Boyle & Birds’
Company Law

8th Edition
2011

Editors

John Birds LLM, FRSA
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
Reader in Law, University of Strathclyde

Iain MacNeil LLB, PhD
Alexander Stone Professor of Commercial Law, University of Glasgow

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

Christian Twigg-Flesner LLB, PCHE, PhD
Reader 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

JORDANS
CONTENTS

Preface to the 8th Edition v
Table of Cases xxvii
Table of Statutes lxxvii
Table of Statutory Instruments xcvii

Chapter 1
The Development of the Registered Company 1
Introduction 1
Historical background 1
The incorporation of joint-stock companies by registration 2
  Legislative control 3
  Limited liability 4
Developments in the late nineteenth and twentieth centuries 6
Other types of corporate business organisation 8
The Companies Acts: consolidation and reconsolidation in the 1980s 9
The Companies Act 2006 11
The impact of law and economics theory 14
The market for corporate control 17
  Venture capital and private equity 19

Chapter 2
The European Community and Company Law 21
Introduction 21
Fundamental freedoms: the free movement of companies 23
  A fundamental problem 23
  The jurisprudence of the ECJ 25
  The impact of the ECJ's case-law 29
  Further developments regarding the freedom of establishment of companies 31
The harmonisation programme: company law directives 31
  First Company Law Directive 32
  Second Company Law Directive 33
  Third and Sixth Directives: mergers and divisions of public companies 34
  Tenth Directive: cross-border mergers 35
  Fourth, Seventh and Eighth Directives: accounting and audit 36
  Thirteenth Directive: Takeovers 37
Eleventh and Twelfth Directive: branches and single-member companies 38
Cross-border exercise of shareholder rights 38
Abandoned Fourteenth Directive 39
Other Abandoned proposals (Fifth and Ninth Directives) 39
Harmonisation of securities regulation 40
The European Company Statute 41
Background 41
Implementation into domestic law 42
Scope 42
Interaction between ECS and domestic law 43
Share capital 44
Registered and head offices 44
Formation 45
Merger of two public companies 46
Formation of holding company as SE 47
Creation of subsidiary SE 48
Conversion of existing public company into an SE 48
Structure 49
Accounting 51
Winding up, liquidation, insolvency and cessation of payments 51
Employee involvement 52
Towards a European private company 53
Conclusions 53

Chapter 3
Legal Personality: Its Consequences and Limitations 55
Introduction 55
The consequences of incorporation 55
The advantages of incorporation 57
Limited liability partnerships 58
The principle of corporate personality 59
Corporate personality and directors' liability 60
Controlling shareholders and the corporate veil 62
Lifting the veil of incorporation 62
The criminal liabilities of companies 65
Corporate manslaughter 67
Application to civil law 68
Groups of companies 71
The group relationship in the Companies Act 2006 71
The treatment of groups by the courts 72
Adams v Cape Industries plc 74
(1) The single economic unit argument 75
(2) Piercing the corporate veil 76
(3) The agency argument 77
The problem of insolvent subsidiaries 77
## Chapter 4
### Registration, Formation and Promotion of Companies

