Boyle & Birds’
Company Law

9th edition
2014

Editors
John Birds LLM
Emeritus Professor in the School of Law, University of Manchester and
Honorary Professor in the School of Law, University of Sheffield

Bryan Clark BA, LLM, PhD
Professor of Law, University of Strathclyde

Gerard McCormack BCL, LLM, PhD
Professor of International Business Law, University of Leeds

Matteo Solinas LLB, LLM, PhD
Lecturer in Corporate and Financial Law, University of Glasgow

Michael R Varney LLB, PhD
Lecturer in Law, University of Hull

Charlotte Villiers LLM, Solicitor
Professor of Company Law, University of Bristol

Consultant Editor
A. J. Boyle LLM, SJD, Barrister
Emeritus Professor of Law, Queen Mary, University of London

JORDAN PUBLISHING
# CONTENTS

Preface to the 9th Edition \[v\]  
Table of Cases \[xxvii\]  
Table of Statutes \[lxxvii\]  
Table of Statutory Instruments \[xcvii\]  

## Chapter 1  
The Development of the Registered Company  
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  
2.1 Introduction \[19\]  
2.2 Fundamental freedoms: the free movement of companies \[21\]  
  A fundamental problem \[21\]  
  The jurisprudence of the ECJ \[23\]  
  The impact of the ECJ’s case-law \[28\]  
  Further developments regarding the freedom of establishment of companies \[29\]  
2.3 The harmonisation programme: company law directives \[30\]  
  First Company Law Directive \[30\]  
  Second Company Law Directive \[31\]  
  Third and Sixth Directives: mergers and divisions of public companies \[33\]  
  Tenth Directive: cross-border mergers \[34\]  
  Fourth, Seventh and Eighth Directives: accounting and audit \[34\]  
  Thirteenth Directive: Takeovers \[35\]
## Chapter 2

**Harmonisation of securities regulation**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.4</td>
<td>Cross-border exercise of shareholder rights</td>
</tr>
<tr>
<td>2.5</td>
<td>Abandoned Fourteenth Directive</td>
</tr>
<tr>
<td>2.6</td>
<td>Other Abandoned proposals (Fifth and Ninth Directives)</td>
</tr>
</tbody>
</table>

## Chapter 3

**Legal Personality: Its Consequences and Limitations**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Introduction</td>
</tr>
<tr>
<td>3.2</td>
<td>The consequences of incorporation</td>
</tr>
<tr>
<td>3.3</td>
<td>‘The veil’ of incorporation</td>
</tr>
<tr>
<td>3.4</td>
<td>Criminal liabilities of companies</td>
</tr>
</tbody>
</table>

## Chapter 4

**Registration, Formation and Promotion of Companies**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1</td>
<td>Introduction</td>
</tr>
</tbody>
</table>
4.2 The classification of private and public companies 88
4.3 Forming a company 89
4.4 The articles of association 90
4.5 Registration 90
4.6 The certificate of incorporation 92
4.7 Trading certificate for public companies 94
4.8 Unlimited companies 95
4.9 Companies limited by guarantee 96
   Exemption from using ‘limited’ as part of the name 97
4.10 The re-registration of companies 98
4.11 The re-registration of private companies as public 99
   Requirements as to share capital, net assets and valuation 99
   The effect of re-registration under s 90 100
4.12 Public companies re-registering as private 100
4.13 Re-registration of private and public limited companies as 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
Contents

6.23 Statutory provisions affecting appointments 188
6.24 Publication in the Gazette of returns relating to the register of directors 189
6.25 The form of contracts by companies 189
6.26 The execution of company documents 189
6.27 Protection for purchasers 190

