

# TABLE OF CONTENTS

	PAGE
<i>Preface</i> .....	v
<i>Table of Abbreviations</i> .....	vii
<i>Table of Cases</i> .....	xxxix
<i>Table of Statutes</i> .....	xciii
<i>Table of Statutory Instruments</i> .....	cxxi
<i>Table of European Material</i> .....	cxxvii
<i>Table of Takeovers Code</i> .....	cxxxv

PARA

## PART 1 Introductory

### 1. TYPES AND FUNCTIONS OF COMPANIES

USES TO WHICH THE COMPANY MAY BE PUT.....	1–1
Business vehicles: companies and partnerships (limited and unlimited)	
<i>Partnership Act 1890 and Companies Act 2006</i> .....	1–2
<i>Limited Liability Partnerships Act 2000</i> .....	1–4
<i>Limited Partnership Act 1907</i> .....	1–5
Non-business vehicles: charitable, community interest and limited by guarantee companies	
<i>Not-for-profit companies</i> .....	1–6
<i>Company limited by guarantee</i> .....	1–8
<i>Company limited by shares</i> .....	1–11
<i>Community Interest Company (“CIC”)</i> .....	1–12
The advantages of the modern corporate form .....	1–13
DIFFERENT TYPES OF REGISTERED COMPANIES .....	1–17
Public and private companies .....	1–18
Officially listed and other publicly traded companies .....	1–22
Limited and unlimited companies .....	1–27
Classification according to size: large, medium and micro companies.....	1–28
Classification according to activity: for-profit and not-for-profit companies .....	1–29

<b>UNREGISTERED COMPANIES AND OTHER FORMS OF INCORPORATION</b>	
Statutory and chartered companies.....	1–31
Building societies, friendly societies and co-operatives .....	1–34
Open-ended investment companies .....	1–36
<b>EUROPEAN UNION FORMS OF INCORPORATION</b>	
European Economic Interest Grouping .....	1–37
The European Company (societas europaea or “SE”) .....	1–40
<b>CONCLUSION</b> .....	1–47
<b>2. ADVANTAGES AND DISADVANTAGES OF INCORPORATION</b>	
LEGAL ENTITY DISTINCT FROM ITS MEMBERS.....	2–1
LIMITED LIABILITY .....	2–9
PROPERTY .....	2–16
SUING AND BEING SUED .....	2–18
PERPETUAL SUCCESSION .....	2–19
TRANSFERABLE SHARES .....	2–24
MANAGEMENT UNDER A BOARD STRUCTURE.....	2–27
BORROWING.....	2–31
TAXATION.....	2–34
FORMALITIES AND EXPENSE.....	2–35
PUBLICITY	
The company’s affairs.....	2–39
The company’s members and directors .....	2–40
“People with significant control”—the PSC Register.....	2–42
CONCLUSION.....	2–48
<b>3. SOURCES OF COMPANY LAW AND THE COMPANY’S CONSTITUTION</b>	
SOURCES .....	3–1
Primary legislation .....	3–3
Secondary legislation .....	3–5
Delegated rule-making	
<i>The Financial Conduct Authority</i> .....	3–7
<i>Financial Reporting Council</i> .....	3–9
Common law .....	3–10

Review and reform.....	3-11
<b>THE COMPANY'S CONSTITUTION</b>	
The significance of the constitution .....	3-13
Model articles of association .....	3-14
What constitutes the constitution? .....	3-16
The legal status of the constitution.....	3-18
(i) <i>The parties to the contract</i> .....	3-19
(ii) <i>The contract as a public document</i> .....	3-20
(iii) <i>Limits to the provisions which can be enforced: only rights "as a member"</i> .....	3-23
(iv) <i>Further limits to the provisions which can be enforced: not mere procedural irregularities</i> .....	3-27
(v) <i>Altering the contract</i> .....	3-31
SHAREHOLDER AGREEMENTS .....	3-33
THE EUROPEAN COMPANY .....	3-36
<b>4. FORMATION PROCEDURES</b>	
FORMATION OF DIFFERENT TYPES OF COMPANY.....	4-1
Statutory companies.....	4-2
Chartered companies.....	4-3
Registered companies .....	4-4
FORMING A COMPANY BY REGISTRATION	
Registration documents.....	4-5
Certificate of incorporation.....	4-7
Purchase of a shelf-company .....	4-9
CHOICE OF TYPE OF REGISTERED COMPANY.....	4-10
CHOICE OF COMPANY NAME.....	4-13
Warning the public about limited liability or other status .....	4-14
Prohibition on illegal or offensive names .....	4-16
Names requiring special approval .....	4-17
Prohibition on using a name already allocated .....	4-18
Restrictions on use of a defunct company's name—phoenix companies.....	4-19
Use of a business name other than the corporate name.....	4-20
MANDATORY AND ELECTIVE NAME CHANGES .....	4-22
Requirements to change a name .....	4-23
Passing off actions .....	4-25
Company names adjudicators .....	4-27
Company's election to change its name .....	4-30
Effect of a name change .....	4-31
CHOICE OF APPROPRIATE ARTICLES .....	4-32

CHALLENGING THE CERTIFICATE OF INCORPORATION .....	4-34
COMMENCEMENT OF BUSINESS .....	4-38
RE-REGISTRATION OF AN EXISTING COMPANY .....	4-39
(i) Private company becoming public .....	4-40
(ii) Public company becoming private limited company .....	4-41
(iii) Private or public limited company becoming unlimited .....	4-43
<i>Ban on vacillation between limited and unlimited</i> .....	4-44
(iv) Unlimited company becoming a private limited company .....	4-45
(v) Becoming or ceasing to be a community interest company .....	4-46
CONCLUSION .....	4-47
<b>5. PRE-INCORPORATION AND INITIAL CORPORATE CONTRACTING</b>	
INTRODUCTION.....	5-1
<b>“PROMOTERS” AND THEIR DEALINGS WITH THE COMPANY</b>	
Meaning of “promoter”.....	5-2
Duties of promoters .....	5-6
(a) <i>Statutory rules</i> .....	5-7
(b) <i>Common law and equitable rules</i> .....	5-10
(c) <i>Full disclosure and consent</i> .....	5-11
Remedies for breach of promoters’ duties.....	5-15
Remuneration of promoters .....	5-21
PRELIMINARY CONTRACTS ENTERED INTO BY PROMOTERS.....	5-23
COMPANIES’ PRE-INCORPORATION CONTRACTS.....	5-24
CONCLUSION .....	5-29
<b>6. OVERSEAS COMPANIES, EU LAW AND CORPORATE MOBILITY</b>	
OVERSEAS COMPANIES .....	6-2
Establishment: branch and place of business .....	6-4
Disclosure obligations.....	6-5
Execution of documents and names .....	6-7
Other mandatory provisions.....	6-8
<b>COMPANY LAW AT EU LEVEL</b>	
Harmonisation .....	6-9
A new approach and subsidiarity.....	6-12
EU forms of incorporation.....	6-13
The single financial market and company law .....	6-14

