GOWER AND DAVIES’
PRINCIPLES OF
MODERN COMPANY LAW

EIGHTH EDITION

By

PAUL L. DAVIES, Q.C. (hon), F.B.A.

Cassel Professor of
Commercial Law
London School of Economics
and Political Science
Honorary Bencher of Gray’s Inn

with contributions from

SARAH WORTHINGTON
Barrister
Professor of Law at the
London School of Economics and
Political Science

and

EVA MICHELER
Senior Lecturer in Law
London School of Economics and
Political Science
Ao Universitätsprofessor
Wirtschaftsuniversität Wien
## CONTENTS

<table>
<thead>
<tr>
<th>Preface</th>
<th>v</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of Cases</td>
<td>xiii</td>
</tr>
<tr>
<td>Table of Statutes</td>
<td>xliii</td>
</tr>
<tr>
<td>Table of Statutory Instruments</td>
<td>lxix</td>
</tr>
<tr>
<td>Table of E.C. Material</td>
<td>lxxiii</td>
</tr>
<tr>
<td>Table of Rules of Takeover Code</td>
<td>lxxv</td>
</tr>
<tr>
<td>Table of Abbreviations</td>
<td>lxxvii</td>
</tr>
</tbody>
</table>

### Part One

#### INTRODUCTORY

1. Types and Functions of Companies  
   - Uses to which the company may be put 3  
   - Different types of registered companies 13  
   - Unregistered companies and other forms of incorporation 21  
   - European Community forms of incorporation 26  

2. Advantages and Disadvantages of Incorporation  
   - Legal entity distinct from its members 33  
   - Limited liability 37  
   - Property 40  
   - Suing and being sued 41  
   - Perpetual succession 42  
   - Transferable shares 44  
   - Management under a board structure 46  
   - Borrowing 48
# Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation</td>
<td>50</td>
</tr>
<tr>
<td>Formalities, publicity and expense</td>
<td>50</td>
</tr>
<tr>
<td>Conclusion</td>
<td>51</td>
</tr>
<tr>
<td>3. Sources of Company Law and the Company's Constitution</td>
<td>53</td>
</tr>
<tr>
<td>Sources</td>
<td>53</td>
</tr>
<tr>
<td>The Company's Constitution</td>
<td>62</td>
</tr>
<tr>
<td>The European Company</td>
<td>77</td>
</tr>
<tr>
<td>4. Formation Procedures</td>
<td>79</td>
</tr>
<tr>
<td>Types of Company</td>
<td>79</td>
</tr>
<tr>
<td>Company Names</td>
<td>83</td>
</tr>
<tr>
<td>Registration</td>
<td>91</td>
</tr>
<tr>
<td>Commencement of Business</td>
<td>97</td>
</tr>
<tr>
<td>Re-Registration of an Existing Company</td>
<td>98</td>
</tr>
<tr>
<td>Conclusion</td>
<td>103</td>
</tr>
<tr>
<td>5. Promoters</td>
<td>105</td>
</tr>
<tr>
<td>Meaning of “promoter”</td>
<td>105</td>
</tr>
<tr>
<td>Duties of promoters</td>
<td>107</td>
</tr>
<tr>
<td>Remuneration of promoters</td>
<td>113</td>
</tr>
<tr>
<td>Preliminary contracts by promoters</td>
<td>114</td>
</tr>
<tr>
<td>Companies’ pre-incorporation contracts</td>
<td>115</td>
</tr>
<tr>
<td>6. Overseas Companies, Community Law and Jurisdictional Migration</td>
<td>119</td>
</tr>
<tr>
<td>Overseas companies</td>
<td>121</td>
</tr>
<tr>
<td>Company law at community level</td>
<td>129</td>
</tr>
<tr>
<td>Migration of companies and regulatory competition</td>
<td>138</td>
</tr>
<tr>
<td>Conclusion</td>
<td>148</td>
</tr>
</tbody>
</table>

## Part Two

**SEPARATE LEGAL PERSONALITY AND LIMITED LIABILITY**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Corporate Actions</td>
<td>151</td>
</tr>
<tr>
<td>The objects clause and corporate capacity</td>
<td>152</td>
</tr>
<tr>
<td>The authority of agents</td>
<td>155</td>
</tr>
<tr>
<td>Tort and crime</td>
<td>178</td>
</tr>
<tr>
<td>Conclusion</td>
<td>191</td>
</tr>
<tr>
<td>8. Limited Liability and Lifting the Veil at Common Law</td>
<td>193</td>
</tr>
<tr>
<td>The rationale for limited liability</td>
<td>193</td>
</tr>
<tr>
<td>Legal responses to limited liability</td>
<td>198</td>
</tr>
<tr>
<td>Lifting the veil under case law</td>
<td>200</td>
</tr>
<tr>
<td>Conclusion</td>
<td>208</td>
</tr>
<tr>
<td>9. Statutory Exceptions to Limited Liability</td>
<td>211</td>
</tr>
<tr>
<td>Reduction of number of members</td>
<td>211</td>
</tr>
<tr>
<td>Misdescription of the company and trading disclosures</td>
<td>212</td>
</tr>
<tr>
<td>Premature trading</td>
<td>214</td>
</tr>
</tbody>
</table>
Fraudulent and wrongful trading 215
Phoenix companies and the abuse of company names 224
Company groups 228
Conclusion 234
10. Disqualification of Directors 237
Disqualification orders and undertakings 239
Disqualification on grounds of unfitness 242
Non-mandatory disqualification 250
Bankrupts 252
Impact of disqualification under foreign law 253
Conclusion 254
11. Legal Capital and Minimum Capital 257
Meaning of capital 257
From authorised capital to statement of capital 260
Minimum capital 261
Nominal value and share premiums 265
Legal capital and share issuance 271
Capitalisation issues 281
Conclusion 283
12. Dividends and Distributions 285
The basic rules 285
Definition of a distribution 289
Relevant accounts 292
Consequences of unlawful distributions 296
Conclusion 300
13. Capital Maintenance 305
Reductions of capital 306
Acquisitions of own shares 316
Financial assistance 341
Conclusion 357

