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
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
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
x

Boyle & Birds’ Company Law

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
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
    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 215
7.17 The redemption or purchase of a company’s own shares 216
        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 223
        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
Chapter 10
Corporation Tax and Other Taxes

10.11 Crystallisation of the floating charge

Notices of crystallisation

10.12 Automatic crystallisation

10.13 Crystallisation and rights of set-off

10.14 Priorities and the floating charge

10.15 The effect of registration on priorities

10.16 Further advances and subsequent charges

10.17 Purchase money, security interests and floating charges

10.18 Postponement and avoidance of floating charges by statute

10.19 Priority agreements

10.20 Retention of title clauses and floating charges

10.21 Execution creditors and floating charges

Part 3: The Registration of Charges

10.22 Legislative framework

10.23 Charges requiring registration

10.24 Effect of failing to register a charge

10.25 The particulars of a charge to be registered

10.26 The ‘date of creation’ for purposes of registration

10.27 The registration obligation

10.28 The registrar’s certificate as conclusive evidence

10.29 The transfer of charges

10.30 Property acquired subject to a charge

10.31 Registration and priorities

10.32 Rectification of the register of charges

10.33 Effect of a winding-up

10.34 Entry of satisfaction and release

10.35 Charges on property in Britain created by an overseas company

10.36 The company’s recording obligations: ss 859P and 859Q

10.37 The reform of the law of security over personal property

Chapter 11
Corporate Governance

11.1 Introduction

11.2 Corporate structure

11.3 Defining corporate governance

11.4 How is this system to be achieved?

11.5 The corporate governance committees

   The Cadbury Committee
   The Greenbury Committee
   The Hampel Committee
   The Combined Code and the UK Corporate Governance Code
   Disclosure
   Non-executive directors
   The auditors and institutional investors

11.6 The narrow framework of corporate governance in the UK

11.7 Corporate governance outside the UK
Chapter 12
Membership of a Company

12.1 Introduction

12.2 The members of a company
   - Subscribers to the memorandum
   - Entry in the register of members

12.3 The termination of membership

12.4 Minors as members

12.5 The register of members
   - The register, equitable interests and notice
   - Inspection and copies of the register
   - Rectification of the register

12.6 Single member companies

12.7 The annual return
   - The contents of the annual return

12.8 Disclosure of interests in voting rights in public companies

12.9 The company’s right to investigate who has an interest in its shares

12.10 Notification of major shareholdings

12.11 Disclosing use of votes

12.12 Exercise of members’ rights by beneficial owners
   - Information rights
   - Voting rights
   - Status of information rights
   - Formalities
   - Exercise of rights in different ways
   - Special rights

Chapter 13
Shareholders’ Meetings and Resolutions

13.1 Introduction

13.2 Informal agreement

13.3 Resolutions

13.4 Written resolutions of private companies
   - Agreement to a written resolution
   - Written resolution proposed by directors
   - Written resolution proposed by members
   - Electronic means

13.5 Meetings

13.5.1 General meetings
   - Nature of a meeting

13.5.3 General meeting requisitioned by members

13.5.4 Annual general meetings of public and traded companies
   - Members’ resolutions at annual general meetings
   - Rights of members of traded companies
   - Court’s power to order a meeting

13.5.8 Class meetings
   - Court’s powers in respect of meetings
13.6 Notice of meetings

Notices of meetings of traded companies 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 453

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

14.6 Annual accounts
14.7 Individual accounts: applicable accounting framework
14.8 Group accounts
  Group accounts: applicable accounting framework
  Companies Act group accounts
  IAS group accounts
  Consistency of financial reporting within group
  Individual profit and loss account where group accounts prepared
14.9 Information to be provided in accounts
  Related undertakings
  Employee numbers and costs
  Directors’ benefits: remuneration
  Information about directors’ benefits: advances, credit and guarantees
  Approval and signing of accounts
14.10 The directors’ report
  Contents of directors’ report: general
  The strategic report
  Contents of strategic report: general
  Recent developments beyond the UK
  Statement on disclosure to auditors
  Approval and signing of directors’ report
14.11 Quoted companies: directors’ remuneration report
  Contents of the directors’ remuneration report
  Approval and signing of the directors’ remuneration report
  Members’ approval of the directors’ remuneration report
14.12 Publication of reports and accounts
14.13 Option to provide summary financial statements
14.14 Quoted companies: annual reports and statements to be made available on website
14.15 Rights of members or debenture holders to copies of accounts and reports
14.16 Requirements in connection with publication of reports and accounts
  Publication of accounts
14.17 Public companies: laying of accounts before general meeting
14.18 Filing of accounts and reports
14.19 Filing obligations: companies subject to the small companies regime
14.20 Filing obligations: medium-sized companies
14.21 Filing obligations: unquoted and quoted companies
14.22 Filing requirements for unlimited companies
14.23 Abbreviated accounts: special auditors’ report
  Approval and signing
14.24 Failure to file accounts and reports
14.25 Defective accounts
  Directors’ voluntary revision
### Secretary of State’s notice
- Application to the court
- Disclosure of information by tax authorities
- Power of authorised persons to require documents, information and explanations
- Restrictions on disclosure of information obtained under compulsory powers
- Permitted disclosure of information obtained under compulsory powers