Corporate governance .....	6–15
Reform of the existing directives .....	6–16
 CORPORATE MOBILITY .....	6–17
Domestic rules .....	6–18
EU law: initial incorporation .....	6–20
EU law: subsequent re-incorporation .....	6–24
EU law: alternative transfer mechanisms .....	6–27
Conclusion .....	6–28
 CONCLUSION .....	6–30

## PART 2

### Separate Legal Personality and Limited Liability

#### 7. CORPORATE ACTIONS

INTRODUCTION .....	7–1
 CONTRACTUAL RIGHTS AND LIABILITIES .....	7–4
Contracting through the board or the shareholders collectively .....	7–5
Constructive notice and the rule in Turquand's case .....	7–6
Statutory protection for third parties dealing with the board .....	7–9
(a) <i>"In favour of a person dealing with a company in                 good faith"</i> .....	7–10
(b) <i>"Dealing with a company"</i> .....	7–11
(c) <i>Persons</i> .....	7–12
(d) <i>The directors</i> .....	7–13
(e) <i>Any limitation under the company's constitution</i> .....	7–14
(f) <i>The internal effects of lack of authority</i> .....	7–15
Contracting through agents .....	7–16
Agency principles .....	7–18
Establishing the ostensible authority of corporate agents .....	7–20
Knowledge .....	7–24
Knowledge of the constitution as an aid to third parties? .....	7–26
Ratification .....	7–27
Overall .....	7–28
The ultra vires doctrine and the objects clause .....	7–29
 TORT AND CRIME .....	7–30
Tortious liability	
<i>Vicarious liability</i> .....	7–31
<i>Assumption of responsibility</i> .....	7–32
<i>Fraud</i> .....	7–33
<i>Recovery by the company from the agent</i> .....	7–34
<i>Liability of non-involved directors</i> .....	7–35

<i>Accessory liability</i> .....	7-36
<i>Direct liability</i> .....	7-37
Criminal liability .....	7-38
<i>Regulatory offences</i> .....	7-39
<i>Identification</i> .....	7-40
<i>Beyond “directing mind and will”</i> .....	7-41
<i>Criminal liability of directors</i> .....	7-42
<i>Corporate manslaughter</i> .....	7-43
<i>Sanctions</i> .....	7-44
<i>Personal liability under the 2007 Act</i> .....	7-45
<i>Failure to prevent criminal acts</i> .....	7-46
Litigation by the company .....	7-47
CONCLUSION.....	7-48
<b>8. LIMITED LIABILITY AND LIFTING THE VEIL</b>	
THE RATIONALE FOR LIMITED LIABILITY .....	8-1
LEGAL RESPONSES TO LIMITED LIABILITY .....	8-5
Disclosure of information .....	8-6
LIFTING THE VEIL.....	8-7
Under statute or contract.....	8-8
At common law.....	8-10
<i>The “single economic unit” argument</i> .....	8-11
<i>Façade or sham</i> .....	8-12
<i>The agency and trust arguments</i> .....	8-13
<i>The interests of justice</i> .....	8-14
<i>Impropriety</i> .....	8-15
CONCLUSION.....	8-17
<b>9. PERSONAL LIABILITY FOR ABUSES OF LIMITED LIABILITY</b>	
PREMATURE TRADING.....	9-3
FRAUDULENT AND WRONGFUL TRADING.....	9-4
Civil liability for fraudulent trading .....	9-5
Wrongful trading .....	9-6
<i>Shadow directors</i> .....	9-7
<i>The declaration</i> .....	9-8
<i>Impact of the wrongful trading provisions</i> .....	9-9
COMMON LAW DUTIES IN RELATION TO CREDITORS.....	9-11
PHOENIX COMPANIES AND THE ABUSE OF COMPANY NAMES .....	9-16
The prohibition.....	9-17
Exceptions .....	9-19

MISDESCRIPTION OF THE COMPANY AND TRADING DISCLOSURES .....	9–20
COMPANY GROUPS	
Limited liability .....	9–21
Ignoring separate legal personality .....	9–24
CONCLUSION .....	9–25
<b>10. DISQUALIFICATION OF DIRECTORS</b>	
DISQUALIFICATION ORDERS AND UNDERTAKINGS .....	10–2
Scope of disqualification orders and undertakings .....	10–3
Compensation.....	10–4
DISQUALIFICATION ON GROUNDS OF UNFITNESS .....	10–5
The role of the Insolvency Service.....	10–7
The role of the court .....	10–8
<i>Breach of commercial morality</i> .....	10–9
<i>Recklessness and incompetence</i> .....	10–10
DISQUALIFICATION ON GROUNDS OTHER THAN UNFITNESS	
Serious offences .....	10–12
Disqualification in connection with civil liability for fraudulent or wrongful trading .....	10–13
Failure to comply with reporting requirements.....	10–14
REGISTER OF DISQUALIFICATION ORDERS .....	10–15
BANKRUPTS .....	10–16
OTHER CASES .....	10–17
CONCLUSION .....	10–18
<b>11. LEGAL CAPITAL, MINIMUM CAPITAL AND VERIFICATION</b>	
MEANING OF CAPITAL .....	11–1
NOMINAL VALUE AND SHARE PREMIUMS	
Nominal value .....	11–3
No issue of shares at a discount .....	11–4
The share premium .....	11–6
MINIMUM CAPITAL .....	11–8
Objections to the minimum capital requirement .....	11–9
DISCLOSURE AND VERIFICATION .....	11–10
Initial statement and return of allotments .....	11–11
Abolition of authorised capital .....	11–12

Consideration received upon issue .....	11–13
<i>Rules applying to all companies</i> .....	11–14
<i>Public companies</i> .....	11–15
<i>Valuation of non-cash consideration</i> .....	11–16
<i>Further provisions as to sanctions</i> .....	11–18
Share capital and choice of currency.....	11–19
CAPITALISATION ISSUES.....	11–20
CONCLUSION .....	11–21

