

# KEY FACTS COMPANY LAW



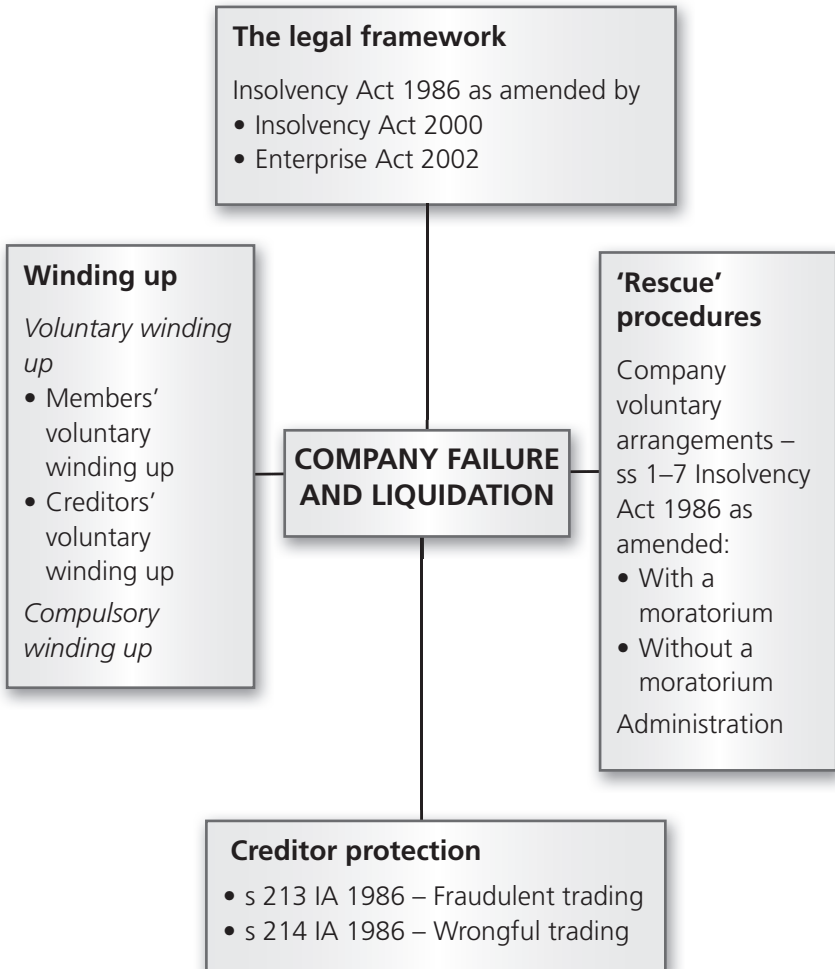
4<sup>th</sup> edition

Ann Ridley

 **HODDER**  
EDUCATION

## *Company failure and liquidation*

---



---

## 16.1 The legal framework

---

1. The law governing insolvency and liquidation was changed and updated by the Insolvency Act 1985, following recommendations of the Cork Report, and is now contained in the Insolvency Act 1986 (IA 1986). Further changes have been introduced by the Insolvency Act 2000 and the Enterprise Act 2002.
2. The changes were intended to introduce procedures to facilitate the survival of a company in financial difficulty.
3. It is necessary to distinguish between insolvency procedures and liquidation procedures. Not all insolvency procedures result in the liquidation of the company and in some circumstances (notably the members' voluntary winding up and winding up on the just and equitable ground) a company that is not insolvent will be put into liquidation.
4. The law relating to insolvency and liquidation is complex and extensive and this chapter covers some general principles only.

### 16.1.1 Objectives of corporate insolvency law

The following objectives have been suggested:

1. To facilitate the recovery of companies in financial difficulty.
2. To suspend the pursuit of rights and remedies of individual creditors.
3. To prevent transfers and transactions which unfairly prejudice the general creditors.
4. To divest directors of their powers of management in certain circumstances.
5. To ensure an orderly distribution of the assets and a fair system for the ranking of claims.
6. To impose responsibility for culpable management by directors and officers.

### 16.1.2 Insolvency practitioners

All liquidation and insolvency procedures require the appointment of an insolvency practitioner to a particular office as shown in the chart below.