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>81</td>
</tr>
<tr>
<td>The classification of private and public companies</td>
<td>82</td>
</tr>
<tr>
<td>Forming a company</td>
<td>83</td>
</tr>
<tr>
<td>The articles of association</td>
<td>84</td>
</tr>
<tr>
<td>Registration</td>
<td>84</td>
</tr>
<tr>
<td>The certificate of incorporation</td>
<td>87</td>
</tr>
<tr>
<td>Trading certificate for public companies</td>
<td>88</td>
</tr>
<tr>
<td>Unlimited companies</td>
<td>90</td>
</tr>
<tr>
<td>Companies limited by guarantee</td>
<td>90</td>
</tr>
<tr>
<td>Exemption from using 'limited' as part of the name</td>
<td>91</td>
</tr>
<tr>
<td>The re-registration of companies</td>
<td>92</td>
</tr>
<tr>
<td>The re-registration of private companies as public</td>
<td>93</td>
</tr>
<tr>
<td>Requirements as to share capital, net assets and valuation</td>
<td>94</td>
</tr>
<tr>
<td>The effect of re-registration under s 90</td>
<td>95</td>
</tr>
<tr>
<td>Public companies re-registering as private</td>
<td>95</td>
</tr>
<tr>
<td>Re-registration of private and public limited companies as unlimited companies</td>
<td>97</td>
</tr>
<tr>
<td>Re-registration of unlimited companies as private limited companies</td>
<td>98</td>
</tr>
<tr>
<td>Promoting companies</td>
<td>98</td>
</tr>
<tr>
<td>Duties of promoters</td>
<td>100</td>
</tr>
<tr>
<td>To whom disclosure must be made</td>
<td>102</td>
</tr>
<tr>
<td>The remuneration of promoters</td>
<td>102</td>
</tr>
<tr>
<td>Underwriting commission</td>
<td>103</td>
</tr>
<tr>
<td>Pre-incorporation contracts</td>
<td>104</td>
</tr>
<tr>
<td>The liability of promoters or other ‘agents’ to third parties</td>
<td>106</td>
</tr>
<tr>
<td>Overseas companies</td>
<td>108</td>
</tr>
<tr>
<td>Company names</td>
<td>110</td>
</tr>
<tr>
<td>Directions to change a registered name</td>
<td>111</td>
</tr>
<tr>
<td>Company names adjudicators</td>
<td>112</td>
</tr>
<tr>
<td>Change of name</td>
<td>113</td>
</tr>
<tr>
<td>‘Phoenix companies’</td>
<td>113</td>
</tr>
<tr>
<td>Trading disclosures</td>
<td>114</td>
</tr>
</tbody>
</table>

## Chapter 5
### The Company’s Constitution

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>From memorandum and articles to constitution</td>
<td>117</td>
</tr>
<tr>
<td>The articles of association</td>
<td>118</td>
</tr>
<tr>
<td>The contents of the articles of association</td>
<td>119</td>
</tr>
<tr>
<td>Drafting articles: adoption of model articles</td>
<td>119</td>
</tr>
<tr>
<td>Drafting articles: examples of invalid provisions</td>
<td>120</td>
</tr>
<tr>
<td>Statement of company’s objects</td>
<td>121</td>
</tr>
<tr>
<td>Entrenched provisions</td>
<td>121</td>
</tr>
<tr>
<td>Provisions of memorandum to be treated as provisions of articles</td>
<td>123</td>
</tr>
<tr>
<td>Alteration of articles: s 21</td>
<td>123</td>
</tr>
<tr>
<td>Effect of alteration: s 25</td>
<td>124</td>
</tr>
</tbody>
</table>
Notification of amendments to registrar | 124
Filing of amendments to the articles: enactments and orders | 125
Requirements as to publicity of alteration of articles | 125
Agreements not to alter the articles and voting agreements | 127
Acting on altered articles | 129
'Bona fide for the benefit of the company as a whole' | 130
A malicious alteration | 131
An alteration outside the bounds of reasonableness | 133
The discrimination test and the ‘interests of the company as a whole’ | 134
Legal effect of constitution: contract | 137
Outsiders’ rights and the articles as a contract | 141
Contracts incorporating provisions in the articles | 144
The character of obligations in the constitution | 145

**Chapter 6**

**Company Contracts**

Introduction | 147

*Ultra vires*: a brief overview
- The doctrine stated and its impact mitigated | 149
- Reaffirming the doctrine | 152
- Restating the law: *Rolled Steel* | 153
- The decline of the *ultra vires* doctrine | 155

Corporate gifts | 156
- Pensions | 158
- Charitable or political donations | 159
- Redundancy payments | 160

Corporate Capacity – the current law: s 39 of the Companies Act 2006 | 161

Just and equitable winding-up | 163

Authority to bind the company | 163

The protection of persons dealing with the company in good faith: s 40 | 164

A person dealing with a company in good faith
- ‘Person dealing with a company’ | 169
- ‘Good faith’ | 172