## 12. DIVIDENDS AND DISTRIBUTIONS

THE BASIC RULES .....	12–1
Public and private companies .....	12–2
IDENTIFYING THE AMOUNT AVAILABLE FOR DISTRIBUTION .....	12–5
Interim and initial accounts .....	12–6
Interim dividends .....	12–7
Adverse developments subsequent to the accounts .....	12–8
DISGUISED DISTRIBUTIONS.....	12–9
Intra-group transfers.....	12–11
CONSEQUENCES OF UNLAWFUL DISTRIBUTIONS	
Recovery from members.....	12–12
Recovery from directors .....	12–13
REFORM .....	12–15
The central issues.....	12–16

## 13. CAPITAL MAINTENANCE

ACQUISITIONS OF OWN SHARES	
The general prohibition.....	13–2
<i>Acquisition through a nominee</i> .....	13–3
<i>Company may not be a member of its holding company</i> .....	13–4
<i>Specific exceptions to the general prohibition</i> .....	13–5
REDEMPTION AND RE-PURCHASE	
Introduction .....	13–7
<i>Some history</i> .....	13–8
<i>General restrictions on redeemable shares and on repurchases</i> .....	13–9
Creditor protection: all companies.....	13–11
Private companies: redemption or purchase out of capital .....	13–12
<i>Directors' statement</i> .....	13–14
<i>Shareholder resolution</i> .....	13–15
<i>Appeal to the court</i> .....	13–16
<i>Legal capital consequences</i> .....	13–17

Protection for shareholders .....	13–19
<i>Off-market purchases</i> .....	13–20
<i>Market purchases</i> .....	13–21
<i>Companies with a premium listing</i> .....	13–22
Payments otherwise than by way of the price.....	13–23
Treasury shares.....	13–24
<i>Sale of treasury shares</i> .....	13–26
<i>Whilst the shares are in treasury</i> .....	13–27
Failure by the company to perform .....	13–28
Conclusion.....	13–29
 REDUCTION OF CAPITAL	
Why are reductions of capital allowed? .....	13–30
The statutory procedures.....	13–33
Procedure applying to all companies.....	13–34
<i>Creditor objection</i> .....	13–35
<i>Confirmation by the court</i> .....	13–36
Procedure available to private companies only.....	13–39
<i>Solvency statement</i> .....	13–40
<i>Reduction, distributions and re-purchase</i> .....	13–43
 FINANCIAL ASSISTANCE	
Rationale and history of the rule .....	13–44
The prohibition.....	13–47
The exceptions	
<i>Specific exceptions</i> .....	13–50
<i>General exceptions</i> .....	13–52
Exemption for private companies.....	13–55
Civil remedies for breach of the prohibition.....	13–56
CONCLUSION.....	13–59

### PART 3

### Corporate Governance: The Board and Shareholders

#### 14. THE BOARD

THE ROLE OF THE BOARD.....	14–1
The default provision in the model articles.....	14–3
The power of the board—the legal effect of the articles	
<i>The board and shareholders</i> .....	14–5
<i>The board and senior management</i> .....	14–9
Default and confirmation powers of the general meeting.....	14–11
<i>Unanimous consent of the shareholders</i> .....	14–15
The mandatory involvement of shareholders in corporate decisions .....	14–18
The mandatory functions of the directors .....	14–21

APPOINTMENT OF DIRECTORS .....	14–23
REMUNERATION OF DIRECTORS.....	14–30
Composition of the remuneration committee.....	14–33
Mandatory shareholder approval of certain aspects of the remuneration package	
<i>General</i> .....	14–34
<i>Long-term incentive pay schemes</i> .....	14–35
Mandatory and advisory shareholder votes on remuneration policy and implementation .....	14–38
General disclosure: the directors' remuneration report .....	14–44
REMOVAL OF DIRECTORS.....	14–48
Shareholders' statutory termination rights.....	14–49
<i>Weighted voting rights</i> .....	14–51
<i>Director's procedural rights on termination</i> .....	14–52
<i>Director's contractual rights on termination</i> .....	14–53
Control of termination payments.....	14–56
<i>Disclosure</i> .....	14–57
<i>Shareholder approval</i> .....	14–59
STRUCTURE AND COMPOSITION OF THE BOARD.....	14–63
Legal rules on board structure .....	14–64
Legal rules on board composition	
<i>Employee representatives</i> .....	14–67
<i>Gender diversity—women on boards</i> .....	14–68
<i>Corporate governance codes, The Cadbury Report and         non-executive directors</i> .....	14–69
The requirements of the UK Corporate Governance Code .....	14–75
Enforcement of the UK Corporate Governance Code .....	14–77
CONCLUSION .....	14–81
<b>15. SHAREHOLDER DECISION-MAKING</b>	
THE ROLE OF THE SHAREHOLDERS.....	15–1
SHAREHOLDER DECISION-MAKING WITHOUT SHAREHOLDER MEETINGS	
The nature of the problem .....	15–6
Written resolutions .....	15–8
<i>Where written resolutions not available</i> .....	15–10
<i>The procedure for passing written resolutions</i> .....	15–11
<i>Written resolutions proposed by members</i> .....	15–13
<i>Wider written resolution provisions under the articles</i> .....	15–14
Unanimous consent at common law .....	15–15
IMPROVING SHAREHOLDER PARTICIPATION	
Analyses of shareholder participation .....	15–22

The role of institutional investors .....	15–25
<i>Conflicts of interest and inactivity</i> .....	15–27
“ <i>Fiduciary investors</i> ” .....	15–29
<i>The UK Stewardship Code</i> .....	15–30
The role of indirect investors.....	15–31
<i>Governance rights—voluntary transfer arrangements for all companies</i> .....	15–34
<i>Information rights—mandatory transfer options in traded companies</i> .....	15–40
<b>THE MECHANICS OF MEETINGS .....</b>	<b>15–42</b>
What happens at meetings? .....	15–43
<i>Types of resolution</i> .....	15–44
<i>Wording and notice of proposed resolutions</i> .....	15–47
Convening a meeting of the shareholders .....	15–48
<i>Annual general meetings</i> .....	15–49
<i>Other general meetings</i> .....	15–51
<i>Meetings convened by the court</i> .....	15–53
What is a meeting? .....	15–55
Getting items onto the agenda and expressing views on agenda items.....	15–56
<i>Placing an item on the agenda</i> .....	15–57
<i>Circulation of members' statements</i> .....	15–59
Notice of meetings and information about the agenda .....	15–60
<i>Length of notice</i> .....	15–61
<i>Special notice</i> .....	15–63
<i>The contents of the notice of the meeting and circulars</i> .....	15–65
<i>Communicating notice of the meeting to the members</i> .....	15–66
Attending the meeting	
<i>Proxies</i> .....	15–67
<i>Corporations' representatives</i> .....	15–72
Voting and verification of votes	
<i>Voting as a governance issue</i> .....	15–73
<i>Votes on a show of hands and polls</i> .....	15–75
<i>Verifying votes</i> .....	15–76
<i>Establishing who is entitled to vote</i> .....	15–77
<i>Publicity for votes and resolutions</i> .....	15–78
“ <i>Empty</i> ” voting .....	15–81
Miscellaneous matters	
<i>Chairman</i> .....	15–82
<i>Adjournments</i> .....	15–83
<i>Class meetings</i> .....	15–84
<i>Forms of communication by the company</i> .....	15–85
<i>Forms of communication to the company</i> .....	15–86
CONCLUSION .....	15–87