Procedure	Office
Administrative receivership	Administrative receiver
Administration order	Administrator
Voluntary arrangement	Supervisor
Liquidation (voluntary or compulsory)	Liquidator

### 16.1.3 Qualification

1. Only an individual can act as an insolvency practitioner, and he or she must not be:
  - an undischarged bankrupt;
  - subject to a director's disqualification order;
  - a patient within the meaning of the mental health legislation.
2. He or she must be qualified to act generally: recognised professional bodies can authorise persons to act as insolvency practitioners.
3. A person who acts without being qualified to do so commits a criminal offence.

## 16.2 Company voluntary arrangements

These are governed by ss 1–7 IA 1986 as amended by the Insolvency Act 2000. In its original form, a company voluntary arrangement (CVA) did not provide for a moratorium on payment of the company's debts, which meant that it was possible that a creditor would petition for a winding up before the CVA could be agreed. The amended legislation provides for two kinds of CVA: without a moratorium and with a moratorium, which allows the company time to come to a binding agreement with its creditors.

### 16.2.1 Company voluntary arrangements without a moratorium

1. A proposal is made for a composition in satisfaction of the company's debts or a scheme of arrangement.

2. The proposal may be made by:
  - the directors of the company, where the company is not in administration or in liquidation;
  - the administrator if the company is in administration;
  - the liquidator where the company is being wound up.
3. The role of the nominee:
  - a person who will supervise the implementation of the proposal, called the nominee, must be nominated;
  - a liquidator or administrator may act as nominee or may nominate another insolvency practitioner;
  - the nominee must submit a report to the court indicating whether he or she thinks the proposal should be put to meetings of creditors and members;
  - if the nominee thinks the proposal should be put to meetings he or she must call separate meetings of all creditors whose addresses are known and members.
4. The meetings may approve or modify the proposal, but cannot approve an arrangement which deprives a secured creditor of his right to enforce the security without the consent of the creditor. Nor can they approve a proposal which alters the priority of preferential debts.
5. Under s 4A IA 1986 (introduced by the Insolvency Act 2000) if the meetings come to different decisions the decision of the creditors must prevail. However, the members may apply to the court within 28 days and the court may order the decision of the members meeting to have effect or make any order that it thinks fit.
6. Once the proposal is approved, it binds all creditors who had notice and were entitled to vote at that meeting. However, there is a 28-day period within which application may be made to the court to have the proposal set aside.
7. Once approved, the arrangement is implemented by the nominee, who becomes the supervisor of the arrangement. When complete all creditors must be notified and must receive an account of receipts and payments.

### **16.2.2 Company voluntary arrangements with a moratorium**

1. Company voluntary arrangements with a moratorium are governed by the Insolvency Act 1986 Schedule A1, introduced by the Enterprise Act

2002. The procedure may be used only by small companies as defined by s 382(3) of the Companies Act 2006 (CA 2006) and there are other restrictions on eligibility set out in Schedule A1.

2. The procedure is similar to that for a CVA without a moratorium except that:
  - the directors must apply for the moratorium;
  - they must give evidence that the company is likely to have sufficient funds to enable it to carry on business during the moratorium;
  - they must submit to the nominee any information he requires to enable him to form an opinion;
  - if the nominee forms a favourable opinion, the directors must file certain prescribed information with the court.
3. The effect of the moratorium is similar to an administration order, with the major difference that the directors retain their management role.

## 16.3 Administration

---

1. Unlike liquidation, which results in the company ceasing to do business, administration is designed to rescue the company, either as a whole or in part.
2. The law relating to administration orders has been overhauled by the Enterprise Act 2002 and is now contained in Schedule B1 of the Insolvency Act 1986 as amended. Previously only the court could appoint an administrator. An administrator may now be appointed by:
  - the court – application may be made by the company or its directors or by a creditor;
  - out of court appointment by the company or its directors;
  - out of court appointment by the holder of a qualifying floating charge.
3. The legislation provides for an hierarchical list of purposes. The administrator must perform his or her role with the objective of:
  - rescuing the company as a going concern, or
  - achieving a better result for the company's creditors as a whole than would be achieved if the company were wound up before going into administration, or
  - realising the property in order to make a distribution to one or more secured or preferential creditors.
4. The appointment of an administrator displaces the board of directors.