No duty to enquire | 173

Directors who deal with their company | 173

The ‘internal’ aspects of s 40 | 175

A failed reform proposal | 176

The *Turquand* rule: the indoor management principle | 176

‘Outsiders’ | 177

General agency principles and the *Turquand* rule | 178

Usual authority | 179

Directors, executive directors and chairmen | 180

When an outsider cannot rely on usual authority | 182

The ‘holding out’ principle | 183

Knowledge of the articles | 185
‘Self-authorising’ agents 185
Forgery, the Turquand rule and agency principles 187
Statutory provisions affecting appointments 188
Publication in the Gazette of returns relating to the register of directors 189
The form of contracts by companies 189
The execution of company documents 189
Protection for purchasers 190

Chapter 7
Share Capital – Allotment and Maintenance 193
Introduction 193
Methods of capitalising companies 193
Allotment of shares 195
Authority required to allot shares 196
Pre-emption rights 198
When authority under s 551 overrides pre-emptive rights 200
Other controls on allotments 201
The contract of allotment 203
Letters of allotment 203
Restrictions on allotment of shares by public companies 205
Return and registration of allotments 206
Maintenance of capital 206
Price of allotted shares 208
Allotments of shares for non-cash consideration by private companies 209
Allotments of shares for non-cash consideration by public companies 210
Prohibited non-cash consideration 211
Future non-cash consideration 211
Valuation of non-cash consideration 212
Non-cash assets acquired from subscribers and others 214
Issue of shares at a premium 215
Relief from s 610 216
Acquisition by a company of rights in respect of its own shares 216
The redemption or purchase of a company’s own shares 217
Redeemable shares 218
Purchase by a company of its own shares 219
Authority required for off-market purchases 220
Conditional contracts 222
Authority required for market purchase 222
Assignments and releases of a company’s right to purchase its own shares 223
Payments other than of the purchase price 223
Publicity for purchases 224
The capital redemption reserve 225
Private companies redeeming or purchasing shares out of capital 225
Procedure and publicity 227
Applications to the court 228
Liability of past shareholders and directors 229
Failure of a company to redeem or purchase its own shares 229
Financial assistance by a company for the acquisition of its own shares 230
Prohibitions under s 678 230
Exceptions 234
The holding by a subsidiary of shares in its holding company 236
Serious loss of capital by public companies 237
Dividends 238
The relevant accounts 239
Determination of profits 239
Public companies 241
Improperly paid dividends 242
Reserves 243
Capitalisation of profits 243
Mode of distribution of profits 244

Chapter 8
Rights and Liabilities Attached to Shares: Reorganisations of Capital 247
Shares 247
Classes of shares 248
Ordinary shares 249
Preference shares 249
Preferential rights 250
Other classes of shares 251
Voting rights 252
Variation and abrogation of the class rights of shareholders 254
The concept of a 'class right' 254
The meaning of 'varying' or 'abrogating' class rights 256
Procedure for variation 259
Notice for class meetings and filing requirements 260
Protection for minority in class 261
Liabilities on shares 262
Initial payments on shares 263
 Calls 263
Liens on shares 264
The reorganisation of capital 265
Reduction of capital 266
The solvency statement 267
Matters incidental to a reduction 268
Matters relevant to confirmation by the court 269
Shareholders' class rights 269
Reduction not in accordance with class rights 271
Rights of creditors 272
Procedure on a reduction of capital 273
Forfeiture and surrender of shares 273
Reissue of forfeited shares 274
Treatment of forfeited and surrendered shares in public companies 275
Other capital alterations 277

Chapter 9
Transfer and Transmission of Shares 281
The transfer of shares 281
Transferrability of shares 282
  Power to refuse registration 283
  Pre-emption clauses 285
  Compulsory transfer 287
  Restrictions not arising out of the articles 288
The mode of transfer of shares 288
  The Stock Transfer Act 1963 289
  Procedure on transfer of unlisted shares 290
  Procedure on transfer of listed shares 292
The position as between transferor and transferee 295
Sales of shares 295
Gifts of shares 297
Mortgages of shares 298
Priorities in England 299
  Notice to the company 300
Forged transfers 301
Share certificates 303
  Evidence of title 304
Certification of transfers 305
Share warrants 306
The transmission of shares 307
Trustees in bankruptcy 307
Executors and administrators 308

