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
<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
</tr>
<tr>
<td>36</td>
</tr>
<tr>
<td>37</td>
</tr>
<tr>
<td>38</td>
</tr>
<tr>
<td>38</td>
</tr>
<tr>
<td>40</td>
</tr>
<tr>
<td>40</td>
</tr>
<tr>
<td>40</td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td>42</td>
</tr>
<tr>
<td>42</td>
</tr>
<tr>
<td>43</td>
</tr>
<tr>
<td>44</td>
</tr>
<tr>
<td>45</td>
</tr>
<tr>
<td>46</td>
</tr>
<tr>
<td>47</td>
</tr>
<tr>
<td>47</td>
</tr>
<tr>
<td>48</td>
</tr>
<tr>
<td>49</td>
</tr>
<tr>
<td>50</td>
</tr>
<tr>
<td>51</td>
</tr>
<tr>
<td>52</td>
</tr>
<tr>
<td>53</td>
</tr>
<tr>
<td>53</td>
</tr>
<tr>
<td>53</td>
</tr>
<tr>
<td>55</td>
</tr>
<tr>
<td>58</td>
</tr>
<tr>
<td>60</td>
</tr>
<tr>
<td>64</td>
</tr>
<tr>
<td>65</td>
</tr>
<tr>
<td>66</td>
</tr>
<tr>
<td>67</td>
</tr>
<tr>
<td>74</td>
</tr>
<tr>
<td>76</td>
</tr>
<tr>
<td>76</td>
</tr>
<tr>
<td>78</td>
</tr>
<tr>
<td>80</td>
</tr>
<tr>
<td>82</td>
</tr>
<tr>
<td>82</td>
</tr>
<tr>
<td>87</td>
</tr>
<tr>
<td>87</td>
</tr>
<tr>
<td>4.2</td>
</tr>
<tr>
<td>4.3</td>
</tr>
<tr>
<td>4.4</td>
</tr>
<tr>
<td>4.5</td>
</tr>
<tr>
<td>4.6</td>
</tr>
<tr>
<td>4.7</td>
</tr>
<tr>
<td>4.8</td>
</tr>
<tr>
<td>4.9</td>
</tr>
<tr>
<td>4.10</td>
</tr>
<tr>
<td>4.11</td>
</tr>
<tr>
<td>4.12</td>
</tr>
<tr>
<td>4.13</td>
</tr>
<tr>
<td>4.14</td>
</tr>
<tr>
<td>4.15</td>
</tr>
<tr>
<td>4.16</td>
</tr>
<tr>
<td>4.17</td>
</tr>
<tr>
<td>4.18</td>
</tr>
<tr>
<td>4.19</td>
</tr>
<tr>
<td>4.20</td>
</tr>
<tr>
<td>4.21</td>
</tr>
<tr>
<td>4.22</td>
</tr>
<tr>
<td>4.23</td>
</tr>
<tr>
<td>4.24</td>
</tr>
<tr>
<td>4.25</td>
</tr>
<tr>
<td>4.26</td>
</tr>
<tr>
<td>4.27</td>
</tr>
<tr>
<td>4.28</td>
</tr>
<tr>
<td>4.29</td>
</tr>
<tr>
<td>4.30</td>
</tr>
<tr>
<td>4.31</td>
</tr>
</tbody>
</table>

Chapter 5
The Company’s Constitution

5.1 From memorandum and articles to constitution | 121 |
5.2 The articles of association | 122 |
5.3 The contents of the articles of association | 122 |
5.4 Drafting articles: adoption of model articles | 123 |
5.5 Drafting articles: examples of invalid provisions | 124 |
5.6 Statement of company’s objects | 125 |
5.7 Entrenched provisions | 125 |
5.8 Provisions of memorandum to be treated as provisions of articles | 126 |
5.9 Amendment of articles: s 21 | 127 |
5.10 Effect of amendment: s 25 | 128 |
5.11 Notification of amendments to registrar | 128 |
5.12 Filing of amendments to the articles: enactments and orders | 129 |
5.13 Requirements as to publicity of amendment of articles 129
5.14 Agreements not to amend the articles and voting agreements 130
5.15 Acting on amended articles 132
5.16 ‘Bona fide for the benefit of the company as a whole’ 134
5.17 A malicious amendment 135
5.18 An amendment outside the bounds of reasonableness 136
5.19 The discrimination test and the ‘interests of the company as a whole’ 137
5.20 Legal effect of constitution: contract 140
5.21 Outsiders’ rights and the articles as a contract 144
5.22 Contracts incorporating provisions in the articles 147
5.23 The character of obligations in the constitution 147