Part Three

CORPORATE GOVERNANCE: THE BOARD AND SHAREHOLDERS

14. The Board 365
The role of the board 365
Appointment and remuneration of directors 378
Removal of directors 389
Structure and composition of the board 398
Conclusion 410
15. Shareholder Decision Making 411
Decision making without meetings 414
Institutional investors 423
Contents

Indirect investors 430
The mechanics of meetings 436
Conclusions 472

16. Directors’ Duties 475
  To whom and by whom are the duties owed? 479
  Directors’ duties of skill, care and diligence 488
  Directors’ fiduciary duties 495
  Duty to act within powers 497
  Duty to promote the success of the company 506
  Duty to exercise independent judgement 525
  Transactions with the company (self-dealing) 529
  Transactions with directors requiring approval of members 541
  Conflicts of interest and the use of corporate property, information and opportunity 557
  Duty not to accept benefits from third parties 574
  Remedies for breach of duty 576
  Specific shareholder approval of breaches of duty 581
  General provisions exempting directors from liability 588
  Relief 597
  Liability of third parties 597
  Limitation of actions 601
  Conclusion 603

17. The Derivative claim and personal actions against directors 605
  The nature of the problem and the potential solutions 605
  The general statutory derivative claim 614
  Shareholders’ personal claims against directors 623
  Conclusion 626

18. Breach of Corporate Duties: Administrative Remedies 629
  Disclosure of documents and information 631
  Investigations by inspectors 635
  Power of investigation of company ownership 641
  Liability for cost of investigations 642
  Follow-up to investigations 643
  Conclusion 645

Part Four

CORPORATE GOVERNANCE: MAJORITY AND MINORITY SHAREHOLDERS

19. Controlling Members’ Voting 649
   Introduction 649
   Review of shareholders’ decisions 653
   Class rights 663
   Self help 674
20. Unfair Prejudice

Introduction 681
Unfair prejudice and the derivative action 684
Independent illegality 689
Legitimate expectations or equitable considerations 691
Reducing litigation costs 700
Remedies 702
Winding up on the just and equitable ground 704
Conclusion 707

Part Five

ACCOUNT AND AUDIT

21. Annual Accounts and Reports 711
   Introduction 711
   The annual accounts 716
   The directors’ report 734
   Approval of the accounts and reports by the directors 743
   The auditor’s report 744
   Revision of defective accounts and reports 745
   Filing accounts and reports with the registrar 747
   Conclusion 757

22. Audits and Auditors 759
   The role of the auditor 759
   Audit exemption 762
   Auditor independence and competence 767
   Disqualifying persons from acting as auditors 771
   The role of shareholders 775
   The role of the audit committee 784
   Auditor regulation 788
   Empowering the auditors 791
   Liability for negligent audit 794
   Claims by the audit client 798
   Claims by third parties 803
   Conclusions 810

Part Six

EQUITY FINANCE

23. The Nature and Classification of Shares 815
   Legal nature of shares 815
The presumption of equality between shareholders 819
Classes of shares 820

24. Share Issues: General Rules 829
   Public and non-public offers 830
   Directors' authority to allot shares 832
   Pre-emptive rights 835
   The Terms of issue 845
   Allotment 845
   Registration 847
   Conclusion 849

25. Public Offers of Shares 851
   Introduction 852
   Admission to trading on a public market 866
   The Prospectus 872
   Sanctions 884
   Cross-border offers and admissions 896
   De-Listing 898

26. Continuing Information and Disclosure Of Information to the Market 901
   Introduction 901
   Periodic reporting obligations 904
   Episodic or ad hoc reporting requirements 906
   Disclosure of directors' shareholdings 916
   Disclosure of major shareholdings 922
   Conclusion 933

27. Transfers of Shares 935
   Certificated and uncertificated shares 937
   Transfer of certificated shares 939
   Transfer of uncertificated shares 950
   The register 954
   Transmission of shares by operation of law 958

28. Takeovers 961
   Introduction 961
   The takeover code and panel 964
   The scope of the city code 976
   The structure of the code 982
   The allocation of the acceptance division 984
   Target management promotion of an offer 1001
   Equality of treatment of target shareholders 1013
   The procedure for making a bid 1027
   Conclusion 1056

29. Arrangements and Reconstructions 1059
   Schemes of arrangement 1061
   Reorganisations under sections 110 and 111 of the Insolvency Act 1986 1080
   Conclusion 1081

30. Insider Dealing and Manipulation 1083
Contents

Approaches to insider dealing 1085
The Criminal Justice Act 1993, Part V 1092
Criminal prohibitions on market manipulation 1109
Prohibition of market abuse in Part VIII of FSMA 1110
Sanctions and enforcement 1123
Conclusion 1130

Part Seven

DEBT FINANCE

31. Debentures 1135
   Introduction 1135
   The issuance and transfer of debentures 1144
   Protection of debenture-holders’ rights 1148
   Covered bonds 1150

32. Company charges 1155
   Security interests 1156
   The floating charge 1162
   Registration of charges 1182
   Enforcement of floating charges 1196
   Conclusion 1215

APPENDIX

A note on winding-up and dissolution 1217
   Types of winding-up 1218
   Dissolution 1227

Index 1235