Chapter 7
Share Capital – Allotment and Maintenance 193
7.1 Introduction 193
7.2 Methods of capitalising companies 193
7.3 Allotment of shares 195
7.4 Authority required to allot shares 196
7.5 Pre-emption rights 197
   When authority under s 551 overrides pre-emptive rights 200
7.6 Other controls on allotments 201
7.7 The contract of allotment 202
7.8 Letters of allotment 202
7.9 Restrictions on allotment of shares by public companies 204
7.10 Return and registration of allotments 205
7.11 Maintenance of capital 205
7.12 Price of allotted shares 207
7.13 Allotments of shares for non-cash consideration by private companies 208
7.14 Allotments of shares for non-cash consideration by public companies 209
   Prohibited non-cash consideration 210
   Future non-cash consideration 210
   Valuation of non-cash consideration 210
   Non-cash assets acquired from subscribers and others 212
7.15 Issue of shares at a premium 213
   Relief from s 610 214
7.16 Acquisition by a company of rights in respect of its own shares 214
7.17 The redemption or purchase of a company’s own shares 215
   Redeemable shares 216
   Purchase by a company of its own shares 217
   Authority required for off-market purchases 218
   Conditional contracts 220
   Authority required for market purchase 220
   Assignments and releases of a company’s right to purchase its own shares 221
   Payments other than of the purchase price 221
   Publicity for purchases 222
   The capital redemption reserve 222
   Private companies redeeming or purchasing shares out of capital 223
   Procedure and publicity 224
   Applications to the court 225
10.11 Crystallisation of the floating charge
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 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
13.6 Notice of meetings

Notices of meetings of traded companies
Form of notice
Accidental failure to give notice
Length of notice
Short notice
Notice of adjourned meeting
Misleading notices

13.6.8 Notices and amendments

Special notice
Members’ statements

13.7 Conduct of meetings

General meetings of traded companies
Quorum at general meetings
Quorum at class meetings
Abuse of quorum provisions and the court’s power to order a meeting
Adjourned meetings
Votes and polls
Right to demand a poll
Conduct of a poll
Representatives of corporate members
Proxies
Proxies at meetings of traded companies
Proxy votes
Solicitation of proxies
Records of meetings, resolutions and polls
Right to inspect records of resolutions and meetings
Publication of reports of meetings
Polls of quoted and traded companies
Website publication of poll results
Independent report on a poll
Independent assessor’s report
Website publication
Disclosing use of votes by institutional investors

Chapter 14

Accounts and Reports

Introduction
The small companies regime
Qualification as a small company
Exclusion from the small company regime
Quoted companies
Accounting records
The duty to keep accounting records
The custody of accounting records
Financial years and accounting periods
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.6</td>
<td>Annual accounts</td>
<td>492</td>
</tr>
<tr>
<td>14.7</td>
<td>Individual accounts: applicable accounting framework</td>
<td>493</td>
</tr>
<tr>
<td>14.8</td>
<td>Group accounts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Group accounts: applicable accounting framework</td>
<td>496</td>
</tr>
<tr>
<td></td>
<td>Companies Act group accounts</td>
<td>496</td>
</tr>
<tr>
<td></td>
<td>IAS group accounts</td>
<td>497</td>
</tr>
<tr>
<td></td>
<td>Consistency of financial reporting within group</td>
<td>497</td>
</tr>
<tr>
<td></td>
<td>Individual profit and loss account where group accounts prepared</td>
<td>498</td>
</tr>
<tr>
<td>14.9</td>
<td>Information to be provided in accounts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Related undertakings</td>
<td>498</td>
</tr>
<tr>
<td></td>
<td>Employee numbers and costs</td>
<td>499</td>
</tr>
<tr>
<td></td>
<td>Directors’ benefits: remuneration</td>
<td>500</td>
</tr>
<tr>
<td></td>
<td>Information about directors’ benefits: advances, credit and guarantees</td>
<td>501</td>
</tr>
<tr>
<td></td>
<td>Approval and signing of accounts</td>
<td>501</td>
</tr>
<tr>
<td>14.10</td>
<td>The directors’ report</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contents of directors’ report: general</td>
<td>502</td>
</tr>
<tr>
<td></td>
<td>The strategic report</td>
<td>503</td>
</tr>
<tr>
<td></td>
<td>Contents of strategic report: general</td>
<td>503</td>
</tr>
<tr>
<td></td>
<td>Recent developments beyond the UK</td>
<td>505</td>
</tr>
<tr>
<td></td>
<td>Statement on disclosure to auditors</td>
<td>506</td>
</tr>
<tr>
<td></td>
<td>Approval and signing of directors’ report</td>
<td>506</td>
</tr>
<tr>
<td>14.11</td>
<td>Quoted companies: directors’ remuneration report</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contents of the directors’ remuneration report</td>
<td>507</td>
</tr>
<tr>
<td></td>
<td>Approval and signing of the directors’ remuneration report</td>
<td>507</td>
</tr>
<tr>
<td></td>
<td>Members’ approval of the directors’ remuneration report</td>
<td>508</td>
</tr>
<tr>
<td>14.12</td>
<td>Publication of reports and accounts</td>
<td>509</td>
</tr>
<tr>
<td>14.13</td>
<td>Option to provide summary financial statements</td>
<td>510</td>
</tr>
<tr>
<td>14.14</td>
<td>Quoted companies: annual reports and statements to be made available on website</td>
<td>511</td>
</tr>
<tr>
<td>14.15</td>
<td>Rights of members or debenture holders to copies of accounts and reports</td>
<td>512</td>
</tr>
<tr>
<td>14.16</td>
<td>Requirements in connection with publication of reports and accounts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Publication of accounts</td>
<td>512</td>
</tr>
<tr>
<td>14.17</td>
<td>Public companies: laying of accounts before general meeting</td>
<td>513</td>
</tr>
<tr>
<td>14.18</td>
<td>Filing of accounts and reports</td>
<td>514</td>
</tr>
<tr>
<td>14.19</td>
<td>Filing obligations: companies subject to the small companies regime</td>
<td>515</td>
</tr>
<tr>
<td>14.20</td>
<td>Filing obligations: medium-sized companies</td>
<td>516</td>
</tr>
<tr>
<td>14.21</td>
<td>Filing obligations: unquoted and quoted companies</td>
<td>517</td>
</tr>
<tr>
<td>14.22</td>
<td>Filing requirements for unlimited companies</td>
<td>518</td>
</tr>
<tr>
<td>14.23</td>
<td>Abbreviated accounts: special auditors’ report</td>
<td>518</td>
</tr>
<tr>
<td></td>
<td>Approval and signing</td>
<td>518</td>
</tr>
<tr>
<td>14.24</td>
<td>Failure to file accounts and reports</td>
<td>519</td>
</tr>
<tr>
<td>14.25</td>
<td>Defective accounts</td>
<td>519</td>
</tr>
<tr>
<td></td>
<td>Directors’ voluntary revision</td>
<td>519</td>
</tr>
</tbody>
</table>
Secretary of State’s notice 520
Application to the court 520
Disclosure of information by tax authorities 522
Power of authorised persons to require documents, information and explanations 522
Restrictions on disclosure of information obtained under compulsory powers 523
Permitted disclosure of information obtained under compulsory powers 523