Chapter 6

Company Contracts 149

6.1 Introduction 149
6.2 Ultra vires: a brief overview 151
   The doctrine stated and its impact mitigated 151
   Reaffirming the doctrine 154
   Restating the law: Rolled Steel 155
   The decline of the ultra vires doctrine 157
6.3 Corporate gifts 158
   Pensions 159
   Charitable or political donations 160
   Redundancy payments 162
6.4 Corporate Capacity – the current law: s 39 of the Companies Act 2006 163
6.5 Just and equitable winding-up 164
6.6 Authority to bind the company 165
6.7 The protection of persons dealing with the company in good faith: s 40 166
6.8 A person dealing with a company in good faith 170
   ‘Person dealing with a company’ 171
   ‘Good faith’ 173
6.9 No duty to enquire 174
6.10 Directors who deal with their company 175
6.11 The ‘internal’ aspects of s 40 176
6.12 A failed reform proposal 177
6.13 The Turquand rule: the indoor management principle 177
6.14 ‘Outsiders’ 178
6.15 General agency principles and the Turquand rule 179
6.16 Usual authority 180
6.17 Directors, executive directors and chairmen 181
6.18 When an outsider cannot rely on usual authority 182
6.19 The ‘holding out’ principle 183
6.20 Knowledge of the articles 185
6.21 ‘Self-authorising’ agents 185
6.22 Forgery, the Turquand rule and agency principles 187
### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.23 Statutory provisions affecting appointments</td>
<td>188</td>
</tr>
<tr>
<td>6.24 Publication in the <em>Gazette</em> of returns relating to the register of directors</td>
<td>189</td>
</tr>
<tr>
<td>6.25 The form of contracts by companies</td>
<td>189</td>
</tr>
<tr>
<td>6.26 The execution of company documents</td>
<td>189</td>
</tr>
<tr>
<td>6.27 Protection for purchasers</td>
<td>190</td>
</tr>
<tr>
<td><strong>Chapter 7</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Share Capital – Allotment and Maintenance</strong></td>
<td>193</td>
</tr>
<tr>
<td>7.1 Introduction</td>
<td>193</td>
</tr>
<tr>
<td>7.2 Methods of capitalising companies</td>
<td>193</td>
</tr>
<tr>
<td>7.3 Allotment of shares</td>
<td>195</td>
</tr>
<tr>
<td>7.4 Authority required to allot shares</td>
<td>196</td>
</tr>
<tr>
<td>7.5 Pre-emption rights</td>
<td>197</td>
</tr>
<tr>
<td>When authority under s 551 overrides pre-emptive rights</td>
<td>200</td>
</tr>
<tr>
<td>7.6 Other controls on allotments</td>
<td>201</td>
</tr>
<tr>
<td>7.7 The contract of allotment</td>
<td>202</td>
</tr>
<tr>
<td>7.8 Letters of allotment</td>
<td>202</td>
</tr>
<tr>
<td>7.9 Restrictions on allotment of shares by public companies</td>
<td>204</td>
</tr>
<tr>
<td>7.10 Return and registration of allotments</td>
<td>205</td>
</tr>
<tr>
<td>7.11 Maintenance of capital</td>
<td>205</td>
</tr>
<tr>
<td>7.12 Price of allotted shares</td>
<td>207</td>
</tr>
<tr>
<td>7.13 Allotments of shares for non-cash consideration by private companies</td>
<td>208</td>
</tr>
<tr>
<td>7.14 Allotments of shares for non-cash consideration by public companies</td>
<td>209</td>
</tr>
<tr>
<td>Prohibited non-cash consideration</td>
<td>210</td>
</tr>
<tr>
<td>Future non-cash consideration</td>
<td>210</td>
</tr>
<tr>
<td>Valuation of non-cash consideration</td>
<td>210</td>
</tr>
<tr>
<td>Non-cash assets acquired from subscribers and others</td>
<td>212</td>
</tr>
<tr>
<td>7.15 Issue of shares at a premium</td>
<td>213</td>
</tr>
<tr>
<td>Relief from s 610</td>
<td>214</td>
</tr>
<tr>
<td>7.16 Acquisition by a company of rights in respect of its own shares</td>
<td>214</td>
</tr>
<tr>
<td>7.17 The redemption or purchase of a company’s own shares</td>
<td>215</td>
</tr>
<tr>
<td>Redeemable shares</td>
<td>216</td>
</tr>
<tr>
<td>Purchase by a company of its own shares</td>
<td>217</td>
</tr>
<tr>
<td>Authority required for off-market purchases</td>
<td>218</td>
</tr>
<tr>
<td>Conditional contracts</td>
<td>220</td>
</tr>
<tr>
<td>Authority required for market purchase</td>
<td>220</td>
</tr>
<tr>
<td>Assignments and releases of a company’s right to purchase its own shares</td>
<td>221</td>
</tr>
<tr>
<td>Payments other than of the purchase price</td>
<td>221</td>
</tr>
<tr>
<td>Publicity for purchases</td>
<td>222</td>
</tr>
<tr>
<td>The capital redemption reserve</td>
<td>222</td>
</tr>
<tr>
<td>Private companies redeeming or purchasing shares out of capital</td>
<td>223</td>
</tr>
<tr>
<td>Procedure and publicity</td>
<td>224</td>
</tr>
<tr>
<td>Applications to the court</td>
<td>225</td>
</tr>
</tbody>
</table>
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
    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
    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
    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
    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
    Reissue of forfeited shares 267
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
Chapter 10
10.11 Crystallisation of the floating charge 319
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 397
   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
Chapter 13