## 16. DIRECTORS' DUTIES

INTRODUCTION.....	16–1
TO WHOM AND BY WHOM ARE THE DUTIES OWED?	
To whom are the general duties owed and who can sue for their breach?	
<i>The company</i> .....	16–4
<i>Individual shareholders</i> .....	16–5
<i>Other stakeholders</i> .....	16–7
By whom are the general duties owed?	
<i>De facto and shadow directors</i> .....	16–8
<i>Senior managers</i> .....	16–11
<i>Former directors</i> .....	16–13
<i>Directors of insolvent companies</i> .....	16–14
DIRECTORS' DUTIES OF SKILL, CARE AND DILIGENCE	
Historical development .....	16–15
The statutory standard.....	16–16
Remedies .....	16–20
INTRODUCTION TO DIRECTORS' VARIOUS DUTIES OF GOOD FAITH AND LOYALTY	
Historical background .....	16–21
Categories of duties .....	16–22
DUTY TO ACT WITHIN POWERS .....	16–23
Acting in accordance with the constitution	
<i>Constitutional limitations</i> .....	16–24
<i>Other situations?</i> .....	16–25
Improper purposes	
<i>The rule</i> .....	16–26
<i>Which purposes are improper?</i> .....	16–27
<i>When is a power exercised for improper purposes?</i> .....	16–29
Remedies .....	16–30
DUTY TO EXERCISE INDEPENDENT JUDGMENT .....	16–33
Taking advice and delegating authority.....	16–34
Exercise of future discretion.....	16–35
Nominee directors .....	16–36
DUTY TO PROMOTE THE SUCCESS OF THE COMPANY	
Settling the statutory formula .....	16–37
Interpreting the statutory formula	
<i>Defining the company's success</i> .....	16–40
<i>Failure to have regard, or due regard, to relevant matters</i> .....	16–41
<i>A duty to disclose wrongdoing</i> .....	16–45
<i>The problem of "short-termism"</i> .....	16–46
<i>Corporate groups</i> .....	16–47

<i>Employees</i> .....	16-48
<i>Creditors</i> .....	16-49
<i>Donations</i> .....	16-50
OVERVIEW OF THE NO-CONFLICT RULES .....	16-52
TRANSACTIONS WITH THE COMPANY (SELF-DEALING)	
The scope of the relevant provisions.....	16-54
Approval mechanisms.....	16-55
Duty to declare interests in relation to proposed transactions or arrangements.....	16-57
<i>Purpose of the disclosure requirement</i> .....	16-58
<i>Who is subject to this duty?</i> .....	16-59
<i>The interests to be disclosed</i> .....	16-60
<i>Methods of disclosure</i> .....	16-61
<i>Remedies</i> .....	16-62
<i>A continuing role for the articles in setting tighter constraints</i> .....	16-63
Duty to declare interests in relation to existing transactions or arrangements.....	16-64
<i>Methods of disclosure</i> .....	16-65
<i>Remedies</i> .....	16-66
TRANSACTIONS BETWEEN THE COMPANY AND DIRECTORS	
REQUIRING SPECIAL APPROVAL OF MEMBERS.....	16-67
Relationship with the general duties .....	16-68
Substantial property transactions	
<i>The scope of the requirement for shareholder approval</i> .....	16-70
<i>Exceptions</i> .....	16-72
<i>Remedies</i> .....	16-73
<i>Additional rules for listed companies</i> .....	16-77
Loans, quasi-loans and credit transactions	
<i>Arrangements covered</i> .....	16-78
<i>Method of approval and related disclosures</i> .....	16-81
<i>Exceptions</i> .....	16-82
<i>Remedies</i> .....	16-83
Directors' service contracts and gratuitous payments to directors.....	16-84
Political donations and expenditure.....	16-85
CONFLICTS OF INTEREST AND THE USE OF CORPORATE PROPERTY, INFORMATION AND OPPORTUNITY	
The scope and functioning of section 175 .....	16-86
A strict approach to conflicts of interest .....	16-87
Identification of "corporate" opportunities.....	16-89
<i>Issues of scope</i> .....	16-90
<i>Effect of director's resignation</i> .....	16-94
<i>Effect of board determinations of scope</i> .....	16-95

Competing and multiple directorships.....	16–99
<i>Competing with the company</i> .....	16–100
<i>Multiple directorships</i> .....	16–102
Approval by the board .....	16–103
A conceptual issue .....	16–105
Remedies .....	16–106
<b>DUTY NOT TO ACCEPT BENEFITS FROM THIRD PARTIES</b>	
The scope of section 176 .....	16–107
Remedies .....	16–108
<b>REMEDIES FOR BREACH OF DUTY .....</b>	
(a) Injunction or declaration.....	16–110
(b) Damages or compensation .....	16–111
(c) “Restoration” of property .....	16–112
(d) Avoidance of contracts.....	16–113
(e) Accounting for profits: disgorgement of disloyal gains .....	16–114
(f) Summary dismissal .....	16–116
<b>SHAREHOLDER APPROVAL OR “WHITEWASH” OF SPECIFIC BREACHES OF DUTY .....</b>	
What is being decided? .....	16–118
Who can take the decision for the company? .....	16–119
Disenfranchising particular voters .....	16–121
Voting majorities .....	16–123
Non-ratifiable breaches .....	16–124
<b>GENERAL PROVISIONS EXEMPTING DIRECTORS FROM LIABILITY</b>	
Statutory constraints.....	16–125
Conflicts of interest.....	16–126
Provisions providing directors with an indemnity .....	16–128
<i>Insurance</i> .....	16–129
<i>Third party indemnities</i> .....	16–130
Pension scheme indemnity.....	16–132
<b>RELIEF GRANTED BY THE COURT .....</b>	16–133
<b>LIABILITY OF THIRD PARTIES .....</b>	16–134
<b>LIMITATION OF ACTIONS.....</b>	16–138
<b>CONCLUSION .....</b>	16–140
<b>17. THE DERIVATIVE CLAIM AND PERSONAL ACTIONS AGAINST DIRECTORS</b>	
<b>THE NATURE OF THE PROBLEM AND THE POTENTIAL SOLUTIONS.....</b>	
The board and litigation.....	17–1
.....	17–2

