

Boyle & Birds' Company Law

9th edition
2014

Editors

John Birds LL.M.
Emeritus Professor in the School of Law, University of Manchester and
Honorary Professor in the School of Law, University of Sheffield

Bryan Clark BA, LL.M., PhD
Professor of Law, University of Strathclyde

Gerard McCormack BCL, LL.M., PhD
Professor of International Business Law, University of Leeds

Matteo Solinas LL.B., LL.M., PhD
Lecturer in Corporate and Financial Law, University of Glasgow

Michael R Varney LL.B., PhD
Lecturer in Law, University of Hull

Charlotte Villiers LL.M., Solicitor
Professor of Company Law, University of Bristol

Consultant Editor

A. J. Boyle LL.M., SJD, Barrister
Emeritus Professor of Law, Queen Mary, University of London



Published by
Jordan Publishing Limited
21 St Thomas Street
Bristol BS1 6JS

© Jordan Publishing Limited 2014

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any way or by any means, including photocopying or recording, without the written permission of the copyright holder, application for which should be addressed to the publisher.

Crown Copyright material is reproduced with the permission of the Controller of Her Majesty's Stationery Office.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978 1 84661 955 7

Typeset by Letterpart Limited, Caterham on the Hill, Surrey CR3 5XL

Printed in Great Britain by Hobbs the Printers Limited, Totton, Hampshire SO40 3WX

CONTENTS

Preface to the 9th Edition	v
Table of Cases	xxvii
Table of Statutes	lxxvii
Table of Statutory Instruments	xcvii
Chapter 1	
The Development of the Registered Company	1
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	19
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

	Eleventh and Twelfth Directive: branches and single-member companies	36
	Cross-border exercise of shareholder rights	36
	Abandoned Fourteenth Directive	37
	Other Abandoned proposals (Fifth and Ninth Directives)	38
2.4	Harmonisation of securities regulation	38
2.5	The European Company Statute	40
	Background	40
	Implementation into domestic law	40
	Scope	41
	Interaction between ECS and domestic law	42
	Share capital	43
	Registered and head offices	43
	Formation	44
	Merger of two public companies	45
	Formation of holding company as SE	46
	Creation of subsidiary SE	47
	Conversion of existing public company into an SE	47
	Structure	48
	Accounting	49
	Winding up, liquidation, insolvency and cessation of payments	50
	Employee involvement	50
2.6	Towards a European private company	51
2.7	Conclusions	52
Chapter 3		
Legal Personality: Its Consequences and Limitations		53
3.1	Introduction	53
3.2	The consequences of incorporation	53
	The separate legal entity: The <i>Salomon</i> principle	55
	Other cases on the consequences of incorporation	58
3.3	'The veil' of incorporation	60
	Categorising pre- <i>Prest</i> cases	64
	'Looking behind' the veil	65
	Avoidance of existing obligations	66
	Groups of companies and single economic entities	67
	Statutory 'interference' with the veil of incorporation	74
	The 'veil' in European context	76
	The problem of insolvent subsidiaries	76
	Tortious liability	78
3.4	Criminal liabilities of companies	80
	Corporate manslaughter	82
	Application to civil law	82
Chapter 4		
Registration, Formation and Promotion of Companies		87
4.1	Introduction	87

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
	Exemption from using 'limited' as part of the name	97
4.10	The re-registration of companies	98
4.11	The re-registration of private companies as public	98
	Requirements as to share capital, net assets and valuation	99
	The effect of re-registration under s 90	100
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
	To whom disclosure must be made	106
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
	Directions to change a registered name	115
	Company names adjudicators	115
	Change of name	116
	'Phoenix companies'	117
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	' <i>Bona fide</i> 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: <i>Rolled Steel</i>	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 <i>Turquand</i> rule: the indoor management principle	177
6.14	'Outsiders'	178
6.15	General agency principles and the <i>Turquand</i> 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 <i>Turquand</i> rule and agency principles	187

6.23	Statutory provisions affecting appointments	188
6.24	Publication in the <i>Gazette</i> 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