13.6 Notice of meetings
   Notice of meetings of traded companies 438
   Form of notice 439
   Accidental failure to give notice 441
   Length of notice 442
   Short notice 444
   Notice of adjourned meeting 444
   Misleading notices 445

13.6.8 Notices and amendments
   Special notice 446
   Members’ statements 447

13.7 Conduct of meetings
   General meetings of traded companies 452
   Quorum at general meetings 452
   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
   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 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

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
Contents

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
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
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 585
  for the debts of their companies
  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 615
  from third parties
  Conflicts of interest and secret profits 616
  Consequences of a breach of the no conflict duty 620
Chapter 16
The Duties of Directors – General Duties
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
Contents

18.4 Non-ratifiable breaches of directors’ duties
   The enforcement of statutory ‘fiduciary’ duties 662
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
18.10 Power of the court to grant relief on a petition alleging unfair prejudice
   The concept of unfair prejudice 680
   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
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 19

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.34</td>
<td>An action for deceit</td>
</tr>
<tr>
<td>19.35</td>
<td>Misleading omissions</td>
</tr>
<tr>
<td>19.36</td>
<td>The Misrepresentation Act 1967</td>
</tr>
<tr>
<td>19.37</td>
<td>The measure of damages</td>
</tr>
<tr>
<td>19.38</td>
<td>An action for negligent misstatement</td>
</tr>
<tr>
<td>19.39</td>
<td>Criminal liability for false or misleading statements in prospectuses</td>
</tr>
<tr>
<td>19.40</td>
<td>Section 19 of the Theft Act 1968</td>
</tr>
</tbody>
</table>

### Chapter 20

#### Takeovers and Mergers

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

### Chapter 21

#### Corporate Reconstruction and Insolvency

**Part 1: General**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.1</td>
<td>Introduction</td>
</tr>
<tr>
<td>21.2</td>
<td>The definition of insolvency</td>
</tr>
<tr>
<td>21.3</td>
<td>The regulation of insolvency practitioners</td>
</tr>
</tbody>
</table>
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
21.39 The effect of a winding-up order on dispositions of assets 876
21.40 Appointment of the liquidator 878
   The liquidator's status 879
   Duties and powers of a liquidator 881
   The liquidation committee 883
21.41 Ceasing to act as liquidator 883
Part 5: The voluntary liquidation of companies 884
21.42 Introduction 884
21.43 Resolutions for voluntary winding-up 885
   Commencement of a voluntary liquidation 885
   Consequences of resolution to wind up 886
21.44 The declaration of solvency 886
21.45 Appointment of a liquidator 887
21.46 The liquidation committee 888
21.47 Powers and duties of a voluntary liquidator 888
21.48 Ceasing to act as a voluntary liquidator 889
21.49 The relationship between voluntary liquidation and other
   insolvency-related procedures 890
Part 6: The conduct of liquidations 892
21.50 Introduction 892
21.51 Creditors' claims 892
21.52 Proof of debts and rights of set-off 894
21.53 The company's assets 896
21.54 The order of payment of debts and liabilities and the pari
   passu rule 898
   Preferential debts 898
   Liquidation expenses 899
   Deferred debts and subordinated debts 900
21.55 Contributories 901
21.56 Distribution of remaining assets 902
Part 7: Special powers of liquidators and other office holders in
   insolvency proceedings 902
21.57 A liquidator's ability to disclaim property 902
21.58 Office-holders 904
   Utilities 904
   Transactions at an undervalue and putting assets beyond the
   reach of creditors 904
   Voidable preferences 906
   Court orders in respect of transactions at an undervalue and
   preferences 908
   Extortionate credit transactions 908
   Avoidance of floating charges 909
21.59 Other powers 911
21.60 Dissolution of companies 912
21.61 Defunct companies 914
21.62 International insolvency 915
21.63 EU insolvency regulation 919
   What constitutes the opening of main insolvency
   proceedings 920
Main insolvency proceedings and the debtor’s ‘centre of main interests’ 921
Centre of main interests – guidance from the European court 923
Groups of companies and a ‘head office functions’ test 924
Jurisdiction to open secondary and territorial insolvency proceedings 926
Applicable law 927
Referrals to legal orders other than the law of the insolvency forum 928
Recognition of insolvency proceedings 929
Liquidators’ powers 930
Relationship between main and secondary liquidations 930
An assessment of the Regulation 931

Index 933