#### 14.26 False or misleading statements in reports

#### 14.27 Power to make further provisions about accounts and reports

#### 14.28 Auditors
- Appointment of auditors in private companies
- Public companies
- Qualifications
- Auditors’ remuneration
- Disclosure of terms of audit appointment
- Disclosure of services by the auditor or associates and related remuneration
- Removal or resignation
- Resignation of auditor
- Statement by auditor on ceasing to hold office
- Duty of auditor to notify appropriate audit authority

#### 14.29 The rights and duties of an auditor
- Right to information
- Attendance at meetings
- The auditors’ report
- The contents of the auditors’ report
- The auditor as an officer of the company

#### 14.30 Liability for negligence
- Liability in contract
- Liability in tort for negligent misstatement
- Duty of auditor valuing shares
- The limitation or exclusion of liability

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

Chapter 16
The Duties of Directors – General 595
16.1 Introduction 595
    The legal nature of the office of director 596
16.2 The scope of directors’ duties 597
16.3 Introduction to directors’ general duties 599
16.4 Duty to act within powers 600
16.5 Duty to promote the success of the company 604
    Interests other than those of the members 607
    Interests of creditors 609
16.6 Duty to exercise independent judgment 610
16.7 Duty to exercise reasonable care, skill and diligence 612
16.8 Duties to avoid conflicts of interest and not to accept benefits from third parties 615
    Conflicts of interest and secret profits 616
    Consequences of a breach of the no conflict duty 620
16.9 Duty not to accept benefits from third parties 621
  Consequences of a breach of the no benefits rule 622
16.10 Duty to declare interest in proposed transaction or arrangement 624
  Interest 626
16.11 Relationship between the general duties and other rules 627
16.12 Statutory duties supplementing the general duties 627
  Declarations of interest in existing transactions or arrangements 628
  Companies with a sole director 629
16.13 Directors’ trusteeship of the company’s assets 630
  The scope of the trusteeship 631
  Further examples of misapplications 632

Chapter 17
The Duties of Directors – Specific Duties, Relief from Liability and Consequences of Breach 635
17.1 Introduction 635
17.2 Specific rules regarding directors’ interests in transactions and arrangements 635
  Persons connected with a director 636
17.3 Directors’ service contracts 636
17.4 Substantial property transactions 638
  Exceptions 639
  Approval 640
  Remedies 640
17.5 Loans to directors and others 642
  Requirements applying to all companies 643
  Requirements applying to public companies 643
  Exceptions 644
  Remedies 646
17.6 Payments for loss of office 647
  Exceptions 649
  Remedies 650
17.7 Power to provide for employees 650
17.8 Liability for false and misleading statements in reports 650
17.9 Factors relieving a director from liability for breach of duty 651
  Ratification 651
  Provisions in the articles 654
  Discretionary relief from liability by the court 657
17.10 Enforcement of civil liabilities against directors 658

Chapter 18
Shareholders’ Remedies 659
18.1 Introduction 659
Part 1: Minority Shareholders’ Claims 660
18.2 Common law claims 660
18.3 Permitted common law claims 661
18.4 Non-ratifiable breaches of directors’ duties
   The enforcement of statutory ‘fiduciary’ duties 664
18.5 The statutory derivative claim
   The key requirements for a derivative claim 665
   The criteria to guide the court 667
   Authorisation or ratification
   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
   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’
   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
   Informal investigations under s 447 710
18.22 The conduct of proceedings by inspectors
   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 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
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

