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
1.1 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 Salomon principle 55
Other cases on the consequences of incorporation 58
3.3 ‘The veil’ of incorporation 60
Categorising pre-Prest 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 99
   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 101
   unlimited companies
4.14 Re-registration of unlimited companies as private limited 102
   companies
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 126
   articles
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
Contents

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
### 7. Liability of past shareholders and directors

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.18</td>
<td>Financial assistance by a company for the acquisition of its own shares</td>
<td>227</td>
</tr>
<tr>
<td></td>
<td>Prohibitions under s 678</td>
<td>227</td>
</tr>
<tr>
<td></td>
<td>Exceptions</td>
<td>231</td>
</tr>
<tr>
<td>7.19</td>
<td>The holding by a subsidiary of shares in its holding company</td>
<td>233</td>
</tr>
<tr>
<td>7.20</td>
<td>Serious loss of capital by public companies</td>
<td>234</td>
</tr>
<tr>
<td>7.21</td>
<td>Dividends</td>
<td>234</td>
</tr>
<tr>
<td></td>
<td>The relevant accounts</td>
<td>235</td>
</tr>
<tr>
<td></td>
<td>Determination of profits</td>
<td>236</td>
</tr>
<tr>
<td></td>
<td>Public companies</td>
<td>238</td>
</tr>
<tr>
<td></td>
<td>Improperly paid dividends</td>
<td>238</td>
</tr>
<tr>
<td>7.22</td>
<td>Reserves</td>
<td>239</td>
</tr>
<tr>
<td>7.23</td>
<td>Capitalisation of profits</td>
<td>239</td>
</tr>
<tr>
<td>7.24</td>
<td>Mode of distribution of profits</td>
<td>240</td>
</tr>
</tbody>
</table>

### Chapter 8

#### Rights and Liabilities Attached to Shares: Reorganisations of Capital

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1</td>
<td>Shares</td>
<td>243</td>
</tr>
<tr>
<td>8.2</td>
<td>Classes of shares</td>
<td>244</td>
</tr>
<tr>
<td>8.3</td>
<td>Ordinary shares</td>
<td>245</td>
</tr>
<tr>
<td>8.4</td>
<td>Preference shares</td>
<td>245</td>
</tr>
<tr>
<td></td>
<td>Preferential rights</td>
<td>246</td>
</tr>
<tr>
<td>8.5</td>
<td>Other classes of shares</td>
<td>247</td>
</tr>
<tr>
<td>8.6</td>
<td>Voting rights</td>
<td>247</td>
</tr>
<tr>
<td>8.7</td>
<td>Variation and abrogation of the class rights of shareholders</td>
<td>249</td>
</tr>
<tr>
<td></td>
<td>The concept of a ‘class right’</td>
<td>250</td>
</tr>
<tr>
<td></td>
<td>The meaning of ‘varying’ or ‘abrogating’ class rights</td>
<td>251</td>
</tr>
<tr>
<td></td>
<td>Procedure for variation</td>
<td>254</td>
</tr>
<tr>
<td></td>
<td>Notice for class meetings and filing requirements</td>
<td>255</td>
</tr>
<tr>
<td></td>
<td>Protection for minority in class</td>
<td>255</td>
</tr>
<tr>
<td>8.8</td>
<td>Liabilities on shares</td>
<td>256</td>
</tr>
<tr>
<td>8.9</td>
<td>Initial payments on shares</td>
<td>257</td>
</tr>
<tr>
<td>8.10</td>
<td>Calls</td>
<td>258</td>
</tr>
<tr>
<td>8.11</td>
<td>Liens on shares</td>
<td>259</td>
</tr>
<tr>
<td>8.12</td>
<td>The reorganisation of capital</td>
<td>259</td>
</tr>
<tr>
<td>8.13</td>
<td>Reduction of capital</td>
<td>260</td>
</tr>
<tr>
<td></td>
<td>The solvency statement</td>
<td>262</td>
</tr>
<tr>
<td></td>
<td>Matters incidental to a reduction</td>
<td>262</td>
</tr>
<tr>
<td></td>
<td>Matters relevant to confirmation by the court</td>
<td>263</td>
</tr>
<tr>
<td></td>
<td>Shareholders’ class rights</td>
<td>264</td>
</tr>
<tr>
<td></td>
<td>Reduction not in accordance with class rights</td>
<td>265</td>
</tr>
<tr>
<td></td>
<td>Rights of creditors</td>
<td>266</td>
</tr>
<tr>
<td></td>
<td>Procedure on a reduction of capital</td>
<td>267</td>
</tr>
<tr>
<td>8.14</td>
<td>Forfeiture and surrender of shares</td>
<td>267</td>
</tr>
<tr>
<td></td>
<td>Reissue of forfeited shares</td>
<td>268</td>
</tr>
</tbody>
</table>
Contents