---

## 16.4 Receivers and administrative receivers

---

### 16.4.1 Appointment

1. A receiver is an individual appointed to take control of property which is security for a debt.
2. Receivers may be appointed by the court or in accordance with the terms of a debenture. Normally there is a clause in the charge which entitles the chargee to appoint a receiver.
3. An administrative receiver may be appointed by a creditor whose debt is secured by a floating charge on the whole, or substantially the whole, of the company's undertaking. He or she takes control of the whole, or substantially the whole, of the company's property. This right was abolished with respect to any floating charge created after 15 September 2003 by the Enterprise Act 2002. Holders of floating charges created before that date may still appoint an administrative receiver.

### 16.4.2 Effect of appointment of administrative receiver

1. The administrative receiver has sole authority to deal with charged property.
2. The directors continue in office but have no authority to deal with the charged property, so their role is extremely limited.
3. An administrative receiver is an agent of the company until the company goes into liquidation (IA 1986 s 44(1)(a)).
4. The administrative receiver must, within three months of appointment, prepare a report to be sent to the company's creditors and must call a meeting of unsecured creditors.
5. Apart from any contract for which specific performance may be ordered, the administrative receiver may cause the company to repudiate any existing contract.

## 16.5 Winding up

---

Winding up (liquidation) is the process whereby the company's assets are collected and realised, its debts paid and the net surplus distributed in accordance with the company's articles of association. Winding up is followed by dissolution of the company.

### 16.5.1 Voluntary winding up

The members adopt a resolution to wind up the company (special or extraordinary). This may result in a members' voluntary winding up or a creditors' voluntary winding up.

#### Members' voluntary winding up

1. The members of a company adopt a resolution to put the company into liquidation, following a statutory declaration by the directors that the company is able to pay its debts.
2. The members appoint a liquidator, usually at the meeting where the resolution to wind up the company is adopted.
3. On appointment of the liquidator, all powers of the directors cease.

#### Creditors' voluntary winding up

1. The members adopt a resolution to put the company into liquidation without a statutory declaration of solvency by the directors.
2. Members can nominate a liquidator, but the liquidator must hold a creditors' meeting at which they may nominate a liquidator, who will become the liquidator of the company unless the court directs otherwise.
3. The creditors may appoint a liquidation committee of up to five persons to act with the liquidator. Members may appoint five members to this committee.

### 16.5.2 Compulsory winding up

1. The court orders that the company be wound up on application to the court by a person entitled to petition. Section 124 provides that petitions may be made by:
  - any creditor who establishes a *prima facie* case;
  - contributories (shareholders who may contribute to the company's assets on liquidation);
  - the company itself;
  - the directors of the company;
  - a supervisor of a voluntary arrangement;
  - the clerk of the magistrates court if the company has failed to pay a fine;



- any or all of the parties listed above together or separately;
  - the secretary of state;
  - an official receiver – if the company is already in voluntary liquidation;
  - an administrator of the company;
  - an administrative receiver of the company.
2. The vast majority of petitions are by creditors.
  3. The grounds on which a petition may be made are contained in s 122 Insolvency Act 1986. The most important are:
    - the company is unable to pay its debts (s 122(1)(f));
    - it is just and equitable to wind the company up (s 122(1)(g)).

### 16.5.3 Appointment and role of the liquidator

1. The official liquidator attached to the court where the order is made will be appointed.
2. If there are substantial assets, an insolvency practitioner may be appointed to replace the official liquidator.
3. Once the liquidator is appointed the directors cease to have any right to manage the company.
4. The role of the liquidator is to realise the assets and distribute them to those entitled to payment.
5. In an insolvent liquidation, priority of payment is important:
  - (a) Where a debt is secured by a fixed charge, the asset charged may be taken in settlement of the debt. Charges secured by a floating charge are subject to the ring-fencing provisions of the Enterprise Act 2002 (see chapter 9, section 9.1.2 above).
  - (b) The principle of set-off will allow a creditor who is owed money by the company to deduct the difference before paying the company, thus in effect receiving full payment of his debt to the company.
6. Subject to these two principles, the order of payment is:
  - expenses of the winding up, including the liquidator's remuneration;
  - preferential debts: up to four months' salary of employees, up to a prescribed amount, holiday pay and contributions to state and occupational pension schemes;
  - unsecured creditors;
  - deferred debts, for example debts due to a shareholder in his capacity as such, like dividends declared but not paid;

- where the company is not insolvent, any surplus will be distributed among members in accordance with class rights.