The shareholders collectively and litigation.....	17-3
Derivative claims .....	17-4
Other possible solutions.....	17-7
<b>THE GENERAL STATUTORY DERIVATIVE CLAIM</b>	
The scope of the statutory derivative claim	
<i>The court's gatekeeper role</i> .....	17-11
<i>The types of claims covered by the statutory regime</i> .....	17-13
<i>Shareholder claimants</i> .....	17-16
Deciding whether to give permission for the derivative claim.....	17-17
<i>The prima facie case and judicial management of proceedings</i> .....	17-18
<i>Mandatory refusal of permission</i> .....	17-19
<i>Discretionary grant of permission</i> .....	17-20
Varieties of derivative claim	
<i>Taking over existing claims</i> .....	17-22
<i>Multiple derivative claims</i> .....	17-24
The subsequent conduct of the derivative claim	
<i>General issues</i> .....	17-25
<i>Information rights</i> .....	17-26
<i>Costs</i> .....	17-27
<i>Restrictions on settlement</i> .....	17-28
<b>THE STATUTORY DERIVATIVE CLAIM FOR UNAUTHORISED POLITICAL EXPENDITURE</b> .....	
.....	17-29
<b>SHAREHOLDERS' PERSONAL CLAIMS AGAINST DIRECTORS</b> .....	
Reflective loss .....	17-34
CONCLUSION .....	17-39
<b>18. BREACH OF CORPORATE DUTIES: ADMINISTRATIVE REMEDIES</b>	
INTRODUCTION.....	18-1
<b>INFORMAL INVESTIGATIONS: DISCLOSURE OF DOCUMENTS AND INFORMATION</b> .....	
.....	18-2
<b>FORMAL INVESTIGATIONS BY INSPECTORS</b>	
When inspectors can be appointed .....	18-5
Conduct of inspections	
<i>Extent of the inspectors' powers</i> .....	18-7
<i>Control of the inspectors' powers</i> .....	18-8
<i>Reports</i> .....	18-10
POWER OF INVESTIGATION OF COMPANY OWNERSHIP.....	18-11
LIABILITY FOR COSTS OF INVESTIGATIONS .....	18-12

FOLLOW-UP TO INVESTIGATIONS .....	18–13
CONCLUSION .....	18–15
<b>PART 4</b>	
<b>Corporate Governance—Majority and Minority Shareholders</b>	
<b>19. CONTROLLING MEMBERS' VOTING</b>	
INTRODUCTION .....	19–1
REVIEW OF SHAREHOLDERS' DECISIONS	
The starting point .....	19–4
Resolutions where the company's interests are centre stage.....	19–6
Resolutions more generally .....	19–7
Resolutions to expropriate members' shares .....	19–8
Other resolutions .....	19–10
The future .....	19–11
Voting at class meetings .....	19–12
CLASS RIGHTS .....	19–13
The procedure for varying class rights.....	19–14
What constitutes a “variation” .....	19–16
The definition of class rights .....	19–18
Other cases .....	19–21
SELF-HELP .....	19–22
Provisions in the constitution .....	19–23
Shareholder agreements .....	19–25
<i>Prior contracts</i> .....	19–26
<i>Binding only the shareholders</i> .....	19–28
CONCLUSION .....	19–29
<b>20. UNFAIR PREJUDICE</b>	
INTRODUCTION .....	20–1
SCOPE OF THE PROVISIONS .....	20–4
INDEPENDENT ILLEGALITY AND LEGITIMATE EXPECTATIONS OR EQUITABLE CONSIDERATIONS .....	20–6
Informal arrangements among the members .....	20–7
The balance between dividends and directors' remuneration .....	20–10
Other categories of unfair prejudice .....	20–12
PREJUDICE AND UNFAIRNESS .....	20–13

UNFAIR PREJUDICE AND THE DERIVATIVE ACTION .....	20–14
REDUCING LITIGATION COSTS.....	20–18
REMEDIES .....	20–19
WINDING UP ON THE JUST AND EQUITABLE GROUND.....	20–21
CONCLUSION.....	20–23

## PART 5

### Accounts and Audit

## **21. ANNUAL ACCOUNTS AND REPORTS**

### INTRODUCTION

Scope and rationale of the annual reporting requirement .....	21–1
The classification of companies for the purposes of annual reporting .....	21–2
<i>Micro companies</i> .....	21–3
<i>Small companies</i> .....	21–4
<i>Medium-sized companies</i> .....	21–5
<i>Large companies and public interest entities</i> .....	21–6

### THE ANNUAL ACCOUNTS

Accounting records .....	21–7
The financial year .....	21–8
Individual accounts and group accounts .....	21–9
Parent and subsidiary undertakings .....	21–10
<i>Parent companies which are part of a larger group</i> .....	21–11
<i>Companies excluded from consolidation</i> .....	21–12
Form and content of annual accounts	
<i>Possible approaches</i> .....	21–13
<i>True and fair view</i> .....	21–14
<i>Going concern evaluation</i> .....	21–15
<i>Companies Act accounts</i> .....	21–16
<i>Accounting standards</i> .....	21–17
<i>IAS accounts</i> .....	21–18
<i>Applying the requirements to different sizes of company</i> .....	21–20
<i>Notes to the accounts</i> .....	21–21

### NARRATIVE REPORTING .....

Directors' report .....	21–23
The strategic report	
<i>Rationale and history</i> .....	21–24
<i>Contents of the Strategic Review</i> .....	21–25
Verification of narrative reports.....	21–26
<i>Liability for misstatements in narrative reports</i> .....	21–27

APPROVAL OF THE ACCOUNTS AND REPORTS BY THE DIRECTORS.....	21–29
THE AUDITOR'S REPORT.....	21–30
REVISION OF DEFECTIVE ACCOUNTS AND REPORTS.....	21–31
FILING ACCOUNTS AND REPORTS WITH THE REGISTRAR .....	21–33
Speed of filing.....	21–34
Modifications of the full filing requirements .....	21–35
Other information available from the Registrar .....	21–37
<i>Confirmation statement</i> .....	21–38
Other forms of publicity for the accounts and reports.....	21–39
CONSIDERATION OF THE ACCOUNTS AND REPORTS BY THE MEMBERS	
Circulation to the members.....	21–40
<i>Circulation of the Strategic Report only</i> .....	21–41
Laying the accounts and reports before the members.....	21–42
CONCLUSION.....	21–43