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

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.40</td>
<td>Appointment of the liquidator</td>
<td>878</td>
</tr>
<tr>
<td></td>
<td>The liquidator’s status</td>
<td>879</td>
</tr>
<tr>
<td></td>
<td>Duties and powers of a liquidator</td>
<td>881</td>
</tr>
<tr>
<td></td>
<td>The liquidation committee</td>
<td>883</td>
</tr>
<tr>
<td>21.41</td>
<td>Ceasing to act as liquidator</td>
<td>883</td>
</tr>
<tr>
<td>Part 5: The voluntary liquidation of companies</td>
<td>884</td>
<td></td>
</tr>
<tr>
<td>21.42</td>
<td>Introduction</td>
<td>884</td>
</tr>
<tr>
<td>21.43</td>
<td>Resolutions for voluntary winding-up</td>
<td>885</td>
</tr>
<tr>
<td></td>
<td>Commencement of a voluntary liquidation</td>
<td>885</td>
</tr>
<tr>
<td></td>
<td>Consequences of resolution to wind up</td>
<td>886</td>
</tr>
<tr>
<td>21.44</td>
<td>The declaration of solvency</td>
<td>886</td>
</tr>
<tr>
<td>21.45</td>
<td>Appointment of a liquidator</td>
<td>887</td>
</tr>
<tr>
<td>21.46</td>
<td>The liquidation committee</td>
<td>888</td>
</tr>
<tr>
<td>21.47</td>
<td>Powers and duties of a voluntary liquidator</td>
<td>888</td>
</tr>
<tr>
<td>21.48</td>
<td>Ceasing to act as a voluntary liquidator</td>
<td>889</td>
</tr>
<tr>
<td>21.49</td>
<td>The relationship between voluntary liquidation and other insolvency-related procedures</td>
<td>890</td>
</tr>
<tr>
<td>Part 6: The conduct of liquidations</td>
<td>892</td>
<td></td>
</tr>
<tr>
<td>21.50</td>
<td>Introduction</td>
<td>892</td>
</tr>
<tr>
<td>21.51</td>
<td>Creditors’ claims</td>
<td>892</td>
</tr>
<tr>
<td>21.52</td>
<td>Proof of debts and rights of set-off</td>
<td>894</td>
</tr>
<tr>
<td>21.53</td>
<td>The company’s assets</td>
<td>896</td>
</tr>
<tr>
<td>21.54</td>
<td>The order of payment of debts and liabilities and the <em>pari passu</em> rule</td>
<td>898</td>
</tr>
<tr>
<td></td>
<td>Preferential debts</td>
<td>898</td>
</tr>
<tr>
<td></td>
<td>Liquidation expenses</td>
<td>899</td>
</tr>
<tr>
<td></td>
<td>Deferred debts and subordinated debts</td>
<td>900</td>
</tr>
<tr>
<td>21.55</td>
<td>Contributories</td>
<td>901</td>
</tr>
<tr>
<td>21.56</td>
<td>Distribution of remaining assets</td>
<td>902</td>
</tr>
<tr>
<td>Part 7: Special powers of liquidators and other office holders in insolvency proceedings</td>
<td>902</td>
<td></td>
</tr>
<tr>
<td>21.57</td>
<td>A liquidator’s ability to disclaim property</td>
<td>902</td>
</tr>
<tr>
<td>21.58</td>
<td>Office-holders</td>
<td>904</td>
</tr>
<tr>
<td></td>
<td>Utilities</td>
<td>904</td>
</tr>
<tr>
<td></td>
<td>Transactions at an undervalue and putting assets beyond the reach of creditors</td>
<td>904</td>
</tr>
<tr>
<td></td>
<td>Voidable preferences</td>
<td>906</td>
</tr>
<tr>
<td></td>
<td>Court orders in respect of transactions at an undervalue and preferences</td>
<td>908</td>
</tr>
<tr>
<td></td>
<td>Extortionate credit transactions</td>
<td>908</td>
</tr>
<tr>
<td></td>
<td>Avoidance of floating charges</td>
<td>909</td>
</tr>
<tr>
<td>21.59</td>
<td>Other powers</td>
<td>911</td>
</tr>
<tr>
<td>21.60</td>
<td>Dissolution of companies</td>
<td>912</td>
</tr>
<tr>
<td>21.61</td>
<td>Defunct companies</td>
<td>914</td>
</tr>
<tr>
<td>21.62</td>
<td>International insolvency</td>
<td>915</td>
</tr>
<tr>
<td>21.63</td>
<td>EU insolvency regulation</td>
<td>919</td>
</tr>
<tr>
<td></td>
<td>What constitutes the opening of main insolvency proceedings</td>
<td>920</td>
</tr>
</tbody>
</table>
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