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
4.2 The classification of private and public companies 88
4.3 Forming a company 89
4.4 The articles of association 90
4.5 Registration 90
4.6 The certificate of incorporation 92
4.7 Trading certificate for public companies 94
4.8 Unlimited companies 95
4.9 Companies limited by guarantee 96
Exemption from using ‘limited’ as part of the name 97
4.10 The re-registration of companies 98
4.11 The re-registration of private companies as public 98
Requirements as to share capital, net assets and valuation 99
The effect of re-registration under s 90 100
4.12 Public companies re-registering as private 100
4.13 Re-registration of private and public limited companies as unlimited companies 101
4.14 Re-registration of unlimited companies as private limited companies 102
4.15 Promoting companies 103
4.16 Duties of promoters 104
To whom disclosure must be made 106
4.17 The remuneration of promoters 107
4.18 Underwriting commission 107
4.19 Pre-incorporation contracts 108
4.20 The liability of promoters or other ‘agents’ to third parties 110
4.21 Overseas companies 112
4.22 Company names 114
Directions to change a registered name 115
Company names adjudicators 115
Change of name 116
‘Phoenix companies’ 117
4.23 Trading disclosures 117

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

Chapter 6
Company Contracts
6.1 Introduction
6.2 Ultra vires: a brief overview
   The doctrine stated and its impact mitigated
   Reaffirming the doctrine
   Restating the law: Rolled Steel
   The decline of the ultra vires doctrine
6.3 Corporate gifts
   Pensions
   Charitable or political donations
   Redundancy payments
6.4 Corporate Capacity – the current law: s 39 of the Companies Act 2006
6.5 Just and equitable winding-up
6.6 Authority to bind the company
6.7 The protection of persons dealing with the company in good faith: s 40
6.8 A person dealing with a company in good faith
   ‘Person dealing with a company’
   ‘Good faith’
6.9 No duty to enquire
6.10 Directors who deal with their company
6.11 The ‘internal’ aspects of s 40
6.12 A failed reform proposal
6.13 The Turquand rule: the indoor management principle
6.14 ‘Outsiders’
6.15 General agency principles and the Turquand rule
6.16 Usual authority
6.17 Directors, executive directors and chairmen
6.18 When an outsider cannot rely on usual authority
6.19 The ‘holding out’ principle
6.20 Knowledge of the articles
6.21 ‘Self-authorising’ agents
6.22 Forgery, the Turquand rule and agency principles
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
    Allotments of shares for non-cash consideration by public companies 209
        Prohibited non-cash consideration 210
        Future non-cash consideration 210
        Valuation of non-cash consideration 210
        Non-cash assets acquired from subscribers and others 212
7.15 Issue of shares at a premium 213
        Relief from s 610 214
7.16 Acquisition by a company of rights in respect of its own shares 214
7.17 The redemption or purchase of a company’s own shares 215
        Redeemable shares 216
        Purchase by a company of its own shares 217
        Authority required for off-market purchases 218
        Conditional contracts 220
        Authority required for market purchase 220
        Assignments and releases of a company’s right to purchase its own shares 221
        Payments other than of the purchase price 221
        Publicity for purchases 222
        The capital redemption reserve 222
        Private companies redeeming or purchasing shares out of capital 223
        Procedure and publicity 224
        Applications to the court 225
Liability of past shareholders and directors 226
Failure of a company to redeem or purchase its own shares 226
7.18 Financial assistance by a company for the acquisition of its own shares 227
Prohibitions under s 678 227
Exceptions 231
7.19 The holding by a subsidiary of shares in its holding company 233
7.20 Serious loss of capital by public companies 234
7.21 Dividends 234
The relevant accounts 235
Determination of profits 236
Public companies 238
Improperly paid dividends 238
7.22 Reserves 239
7.23 Capitalisation of profits 239
7.24 Mode of distribution of profits 240