	Liability of past shareholders and directors	226
	Failure of a company to redeem or purchase its own shares	226
7.18	Financial assistance by a company for the acquisition of its own shares	227
	Prohibitions under s 678	227
	Exceptions	231
7.19	The holding by a subsidiary of shares in its holding company	233
7.20	Serious loss of capital by public companies	234
7.21	Dividends	234
	The relevant accounts	235
	Determination of profits	236
	Public companies	238
	Improperly paid dividends	238
7.22	Reserves	239
7.23	Capitalisation of profits	239
7.24	Mode of distribution of profits	240
Chapter 8		
Rights and Liabilities Attached to Shares: Reorganisations of Capital		243
8.1	Shares	243
8.2	Classes of shares	244
8.3	Ordinary shares	245
8.4	Preference shares	245
	Preferential rights	246
8.5	Other classes of shares	247
8.6	Voting rights	247
8.7	Variation and abrogation of the class rights of shareholders	249
	The concept of a 'class right'	250
	The meaning of 'varying' or 'abrogating' class rights	251
	Procedure for variation	254
	Notice for class meetings and filing requirements	255
	Protection for minority in class	255
8.8	Liabilities on shares	256
8.9	Initial payments on shares	257
8.10	Calls	258
8.11	Liens on shares	259
8.12	The reorganisation of capital	259
8.13	Reduction of capital	260
	The solvency statement	262
	Matters incidental to a reduction	262
	Matters relevant to confirmation by the court	263
	Shareholders' class rights	264
	Reduction not in accordance with class rights	265
	Rights of creditors	266
	Procedure on a reduction of capital	267
8.14	Forfeiture and surrender of shares	267
	Reissue of forfeited shares	268

	Treatment of forfeited and surrendered shares in public companies	269
8.15	Other capital alterations	270
Chapter 9		
Transfer and Transmission of Shares		273
9.1	The transfer of shares	273
9.2	Transferability of shares	274
	Power to refuse registration	274
	Pre-emption clauses	276
	Compulsory transfer	279
	Restrictions not arising out of the articles	279
9.3	The mode of transfer of shares	280
	The Stock Transfer Act 1963	280
	Procedure on transfer of unlisted shares	281
	Procedure on transfer of listed shares	283
9.4	The position as between transferor and transferee	286
9.5	Sales of shares	286
9.6	Gifts of shares	288
9.7	Mortgages of shares	289
9.8	Priorities in England	290
	Notice to the company	291
9.9	Forged transfers	292
9.10	Share certificates	294
	Evidence of title	295
9.11	Certification of transfers	296
9.12	Share warrants	297
9.13	The transmission of shares	298
9.14	Trustees in bankruptcy	298
9.15	Executors and administrators	299
Chapter 10		
Debentures, Charges and Registration		301
10.1	Introduction	301
Part 1: General Considerations		303
10.2	Borrowing powers	303
10.3	Borrowing on debentures	304
10.4	Significance of the term 'debenture'	305
10.5	Main terms of loans	306
	Principal	306
	Interest	307
10.6	Debentures issued at a discount	307
Part 2: Charges		307
10.7	Fixed and floating charges	307
10.8	The nature of a floating charge	312
10.9	Charges on book debts	314
10.10	Floating charges and the Bills of Sale Acts	318

10.11	Crystallisation of the floating charge	319
	Notices of crystallisation	320
10.12	Automatic crystallisation	321
10.13	Crystallisation and rights of set-off	323
10.14	Priorities and the floating charge	323
10.15	The effect of registration on priorities	325
10.16	Further advances and subsequent charges	326
10.17	Purchase money, security interests and floating charges	326
10.18	Postponement and avoidance of floating charges by statute	327
10.19	Priority agreements	328
10.20	Retention of title clauses and floating charges	329
10.21	Execution creditors and floating charges	331
Part 3:	The Registration of Charges	332
10.22	Legislative framework	332
10.23	Charges requiring registration	333
10.24	Effect of failing to register a charge	335
10.25	The particulars of a charge to be registered	335
10.26	The 'date of creation' for purposes of registration	337
10.27	The registration obligation	338
10.28	The registrar's certificate as conclusive evidence	339
10.29	The transfer of charges	340
10.30	Property acquired subject to a charge	341
10.31	Registration and priorities	341
10.32	Rectification of the register of charges	341
10.33	Effect of a winding-up	343
10.34	Entry of satisfaction and release	344
10.35	Charges on property in Britain created by an overseas company	345
10.36	The company's recording obligations: ss 859P and 859Q	346
10.37	The reform of the law of security over personal property	347
Chapter 11		
Corporate Governance		351
11.1	Introduction	351
11.2	Corporate structure	352
11.3	Defining corporate governance	353
11.4	How is this system to be achieved?	354
11.5	The corporate governance committees	357
	The Cadbury Committee	358
	The Greenbury Committee	359
	The Hampel Committee	359
	The Combined Code and the UK Corporate Governance Code	360
	Disclosure	363
	Non-executive directors	364
	The auditors and institutional investors	367
11.6	The narrow framework of corporate governance in the UK	371
11.7	Corporate governance outside the UK	382