## 22. AUDITS AND AUDITORS

INTRODUCTION.....	22–1
Sources of audit law .....	22–2
The duties of the auditor.....	22–3
Overarching issues .....	22–4
AUDIT EXEMPTION	
Small companies .....	22–5
Subsidiaries .....	22–7
Dormant companies .....	22–8
Non-profit public sector companies .....	22–9
AUDITOR INDEPENDENCE AND COMPETENCE .....	22–10
Regulatory structure .....	22–11
DIRECT REGULATION OF AUDITOR INDEPENDENCE	
Non-independent persons.....	22–12
Non-audit remuneration of auditors .....	22–13
Auditors becoming non-independent.....	22–14
Auditors becoming prospectively non-independent .....	22–15
THE ROLE OF SHAREHOLDERS AND THE AUDIT AUTHORITIES.....	22–16
Appointment and remuneration of auditors.....	22–17
Removal and resignation of auditors	
<i>Requirement for shareholder resolution</i> .....	22–18
<i>Notifications</i> .....	22–19
Failure to re-appoint an auditor .....	22–20
Whistle blowing .....	22–21

Shareholders and the audit report .....	22–22
<b>THE ROLE OF THE AUDIT COMMITTEE OF THE BOARD</b>	
Introduction .....	22–23
Composition of the audit committee .....	22–24
Functions of the audit committee .....	22–25
<b>AUDITOR COMPETENCE</b> .....	
Qualifications .....	22–27
Auditing standards .....	22–28
Quality assurance, investigation and discipline .....	22–29
Empowering auditors .....	22–30
<b>LIABILITY FOR NEGLIGENT AUDIT</b>	
The nature of the issue.....	22–31
Providing audit services through bodies with limited liability .....	22–34
<b>CLAIMS BY THE AUDIT CLIENT</b>	
Establishing liability .....	22–36
Limiting liability .....	22–38
<i>General defences</i> .....	22–39
<i>Limitation by contract</i> .....	22–42
Criminal liability .....	22–43
<b>CLAIMS BY THIRD PARTIES</b>	
The duty of care in principle .....	22–44
Assumption of responsibility .....	22–47
Other issues .....	22–52
CONCLUSION .....	22–53

## PART 6

### Equity Finance

## **23. THE NATURE AND CLASSIFICATION OF SHARES**

LEGAL NATURE OF SHARES.....	23–1
THE PRESUMPTION OF EQUALITY BETWEEN SHAREHOLDERS.....	23–4
CLASSES OF SHARES.....	23–6
Preference shares .....	23–7
<i>Canons of construction</i> .....	23–8
Ordinary shares .....	23–9
Special classes.....	23–10
Conversion of shares into stock.....	23–11

## 24. SHARE ISSUES: GENERAL RULES

PUBLIC AND NON-PUBLIC OFFERS .....	24–2
DIRECTORS' AUTHORITY TO ALLOT SHARES .....	24–4
PRE-EMPTIVE RIGHTS	
Policy issues .....	24–6
The scope of the statutory right .....	24–7
Waiver .....	24–10
Sanctions .....	24–12
Listed companies .....	24–13
Pre-emption guidelines .....	24–14
Criticism and further market developments .....	24–15
THE TERMS OF ISSUE .....	24–17
ALLOTMENT .....	24–18
Renounceable allotments .....	24–19
Failure of the offer .....	24–20
REGISTRATION .....	24–21
Bearer shares .....	24–22
CONCLUSION .....	24–23

## 25. PUBLIC OFFERS OF SHARES

INTRODUCTION .....	25–1
Public offers and introductions to public markets .....	25–2
Regulatory goals .....	25–3
Listing .....	25–5
<i>Premium and standard listing</i> .....	25–6
Types of public market .....	25–7
<i>Regulated markets and multi-lateral trading facilities</i> .....	25–8
<i>Listing and regulated markets</i> .....	25–9
The regulatory structure .....	25–10
Types of public offer .....	25–11
<i>Offers for sale or subscription</i> .....	25–12
<i>Placings</i> .....	25–13
<i>Rights offers</i> .....	25–14
ADMISSION TO LISTING AND TO TRADING ON A PUBLIC MARKET	
Eligibility criteria for the official list .....	25–15
Exchange admission standards .....	25–16
THE PROSPECTUS .....	25–17
The public offer trigger .....	25–18
Exemptions from the prospectus requirement on a public offer .....	25–19
The admission to trading trigger .....	25–20

The form and content of prospectuses .....	25–22
<i>Summary</i> .....	25–23
<i>Supplementary prospectus</i> .....	25–24
<i>Registration statement and securities note</i> .....	25–25
Verifying the prospectuses .....	25–26
<i>Reputational intermediaries</i> .....	25–27
<i>Vetting by the FCA</i> .....	25–28
<i>Authorisation to omit material</i> .....	25–29
Publication of prospectuses and other material.....	25–30
 SANCTIONS.....	25–31
Compensation under the Act.....	25–32
(a) <i>Liability to compensate</i> .....	25–33
(b) <i>Defences</i> .....	25–34
(c) <i>Persons responsible</i> .....	25–35
Civil remedies available elsewhere .....	25–36
(a) <i>Damages</i> .....	25–37
(b) <i>Rescission</i> .....	25–39
(c) <i>Breach of contract</i> .....	25–40
Criminal and regulatory sanctions .....	25–41
<i>Ex ante controls</i> .....	25–42
<i>Ex post sanctions</i> .....	25–43
 CROSS-BORDER OFFERS AND ADMISSIONS .....	25–44
 DE-LISTING .....	25–45

## 26. CONTINUING OBLIGATIONS AND DISCLOSURE OF INFORMATION TO THE MARKET

INTRODUCTION.....	26–1
PERIODIC REPORTING OBLIGATIONS.....	26–3
EPISODIC OR AD HOC REPORTING REQUIREMENTS.....	26–5
DISCLOSURE OF DIRECTORS' INTERESTS.....	26–9
Who has to disclose? .....	26–11
What has to be disclosed, to whom and when? .....	26–12
 DISCLOSURE OF MAJOR VOTING SHAREHOLDINGS	
Rationale and history .....	26–14
The scope of the disclosure obligation	
<i>Which companies are subject to the regime?</i> .....	26–16
<i>When does the disclosure obligation arise?</i> .....	26–17
<i>Indirect holdings of voting rights</i> .....	26–19
<i>Financial Instruments</i> .....	26–20
<i>Exemptions</i> .....	26–22
<i>The disclosure process</i> .....	26–23