Chapter 10
Debentures, Charges and Registration 311
Introduction 311
Part 1: General Considerations 313
Borrowing powers 313
Borrowing on debentures 314
Significance of the term ‘debenture’ 315
Main terms of loans 316
  Principal 316
  Interest 317
Debentures issued at a discount 317
Part 2: Charges 318
Fixed and floating charges 318
The nature of a floating charge 323
Charges on book debts 325
Floating charges and the Bills of Sale Acts 329
Crystallisation of the floating charge 330
Notices of crystallisation 332
Automatic crystallisation 332
Crystallisation and rights of set-off 334
Priorities and the floating charge 335
The effect of registration on priorities 336
Further advances and subsequent charges 338
Purchase money, security interests and floating charges 338
Postponement and avoidance of floating charges by statute 339
Priority agreements 340
Retention of title clauses and floating charges 341
Execution creditors and floating charges 343
Part 3: The Registration of Charges 344
Legislative framework 344
Charges requiring registration 345
Effect of failing to register a charge 347
The particulars of a charge to be registered 348
The 'date of creation' for purposes of registration 349
The registration obligation 350
The registrar's certificate as conclusive evidence 350
The transfer of charges 352
Property acquired subject to a charge 353
Registration and priorities 353
Rectification of the register of charges 353
Effect of a winding-up 355
Memorandum of satisfaction 356
Charges over foreign property 356
Charges on property in Britain created by an overseas company 357
The company's register of charges: s 876 357
The reform of the law of security over personal property 359

Chapter 11
Corporate Governance 363
Introduction 363
Corporate structure 364
Defining corporate governance 366
How is this system to be achieved? 367
The corporate governance committees 370
The Cadbury Committee 370
The Greenbury Committee 371
The Hampel Committee 372
The Combined Code and the UK Corporate Governance Code 373
Disclosure 375
Non-executive directors 377
The auditors and institutional investors 380
The narrow framework of corporate governance in the UK 384
Chapter 12
Membership of a Company 401
Introduction 401
The members of a company 403
Subscribers to the memorandum 403
Entry in the register of members 404
The termination of membership 406
Minors as members 407
The register of members 408
The register, equitable interests and notice 410
Inspection and copies of the register 412
Rectification of the register 414
Single member companies 415
The annual return 415
The contents of the annual return 416
Disclosure of interests in voting rights in public companies 417
The company's right to investigate who has an interest in its shares 418
Notification of major shareholdings 420
Disclosing use of votes 423
Exercise of members' rights by beneficial owners 425
Information rights 426
Voting rights 426
Status of information rights 427
Formalities 427
Exercise of rights in different ways 428
Special rights 428

Chapter 13
Shareholders' Meetings and Resolutions 431
Introduction 431
Informal agreement 433
Resolutions 436
Written Resolutions of Private Companies 437
Agreement to a written resolution 439
Written resolution proposed by directors 440
Written resolution proposed by members 440
Electronic means 441
Meetings 442
General Meetings 443
Nature of a meeting 444
General Meeting Requisitioned by Members 445
Annual General Meetings of Public and Traded Companies 447
Members' resolutions at annual general meetings 448
Rights of members of traded companies 450
Court's power to order a meeting 451
Class Meetings 453
Court's powers in respect of meetings 453
Notice of Meetings 453
  Notices of meetings of traded companies 455
  Form of notice 456
  Accidental failure to give notice 457
  Length of notice 458
  Short notice 459
  Notice of adjourned meeting 460
  Misleading notices 461
Notices and Amendments 462
  Special notice 463
  Members' statements 464
Electronic Communications and Meetings 465
  Conduct of Meetings 466
    General meetings of traded companies 469
Quorum at General Meetings 469
Quorum at Class Meetings 470
  Abuse of quorum provisions and the court's power to order a
    meeting 471
Adjourned Meetings 472
Votes and Polls 475
  Right to demand a poll 478
  Conduct of a poll 479
Representatives of Corporate Members 482
Proxies 483
  Proxies at meetings of traded companies 487
  Proxy votes 488
  Solicitation of proxies 490
  Records of Meetings, Resolutions and Polls 491
  Right to inspect records of resolutions and meetings 493
Publication of Reports of Meetings 494
Polls of Quoted and Traded Companies 494
  Website publication of poll results 495
  Independent report on a poll 496
  Independent assessor's report 498
  Website publication 499
  Disclosing use of votes by institutional investors 500