Chapter 12	
Membership of a Company	389
12.1	Introduction 389
12.2	The members of a company 391
	Subscribers to the memorandum 391
	Entry in the register of members 391
12.3	The termination of membership 393
12.4	Minors as members 395
12.5	The register of members 395
	The register, equitable interests and notice 397
	Inspection and copies of the register 399
	Rectification of the register 401
12.6	Single member companies 402
12.7	The annual return 402
	The contents of the annual return 403
12.8	Disclosure of interests in voting rights in public companies 404
12.9	The company's right to investigate who has an interest in its shares 404
12.10	Notification of major shareholdings 407
12.11	Disclosing use of votes 410
12.12	Exercise of members' rights by beneficial owners 411
	Information rights 412
	Voting rights 413
	Status of information rights 413
	Formalities 413
	Exercise of rights in different ways 414
	Special rights 414
Chapter 13	
Shareholders' Meetings and Resolutions	417
13.1	Introduction 417
13.2	Informal agreement 419
13.3	Resolutions 422
13.4	Written resolutions of private companies 423
	Agreement to a written resolution 425
	Written resolution proposed by directors 425
	Written resolution proposed by members 426
	Electronic means 427
13.5	Meetings 428
13.5.1	General meetings 428
	Nature of a meeting 429
13.5.3	General meeting requisitioned by members 430
13.5.4	Annual general meetings of public and traded companies 432
	Members' resolutions at annual general meetings 433
	Rights of members of traded companies 434
	Court's power to order a meeting 435
13.5.8	Class meetings 437
	Court's powers in respect of meetings 437

13.6	Notice of meetings	438
	Notices of meetings of traded companies	439
	Form of notice	441
	Accidental failure to give notice	441
	Length of notice	442
	Short notice	444
	Notice of adjourned meeting	444
	Misleading notices	445
13.6.8	Notices and amendments	446
	Special notice	447
	Members' statements	448
13.6.11	Electronic communications and meetings	449
13.7	Conduct of meetings	449
	General meetings of traded companies	452
13.7.2	Quorum at general meetings	452
13.7.3	Quorum at class meetings	454
	Abuse of quorum provisions and the court's power to order a meeting	454
13.7.5	Adjourned meetings	456
13.7.6	Votes and polls	458
	Right to demand a poll	461
	Conduct of a poll	462
13.7.9	Representatives of corporate members	465
13.7.10	Proxies	466
	Proxies at meetings of traded companies	470
	Proxy votes	470
	Solicitation of proxies	472
	Records of meetings, resolutions and polls	473
	Right to inspect records of resolutions and meetings	475
13.8.2	Publication of reports of meetings	476
13.9	Polls of quoted and traded companies	476
	Website publication of poll results	477
	Independent report on a poll	478
	Independent assessor's report	480
	Website publication	481
	Disclosing use of votes by institutional investors	481
Chapter 14		
Accounts and Reports		483
14.1	Introduction	483
14.2	The small companies regime	486
	Qualification as a small company	486
	Exclusion from the small company regime	487
14.3	Quoted companies	489
14.4	Accounting records	489
	The duty to keep accounting records	489
	The custody of accounting records	490
14.5	Financial years and accounting periods	491