## 16.6 Fraudulent and wrongful trading

---

### 16.6.1 Fraudulent trading

1. Where a person (often, but not always, a director of a company) was involved in running a company which is in the course of being wound up and which was operated with the intention of defrauding creditors, the liquidator can apply to the court for an order that the person must contribute towards the assets of the company (s 213 Insolvency Act 1986).
2. In addition to civil liability, the director may be disqualified under the Company Directors Disqualification Act 1986 or prosecuted under s 993 CA 2006.
3. To establish fraud, intention or recklessness must be proved (*R v Grantham* (1984)).

### 16.6.2 Wrongful trading

1. A liquidator may apply for an order that a director, former director or shadow director of the company is liable to contribute to the company's assets if it can be shown that:
  - the company has gone into insolvent liquidation;
  - at some time before the start of the winding up, the director knew or ought to have known that there was no prospect of the company not going into insolvent liquidation; and
  - the director was a director at the time of the relevant transaction (s 214 Insolvency Act 1986).
2. The director's conduct should be judged against the standard of a reasonably diligent person having both:
  - the knowledge, skill and experience that would reasonably be expected of someone carrying out the same function, and
  - the knowledge, skill and experience of the director himself.
3. The main reason for these provisions is to compensate creditors in situations where directors have acted improperly in the ways described above. If the company is in insolvent liquidation cases are more likely

to be brought under s 214, where it is not necessary to prove fraud or dishonesty.

## 16.7 Dissolution

---

1. Dissolution of a company takes place when its name is removed from the register kept at Companies House. On liquidation, three months after the liquidator has sent his final accounts to the Registrar, dissolution automatically follows unless an application is made to the court seeking deferral of the date of dissolution. There are slightly different procedures for voluntary and compulsory liquidations.
2. There are a number of other ways in which dissolution may take place, including:
  - In an administration, three months after notification by the administrator that there is nothing to distribute to creditors the company is deemed to be dissolved.
  - By order of the court as part of a compromise, arrangement or reconstruction.
  - s 1000 CA 2006 sets out a procedure by which the Registrar is empowered to strike a company off the register. This accounts for a large number of dissolutions, where after sending letters to the company and advertising the Registrar is satisfied that the company has ceased to do business.
  - Under s 1003 CA 2006, on application of the company itself three months after publication of a notice in the Gazette.

# Index

---

*Indexer: Dr Laurence Errington*

- accountability of directors 85–7, 88, 96
- acquisition *see* merger
- actual authority 43–4, 45
- administration 142
- administrative receivers 143
- agency 21, 43–5
- Alternative Investment Market (AIM) 67
- amalgamations 136–7
- annual general meetings (AGMs) 50, 51, 52, 55, 73, 87
- apparent authority 44–5
- arrangements 130, 136–7
  - company voluntary 138, 140–2
- articles of association 10, 11, 29–37, 63, 86, 92, 99, 105, 131
  - alterations 29, 35, 35–7, 51
  - restrictions on powers of 36–7
  - directors and 99–100
    - appointments of 92
    - and powers of general meeting 95–6
- association
  - articles of 10, 11, 29–37, 39, 45, 49, 51, 63, 86, 92, 99, 105, 131
  - memorandum of 10, 11–12, 39
- auditors 87
- authority (and powers) 43–5
  - actual 43–4, 45
  - of directors *see* directors
  - directors delegating to other 47–8
  - limitations 48, 49
- best interests, duty to act in 85, 100, 101
- board of directors 45
  - balance of power between shareholders and 90, 94–6
  - duties/responsibilities 86, 88–9
  - takeovers and mergers 135
  - powers *see* directors
- bona fide*
  - alterations to articles of association 37
  - directors' duty to act 100, 101
- book debts 79, 80–1
- borrowing 78–83
  - see also* loans
- breach of duty 27
  - directors 39, 77, 100, 101, 109
  - takeover 133–4
- Cadbury Committee 87
- called-up share capital 60, 72
- capital 68–77
  - maintenance 68–77
  - main rules 71–2
  - reduction 69, 72–3
  - share *see* share capital
  - statement of 10, 73
- care *see* reasonable care/skill/diligence
- case law 1, 5–6
- charges 78–83
  - insolvent liquidation 145
  - reform 83
- City Code on Takeovers and Mergers 6, 131, 132–5, 134–5
- class meetings 56
- class rights 36, 58, 63–5, 146
- clean hands provision
  - just and equitable winding up 128
  - unfair prejudice 125
- codes 6
- Cohen Committee 41
- 'commercial reality' of the situation 76, 81
- common law, derivative claim 121–2
- community interest companies 9
- companies (general aspects)
  - articles of association and their alteration 36
  - directors *see* directors
  - failure 138–47
  - formation 7–16
  - names 12–13
  - sources of law 1–6
  - supervision 5–6
  - types 7, 8–9
- Companies Act(s) (unspecified previous to 2006), constitution 30
- Companies Act 1985 2, 3, 11, 41, 42, 95
- Companies Act 1989 2, 40, 42
- Companies Act 2006 (principle references)
  - 1, 3–4
  - constitution 30, 31–3
  - contracts 31–3, 39, 42–3
    - pre-incorporation 15–16
  - derivative claims 122–3
  - directors 91–3
    - authority to bind the company 45–7
    - duties 98–109

