

Contents

Guided tour	xvi
Preface to the fifteenth edition	xviii
Law report abbreviations	xx
Table of cases	xxi
Table of statutes	xxxvi
1 The nature of a company	1
General features	2
Background to limited liability	3
Classification of corporations – the company as a corporation	5
Classification of registered companies	13
Lifting the corporate veil	30
Companies and partnerships compared	42
The ordinary and limited partnership	42
Limited liability partnerships – the Act	44
Limited liability partnerships – the regulations	45
LLP or private limited company? – a checklist	48
Reform – an ordinary partnership with legal personality	49
Advantages and disadvantages of incorporation	50
Companies and human rights	51
<i>Essay questions</i>	52
<i>Test your knowledge</i>	53
<i>Suggested further reading</i>	54
2 Promotion and incorporation	55
The promoter	56
Incorporation	65
Electronic incorporation	69
Effect of incorporation	69
Ready-made companies	70
Publicity in connection with incorporation	71
Post-incorporation procedures for re-registration	71
<i>Essay questions</i>	75
<i>Test your knowledge</i>	76
3 The constitution of the company – the memorandum of association	78
Company names	79
The objects clause	83

Contents

Capital	87
The registered office	88
<i>Essay questions</i>	90
<i>Test your knowledge</i>	91
<i>Suggested further reading</i>	92
4 The constitution of the company – the articles of association	93
The traditional division of powers under the articles	96
The legal effect of the articles	98
The articles and insider/outsider rights	103
The effect of the Contracts (Rights of Third Parties) Act 1999	107
Shareholders' agreements	108
<i>Essay questions</i>	111
<i>Test your knowledge</i>	112
<i>Suggested further reading</i>	112
5 The constitution of the company – altering the articles	114
Breaches of contract arising out of alteration of the articles	123
Alteration of the articles by the court	125
<i>Essay questions</i>	126
<i>Suggested further reading</i>	127
6 The company and its contracts	128
Public companies and the s 761 certificate	129
Directors and others as agents	130
<i>Essay questions</i>	140
<i>Test your knowledge</i>	142
7 The capital of a company	143
Ordinary shares	147
Preference shares	147
Variation and abrogation of class rights	151
Alteration of share capital	155
Redeemable shares	156
<i>Essay questions</i>	158
<i>Test your knowledge</i>	159
8 Capital maintenance – generally	161
Reduction of capital	162
Acquisition of own shares – generally	171
Purchase of own shares	173
Financial assistance for the purchase of shares	181
<i>Essay questions</i>	191
<i>Test your knowledge</i>	192
<i>Suggested further reading</i>	193

9 Capital maintenance – company distributions	194
Profits available for distribution – generally	195
What is a distribution?	195
Profits available – public and private companies	196
Realised profits and accounting standards	197
Related statutory rules	198
Special cases	200
Relevant accounts	200
Audit considerations	200
Declaration and payment of dividends	201
Consequences of unlawful distribution	204
Capitalising profits	206
Reserves	207
<i>Essay questions</i>	207
<i>Aid to learning on distributions</i>	208
10 Company flotations	211
The official system for listing securities on an investment exchange	212
Offers of unlisted securities	217
The remedy of rescission	218
Procedures for issuing shares	218
Underwriting	219
Brokerage	220
Reform	220
<i>Essay questions</i>	222
<i>Test your knowledge</i>	223
11 Shares – generally	225
Subscribers' contract	226
Allotment	227
Return of an allotment	229
Share certificates	230
Share warrants (or bearer shares)	232
Calls	233
Mortgages of shares	234
Lien	236
Forfeiture of shares	237
Surrender of shares	239
<i>Essay questions</i>	240
<i>Test your knowledge</i>	240
12 Shares – transfer and transmission	242
Transfer of unlisted shares	243
Transfer of listed shares	245
Companies whose articles restrict transfer	248
Transmission of shares	254
Trustees	255

<i>Essay questions</i>	255
<i>Test your knowledge</i>	256
13 Shares – payment for and insider dealing	258
The consideration – generally	259
Prohibition on allotment of shares at a discount	263
Shares issued at a premium	264
Insider dealing	267
Market abuse	269
Model Code for Securities Transactions by directors of listed companies	271
<i>Essay questions</i>	272
<i>Test your knowledge</i>	273
14 Membership – capacity, registration, director and substantial holdings, annual return	275
Capacity	276
The register of members	277
Director and substantial shareholdings	281
The annual return	283
<i>Essay questions</i>	285
<i>Test your knowledge</i>	286
15 The statutory derivative action	288
The s 33 contract revisited	290
Shareholders’ agreements	290
The rule in <i>Foss v Harbottle</i>	290
The statutory derivative action	301
<i>Essay questions</i>	309
<i>Suggested further reading</i>	309
16 The protection of minorities	311
Statutory protection against unfair prejudice	312
Minority petition for a just and equitable winding-up	328
<i>Essay questions</i>	329
<i>Test your knowledge</i>	330
<i>Suggested further reading</i>	331
17 Directors and management – generally	333
Definition	334
Appointment of directors	336
Directors’ share qualification	346
Division of power – directors and members	346
The chairman and executive directors	351
Publicity in connection with directors	353
The secretary	354
The company accountant	356

