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
## 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
Chapter 2
Harmonisation of securities regulation
2.4 The European Company Statute
2.5 The European Company Statute

Chapter 3
Legal Personality: Its Consequences and Limitations
3.1 Introduction
3.2 The consequences of incorporation
3.3 ‘The veil’ of incorporation

Chapter 4
Registration, Formation and Promotion of Companies
4.1 Introduction
## 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
Chapter 7
Share Capital – Allotment and Maintenance

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
<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 | 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 |
Contents

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

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
   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
   Special notice 447
   Members’ statements 448
13.6.11 Electronic communications and meetings 449
13.7 Conduct of meetings
   General meetings of traded companies 452
13.7.2 Quorum at general meetings 452
13.7.3 Quorum at class meetings
   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
   Right to demand a poll 461
   Conduct of a poll 462
13.7.9 Representatives of corporate members 465
13.7.10 Proxies
   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
   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
14.1 Introduction 483
14.2 The small companies regime
   Qualification as a small company 486
   Exclusion from the small company regime 487
14.3 Quoted companies 489
14.4 Accounting records
   The duty to keep accounting records 489
   The custody of accounting records 490
14.5 Financial years and accounting periods 491
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.6</td>
<td>Annual accounts</td>
</tr>
<tr>
<td>14.7</td>
<td>Individual accounts: applicable accounting framework</td>
</tr>
<tr>
<td>14.8</td>
<td>Group accounts</td>
</tr>
<tr>
<td></td>
<td>Group accounts: applicable accounting framework</td>
</tr>
<tr>
<td></td>
<td>Companies Act group accounts</td>
</tr>
<tr>
<td></td>
<td>IAS group accounts</td>
</tr>
<tr>
<td></td>
<td>Consistency of financial reporting within group</td>
</tr>
<tr>
<td></td>
<td>Individual profit and loss account where group accounts prepared</td>
</tr>
<tr>
<td>14.9</td>
<td>Information to be provided in accounts</td>
</tr>
<tr>
<td></td>
<td>Related undertakings</td>
</tr>
<tr>
<td></td>
<td>Employee numbers and costs</td>
</tr>
<tr>
<td></td>
<td>Directors’ benefits: remuneration</td>
</tr>
<tr>
<td></td>
<td>Information about directors’ benefits: advances, credit and guarantees</td>
</tr>
<tr>
<td></td>
<td>Approval and signing of accounts</td>
</tr>
<tr>
<td>14.10</td>
<td>The directors’ report</td>
</tr>
<tr>
<td></td>
<td>Contents of directors’ report: general</td>
</tr>
<tr>
<td></td>
<td>The strategic report</td>
</tr>
<tr>
<td></td>
<td>Contents of strategic report: general</td>
</tr>
<tr>
<td></td>
<td>Recent developments beyond the UK</td>
</tr>
<tr>
<td></td>
<td>Statement on disclosure to auditors</td>
</tr>
<tr>
<td></td>
<td>Approval and signing of directors’ report</td>
</tr>
<tr>
<td>14.11</td>
<td>Quoted companies: directors’ remuneration report</td>
</tr>
<tr>
<td></td>
<td>Contents of the directors’ remuneration report</td>
</tr>
<tr>
<td></td>
<td>Approval and signing of the directors’ remuneration report</td>
</tr>
<tr>
<td></td>
<td>Members’ approval of the directors’ remuneration report</td>
</tr>
<tr>
<td>14.12</td>
<td>Publication of reports and accounts</td>
</tr>
<tr>
<td>14.13</td>
<td>Option to provide summary financial statements</td>
</tr>
<tr>
<td>14.14</td>
<td>Quoted companies: annual reports and statements to be made available on website</td>
</tr>
<tr>
<td>14.15</td>
<td>Rights of members or debenture holders to copies of accounts and reports</td>
</tr>
<tr>
<td>14.16</td>
<td>Requirements in connection with publication of reports and accounts</td>
</tr>
<tr>
<td></td>
<td>Publication of accounts</td>
</tr>
<tr>
<td>14.17</td>
<td>Public companies: laying of accounts before general meeting</td>
</tr>
<tr>
<td>14.18</td>
<td>Filing of accounts and reports</td>
</tr>
<tr>
<td>14.19</td>
<td>Filing obligations: companies subject to the small companies regime</td>
</tr>
<tr>
<td>14.20</td>
<td>Filing obligations: medium-sized companies</td>
</tr>
<tr>
<td>14.21</td>
<td>Filing obligations: unquoted and quoted companies</td>
</tr>
<tr>
<td>14.22</td>
<td>Filing requirements for unlimited companies</td>
</tr>
<tr>
<td>14.23</td>
<td>Abbreviated accounts: special auditors’ report</td>
</tr>
<tr>
<td></td>
<td>Approval and signing</td>
</tr>
<tr>
<td>14.24</td>
<td>Failure to file accounts and reports</td>
</tr>
<tr>
<td>14.25</td>
<td>Defective accounts</td>
</tr>
<tr>
<td></td>
<td>Directors’ voluntary revision</td>
</tr>
</tbody>
</table>
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 639
Approval 640
Remedies 640
17.5 Loans to directors and others
Requirements applying to all companies 643
Requirements applying to public companies 643
Exceptions 644
Remedies 646
17.6 Payments for loss of office
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
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
Breath 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
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

21.4 The use of voluntary arrangements

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

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

CVAs with a moratorium – Insolvency Act 1986

Sch A1

Part 3: Administration

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

Part 4: The compulsory liquidation of companies

21.38 Compulsory winding-up

Special rules for financial institutions
Grounds for a compulsory winding-up order
Persons who may present a petition
The hearing of the petition
Commencement of the winding-up
21.39 The effect of a winding-up order on dispositions of assets
## 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