Chapter 14
Accounts and Reports 501
Introduction 501
The small companies regime 504
  Qualification as a small company 505
  Exclusion from the small company regime 506
Quoted companies 507
Accounting records 508
  The duty to keep accounting records 508
  The custody of accounting records 508
Financial years and accounting periods 509
Annual accounts 510
Individual accounts: applicable accounting framework 511
Group accounts 512
  Group accounts: applicable accounting framework 514
  Companies Act group accounts 515
  IAS group accounts 515
  Consistency of financial reporting within group 516
Individual profit and loss account where group accounts prepared 516
Information to be provided in accounts 517
  Related undertakings 517
  Employee numbers and costs 518
  Directors' benefits: remuneration 518
  Information about directors' benefits: advances, credit and guarantees 520
Approval and signing of accounts 521
The directors' report 521
  Contents of directors' report: general 521
  Business review 522
  Statement on disclosure to auditors 524
  Approval and signing of directors' report 524
Quoted companies: directors' remuneration report 525
  Contents of the directors' remuneration report 525
  Information in the directors' remuneration report not subject to audit 525
  Information in the directors' remuneration report subject to audit 527
Approval and signing of the directors' remuneration report 532
Members' approval of the directors' remuneration report 532
Publication of reports and accounts 532
Option to provide summary financial statements 534
  Form and content of summary financial statement 535
  Form and content of summary financial statement: quoted companies 536
Quoted companies: annual reports and statements to be made available on website 537
Rights of members or debenture holders to copies of accounts and reports 537
Requirements in connection with publication of reports and accounts 538
Publication of accounts 538
Public companies: laying of accounts before general meeting 539
Filing of accounts and reports 539
Filing obligations: companies subject to the small companies regime 541
Filing obligations: medium-sized companies 542
Filing obligations: unquoted and quoted companies 543
Filing requirements for unlimited companies 544
Abbreviated accounts: special auditors' report 544
Approval and signing 544
Failure to file accounts and reports 545
Defective accounts 545
Directors' voluntary revision 545
Secretary of State's notice 546
Application to the court 546
Disclosure of information by tax authorities 548
Power of authorised persons to require documents, information and explanations 548
Restrictions on disclosure of information obtained under compulsory powers 549
Permitted disclosure of information obtained under compulsory powers 550
False or misleading statements in reports 551
Power to make further provisions about accounts and reports 551
Auditors 552
Appointment of auditors in private companies 552
Public companies 555
Qualifications 555
Auditors' remuneration 556
Disclosure of terms of audit appointment 557
Disclosure of services by the auditor or associates and related remuneration 557
Removal or resignation 558
Resignation of auditor 560
Statement by auditor on ceasing to hold office 561
Duty of auditor to notify appropriate audit authority 562
The rights and duties of an auditor 564
Right to information 565
Attendance at meetings 566
The auditors' report 566
The contents of the auditors' report 566
The auditor as an officer of the company 569
Liability for negligence 569
Liability in contract 569
Liability in tort for negligent misstatement 570
Duty of auditor valuing shares 572
The limitation or exclusion of liability 573

Chapter 15
Management of a Company 577
Introduction 577
The meaning of director 578
Shadow directors 580
Appointment of directors 582
Statutory requirements 582
Remuneration of directors 584
Directors' service contracts and the articles 586
Disclosure of directors' service contracts 588
Retirement and termination of appointment of directors 589
Resignation 590
Removal by ordinary resolution 590
Alternate directors 592
Directors' meetings 592
  Quorum 592
  Notice 593
  Directors' decision-making under the model articles 594
  Minutes of directors' meetings 595
A director's right to inspect company books 596
Delegation and the validity of directors' acts 596
The registers of directors and of directors' residential addresses 597
  Non-disclosure of directors' residential addresses 598
The relationship between board and general meeting 600
The officers of a company 602
  The manager or managing director 603
  The secretary 605
  The register of secretaries 606
Disqualification and other sanctions against miscreant directors and others involved in company management 606
Disqualification of directors and others 607
  The meaning of disqualification 607
  Application for disqualification 608
  Grounds for disqualification 609
  Disqualification for unfitness 610
  Register of disqualification orders 614
Liability of directors (and others) to contribute to the assets or for the debts of their companies 614
  Fraudulent trading 615
  Wrongful trading 617
  Liability for acting while disqualified 623
  Summary remedy 624