SANCTIONS.....	26–24
Compensation for misleading statements to the market .....	26–25
Compensation via FCA action.....	26–28
Administrative penalties for breaches .....	26–29
Criminal sanctions .....	26–32
CONCLUSION.....	26–33
<b>27. TRANSFERS OF SHARES</b>	
CERTIFICATED AND UNCERTIFICATED SHARES .....	27–3
TRANSFERS OF CERTIFICATED SHARES	
Legal ownership.....	27–5
Estoppel.....	27–6
Restrictions on transferability .....	27–7
The positions of transferor and transferee prior to registration.....	27–8
Priorities between competing transferees .....	27–10
The company's lien .....	27–11
TRANSFERS OF UNCERTIFICATED SHARES.....	27–12
Title to uncertificated shares and the protection of transferees .....	27–14
THE REGISTER .....	27–16
Rectification .....	27–19
TRANSMISSION OF SHARES BY OPERATION OF LAW.....	27–21
<b>28. TAKEOVERS</b>	
INTRODUCTION.....	28–1
THE TAKEOVER CODE AND PANEL.....	28–3
The Panel and its methods of operation	
<i>The status and composition of the Panel</i> .....	28–4
<i>Internal appeals</i> .....	28–5
<i>Judicial review</i> .....	28–6
<i>Powers of the Panel</i> .....	28–7
<i>Sanctions</i> .....	28–9
<i>The “cold shoulder” and criminal sanctions</i> .....	28–11
THE SCOPE OF THE CITY CODE.....	28–13
Transactions in scope .....	28–14
Companies in scope	
<i>Full jurisdiction to the Panel</i> .....	28–15
<i>Divided jurisdiction</i> .....	28–16
THE STRUCTURE OF THE CODE .....	28–18

THE ALLOCATION OF THE ACCEPTANCE DECISION .....	28-19
Post-bid defensive measures .....	28-20
Defensive measures in advance of the bid .....	28-21
<i>The break-through rule</i> .....	28-22
<i>Disclosure of control structures</i> .....	28-25
TARGET MANAGEMENT PROMOTION OF AN OFFER .....	28-26
Disclosure and independent advice .....	28-27
Compensation for loss of office .....	28-28
<i>Gratuitous payments</i> .....	28-29
<i>Contractual compensation</i> .....	28-32
Competing bids .....	28-33
<i>A duty to auction or a duty to be even-handed?</i> .....	28-34
<i>Binding the target board by contract</i> .....	28-36
EQUALITY OF TREATMENT OF TARGET SHAREHOLDERS .....	28-37
Partial bids .....	28-38
Level and type of consideration .....	28-39
Mandatory offers .....	28-41
<i>Exemptions and relaxations</i> .....	28-43
<i>Acting in concert</i> .....	28-44
<i>Interests in shares</i> .....	28-45
<i>Conclusion</i> .....	28-46
To whom must an offer be made? .....	28-47
Wait and see .....	28-48
THE PROCEDURE FOR MAKING A BID .....	28-49
Before the approach to the target board .....	28-50
<i>Company-triggered disclosures</i> .....	28-51
<i>Sanctions</i> .....	28-53
<i>Interests in shares and acting in concert</i> .....	28-54
Before a formal offer is made to the target shareholders .....	28-55
<i>Put up or shut up</i> .....	28-56
<i>Initial announcements</i> .....	28-57
The formal offer .....	28-58
<i>Conditions</i> .....	28-59
<i>Timetable</i> .....	28-61
<i>Bid documentation</i> .....	28-62
<i>Employees' interests</i> .....	28-63
<i>Profit forecasts and valuations</i> .....	28-64
<i>Liability for misstatements</i> .....	28-65
<i>Dealings in shares</i> .....	28-66
<i>Solicitation</i> .....	28-68
The post-offer period .....	28-69
<i>Bidding again</i> .....	28-70
<i>The bidder's right to squeeze out the minority</i> .....	28-73
<i>Challenging the squeeze-out</i> .....	28-75
<i>The sell-out right of non-accepting shareholders</i> .....	28-75

CONCLUSION .....	28–77
------------------	-------

## 29. ARRANGEMENTS, RECONSTRUCTIONS AND MERGERS

THE FUNCTION OF SCHEMES OF ARRANGEMENT .....	29–1
Mergers.....	29–2
Takeovers .....	29–3
Other cases .....	29–4
Creditors' schemes .....	29–5
THE MECHANICS OF THE SCHEME OF ARRANGEMENT.....	29–6
Proposing a scheme .....	29–7
Convening and conducting meetings.....	29–8
The sanction of the court .....	29–11
Additional requirements for mergers and divisions of public companies.....	29–12
CROSS-BORDER MERGERS .....	29–16
Employee participation .....	29–20
Further uses of cross-border mergers .....	29–22
REORGANISATION UNDER SECTIONS 110 AND 111 OF THE INSOLVENCY ACT 1986.....	29–24
CONCLUSION .....	29–26

## 30. MARKET ABUSE

INTRODUCTION.....	30–1
APPROACHES TO REGULATING INSIDER DEALING	
Disclosure.....	30–5
Prohibiting trading .....	30–6
Relying on the general law .....	30–7
<i>Directors' fiduciary duties</i> .....	30–8
<i>Breach of confidence</i> .....	30–9
<i>Misrepresentation</i> .....	30–10
Prohibiting insider dealing.....	30–11
THE CRIMINAL JUSTICE ACT 1993 PART V.....	30–12
Regulating markets .....	30–13
Regulating individuals .....	30–15
Inside information.....	30–16
<i>Particular securities or issuers</i> .....	30–17
<i>Specific or precise</i> .....	30–18
<i>Made public</i> .....	30–19
<i>Impact on price</i> .....	30–21
Insiders .....	30–22
<i>Recipients from insiders</i> .....	30–23
Mental element.....	30–24