- dissolution 147
- lifting veil of incorporation 20, 23
- maintenance of capital 70–7
- meetings and resolutions 50–7
- shares 59–63
- takeover and mergers 132–3
- Company Directors Disqualification Act 1986 4, 23, 92, 103, 146
- Company Law Review 2, 3, 98, 121
- company voluntary arrangements 138, 140–2
- compliance
  - with City Code on Takeovers and Mergers 133
  - statement 11
- ‘comply or explain’ principle 89
- compulsory voluntary winding 144–5
- conflict of interest, duty to avoid 97, 104–5
- constitution 10, 30
  - contractual effect 31–4
  - directors duties to act with 99
- constructive notice 40, 48, 82
- contract(s) 38–49
  - articles of association and 29, 39, 45, 49
  - constitution and 31–4
  - extrinsic 34–5
  - liability in 24
  - ordinary 31–2
  - pre-incorporation 7, 14–16
  - reform of law 41–3
  - of service, directors 34, 90, 93, 94, 103, 107
  - statutory-3 31
- contributory (person) and winding up 128
- corporate governance 3, 6, 84–9
  - regulation 87
- corporate liability *see* liability
- Corporate Manslaughter and Corporate Homicide Act 2007 4, 27
- corporate opportunity, exploitation by
  - director of 104
- corporate personality 17–28
- courts *see* judicial issues; petition
- creditors 40, 70, 79, 82, 101, 136, 140, 141, 142, 143
  - in compulsory winding up 145
  - protection 73, 138, 146, 147
  - in voluntary winding up 144
  - in wrongful trading 147
- crime/criminal offence
  - liability 25–6
  - misleading statements and omissions on
    - listing particulars or prospectus 68
- Criminal Justice Act (CJA) 1993 4, 110, 111, 112
- crystallisation, floating charges 81
- dealing
  - definition 46
  - insider *see* insider dealing
- debentures 79
- decision-making 50, 51, 52, 53, 120
  - private companies 52
  - senior management 27
- defence to insider dealing 114
- deferred shares 61
- derivative claims 119, 120–3
- diligence *see* reasonable care/skill/diligence
- Directives, EU 5
  - allotting shares 62
  - contracts 41
  - insider dealing 111
  - market abuse 115
  - pre-incorporation contracts 15
  - public shares offer 67
  - reform of company contracts 41
  - takeovers 132, 133, 135
- directors 90–109
  - accountability 85–7, 88, 96
  - appointment 90, 91–2
    - defective 92
    - disqualification 90, 146
  - articles of association and 34–5
  - authority/powers (incl. board) 45, 46, 87, 105
    - duty to act within 97, 99–100
    - and power of shareholders/general meeting, balance between 86–7, 90, 94–6
  - board of *see* board of directors
  - contracts of service 34, 90, 93, 94, 103, 107
  - duties/responsibilities 86, 88–9, 97–109
    - breach 39, 77, 100, 101, 109
    - takeovers and mergers 130, 135–6
    - wrongful trading 146
  - as employees 94
  - interests *see* interests
  - liability in tort 24–5
  - non-executive 87, 88
  - remuneration 34, 87, 88, 94
  - shadow 91, 99, 122, 146
  - termination of office 90, 92
- disclosure 8, 65, 89, 97, 99, 105, 106
- inside information 112, 114, 116
  - promoters duties 14
- dissolution 147
- dividends 73–4
- documentation
  - constitutional 30

