CONTENTS

Preface	v
Table of Cases	xvii
Table of Statutes	XXXV
Table of Statutory Instruments	xliii
List of Abbreviations	xlix
Chamton 1	
Chapter 1 Status of a Liquidator Liquidator as trustee Liquidator as agent Liquidator as an officer of the company Liquidator as insolvency practitioner	1
Liquidator on tructor	1
Liquidator as trustee	1
Liquidator as agent	3
Liquidator as an officer of the company	4 5
Liquidator as insolvency practitioner	5
A15,	
Chapter 2	7
Commencement of Voluntary Winding Up	7
Grounds for a voluntary winding up	8
Members' voluntary winding up	9
Creditors' voluntary winding up	10
Preliminaries to the appointment of a liquidator in a members'	
voluntary winding up	11
Declaration of solvency	11
Members' meeting	12
Quorum	13
Resolution	13
Directors' powers	13
Preliminaries to the appointment of the liquidator in a creditors'	
winding up	14
The resolution	14
Notice	14
Quorum	14
Directors' powers	16
Acceptance of appointment and conversion of members' voluntary	
winding up to creditors' voluntary winding up	22
Procedure on appointment of liquidator in a members' winding up	23
Procedure on appointment of liquidator in a creditors' voluntary	
winding up	27

Contents	
COTTUCTUS	

ix

(f) The Official Receiver	80				
(g) The Attorney-General					
(h) The Bank of England					
(i) A clerk of a magistrates' court					
(j) A supervisor of a corporate voluntary arrangement (CVA)					
(k) An administrator or administrative receiver					
(l) The Financial Conduct Authority	83				
Grounds for winding up	83				
(a) Where the company has by special resolution resolved that the					
company be wound up by the court	83				
(b) Where the company being a public company which was					
registered as such on its original incorporation has not been					
issued with a certificate under CA 2006, s 761 and more than					
one year has expired since it was so registered	84				
(c) Where the company is an old public company and has not					
re-registered as required by the Companies Act 1980	84				
(d) Where the company has not commenced business within a year					
from incorporation or has suspended business for a whole year	84				
(e) Where the membership falls below two	85				
(f) Where the company is unable to pay its debts	85				
The relationship between cash flow and balance sheet insolvency	92				
(g) Where the court is of the opinion that it is just and equitable					
that the company should be wound up	94				
Procedure	99				
(a) The petition and the supporting affidavit	99				
(b) Service and advertisement	100				
(c) The hearing	101				
(d) Opposition by the company	103				
(e) Provisional liquidator	103				
Chapter 5					
Effects of Winding Up and Appointment of the Liquidator	109				
Time of commencement	109				
Business ceases	110				
Powers of the liquidator	111				
Powers of company	114				
Company's property	114				
Use of the company name: phoenix companies	116				
Share transfers	122				
Proceedings may be restrained	123				
Directors' powers cease	126				
Employees	127				
Notice 12					
Employees' claims	128				
Redundancy	129				
Consultation on redundancy 1					
Rights of inspection of registers	131				
Floating charges	132				

Chapter 3	
The EC Regulation on Insolvency Proceedings	33
Introduction	33
European jargon	34
The aim of the Regulation	34
Forum shopping	36
Proceedings subject to the Regulation	37
Types of proceedings	38
Main proceedings	39
Proceedings outside the Regulation	40
Jurisdiction for main proceedings	42
Secondary proceedings	46
The nature of secondary proceedings	48
Office-holders to whom the Regulation applies	48
Territorial proceedings	49
The importance of commencing main proceedings	50
Claims	53
Rescue plans	53
Proceedings after closure of secondary proceedings	54
Choice of law	54
Exceptions to the general rule as to applicable law	55
Rights in rem	55
Set-off	57
Reservation of title	57
Contracts relating to immovable property	58
Payment systems and financial markets	59
Contracts of employment	60
Effect on rights subject to registration	61
Community patents and trade marks	61
Detrimental acts	62
Protection of third party purchasers	62
Effects of insolvency proceedings on law suits pending	63
Recognition	63
Powers of the liquidator	64
Public policy	65
Opening of secondary proceedings	65
Review of the Regulation	66
The impact of the Regulation	67
The impact of the regulation	07
Chapter 4	
Compulsory Winding Up	69
Jurisdiction	70
Who may petition?	72
(a) The company	72
(b) The directors	73
(c) A creditor or creditors	73
(d) A contributory	73
(a) The Secretary of State	90