Chapter 8
Rights and Liabilities Attached to Shares: Reorganisations of Capital 243
8.1 Shares 243
8.2 Classes of shares 244
8.3 Ordinary shares 245
8.4 Preference shares 245
Preferential rights 246
8.5 Other classes of shares 247
8.6 Voting rights 247
8.7 Variation and abrogation of the class rights of shareholders 249
The concept of a ‘class right’ 250
The meaning of ‘varying’ or ‘abrogating’ class rights 251
Procedure for variation 254
Notice for class meetings and filing requirements 255
Protection for minority in class 255
8.8 Liabilities on shares 256
8.9 Initial payments on shares 257
8.10 Calls 258
8.11 Liens on shares 259
8.12 The reorganisation of capital 259
8.13 Reduction of capital 260
The solvency statement 262
Matters incidental to a reduction 262
Matters relevant to confirmation by the court 263
Shareholders’ class rights 264
Reduction not in accordance with class rights 265
Rights of creditors 266
Procedure on a reduction of capital 267
8.14 Forfeiture and surrender of shares 267
Reissue of forfeited shares 268
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
   Notices of crystallisation 319
10.12 Automatic crystallisation 320
10.13 Crystallisation and rights of set-off 321
10.14 Priorities and the floating charge 322
10.15 The effect of registration on priorities 323
10.16 Further advances and subsequent charges 324
10.17 Purchase money, security interests and floating charges 325
10.18 Postponement and avoidance of floating charges by statute 326
10.19 Priority agreements 327
10.20 Retention of title clauses and floating charges 328
10.21 Execution creditors and floating charges 329
Part 3: The Registration of Charges 330
10.22 Legislative framework 331
10.23 Charges requiring registration 332
10.24 Effect of failing to register a charge 333
10.25 The particulars of a charge to be registered 334
10.26 The ‘date of creation’ for purposes of registration 335
10.27 The registration obligation 336
10.28 The registrar’s certificate as conclusive evidence 337
10.29 The transfer of charges 338
10.30 Property acquired subject to a charge 339
10.31 Registration and priorities 340
10.32 Rectification of the register of charges 341
10.33 Effect of a winding-up 342
10.34 Entry of satisfaction and release 343
10.35 Charges on property in Britain created by an overseas company 344
10.36 The company’s recording obligations: ss 859P and 859Q 345
10.37 The reform of the law of security over personal property 346

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 361
   Non-executive directors 362
   The auditors and institutional investors 363
11.6 The narrow framework of corporate governance in the UK 364
11.7 Corporate governance outside the UK 365
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 438
   Form of notice 441
   Accidental failure to give notice 441
   Length of notice 442
   Short notice 444
   Notice of adjourned meeting 444
   Misleading notices 445
13.6.8 Notices and amendments 446
   Special notice 447
   Members’ statements 448
13.6.11 Electronic communications and meetings 449
13.7 Conduct of meetings 449
   General meetings of traded companies 452
13.7.2 Quorum at general meetings 452
13.7.3 Quorum at class meetings 454
   Abuse of quorum provisions and the court’s power to order a meeting 454
13.7.5 Adjourned meetings 456
13.7.6 Votes and polls 458
   Right to demand a poll 461
   Conduct of a poll 462
13.7.9 Representatives of corporate members 465
13.7.10 Proxies 466
   Proxies at meetings of traded companies 470
   Proxy votes 470
   Solicitation of proxies 472
   Records of meetings, resolutions and polls 473
   Right to inspect records of resolutions and meetings 475
13.8.2 Publication of reports of meetings 476
13.9 Polls of quoted and traded companies 476
   Website publication of poll results 477
   Independent report on a poll 478
   Independent assessor’s report 480
   Website publication 481
   Disclosing use of votes by institutional investors 481

Chapter 14
Accounts and Reports 483
14.1 Introduction 483
14.2 The small companies regime 486
   Qualification as a small company 486
   Exclusion from the small company regime 487
14.3 Quoted companies 489
14.4 Accounting records 489
   The duty to keep accounting records 489
   The custody of accounting records 490
14.5 Financial years and accounting periods 491
14.6 Annual accounts 492
14.7 Individual accounts: applicable accounting framework 493
14.8 Group accounts 494
   Group accounts: applicable accounting framework 496
   Companies Act group accounts 496
   IAS group accounts 497
   Consistency of financial reporting within group 497
   Individual profit and loss account where group accounts prepared 498
14.9 Information to be provided in accounts 498
   Related undertakings 498
   Employee numbers and costs 499
   Directors’ benefits: remuneration 500
   Information about directors’ benefits: advances, credit and guarantees 501
   Approval and signing of accounts 501
14.10 The directors’ report 502
   Contents of directors’ report: general 502
   The strategic report 503
   Contents of strategic report: general 503
   Recent developments beyond the UK 505
   Statement on disclosure to auditors 506
   Approval and signing of directors’ report 506
14.11 Quoted companies: directors’ remuneration report 507
   Contents of the directors’ remuneration report 507
   Approval and signing of the directors’ remuneration report 508
   Members’ approval of the directors’ remuneration report 508
14.12 Publication of reports and accounts 509
14.13 Option to provide summary financial statements 510
14.14 Quoted companies: annual reports and statements to be made available on website 511
14.15 Rights of members or debenture holders to copies of accounts and reports 512
14.16 Requirements in connection with publication of reports and accounts 512
   Publication of accounts 512
14.17 Public companies: laying of accounts before general meeting 513
14.18 Filing of accounts and reports 514
14.19 Filing obligations: companies subject to the small companies regime 515
14.20 Filing obligations: medium-sized companies 516
14.21 Filing obligations: unquoted and quoted companies 517
14.22 Filing requirements for unlimited companies 518
14.23 Abbreviated accounts: special auditors’ report 518
   Approval and signing 518
14.24 Failure to file accounts and reports 519
14.25 Defective accounts 519
   Directors’ voluntary revision 519
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 577
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
Chapter 18: Non-ratifiable breaches of directors’ duties