Treatment of forfeited and surrendered shares in public companies
8.15 Other capital alterations 270

Chapter 9
Transfer and Transmission of Shares
9.1 The transfer of shares 273
9.2 Transferability of shares
   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
   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
   Notice to the company 291
9.9 Forged transfers 292
9.10 Share certificates
   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
10.1 Introduction 301
Part 1: General Considerations
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
   Principal 306
   Interest 307
10.6 Debentures issued at a discount 307
Part 2: Charges
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
    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

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.1</td>
<td>Introduction</td>
<td>389</td>
</tr>
<tr>
<td>12.2</td>
<td>The members of a company</td>
<td>391</td>
</tr>
<tr>
<td></td>
<td>Subscribers to the memorandum</td>
<td>391</td>
</tr>
<tr>
<td></td>
<td>Entry in the register of members</td>
<td>391</td>
</tr>
<tr>
<td>12.3</td>
<td>The termination of membership</td>
<td>393</td>
</tr>
<tr>
<td>12.4</td>
<td>Minors as members</td>
<td>395</td>
</tr>
<tr>
<td>12.5</td>
<td>The register of members</td>
<td>395</td>
</tr>
<tr>
<td></td>
<td>The register, equitable interests and notice</td>
<td>397</td>
</tr>
<tr>
<td></td>
<td>Inspection and copies of the register</td>
<td>399</td>
</tr>
<tr>
<td></td>
<td>Rectification of the register</td>
<td>401</td>
</tr>
<tr>
<td>12.6</td>
<td>Single member companies</td>
<td>402</td>
</tr>
<tr>
<td>12.7</td>
<td>The annual return</td>
<td>402</td>
</tr>
<tr>
<td></td>
<td>The contents of the annual return</td>
<td>403</td>
</tr>
<tr>
<td>12.8</td>
<td>Disclosure of interests in voting rights in public companies</td>
<td>404</td>
</tr>
<tr>
<td>12.9</td>
<td>The company’s right to investigate who has an interest in its shares</td>
<td>404</td>
</tr>
<tr>
<td>12.10</td>
<td>Notification of major shareholdings</td>
<td>407</td>
</tr>
<tr>
<td>12.11</td>
<td>Disclosing use of votes</td>
<td>410</td>
</tr>
<tr>
<td>12.12</td>
<td>Exercise of members’ rights by beneficial owners</td>
<td>411</td>
</tr>
<tr>
<td></td>
<td>Information rights</td>
<td>412</td>
</tr>
<tr>
<td></td>
<td>Voting rights</td>
<td>413</td>
</tr>
<tr>
<td></td>
<td>Status of information rights</td>
<td>413</td>
</tr>
<tr>
<td></td>
<td>Formalities</td>
<td>413</td>
</tr>
<tr>
<td></td>
<td>Exercise of rights in different ways</td>
<td>414</td>
</tr>
<tr>
<td></td>
<td>Special rights</td>
<td>414</td>
</tr>
</tbody>
</table>