- registration 10–11
- duties, directors *see* directors
- effectiveness of directors 88
- employees, directors as 94
- encouraging other to deal (with inside information) 112, 113, 114
- enforcement
  - of contracts 32, 33–4, 35
  - in market abuse 117
  - of personal rights of shareholder 123
  - takeover panel's power of 133–4
  - see also* compulsory voluntary winding
- Enterprise Act 2002 4, 80, 139, 142, 143, 145
- equitable charge 82
- equitable winding up, just and 128–9, 139
- equity 5
  - promoters and 14
- European Union law 1
  - contracts 40, 41
  - Directives *see* Directives
  - harmonisation 4–5
  - listings and markets 66, 67
  - types of company 8
- express authority 44
- extrinsic contracts 34–5
- failure of companies 138–47
- fiduciary duties 5, 14, 99, 104, 135
  - breach of 14, 41, 104–5
  - in takeovers and mergers 135
- financial assistance of public company to purchase own shares 69, 75–7
- Financial Services Authority (FSA)
  - and insider dealing 114
  - and market abuse 117–18
  - and public share offers 66, 67
- Financial Services and Markets Act (FSMA) 2000 4, 6, 66, 67, 68, 112, 114, 116, 117
  - as amended 110, 115, 116
- fixed charge 78, 79, 79–80
  - book debts expressed as 80
  - insolvent liquidation 145
- floating charge 78, 79, 79–80
  - crystallisation 81
- formation of companies 7–16
- Foss v Harbottle* rule 119, 120–1
- founders' deferred shares 61
- fraudulent trading 23, 146
- balance of power between directors and shareholder 86–7, 90, 94–6
  - default powers 95–6
  - 'good faith' 14, 41–2, 46, 47, 100, 123
- Greenbury Report 87
- gross negligence, manslaughter by 26, 27
- groups of companies 21–2
- guarantee, limited by 8
- Hampel Committee 87
- harmonisation with EU law 4–5
- Higgs Report 87
- historical perspectives 2–3
  - contracts 39–41
- implied authority 44
- impropriety 21, 22
- incorporation
  - certificate of 11, 18
  - consequences 18
  - contracts before 7, 14–16
  - veil of, lifting 17, 20–3
- independent judgment, duty to exercise 97, 101–2
- indoor management rule 48–9
- 'insider' 116
  - contracts and 32
- insider dealing/trading 4, 110–15
  - as market abuse 116
- Insolvency (IA) Act 1985 139
- Insolvency (IA) Act 1986 4, 33, 53–4, 76, 93, 95, 103, 104, 119, 125, 126, 128, 131, 136–7, 139, 140, 141, 142, 143, 145, 146
  - lifting veil of incorporation 23
- Insolvency (IA) Act 2000 139, 140, 141
- insolvency procedures 139–40
  - distinction from liquidation procedures 139
  - objectives 139
  - practitioners 139–40
- insolvent liquidation 145, 146, 147
- interests (of company/directors) 107–9
  - best, duty to act in 85, 100, 101
  - conflict of, duty to avoid 97, 104–5
  - in proposed transaction within company, duty to declare 97, 106
- interpretive function of takeover panel 133
- investigative function of takeover panel 133
- Jenkins Committee 41
- Joint Stock Companies Act 1856 2
- judicial issues (incl. courts)
  - administration 142
  - capital reduction 73
- general duties of directors 98–106
- general meetings 33, 45, 51, 52, 55–6, 57, 65, 79, 86, 94–6, 105, 120, 124
  - annual (AGMs) 50, 51, 52, 55, 73, 87