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

	Secretary of State's notice	520
	Application to the court	520
	Disclosure of information by tax authorities	522
	Power of authorised persons to require documents, information and explanations	522
	Restrictions on disclosure of information obtained under compulsory powers	523
	Permitted disclosure of information obtained under compulsory powers	523
14.26	False or misleading statements in reports	524
14.27	Power to make further provisions about accounts and reports	525
14.28	Auditors	525
	Appointment of auditors in private companies	525
	Public companies	527
	Qualifications	528
	Auditors' remuneration	529
	Disclosure of terms of audit appointment	529
	Disclosure of services by the auditor or associates and related remuneration	530
	Removal or resignation	530
	Resignation of auditor	532
	Statement by auditor on ceasing to hold office	533
	Duty of auditor to notify appropriate audit authority	535
14.29	The rights and duties of an auditor	537
	Right to information	537
	Attendance at meetings	538
	The auditors' report	538
	The contents of the auditors' report	538
	The auditor as an officer of the company	541
14.30	Liability for negligence	542
	Liability in contract	542
	Liability in tort for negligent misstatement	542
	Duty of auditor valuing shares	545
	The limitation or exclusion of liability	545
 Chapter 15		
Management of a Company		549
15.1	Introduction	549
15.2	The meaning of director	550
	De facto director	550
	Shadow director	552
15.3	Appointment of directors	554
	Statutory requirements	555
15.4	Remuneration of directors	556
15.5	Directors' service contracts and the articles	558
15.6	Disclosure of directors' service contracts	560
15.7	Retirement and termination of appointment of directors	561
15.8	Resignation	561

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

18.4	Non-ratifiable breaches of directors' duties	662
	The enforcement of statutory 'fiduciary' duties	664
18.5	The statutory derivative claim	665
	The key requirements for a derivative claim	665
	The criteria to guide the court	667
	Authorisation or ratification	671
	Authorisation	671
	Ratification	671
	Members with no personal interest	672
	Comment	673
	Remedies in derivative claims	674
	Power to amend s 263	674
	Transitional provisions	674
18.6	Overlapping personal and corporate claims	675
18.7	Minority shareholders' right to an indemnity in a derivative action	676
18.8	Shareholders' claims to enforce rights against the company	678
18.9	Proceedings in the company's name	679
Part 2:	Unfair Prejudice Remedy for Minorities	680
18.10	Power of the court to grant relief on a petition alleging unfair prejudice	680
	The concept of unfair prejudice	681
	<i>O'Neill v Phillips</i>	683
	Breach of directors' duties	685
	'Legitimate expectations'	687
	Meaning of 'quasi-partnership'	689
18.11	Limited Liability Partnerships and unfair prejudice	690
18.12	'Member <i>qua</i> member'	690
18.13	The 'alternative remedy'	693
	The offer to buy as a bar to winding up	694
	The offer to buy as a bar to an unfair prejudice petition	696
18.14	The remedies available to the court: s 996	698
18.15	Shareholder protection and the ECHR	702
18.16	Just and equitable winding up as a minority shareholder's remedy	703
18.17	Earlier cases consistent with <i>Westbourne</i>	706
18.18	Loss of 'substratum'	706
18.19	Fraudulent and illegal companies	707
Part 3:	The Business Department's Powers to Investigate Companies and Their Securities	707
18.20	Introduction	707
18.21	Investigation of the affairs of the company	708
	Informal investigations under s 447	710
18.22	The conduct of proceedings by inspectors	711
	The role of the Secretary of State in inspections	712
18.23	The inspectors' report and subsequent proceedings	712
18.24	The power to examine on oath and obtain documents	713
18.25	Proceedings by the Department	714

18.26	Expenses in investigations and proceedings by the Department	715
18.27	The Department's power to investigate the ownership of shares	716
18.28	Power to impose restrictions on shares or debentures	717
Chapter 19		
The Public Issue of Securities		719
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

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	771	
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	827
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
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

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 <i>pari</i> <i>passu</i> 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

Boyle's law (sometimes called the Boyle-Mariotte law) is one of several gas laws and a special case of the ideal gas law. Boyle's law describes the inversely proportional relationship between the absolute pressure and volume of a gas, if the temperature is kept constant within a closed system. The law was named after chemist and physicist Robert Boyle, who published the original law in 1662. Boyle's law can be stated as follows Boyle & Birds'™ Company Law is a well established leading textbook based on Gore-Browne on Companies. It combines a comprehensive and authoritative exploration of law and practice with an examination of the theoretical issues. The new edition has been completely updated to take into account the latest legislation and case law. New to this Edition: Legislative changes, including disclosure requirements on plcs under The Companies (Miscellaneous Reporting) Regulations 2018. Significant changes in corporate governance requirements. Case law developments, including Supreme Court decisions in Ec Boyle & Birds' Company Law is a well established leading textbook based on Gore-Browne on Companies. It combines a comprehensive and authoritative exploration of law and practice with an examination of the theoretical issues. The new edition has been completely updated to take into account the latest legislation and case law. Read moreRead less. click to open popover.