### Chapter 13
Shareholders’ Meetings and Resolutions

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.1</td>
<td>Introduction</td>
<td>417</td>
</tr>
<tr>
<td>13.2</td>
<td>Informal agreement</td>
<td>419</td>
</tr>
<tr>
<td>13.3</td>
<td>Resolutions</td>
<td>422</td>
</tr>
<tr>
<td>13.4</td>
<td>Written resolutions of private companies</td>
<td>423</td>
</tr>
<tr>
<td></td>
<td>Agreement to a written resolution</td>
<td>425</td>
</tr>
<tr>
<td></td>
<td>Written resolution proposed by directors</td>
<td>425</td>
</tr>
<tr>
<td></td>
<td>Written resolution proposed by members</td>
<td>426</td>
</tr>
<tr>
<td></td>
<td>Electronic means</td>
<td>427</td>
</tr>
<tr>
<td>13.5</td>
<td>Meetings</td>
<td>428</td>
</tr>
<tr>
<td>13.5.1</td>
<td>General meetings</td>
<td>428</td>
</tr>
<tr>
<td></td>
<td>Nature of a meeting</td>
<td>429</td>
</tr>
<tr>
<td>13.5.3</td>
<td>General meeting requisitioned by members</td>
<td>430</td>
</tr>
<tr>
<td>13.5.4</td>
<td>Annual general meetings of public and traded companies</td>
<td>432</td>
</tr>
<tr>
<td></td>
<td>Members’ resolutions at annual general meetings</td>
<td>433</td>
</tr>
<tr>
<td></td>
<td>Rights of members of traded companies</td>
<td>434</td>
</tr>
<tr>
<td></td>
<td>Court’s power to order a meeting</td>
<td>435</td>
</tr>
<tr>
<td>13.5.8</td>
<td>Class meetings</td>
<td>437</td>
</tr>
<tr>
<td></td>
<td>Court’s powers in respect of meetings</td>
<td>437</td>
</tr>
</tbody>
</table>
13.6 Notice of meetings
    Notices of meetings of traded companies 438
    Form of notice 439
    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 450
    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
Contents xvi

14.6 Annual accounts 492
14.7 Individual accounts: applicable accounting framework 493
14.8 Group accounts

   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

   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

   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

   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

   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

   Approval and signing 518
14.24 Failure to file accounts and reports 519
14.25 Defective accounts

   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
Contents

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
Declarations of interest in existing transactions or
arrangements 628
Companies with a sole director 629
16.13 Directors’ trusteeship of the company’s assets
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
Exceptions 638
Approval 640
Remedies 640
17.5 Loans to directors and others
Requirements applying to all companies 642
Requirements applying to public companies 643
Exceptions 644
Remedies 646
17.6 Payments for loss of office
Exceptions 647
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
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
O’Neill v Phillips 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 qua 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 Westbourne 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
Chapter 19

The Public Issue of Securities

19.1 Legislative background
19.2 The regulatory framework
19.3 Private and public companies
19.4 The UK Listing Authority and the London Stock Exchange
19.5 Criteria for admission to listing
19.6 Criteria for admission to trading on the London Stock Exchange
19.7 Offers of securities otherwise than through the London Stock Exchange
19.8 ‘Offers for subscription’ and ‘offers for sale’
19.9 Placings, intermediaries offers, rights issues and open offers
19.10 Convertible issues
19.11 The function of the sponsor
19.12 Underwriting and bookbuilding
19.13 Official Listing: the function of the ‘competent authority’
19.14 Application for listing
19.15 Part VI prospectuses and listing particulars
19.16 The issuer’s general duty to disclose
19.17 Supplementary Part VI listing particulars
19.18 Approval of Part VI prospectuses and listing particulars
19.19 Power to control information
19.20 Public offers of unlisted securities
19.21 An ‘offer to the public’ of ‘securities’
19.22 Form and content of prospectuses
19.23 Supplementary prospectuses
19.24 Regulation of invitations to engage in investment activity under the Financial Services and Markets Act 2000
19.25 Mutual recognition of prospectuses and listing particulars in Member States of the European Community
19.26 Remedies for false, misleading or incomplete statements in connection with prospectuses or listing particulars
19.27 The statutory remedy for false, misleading or incomplete statements
19.28 Who may be sued and who may sue under the statutory remedy?
19.29 Defences available to persons responsible
19.30 The relationship of the statutory remedy to the common-law remedies
19.31 The common-law remedies: the right to rescind a contract of allotment for material misrepresentation
19.32 Responsibility for statements
19.33 Loss of the right to rescind
Chapter 20
Takeovers and Mergers

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

Chapter 21
Corporate Reconstruction and Insolvency

Part 1: General
21.1 Introduction
21.2 The definition of insolvency
21.3 The regulation of insolvency practitioners
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
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 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
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.