- corporate manslaughter 27
- derivative claims 122–3
- directors' duty to exercise care/skill/  
diligence 102–3
- lifting veil of incorporation 17
- power balance between general meeting  
and the board 95
- takeovers and mergers 134
- unfair prejudice 127
- see also* petition
- just and equitable winding up 128–9, 139
- justice and lifting the veil of incorporation  
22
- leadership 88
- legal charges 82
- legislation *see* regulations
- legislative function of takeover panel 133
- legitimate expectations of member(s) 126
- liability (corporate) 24–6
  - to breach of duty 109
  - limited *see* limited liability
  - paying tax 21
- limited company 71, 75
  - limited by guarantee 8
  - limited by shares 8
  - public *see* public limited company
- limited liability 10, 20, 25
- limited liability partnership 9, 83
- Limited Liability Partnerships (LLP) and the  
LLP Act 2000 4, 9
- liquidation (winding up) 139, 142, 143,  
143–6, 146, 147
  - just and equitable 128–9
  - voluntary 136–7, 138, 144
- listing on stock market 66–7, 67
  - remedies for misleading statements and  
omissions 68
  - UK Listing Authority Model Code 115
- loans to directors 108–9
- see also* borrowing
- London Stock Exchange 67
- loyalty, duty of 99, 104
- Main Market 67
- Manne, Professor HG, on insider dealing 111
- manslaughter, corporate 4, 26–8
- market (stock) 66–7
  - abuse 111, 112, 115–18
  - code of conduct 6, 116
  - listing *see* listing
  - manipulation 112, 116, 117
- meetings 50–7
  - conduct 50, 56–7
  - general *see* general meetings
  - role 51
- memorandum (of association) 10, 11–12, 39
- mergers (acquisitions) 6, 130–7
  - definition 131
- misrepresentation, negligent 25
- monitoring function of takeover panel 133
- moratorium
  - company voluntary arrangements with  
141–2
  - company voluntary arrangements without  
140–1
- names of companies 12–13
- negligence
  - derivative claim based on 122
  - gross, manslaughter by 26, 27
  - in misrepresentation 25
- no reflective loss' principle 124
- non-executive directors 87, 88
- non-voting shares 61
- notice of meetings 50, 56
- objects clause 11, 12, 24, 39, 40, 41, 42, 99
- off the shelf companies 12
- ordinary resolutions 52–3
- ordinary shares 61
- ostensible authority 44–5
- 'outsider'
  - contracts and 33, 34
  - director nominated by 102
- paid-up share capital 60
- payment
  - of dividends 73–4
  - in liquidation, order of 145–6
  - for shares 62
  - of tax 21
  - see also* remuneration
- penalties, insider dealing 114
- 'person' dealing with a company (s 40 CA  
2006) 46
- personal claims 119, 123–4
- petition
  - unfair prejudice 124–5, 126, 127
  - winding up 140, 144–5
  - just and equitable 128, 129
- powers *see* authority
- pre-emption rights 62–3
- preference shares 61
- pre-incorporation contracts 7, 14–16
- Prentice Report (1986) 41
- priorities, charges 78, 82–3
- private company 12, 13

- capital reduction and solvency statement 72–3
- meetings and resolutions 51–2, 55
- names 12
- shares 52–3, 62, 65, 70
  - purchase of own shares 75
- takeover 131
- promote success of company, duty to 97, 100–1
- promoters 7, 13–14, 15, 61
- property
  - exploitation of 104, 105
  - substantial transactions of 107–8
- prospectus, shares 67
  - remedies for misleading statements and omissions 68
- proxies 53, 56, 57, 136
- public, the
  - share offer/issue to 58, 65–8
  - timing of making information available to 113
- public company 12, 13
  - meetings and resolutions 51–2, 55
  - names 12
  - shares 65
    - financial assistance by company to purchase own shares 69, 75–7
    - offer 65
  - takeovers 131, 132
- public limited company (plc) 9, 12
  - EU law 9
- publicity order, corporate manslaughter 28
- quorum 50, 56–7
- reasonable care/skill/diligence, duty to
  - exercise 97, 102–4
  - wrongful trading 146
- receivers 143
- reconstructions 130, 136–7
- redeemable shares 61
  - company purchase of their own 75
- registration 7, 8, 10–13
  - charges 78, 82–3
  - reform 83
  - effect 82
  - removal from register 147
- regulations (statutes and legislation) 1, 2–4
  - contracts 32–3
  - corporate governance 87
  - directors' duties 98–109
  - failure and liquidation 138, 139–40
  - lifting the veil 23
  - share offers to public 67–8
  - takeovers and mergers 130
    - see also specific statutes*
- remedies 119–29
  - breach of fiduciary duties 14
  - corporate manslaughter 28
  - financial assistance for purchase of own shares 77
  - misleading statements and omissions with public offers of shares 68
- removal of directors from office 93
- remuneration, directors 34, 87, 88, 94
- rescue procedures 138, 140–2
- resignation of directors 92–3
- resolutions 50–7
  - ordinary 52–3
  - role 51
  - special *see* special resolutions
- restraint of trade clause, evasion 21
- retirement of directors 92–3
- rights (shareholders) 31, 58, 62–5
  - class 36, 58, 63–5, 146
  - issue 62
  - pre-emption 62–3
  - to remove directors 93
- Salomon* principle 19, 20
- sanctions, financial assistance for purchase of own shares 77
- secured debentures 79
- securities
  - and insider dealing 111, 112, 113, 114, 115
  - and takeovers/mergers 135
- self-regulation 1
- senior management and manslaughter 27
- separate legal personality 17, 43
- set-off 145
- shadow director 91, 99, 122, 146
- share(s)
  - allotment 61–3, 100
  - debentures compared with 75
  - discounting 69, 74
  - dividends 73–4
  - effects of holding 59
  - limited by 8
  - listing *see* listing
  - nature of 59
  - offer to public 58, 65–8
  - payment for 62
  - petitioner's, court order for purchase of 127
  - purchase of own 69, 74–7
  - regulations 67–8
  - statement of initial holdings 58–68
  - types 61