Connected person and associate	135	To take necessary steps	207	
Forfeiture	136	To settle contributions	208	
Disclaimer and rescission	136	To call meetings		
Executions and attachments	137	To pay debts	209 210	
		Powers exercisable with sanction	211	
Chapter 6		Restricted powers exercisable before the creditors' meeting	212	
Duties of the Liquidator	141	Other powers	213	
Preliminary duties	141	Meetings of creditors	213	
Duty to maintain liquidator's record	142	Meetings of committee	213	
Duty to take possession of property	143	Register	213	
Duty as to bank accounts	144	Powers of directors	214	
Duty to settle list of contributories	146	Reconstruction and sale	214	
Duty to examine conduct of officers	149	Distribution of property	215	
Proceedings following examination of the conduct of directors etc	150	Application to court	218	
Disqualification and unfitness	151	Disclaimer	220	
Fraud, etc in anticipation of winding up	157	2 isolumer	220	
Transactions in fraud of creditors	158	Chapter 8		
Misconduct in course of winding up	158	Creditors	229	
Material omissions	159	Duty to creditors	229	
Duty to recover assets and to institute proceedings	160	Procedure	231	
Examination of officers	160	Letter to creditors	232	
Recovery of property: s 234	167	Form of claim	232	
Misfeasance: s 212	169	Dividends	234	
Fraudulent trading: s 213	174	Consideration of proofs	234	
Wrongful trading: s 214	177	Admission and rejection of proofs	240	
Duty to recover transactions at undervalue and preferences: ss 238,	100	Debts which are provable		
239	183	Contingent or uncertain debts	242	
Transactions (at an undervalue) defrauding creditors: s 423	188	Foreign currency	244 244	
Duty to pay creditors		Discounts		
Duty to distribute the surplus	194 197	Rent and periodical payments	245	
Duty to keep accounts, books and papers	197	Future debts	245	
Duty to dissolve the company	199	Negotiable instruments	245	
Duty to dissolve the company	Ø. 122	Interest on debts	245	
Chapter 7		Mutual credit and set-off	245	
Powers of the Liquidator	201	Secured creditors	246	
Powers exercisable on a liquidator's own authority in a voluntary	201	Invalid securities	249	
winding up and with the approval of the court or the liquidati	ion	Priorities	251	
committee in a compulsory winding up	201		254	
To bring and defend actions in the name of the company	201	Invalidation of transactions: transactions at undervalue (s 238) Preferences (s 239)	255	
To carry on business	204	programme and the control of the con	256	
Powers exercisable on a liquidator's own authority in all cases	205	Extortionate credit transactions (s 244)	258	
To sell assets	205	Avoidance of certain floating charges (s 245)	258	
	206	Transactions defrauding creditors (s 423)	261	
To act in the company's name		Time-limits	263	
To prove	206	Relevant times	263	
To take out representation	206	Relevant time under ss 238 and 239 as fixed by s 240	263	
To draw cheques	206	Relevant time under s 244	264	
To borrow	207	Relevant time under s 245	264	
To appoint agents	207			