Chapter 16
The Duties of Directors – General 625
Introduction 625
  The legal nature of the office of director 626
The scope of directors' duties 627
Introduction to directors' general duties 629
Duty to act within powers 631
Duty to promote the success of the company 634
  Interests other than those of the members 637
  Interests of creditors 638
Duty to exercise independent judgment 639
Duty to exercise reasonable care, skill and diligence 641
Duties to avoid conflicts of interest and not to accept benefits from third parties 644
  Conflicts of Interest and Secret Profits 646
  Consequences of a breach of the no conflict duty 650
Duty not to accept benefits from third parties 651
  Consequences of a breach of the no benefits rule 652
Duty to declare interest in proposed transaction or arrangement 653
  Interest 655
Relationship between the general duties and other rules 656
Statutory duties supplementing the general duties 657
  Declarations of interest in existing transactions or arrangements 657
  Companies with a sole director 659
Directors’ trusteeship of the company’s assets 660
  The scope of the trusteeship 660
  Further examples of misapplications 662

Chapter 17  
The Duties of Directors – Specific Duties, Relief from Liability and Consequences of Breach 665
Introduction 665
Specific rules regarding directors’ interests in transactions and arrangements 665
  Persons connected with a director 666
Directors’ service contracts 667
Substantial property transactions 668
  Exceptions 669
  Approval 670
  Remedies 671
Loans to directors and others 672
  Requirements applying to all companies 673
  Requirements applying to public companies 674
  Exceptions 675
  Remedies 676
Payments for loss of office 678
  Exceptions 680
  Remedies 681
Power to provide for employees 681
Liability for false and misleading statements in reports 682
Factors relieving a director from liability for breach of duty 682
  Ratification 682
  Provisions in the articles 686
  Discretionary relief from liability by the court 689
Enforcement of civil liabilities against directors 689

