## **CONTENTS**

Preface	v
Table of Statutes	xxi
Table of Statutory Instruments	xxxvii
Table of Cases	xliii
Chapter 1	
The Origin and Nature of Companies	1
Corporations	1
The history of the modern company	1
Going behind the corporate veil	4
The Origin and Nature of Companies Corporations The history of the modern company Going behind the corporate veil Piercing under the Companies Act	4 5
Piercing under the insolvency legislation	
The use of a company structure to limit exposure to risk	7
Judicial ingenuity to get around the corporate veil	8
Holland v HMRC	10
Chapter 2	
The Company and its Legal Framework	13
The Companies Act 2006	13
Background	13
Companies Act 1985	14
Associated Acts	15
Table A	15
Further developments prior to the Companies Act 1989	16
Companies Act 1989 and later changes	16
Statutory instruments	17
Other developments	19
The future	20
The Companies Act 2006	20
Types of company	20
The Companies Act 2006	21
Public and private companies	21
The Companies Act 2006	23
The machinery of the company	24
The Companies Act 2006	25
Same day registration	26
Choice of name	26
Public companies	27

0	ntont	

Re-registration	28	Who can be a director?	78
Same day re-registration	29	Directors of listed companies subject to the UK Corporate Governance	
Members	30	Code	80
Directors	30	Disqualification by law	82
Secretary	30	Disqualification orders	82
Auditor	31	Bankrupts	98
Companies having the 1985 Table A	31	Other disqualifications	98
Companies adopting an earlier Table A	32	Foreign disqualifications	99
Appointment of Private Company Auditors	33	Disqualified by the articles	102
Registered office	34	Qualification shares	102
The company's constitution	35	Vacation of office under the articles	102
Name	35	Aliens	104
Company Names Adjudicators	40	Defects in appointment	104
Registered office	44		104
		Publicity	100
Objects	44		
The ultra vires rule	46	Chapter 4	111
Objects under CA 2006	49	Powers of Directors	113
Liability	50	Articles define powers	113
Share capital	51	Company objects	117
Payment for shares	52	Limitations on the articles	119
Redeemable shares	54	Changes to a company's share capital	124
Alterations in capital	54	Conversion of stock into shares	125
Articles of association	56	Redenomination of shares	125
In general	56	Reduction of capital	126
In particular	60	Changes to the memorandum of association	128
The role of the director	61	Allotment of shares	130
Agency	62 62 63	Powers in the articles: the model form and Tables A	130
Trusteeship	62	Table A: '1948 version'	138
The director as an employee	63	Table A: 'pre-1948 versions'	140
Independent contractor	64	Private company variations of the 2006 Act 'model form' articles	141
Who are the directors?	64	Private company variations of Table A	148
Who are the officers?	66	Other common private company variations of the model form or Table	
		A	151
Chapter 3		Listed company variations of Table A	153
Appointment of Directors	67	Variations arising from regulatory requirements	153
Identifying a company's directors	67	Optional variations	155
Appointment of first directors on incorporation	68	Effect of articles – dominance of the board	156
Articles may repeat the provisions of the Companies Acts	70	Exceptions	157
Articles may name the first directors	70	Powers exercised collectively	158
Articles may specify appointor	71	Delegation of powers	159
Appointment of subsequent directors	71	Directors exceeding powers	160
Appointment by ordinary resolution of members in general meeting	71	Ultra vires the company	160
Nomination by specified parties	73	Ultra vires the board	163
Nomination pursuant to agreement for sale of shares	74	Validity of directors' acts	165
Appointment by the directors	75	validity of directors acts	100
Retirement of directors by rotation at the annual general meeting	7 <i>5</i>	Chapter 5	
Appointment of alternate directors	73 77	Accounts	171
Number of directors	77		171
Trumber of directors	1.1	Introduction	1/1