14.26 False or misleading statements in reports 524
14.27 Power to make further provisions about accounts and reports 525
14.28 Auditors 525
Appointment of auditors in private companies 525
Public companies 527
Qualifications 528
Auditors’ remuneration 529
Disclosure of terms of audit appointment 529
Disclosure of services by the auditor or associates and related remuneration 530
Removal or resignation 530
Resignation of auditor 532
Statement by auditor on ceasing to hold office 533
Duty of auditor to notify appropriate audit authority 535

14.29 The rights and duties of an auditor 537
Right to information 537
Attendance at meetings 538
The auditors’ report 538
The contents of the auditors’ report 538
The auditor as an officer of the company 541

14.30 Liability for negligence 542
Liability in contract 542
Liability in tort for negligent misstatement 542
Duty of auditor valuing shares 545
The limitation or exclusion of liability 545

Chapter 15
Management of a Company 549
15.1 Introduction 549
15.2 The meaning of director 550
De facto director 550
Shadow director 552
15.3 Appointment of directors 554
Statutory requirements 555
15.4 Remuneration of directors 556
15.5 Directors’ service contracts and the articles 558
15.6 Disclosure of directors’ service contracts 560
15.7 Retirement and termination of appointment of directors 561
15.8 Resignation 561
Contents

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

Chapter 16

The Duties of Directors – General 595
16.1 Introduction 595
16.2 The legal nature of the office of director 596
16.3 The scope of directors’ duties 597
16.4 Introduction to directors’ general duties 599
16.5 Duty to act within powers 600
16.6 Duty to promote the success of the company 604
   Interests other than those of the members 607
   Interests of creditors 609
16.7 Duty to exercise independent judgment 610
16.8 Duty to exercise reasonable care, skill and diligence 612
16.9 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
Chapter 17
The Duties of Directors – Specific Duties, Relief from Liability and Consequences of Breach