Chapter 18  
Shareholders’ Remedies 691
Introduction 691
<table>
<thead>
<tr>
<th>Contents</th>
<th>xxi</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1: Minority Shareholders' Claims</td>
<td>692</td>
</tr>
<tr>
<td>Common law claims</td>
<td>692</td>
</tr>
<tr>
<td>Permitted common law claims</td>
<td>693</td>
</tr>
<tr>
<td>Non-ratifiable breaches of directors' duties</td>
<td>695</td>
</tr>
<tr>
<td>The enforcement of statutory 'fiduciary' duties</td>
<td>697</td>
</tr>
<tr>
<td>The statutory derivative claim</td>
<td>698</td>
</tr>
<tr>
<td>Nature of a derivative claim</td>
<td>698</td>
</tr>
<tr>
<td>The criteria to guide the court: s 263</td>
<td>699</td>
</tr>
<tr>
<td>Two stage procedure</td>
<td>700</td>
</tr>
<tr>
<td>Authorisation or ratification</td>
<td>701</td>
</tr>
<tr>
<td>Authorisation</td>
<td>701</td>
</tr>
<tr>
<td>Ratification</td>
<td>702</td>
</tr>
<tr>
<td>Members with no personal interest</td>
<td>702</td>
</tr>
<tr>
<td>Comment</td>
<td>703</td>
</tr>
<tr>
<td>Remedies in derivative claims</td>
<td>704</td>
</tr>
<tr>
<td>Power to amend s 263</td>
<td>704</td>
</tr>
<tr>
<td>Transitional provisions</td>
<td>705</td>
</tr>
<tr>
<td>Overlapping personal and corporate claims</td>
<td>705</td>
</tr>
<tr>
<td>Minority shareholders' right to an indemnity in a derivative action</td>
<td>707</td>
</tr>
<tr>
<td>Shareholders' actions to enforce rights against the company</td>
<td>709</td>
</tr>
<tr>
<td>Proceedings in the company's name</td>
<td>710</td>
</tr>
<tr>
<td>Part 2: Unfair Prejudice Remedy for Minorities</td>
<td>711</td>
</tr>
<tr>
<td>Power of the court to grant relief on a petition alleging unfair prejudice</td>
<td>711</td>
</tr>
<tr>
<td>The concept of unfair prejudice</td>
<td>711</td>
</tr>
<tr>
<td>O'Neill v Phillips</td>
<td>712</td>
</tr>
<tr>
<td>Breach of directors' duties</td>
<td>715</td>
</tr>
<tr>
<td>'Legitimate expectations'</td>
<td>717</td>
</tr>
<tr>
<td>Meaning of 'quasi-partnership'</td>
<td>718</td>
</tr>
<tr>
<td>'Member qua member'</td>
<td>719</td>
</tr>
<tr>
<td>The 'alternative remedy'</td>
<td>722</td>
</tr>
<tr>
<td>The offer to buy as a bar to a winding-up</td>
<td>723</td>
</tr>
<tr>
<td>The offer to buy as a bar to an unfair prejudice petition</td>
<td>725</td>
</tr>
<tr>
<td>The remedies available to the court: s 996</td>
<td>727</td>
</tr>
<tr>
<td>Just and equitable winding up as a minority shareholder's remedy</td>
<td>731</td>
</tr>
<tr>
<td>Earlier cases consistent with Westbourne</td>
<td>734</td>
</tr>
<tr>
<td>Loss of 'substratum'</td>
<td>734</td>
</tr>
<tr>
<td>Fraudulent and illegal companies</td>
<td>735</td>
</tr>
<tr>
<td>Part 3: The Business Department's Powers to Investigate Companies and Their Securities</td>
<td>736</td>
</tr>
<tr>
<td>Introduction</td>
<td>736</td>
</tr>
<tr>
<td>Investigation of the affairs of the company</td>
<td>736</td>
</tr>
<tr>
<td>Informal investigations under s 447</td>
<td>738</td>
</tr>
<tr>
<td>The conduct of proceedings by inspectors</td>
<td>739</td>
</tr>
<tr>
<td>The role of the Secretary of State in inspections</td>
<td>740</td>
</tr>
<tr>
<td>The inspectors' report and subsequent proceedings</td>
<td>741</td>
</tr>
<tr>
<td>The power to examine on oath and obtain documents</td>
<td>742</td>
</tr>
</tbody>
</table>
Proceedings by the Department 742
Expenses in investigations and proceedings by the Department 744
The Department’s power to investigate the ownership of shares 745
Power to impose restrictions on shares or debentures 746

Chapter 19
The Public Issue of Securities 749
Legislative background 749
The regulatory framework 755
Private and public companies 756
The UK Listing Authority and the London Stock Exchange 758
Criteria for admission to listing 760
Criteria for admission to trading on the London Stock Exchange 762
Offers of securities otherwise than through the London Stock Exchange 763
‘Offers for subscription’ and ‘offers for sale’ 764
Placings, intermediaries offers, rights issues and open offers 764
Convertible issues 766
The function of the sponsor 767
Underwriting and bookbuilding 767
Official listing: the function of the ‘competent authority’ 768
Application for listing 769
Part VI prospectuses and listing particulars 770
The issuer’s general duty to disclose 773
Supplementary Part VI listing particulars 774
Approval of Part VI prospectuses and listing particulars 774
Power to control information 775
Public offers of unlisted securities 776
An ‘offer to the public’ of ‘securities’ 777
Form and content of prospectuses 779
Supplementary prospectuses 780
Regulation of invitations to engage in investment activity under the Financial Services and Markets Act 2000 780
Mutual recognition of prospectuses and listing particulars in member states of the European Community 781
Remedies for false, misleading or incomplete statements in connection with prospectuses or listing particulars 782
The statutory remedy for false, misleading or incomplete statements 783
Who may be sued and who may sue under the statutory remedy? 785
Defences available to persons responsible 787
The relationship of the statutory remedy to the common-law remedies 787
The common-law remedies: the right to rescind a contract of allotment for material misrepresentation 788
Responsibility for statements 789
Loss of the right to rescind 790
An action for deceit 792
Chapter 20
Takeovers and Mergers