Prohibited acts.....	30–25
Defences .....	30–26
<i>General defences</i> .....	30–27
<i>Special defences</i> .....	30–28
CRIMINAL PROHIBITIONS ON MARKET MANIPULATION.....	30–29
REGULATORY CONTROL OF MARKET ABUSE	
Background .....	30–30
Insider dealing.....	30–31
<i>Dealing</i> .....	30–32
<i>Inside information</i> .....	30–37
<i>Persons covered and exemptions</i> .....	30–38
Market manipulation	
<i>Transactions and orders to trade</i> .....	30–39
<i>Dissemination of information</i> .....	30–40
<i>Misleading behaviour and market distortion</i> .....	30–41
<i>Accepted market practices</i> .....	30–42
Safe harbours .....	30–43
<i>Share buy-backs</i> .....	30–44
<i>Price stabilisation</i> .....	30–45
ENFORCEMENT AND SANCTIONS .....	30–47
Investigation into market abuse.....	30–48
Sanctions for market abuse.....	30–51
<i>Penalties</i> .....	30–52
<i>Injunctions</i> .....	30–53
Sanctions for breach of the criminal law .....	30–54
<i>Restitution orders and injunctions</i> .....	30–55
<i>Disqualification</i> .....	30–56
CONCLUSION.....	30–57

## PART 7

### Debt Finance

#### **31. DEBTS AND DEBT SECURITIES**

INTRODUCTION.....	31–1
Difference between debt (loans), equity (shares) and hybrid instruments .....	31–2
Should a company use debt or equity in its financing? .....	31–4
DIFFERENT STRUCTURES IN DEBT FINANCING	
Terminology .....	31–5
Defining a “debenture” .....	31–6
Small and large scale loans.....	31–8
Debts and “debt securities” .....	31–9

<b>SINGLE AND MULTIPLE LENDERS</b>	
Single lenders.....	31–10
Syndicated loans.....	31–11
Debt securities: distinguishing “bonds” and “stocks” .....	31–12
Debt securities: trustees for the bondholders or stockholders.....	31–14
<b>ISSUE OF DEBT SECURITIES</b>	
Private issues.....	31–15
Public issues of debt securities.....	31–17
Special rules: covered bonds .....	31–19
<b>TRANSFER OF DEBTS AND DEBT SECURITIES</b>	
Transfer of simple debts .....	31–21
Transfer of debt securities .....	31–22
<b>PROTECTIVE GOVERNANCE REGIMES IN DEBTS</b>	
General .....	31–24
Defining repayment terms .....	31–25
Protecting the debt holder against the borrower’s possible default.....	31–26
Protecting multiple lenders from their lead intermediary .....	31–28
Protecting multiple lenders from each other .....	31–30
<b>CONCLUSION</b> .....	31–32
<b>32. COMPANY CHARGES</b>	
<b>INTRODUCTION</b> .....	32–1
<b>SECURITY INTERESTS</b>	
The legal nature of security interests .....	32–2
The benefits of taking security .....	32–4
<b>THE FLOATING CHARGE</b>	
The practical differences between fixed and floating charges.....	32–5
Crystallisation .....	32–8
<i>Automatic crystallisation</i> .....	32–9
Priority accorded to floating charges.....	32–10
<i>Negative pledge clauses</i> .....	32–11
<i>Subordination agreements</i> .....	32–12
Statutory limitations on the floating charge .....	32–13
(i) <i>Defective floating charges</i> .....	32–14
(ii) <i>Preferential creditors</i> .....	32–15
(iii) <i>Sharing with unsecured creditors—the “prescribed part”</i> .....	32–17
(iv) <i>Costs of liquidation</i> .....	32–18
(v) <i>Powers of the administrator</i> .....	32–20
Distinguishing between fixed and floating charges .....	32–21

<b>REGISTRATION OF CHARGES</b>	
The purpose of a registration system .....	32–24
The reformed registration system	
<i>What has to be registered</i> .....	32–26
<i>The mechanics of registration</i> .....	32–27
<i>Geographical reach of the registration provisions</i> .....	32–28
<i>The effect of failure to register</i> .....	32–29
<i>Late registration</i> .....	32–30
<i>Defective registration</i> .....	32–31
<i>Effect of registration</i> .....	32–32
Reform proposals and registration systems elsewhere.....	32–33
<b>ENFORCEMENT OF FLOATING CHARGES</b>	
Receivers and administrators .....	32–34
Receivership	
<i>Appointment of an administrative receiver</i> .....	32–37
<i>Function and status of the receiver and administrative receiver</i> .....	32–38
<i>The receiver's liability with respect to contracts</i> .....	32–40
<i>Publicity of appointment and reports</i> .....	32–42
Administration	
<i>Function</i> .....	32–43
<i>Appointment</i> .....	32–44
<i>Powers and duties</i> .....	32–45
<i>Protections for creditors and members as against the administrator</i> .....	32–47
<i>Publication of appointment</i> .....	32–48
<i>Administration expenses</i> .....	32–49
<i>End of administration</i> .....	32–50
CONCLUSION .....	32–51

## PART 8

### Insolvency and its Consequences

#### **33. WINDING UP, DISSOLUTION AND RESTORATION**

INTRODUCTION.....	33–1
TYPES OF WINDING UP .....	33–2
Winding up by the court	
<i>Grounds for winding up</i> .....	33–3
<i>Who may petition for a court ordered winding up?</i> .....	33–4
<i>Proof that a company is unable to pay its debts</i> .....	33–5
<i>The court's discretion</i> .....	33–6
<i>Liquidators, provisional liquidators and official receivers</i> .....	33–7
<i>Timing of commencement of winding up</i> .....	33–8

Voluntary winding up—general	
<i>Instigation of winding up</i> .....	33–9
<i>Timing of commencement of winding up</i> .....	33–10
Members' voluntary winding up	
<i>Declaration of solvency</i> .....	33–11
<i>Appointment and obligations of liquidator</i> .....	33–12
Creditors' voluntary winding up	
<i>Instigation of winding up</i> .....	33–13
<i>Appointment of liquidator</i> .....	33–14
“ <i>Liquidation committee</i> ” .....	33–15
POWERS AND DUTIES OF THE LIQUIDATOR .....	33–16
COLLECTION, REALISATION AND DISTRIBUTION OF THE COMPANY'S ASSETS	
Maximising the assets available for distribution.....	33–17
<i>Statutory “claw back” and avoidance provisions</i> .....	33–18
<i>Statutory provisions requiring wrongdoers to make contributions</i> .....	33–19
<i>The common law “anti-deprivation principle”</i> .....	33–20
<i>Benefit of the statutory claw backs and wrongdoer contributions</i> .....	33–21
Proof of debts and mandatory insolvency set off .....	33–22
Distribution of the company's assets.....	33–24
DISSOLUTION	
After winding up	
<i>The normal process</i> .....	33–27
<i>Early dissolution</i> .....	33–28
Striking off of defunct companies .....	33–29
Voluntary striking off.....	33–30
RESURRECTION OF DISSOLVED COMPANIES .....	33–31
Administrative restoration .....	33–32
Restoration by the court.....	33–33
CONCLUSION .....	33–34
Index .....	PAGE 1181