Court orders	264	Personal indemnity	334
Sections 238, 239: undervalue and preferences	264	Solicitors' and other costs	334
Section 244: extortionate credit transactions	266	Registered land	336
Section 423: transactions (at an undervalue) defrauding creditors	267	Stamp duties	336
Ultra vires	267	Liquidators, receivers and administrative receivers	337
Reservation of title	271	Receivership continues	337
Trust property	272	Receiver's right to the assets	338
Landlords' forfeiture and distress	272	Validity of receiver's appointment	338
CRAR	277	Liquidator as receiver	339
Voluntary arrangements	283	Manager carrying on business	339
The moratorium envisaged by the Insolvency Act 2000	289	Misfeasance by receiver	339
Moratorium where directors propose voluntary arrangement	289	Preferential debts	341
Companies that cannot seek a moratorium	289	Receiver's remuneration	341
Applications for a moratorium	290	Abolition of the power to appoint an administrative receiver in new	
Directors of an eligible company may apply to the court for a		securities	342
moratorium	290	Administration orders and liquidation	342
Proposed extension of the moratorium	296	Insolvency in members' winding up	343
Challenging voluntary arrangements	296	Compulsory order after voluntary winding up	344
Other compromises and arrangements	302	The state of the s	
	002	Chapter 11	
Chapter 9		Payment of Debts	345
The Liquidation Committee and Meetings	303	Expenses of the winding up	345
Members' winding up	303	Preferential debts	350
Creditors' winding up and compulsory winding up	305	Floating charges	352
Appointment of liquidation committee	305	Ordinary creditors	356
Liquidation committee where winding up follows immediately on	\(\)	Deferred creditors	357
administration	312		00,
Meetings of creditors	312	Chapter 12	
Procedure for meetings of creditors	314	Rights and Liabilities of Members	359
Resolutions by correspondence	312 314 317	Contributions: contributories	359
,	1/2	Liability of contributories: are their shares paid up?	360
Chapter 10	· '\'	Lists and calls from contributories	362
Matters Arising in Winding Up	319	Distribution to members	365
Remuneration of liquidator	319		2042
Removal of liquidator	322	Chapter 13	
Voluntary winding up	322	Completion of Winding Up	371
By the court	322	Returns regarding directors	371
By meetings	325	Tax clearances	375
Compulsory winding up	326	Final account	375
Vacancies	327	Final meetings	376
Death	327	Notices of final meetings	376
Resignation	328	Essential business at final meetings	377
Removal – vacation of office	329	Remuneration	377
Filling of vacancies	329	Procedure at final meetings	379
Release of liquidator	331	Return of final meetings and release	379
Misfeasance	332	Dissolution	380
Joint liquidators	333	Bona vacantia	383
Change of registered office	333		300

Disclosure

The Financial Collateral Arrangements (No 2) Regulations 2003

Chapter 15

Introduction

Terminology

Who is affected?

What arrangements are covered?

Purpose

Conte	2411	te

XV

Chapter 14			Relaxation of registration and other requirements
The Administration Procedure	385		Enforcement against companies in administration
Introduction	385		Disapplication of other insolvency legislation
Pre-packaged administrations	386		Close-out netting clauses
What is administration?	386		Debts in foreign currency
The purpose in more detail	387		Right of use in a security financial arrangement
Administrations and other insolvency procedures	389		Appropriation of collateral
Terminology used	390		Conflict of law and book entry securities
General duties of the administrator	391		to experience and the contract of the contract
Re Consumer & Industrial Press Ltd	392		Appendix 1
The administrator	392		Check-lists for Winding Up and Liquidation
Protection for purchasers from administrators	396		Chest asso for thinking of the angular
Restrictions against administrations	396		Appendix 2
Routes into administration since 15 September 2003	397		Precedent Letters with Statutory and Practice Forms
Appointment by the court	397		Titodadii Dottolo Willi ottatatoly and Illavillo Iolino
Appointment by the holder of a floating charge	400		Appendix 3
Appointment by the company or its directors	401		Penalties
Moratorium	402		Citation
Approval of the administrator's proposals	403		Appendix 4
'Pre-packs'	403		Disqualification of Directors
Statement of Insolvency Practice 16	405		O CONTROL OF DIRECTOR
Practitioners	405		Appendix 5
Legal authority for pre-packs	405	30	Guides to Professional Conduct and Ethics
Preparatory work	405	N.P	Cuides to Trolessional Conduct and Emiles
Disclosure	405	70,	Index
Conclusion	406	J	HIGGS
Partnerships and LLPs	407		
Duration of administration	417		
Application to LLPs and partnerships			
Post-administration disposals of property and assets	418		
Employment matters and the application of TUPE	419		
Insolvency	421		
'Phoenix companies' – s 216 of the Insolvency Act 1986	424		
Substantial property transactions involving directors – s 193 of the			
Companies Act 2006	425		
Statement of Insolvency Practice 16	425		
Practitioners	425		2
Legal authority for pre-packs	426		
Preparatory work	426		