<i>Essay questions</i>	357
<i>Test your knowledge</i>	357
<i>Suggested further reading</i>	358
18 Financial arrangements with, and fair dealing by, directors	359
Remuneration	360
The power to pay directors	365
Compensation for loss of office	367
Fair dealing by directors	368
<i>Essay questions</i>	376
<i>Test your knowledge</i>	376
19 The duties of directors	378
The CA 2006 codifies the general duties of directors	379
Scope and nature of general duties	379
Duty to act within powers	380
Duty to promote the success of the company	383
Duty to exercise independent judgment	389
Duty to exercise reasonable care, skill and diligence	389
Duty to avoid conflicts of interest	393
Duty not to accept benefits from third parties	403
Duty to declare interest in proposed transaction or arrangement	403
Effects of a breach of duty	405
Ministerial 'eight-point guidance'	406
<i>Essay questions</i>	407
<i>Test your knowledge</i>	409
20 Vacation of office, disqualification and personal liability	411
Expiration of the period of office	412
Removal – under statute	413
Removal under the articles	414
Statutory removal – restrictions	415
Resignation	416
Winding-up	416
Appointment of an administrator/administrative receiver	417
Disqualification – generally	418
Disqualification by the court and personal liability	419
Disqualification only	419
Disqualification and personal liability	424
Personal liability only	430
Human rights and directors	432
<i>Essay questions</i>	434
<i>Test your knowledge</i>	436
21 Meetings and resolutions	438
General meetings of the company	439
Notice of meetings	443

Contents

Procedure at meetings – legal aspects	447
The chairman	450
Voting	451
Proxies	453
Adjournment of the meeting	457
Minutes	458
Class meetings	459
Company meetings and the disabled	460
Board meetings	460
Resolutions – generally	465
Ordinary resolutions requiring special notice	468
Amendments	468
Written resolutions for private companies (s 288, CA 2006 <i>et seq.</i>)	469
Meetings of single-member companies	471
Electronic communications – CA 2006	471
<i>Essay questions</i>	473
<i>Test your knowledge</i>	474
22 Debentures and charges	476
Power to borrow	477
Debentures – generally	477
Types of debentures	478
Acquisition of debentures	481
The trust deed	482
Company charges	484
Crystallisation of floating charges	486
Postponement of floating charges	487
Validity of charges	492
Registration of charges	492
Company's register	496
Avoidance of floating charges	496
Preference	498
Remedies of secured debenture holders	499
BIS consultation	499
<i>Essay questions</i>	500
<i>Test your knowledge</i>	501
23 Accounts and audit	503
Small and medium-sized companies	504
Accounting records	506
Annual accounts	507
Group accounts	510
The directors' report	511
Publication of accounts and reports	513
Filing of accounts and reports	514
Auditors	516
Duties of auditors	519
Rights of auditors	519

Information and the Companies (Audit, Investigations and Community Enterprise) Act 2004	519
Duty of care of the auditor	520
Auditors' liability	523
<i>Essay questions</i>	527
<i>Test your knowledge</i>	528
24 Amalgamations, reconstructions and takeovers	530
Generally	531
Amalgamations and reconstructions	534
Amalgamation (or reconstruction) under the Insolvency Act 1986, s 110	535
Amalgamation (or reconstruction) under the CA 2006, s 895	536
Takeovers	539
<i>Essay questions</i>	549
<i>Test your knowledge</i>	551
25 Corporate insolvency – company rescue	553
Voluntary arrangements	554
Administration	562
<i>Essay questions</i>	574
<i>Test your knowledge</i>	575
26 Corporate insolvency – procedures other than rescue	577
Receiverships	578
Winding-up or striking off	578
Compulsory winding-up	579
Voluntary winding-up	579
Members' voluntary winding-up	582
Creditors' voluntary winding-up	583
Alternatives to winding-up	585
27 Corporate insolvency – winding-up in context	592
Winding-up by the court	593
Voluntary winding-up	599
The duties of a liquidator	601
Compulsory winding-up by a company in voluntary liquidation	612
<i>Essay questions</i>	612
<i>Test your knowledge</i>	614
Answers to test your knowledge questions	616
Appendix 1 – Companies (Model Articles) Regulations 2008, SI 2008/3229	618
Appendix 2 – Companies (Tables A to F) Regulations 1985 (SI 1985/805) as amended by SI 2007/2541 and SI 2007/2826	664
Index	682