- share capital 8, 9, 10, 59–60, 64, 65, 70
  - alteration 60
  - called-up 60, 72
  - reducing 72
- shareholders
  - agreements 35
    - unanimous 29
  - balance of power between directors and 86–7, 90, 94–6
  - dialogue between directors and 89
  - obligations 31
  - public vs private companies 52–3
  - remedies *see* remedies
  - rights *see* rights
  - role 51
    - in takeovers 131
- single economic unit 22
- skill *see* reasonable care/skill/diligence
- societas Europaea* 9
- solvency statement, private company 72–3
- sources of company law 1–6
- special resolutions 53–4
  - takeovers and mergers 136–7
- statutory frameworks *see* regulation
- stock market *see* market
- striking off the register 147
- substantial property transactions 107–8
- success of company, duty to promote 97, 100–1
- supervision, company 5–6
- takeovers 6, 130–7
  - takeover panel 132, 133–4
- tax, paying 21
- third party benefits, duty not to accept 97, 106
- tort, liability in 24
- trading certificate 12
- transactions 41, 46, 47, 76
  - decision to enter into 46, 49, 105
  - directors involved in 47
    - conflict of interest 104, 105
    - loans 108
    - requiring approval of members 107
  - loans to directors 108
  - proposed, duty to declare interest in 97, 106
  - substantial assets 107–8
  - unlawful 114, 117
- Turquand* case/rule 48–9
- UK Corporate Governance Code 6, 84, 85, 87, 88–9
- UK Listing Authority Model Code 115
- ultra vires* doctrine 38, 39–40, 42
- unanimous agreements
  - members 54
  - shareholders 29
- unfair prejudice 34, 119, 122, 124–8, 129
- unlimited companies 8, 21
- unsecured debentures 79
- veil of incorporation, lifting 17, 20–3
- vicarious liability 24
- voluntary liquidation/winding up 136–7, 138, 144
- voting and polls 50, 53, 56–7
  - director appointment 92
  - by proxies 53, 57, 136
- winding up *see* liquidation
- written resolutions 50, 51, 54–5
- wrongful trading 23, 146–7

Also available:



## KEY CASES: ALL YOU NEED TO PASS

Company Law

Constitutional & Administrative Law

Contract Law

Criminal Law

The English Legal System

Equity & Trusts

EU Law

Evidence

Family Law

Human Rights

Land Law

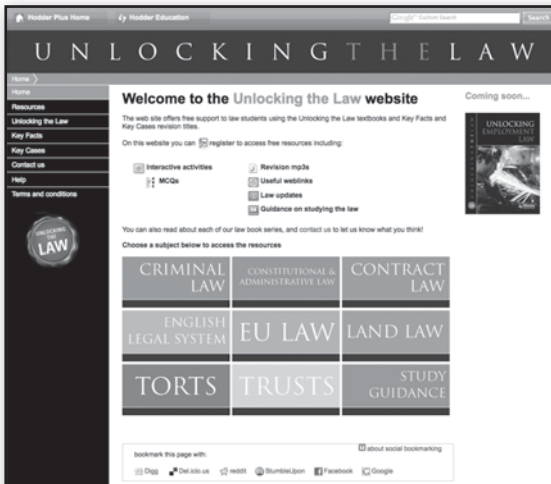
Tort

For more information on any of these titles, or to order, go to **[www.unlockingthelaw.co.uk](http://www.unlockingthelaw.co.uk)**.

# UNLOCKING THE LAW



Log on to **www.unlockingthelaw.co.uk** to access full interactive support for your legal studies.



Including multiple choice questions, Key Q&A, advice on studying the law, updates to the law and weblinks, all completely free.