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 18
Shareholders’ Remedies

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

18.1 Introduction 659
18.2 Common law claims 660
18.3 Permitted common law claims 661
18.4 Non-ratifiable breaches of directors’ duties 662
   The enforcement of statutory ‘fiduciary’ duties 664
18.5 The statutory derivative claim 665
   The key requirements for a derivative claim 665
   The criteria to guide the court 667
   Authorisation or ratification 671
      Authorisation 671
      Ratification 671
      Members with no personal interest 672
   Comment 673
   Remedies in derivative claims 674
   Power to amend s 263 674
   Transitional provisions 674
18.6 Overlapping personal and corporate claims 675
18.7 Minority shareholders’ right to an indemnity in a derivative action 676
18.8 Shareholders’ claims to enforce rights against the company 678
18.9 Proceedings in the company’s name 679
Part 2: Unfair Prejudice Remedy for Minorities 680
18.10 Power of the court to grant relief on a petition alleging unfair prejudice 680
      The concept of unfair prejudice 681
      O’Neill v Phillips 683
      Breach of directors’ duties 685
      ‘Legitimate expectations’ 687
      Meaning of ‘quasi-partnership’ 689
18.11 Limited Liability Partnerships and unfair prejudice 690
18.12 ‘Member qua member’ 690
18.13 The ‘alternative remedy’ 693
      The offer to buy as a bar to winding up 694
      The offer to buy as a bar to an unfair prejudice petition 696
18.14 The remedies available to the court: s 996 698
18.15 Shareholder protection and the ECHR 702
18.16 Just and equitable winding up as a minority shareholder’s remedy 703
18.17 Earlier cases consistent with Westbourne 706
18.18 Loss of ‘substratum’ 706
18.19 Fraudulent and illegal companies 707
Part 3: The Business Department’s Powers to Investigate Companies and Their Securities 707
18.20 Introduction 707
18.21 Investigation of the affairs of the company 708
      Informal investigations under s 447 710
18.22 The conduct of proceedings by inspectors 711
      The role of the Secretary of State in inspections 712
18.23 The inspectors’ report and subsequent proceedings 712
18.24 The power to examine on oath and obtain documents 713
18.25 Proceedings by the Department 714
18.26 Expenses in investigations and proceedings by the Department
18.27 The Department’s power to investigate the ownership of shares
18.28 Power to impose restrictions on shares or debentures

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

20.1 Introduction

20.2 The Takeover Panel and its administration of the Code

20.3 The sanctions available to the Panel

20.4 Impediments to takeovers

20.5 The scope and form of the Takeover Code

20.6 The Principles of the Takeover Code

20.7 The Rules

20.8 Partial offers

20.9 Restrictions on dealings

20.10 The mandatory offer to the remaining shareholders

20.11 Assessing the Takeover Code’s effectiveness

20.12 Reconstruction and amalgamation under s 110 of the Insolvency Act 1986

20.13 Procedure under ss 110 and 111

20.14 Rights of dissenting shareholders

20.15 The protection of creditors

20.16 Duties of the liquidator under ss 110–111

20.17 Procedure under Part 26 of the Companies Act 2006

20.18 The information required by s 897

20.19 The court’s powers under s 900

20.20 Mergers and divisions of public companies

20.21 Composition with debenture-holders and other creditors

20.22 The rights of dissenting shareholders and creditors

20.23 Compulsory acquisition of shares under Part 28 of the Companies Act 2006

20.24 The power of compulsory acquisition

20.25 The ‘price’ payable to those whose shares are compulsorily acquired

20.26 Applications to the court by dissenting shareholders

20.27 The right of minority shareholders to be bought out

Chapter 21
Corporate Reconstruction and Insolvency

Part I: General

21.1 Introduction

21.2 The definition of insolvency

21.3 The regulation of insolvency practitioners
## 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 liquidiator</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</td>
<td>890</td>
</tr>
<tr>
<td></td>
<td>insolvency-related procedures</td>
<td></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</td>
<td>902</td>
<td></td>
</tr>
<tr>
<td></td>
<td>insolvency proceedings</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</td>
<td>904</td>
</tr>
<tr>
<td></td>
<td>reach of creditors</td>
<td></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</td>
<td>908</td>
</tr>
<tr>
<td></td>
<td>preferences</td>
<td></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