18.4 Non-ratifiable breaches of directors’ duties

18.5 The statutory derivative claim

18.6 Overlapping personal and corporate claims

18.7 Minority shareholders’ right to an indemnity in a derivative action

18.8 Shareholders’ claims to enforce rights against the company

18.9 Proceedings in the company’s name

Part 2: Unfair Prejudice Remedy for Minorities

18.10 Power of the court to grant relief on a petition alleging unfair prejudice

Part 3: The Business Department’s Powers to Investigate Companies and Their Securities

18.11 Limited Liability Partnerships and unfair prejudice

18.12 ‘Member qua member’

18.13 The ‘alternative remedy’

18.14 The remedies available to the court: s 996

18.15 Shareholder protection and the ECHR

18.16 Just and equitable winding up as a minority shareholder’s remedy

18.17 Earlier cases consistent with Westbourne

18.18 Loss of ‘substratum’

18.19 Fraudulent and illegal companies
18.26 Expenses in investigations and proceedings by the Department 715
18.27 The Department’s power to investigate the ownership of shares 716
18.28 Power to impose restrictions on shares or debentures 717

Chapter 19
The Public Issue of Securities 719
19.1 Legislative background 719
19.2 The regulatory framework 725
19.3 Private and public companies 726
19.4 The UK Listing Authority and the London Stock Exchange 728
19.5 Criteria for admission to listing 730
19.6 Criteria for admission to trading on the London Stock Exchange 732
19.7 Offers of securities otherwise than through the London Stock Exchange 732
19.8 ‘Offers for subscription’ and ‘offers for sale’ 733
19.9 Placings, intermediaries offers, rights issues and open offers 734
19.10 Convertible issues 736
19.11 The function of the sponsor 736
19.12 Underwriting and bookbuilding 736
19.13 Official Listing: the function of the ‘competent authority’ 737
19.14 Application for listing 738
19.15 Part VI prospectuses and listing particulars 739
19.16 The issuer’s general duty to disclose 742
19.17 Supplementary Part VI listing particulars 743
19.18 Approval of Part VI prospectuses and listing particulars 743
19.19 Power to control information 744
19.20 Public offers of unlisted securities 745
19.21 An ‘offer to the public’ of ‘securities’ 746
19.22 Form and content of prospectuses 748
19.23 Supplementary prospectuses 749
19.24 Regulation of invitations to engage in investment activity under the Financial Services and Markets Act 2000 749
19.25 Mutual recognition of prospectuses and listing particulars in Member States of the European Community 750
19.26 Remedies for false, misleading or incomplete statements in connection with prospectuses or listing particulars 751
19.27 The statutory remedy for false, misleading or incomplete statements 752
19.28 Who may be sued and who may sue under the statutory remedy? 754
19.29 Defences available to persons responsible 755
19.30 The relationship of the statutory remedy to the common-law remedies 756
19.31 The common-law remedies: the right to rescind a contract of allotment for material misrepresentation 757
19.32 Responsibility for statements 757
19.33 Loss of the right to rescind 758
Chapter 20
Takeovers and Mergers

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

Chapter 21
Corporate Reconstruction and Insolvency 821

Part 1: General 821
21.1 Introduction 821
21.2 The definition of insolvency 823
21.3 The regulation of insolvency practitioners 825
Part 2: Voluntary arrangements
21.4 The use of voluntary arrangements 827

CVA without a moratorium – Part I of the Insolvency Act 1986 as amended
21.6 Outline of the procedure 829
21.7 The effect of the approval of the voluntary arrangement 830
21.8 Implementation of the proposal 830
21.9 Challenging the approval of a voluntary arrangement or the supervisor’s decisions 831
21.10 Terminating a voluntary arrangement 833
21.11 Reinforcing the integrity of the law 833

CVAs with a moratorium – Insolvency Act 1986 Sch A1

Part 3: Administration
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
21.38 Compulsory winding-up 871

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

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