Introduction
The Takeover Panel and its administration of the Code
The sanctions available to the Panel
Impediments to takeovers
The scope and form of the Code
The Principles of the Code
The Rules
Partial offers
Restrictions on dealings
The mandatory offer to the remaining shareholders
Assessing the Code’s effectiveness
Reconstruction and amalgamation under s 110 of the Insolvency Act 1986
Procedure under ss 110 and 111
Rights of dissenting shareholders
The protection of creditors
Duties of the liquidator under ss 110–111
Procedure under Part 26 of the Companies Act 2006
The information required by s 897
The court’s powers under s 900
Mergers and divisions of public companies
Composition with debenture-holders and other creditors
The rights of dissenting shareholders and creditors
Compulsory acquisition of shares under Part 28 of the Companies Act 2006
The power of compulsory acquisition
The ‘price’ payable to those whose shares are compulsorily acquired
Applications to the court by dissenting shareholders
The right of minority shareholders to be bought out

Chapter 21
Corporate Reconstruction and Insolvency

Part 1: General
Introduction
The definition of insolvency
The regulation of insolvency practitioners
Part 2: Voluntary arrangements

The use of voluntary arrangements

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

Outline of the procedure

The effect of the approval of the voluntary arrangement

Implementation of the proposal

Challenging the approval of a voluntary arrangement or the supervisor’s decisions

Terminating a voluntary arrangement

Reinforcing the integrity of the law

CVAs with a moratorium – Insolvency Act 1986 Sch A1

Part 3: Administration

The role of administration

The Rescue Culture and US comparisons

Purposes of administration

Entry routes into administration

Out-of-court appointments by qualified floating charge holders

Out-of-court appointments by the company or its directors

Effect of the appointment of an administrator

The statutory moratorium

Relaxation of the moratorium

Power to deal with charged property

Status of the administrator

Duties of the administrator

The administrator’s proposals

The meeting of creditors

The committee of creditors

Cases where urgent action is required

Protection of the interests of creditors and members

Replacing an administrator and vacation of office

Exit routes from administration

Expenses of administration and remuneration of the administrator

The administrator as an ‘office-holder’

Pre-packaged administrations

Post-administration financing

An overview of the administration procedure

Part 4: The compulsory liquidation of companies

Compulsory winding-up

Special Rules for Financial institutions

Grounds for a compulsory winding-up order

Persons who may present a petition

The hearing of the petition

Commencement of the winding-up

The effect of a winding-up order on dispositions of assets
Appointment of the liquidator 920
   The liquidator's status 920
   Duties and powers of a liquidator 922
   The liquidation committee 924
Ceasing to act as liquidator 925

Part 5: The voluntary liquidation of companies 926
   Introduction 926
   Resolutions for voluntary winding-up 926
      Commencement of a voluntary liquidation 927
      Consequences of resolution to wind up 927
   The declaration of solvency 928
   Appointment of a liquidator 929
   The liquidation committee 930
   Powers and duties of a voluntary liquidator 930
   Ceasing to act as a voluntary liquidator 931
   The relationship between voluntary liquidation and other
      insolvency-related procedures 932

Part 6: The conduct of liquidations 934
   Introduction 934
   Creditors' claims 934
   Proof of debts and rights of set-off 936
   The company's assets 938
   The order of payment of debts and liabilities and the pari
      passu rule 940
      Preferential debts 941
      Liquidation expenses 942
      Deferred debts and subordinated debts 943
   Contributories 944
   Distribution of remaining assets 945

Part 7: Special powers of liquidators and other office holders in
   insolvency proceedings 945
   A liquidator's ability to disclaim property 945
   Office-holders 947
      Utilities 947
      Transactions at an undervalue 947
      Voidable preferences 949
      Court orders in respect of transactions at an undervalue
         and preferences 951
      Extortionate credit transactions 952
      Avoidance of floating charges 953
   Other powers 955
   Dissolution of companies 956
   Defunct companies 958
   International Insolvency 959
   EU insolvency regulation 963
      What constitutes the opening of insolvency proceedings 964
      Jurisdiction to open main insolvency proceedings 965
      Jurisdiction to open secondary insolvency proceedings 969
Applicable law 969
Referrals to legal orders other than the law of the 970
insolvency forum
Recognition of insolvency proceedings 971
Liquidators’ powers 972
Relationship between main and secondary liquidations 972
An assessment of the Regulation 973

Index 975