 Application for listing 738
19.15 Part VI prospectuses and listing particulars 739
19.16 The issuer’s general duty to disclose 742
19.17 Supplementary Part VI listing particulars 743
19.18 Approval of Part VI prospectuses and listing particulars 743
19.19 Power to control information 744
19.20 Public offers of unlisted securities 745
19.21 An ‘offer to the public’ of ‘securities’ 746
19.22 Form and content of prospectuses 748
19.23 Supplementary prospectuses 749
19.24 Regulation of invitations to engage in investment activity under the Financial Services and Markets Act 2000 749
19.25 Mutual recognition of prospectuses and listing particulars in Member States of the European Community 750
19.26 Remedies for false, misleading or incomplete statements in connection with prospectuses or listing particulars 751
19.27 The statutory remedy for false, misleading or incomplete statements 752
19.28 Who may be sued and who may sue under the statutory remedy? 754
19.29 Defences available to persons responsible 755
19.30 The relationship of the statutory remedy to the common-law remedies 756
19.31 The common-law remedies: the right to rescind a contract of allotment for material misrepresentation 757
19.32 Responsibility for statements 757
19.33 Loss of the right to rescind 758
Contents

19.34 An action for deceit 760
19.35 Misleading omissions 763
19.36 The Misrepresentation Act 1967 765
19.37 The measure of damages 766
19.38 An action for negligent misstatement 766
19.39 Criminal liability for false or misleading statements in prospectuses 767
19.40 Section 19 of the Theft Act 1968 769

Chapter 20
Takeovers and Mergers
20.1 Introduction 771
20.2 The Takeover Panel and its administration of the Code 772
20.3 The sanctions available to the Panel 775
20.4 Impediments to takeovers 777
20.5 The scope and form of the Takeover Code 782
20.6 The Principles of the Takeover Code 786
20.7 The Rules 787
20.8 Partial offers 789
20.9 Restrictions on dealings 790
20.10 The mandatory offer to the remaining shareholders 791
20.11 Assessing the Takeover Code’s effectiveness 793
20.12 Reconstruction and amalgamation under s 110 of the Insolvency Act 1986 795
20.13 Procedure under ss 110 and 111 795
20.14 Rights of dissenting shareholders 796
20.15 The protection of creditors 798
20.16 Duties of the liquidator under ss 110–111 798
20.17 Procedure under Part 26 of the Companies Act 2006 800
20.18 The information required by s 897 802
20.19 The court’s powers under s 900 805
20.20 Mergers and divisions of public companies 807
20.21 Composition with debenture-holders and other creditors 808
20.22 The rights of dissenting shareholders and creditors 809
20.23 Compulsory acquisition of shares under Part 28 of the Companies Act 2006 812
20.24 The power of compulsory acquisition 812
20.25 The ‘price’ payable to those whose shares are compulsorily acquired 816
20.26 Applications to the court by dissenting shareholders 816
20.27 The right of minority shareholders to be bought out 819

Chapter 21
Corporate Reconstruction and Insolvency 821
Part 1: General 821
21.1 Introduction 821
21.2 The definition of insolvency 823
21.3 The regulation of insolvency practitioners 825
Part 2: Voluntary arrangements

21.4 The use of voluntary arrangements 827

CVA without a moratorium – Part I of the Insolvency Act 1986 as amended

21.6 Outline of the procedure 829
21.7 The effect of the approval of the voluntary arrangement 830
21.8 Implementation of the proposal 830
21.9 Challenging the approval of a voluntary arrangement or the supervisor’s decisions 831
21.10 Terminating a voluntary arrangement 833
21.11 Reinforcing the integrity of the law 833

CVAs with a moratorium – Insolvency Act 1986 Sch A1

Part 3: Administration 837

21.13 The role of administration 837
21.14 The Rescue Culture and US comparisons 838
21.15 Purposes of administration 840
21.16 Entry routes into administration 842
21.17 Out-of-court appointments by qualified floating charge holders 843
21.18 Out-of-court appointments by the company or its directors 844
21.19 Effect of the appointment of an administrator 845
21.20 The statutory moratorium 847
21.21 Relaxation of the moratorium 848
21.22 Rental payments and expenses of administration 851
21.23 Power to deal with charged property 852
21.24 Status of the administrator 854
21.25 Duties of the administrator 855
21.26 The administrator’s proposals 855
21.27 The meeting of creditors 856
21.28 The committee of creditors 858
21.29 Cases where urgent action is required 858
21.30 Protection of the interests of creditors and members 859
21.31 Replacing an administrator and vacation of office 860
21.32 Exit routes from administration 861
21.33 Expenses of administration and remuneration of the administrator 862
21.34 The administrator as an ‘office-holder’ 864
21.35 Pre-packaged administrations 865
21.36 Post-administration financing 868
21.37 An overview of the administration procedure 870

Part 4: The compulsory liquidation of companies 871

21.38 Compulsory winding-up 871

Compulsory winding-up

Special rules for financial institutions 872
Grounds for a compulsory winding-up order 873
Persons who may present a petition 874
The hearing of the petition 875
Commencement of the winding-up 876

21.39 The effect of a winding-up order on dispositions of assets 876
Contents

21.40 Appointment of the liquidator 878
   The liquidator’s status 879
   Duties and powers of a liquidator 881
   The liquidation committee 883
21.41 Ceasing to act as liquidator 883
Part 5: The voluntary liquidation of companies 884
21.42 Introduction 884
21.43 Resolutions for voluntary winding-up 885
   Commencement of a voluntary liquidation 885
   Consequences of resolution to wind up 886
21.44 The declaration of solvency 886
21.45 Appointment of a liquidator 887
21.46 The liquidation committee 888
21.47 Powers and duties of a voluntary liquidator 888
21.48 Ceasing to act as a voluntary liquidator 889
21.49 The relationship between voluntary liquidation and other
   insolvency-related procedures 890
Part 6: The conduct of liquidations 892
21.50 Introduction 892
21.51 Creditors’ claims 892
21.52 Proof of debts and rights of set-off 894
21.53 The company’s assets 896
21.54 The order of payment of debts and liabilities and the pari
   passu rule 898
   Preferential debts 898
   Liquidation expenses 899
   Deferred debts and subordinated debts 900
21.55 Contributories 901
21.56 Distribution of remaining assets 902
Part 7: Special powers of liquidators and other office holders in
   insolvency proceedings 902
21.57 A liquidator’s ability to disclaim property 902
21.58 Office-holders 904
   Utilities 904
   Transactions at an undervalue and putting assets beyond the
   reach of creditors 904
   Voidable preferences 906
   Court orders in respect of transactions at an undervalue and
   preferences 908
   Extortionate credit transactions 908
   Avoidance of floating charges 909
21.59 Other powers 911
21.60 Dissolution of companies 912
21.61 Defunct companies 914
21.62 International insolvency 915
21.63 EU insolvency regulation 919
   What constitutes the opening of main insolvency
   proceedings 920
Main insolvency proceedings and the debtor’s ‘centre of main interests’ 921
Centre of main interests – guidance from the European court 923
Groups of companies and a ‘head office functions’ test 924
Jurisdiction to open secondary and territorial insolvency proceedings 926
Applicable law 927
Referrals to legal orders other than the law of the insolvency forum 928
Recognition of insolvency proceedings 929
Liquidators’ powers 930
Relationship between main and secondary liquidations 930
An assessment of the Regulation 931

Index 933