Background	171	Creditors	237
Accounting records	172	The Companies Act 2006	240
Entitlement of directors to examine company's books	173	Employees	240
Annual accounts	173	The Companies Act 2006	241
Signature	176	Nominees	241
Penalties	177	Non-executive directors	242
Accounting requirements	178	Duty of good faith	242
Small companies	181	Trustees	243
Medium-sized companies	183	Of powers	243
'Dormant' and 'audit exempt' companies	183	The Companies Act 2006	247
Audit exempt companies	184	Of assets	247
Groups of companies	185	The Companies Act 2006	248
Publication of company accounts	187	Assets: fiduciary duties under the Companies Act 2006	249
Directors' report	187	The Companies Act 2006	252
Auditor's report	189	Liability for ultra vires transactions	253
Changes effected by the Companies (Audit, Investigations and		The Companies Act 2006	254
Community Enterprise) Act 2004	196	Trustees of their positions	255
Chapter 1: Auditors	197	Personal profit	255
Overseas auditors	202	Examples of personal profits	257
Disclosure of services provided by auditors and related		Conflict of interest	257
remuneration	203	Ratification insufficient	257
Auditors' rights to information	205	Fees from subsidiaries	258
Chapter 2: Accounts and reports	207	Post-retirement profits	258
Statement in directors' report as to disclosure of information to	~	Bribes	261
auditors	207	Measure of damages	261
Defective accounts - introduction	209	Interest in contracts: principles	262
Defective accounts	210 211	Interest in contracts: features	266
Disclosure of tax information	21 i	Ratification	266
Power of authorised person to require documents, information	124	Listed companies	266
and explanations	212	Failure to comply	266
Supervision of periodic accounts and reports of issuers of listed		Additional disclosure	267
securities	215	Extent of disclosure	268
Dividends	216	Procedure	269
Profits available for distribution	217	The Companies Act 2006	270
Restrictions on public companies	217	Contracts with the company: other restrictions	270
Relevant accounts: CA 2006, s 836	218	The Companies Act 2006	271
Successive distributions: CA 2006, s 274	218	Competition	272
General	219	Can a breach ever be justified?	273
Takeovers and mergers	219	The Companies Act 2006	274
		Confidentiality	275
Chapter 6		Duty of skill and care	277
Duties of Directors	227	Principles	277
Key Duties of Directors	227	A subjective test of skill	278
Sources of duties	227	Periodic attendance	278
The Companies Act 2006	231	Delegation to executives	278
Duties to whom	232	The Companies Act 2006	281
'The company'	236	Examples	281
The Companies Act 2006	236	Cheque signing	281

Investments	283	Directors, de facto directors and shadow directors and their duties	309
Professional advice	284	What is a director?	309
Diligence	285	De facto directors	310
Negligence	286	Shadow directors	310
Reliance on others	287	Are de facto and shadow directors mutually exclusive?	311
The Companies Act 2006	288	Holland v HMRC, Re Paycheck Services Ltd	312
Directors' duties	288	The facts	312
To whom are duties owed?	289	The decision	313
General duty to act within powers	289	Vivendi SA v Richards & Bloch	314
Duty to promote success of company	289	The facts	314
Duty to exercise independent judgment	290	Mr Richards' duties as a shadow director	317
Duty to exercise reasonable care, skill and diligence	290	The duty of good faith	318
Duty to avoid conflicts of interest	291	Limitation problems	319
Duty not to accept benefits from third parties	291	Limitation of actions	319
Duty to declare interest in proposed transaction	292	Disqualification and wrongful trading	319
Enforcement of duties	292	Disqualification	320
Declaration of interest	292	Unfit directors of insolvent companies	320
Directors' service agreements	293	Safeguarding the public	321
Substantial property transactions	293	Misfortune, misjudgment and mismanagement	321
Loans to directors	293	Reliance on others	323
Introduction	293	Periods of disqualification	323
The basic rule	295	Procedure	324
Public and associated companies	296	Procedure for disqualification	326
Further restrictions regarding public companies making	270	Summary procedure	327
quasi-loans to directors	296	Voluntary undertakings not to act as a director	328
Connected persons	297	The effect of disqualification by the Company Directors	
Credit transactions by public companies	297	Disqualification Act 1986, s 1	330
Related transactions	297 299 298	Partial disqualification	332
Loans for business expenditure	298	Wrongful trading: introduction	333
Loans to defend legal proceedings	299	Wrongful trading: the 'functions' of directors	335
Loans in connection with regulatory proceedings	300	Wrongful trading: avoiding trouble	337
Permitted transactions	300	Wrongful trading: the 'defence'	339
Loans by money-lending companies	301	Wrongful trading: the court's order	341
How credit is valued	301	Shadow directors	342
Consequences of contravention	302	Administration	343
How the law has been changed	303	Fraudulent trading	346
Payments for loss of office	303	Other personal liabilities of directors	347
Directors' service contracts	304	Contract	348
Sole members	304	Personal liability	348
Sole members	301	Breach of warranty of authority	348
Chapter 7		Torts	350
Liabilities of Directors	307	Liability under the Statute of Frauds (Amendment) Act 1828	352
Changes brought about by the Companies Act 2006	307	Company crimes	353
Consequences of breach of duty	307	Relief from liability	355
Company to sue	307	Ratification by general meeting	355
Insolvency	307	By majority vote	355
Measure of recovery	308	By special majority	357
Defendant	309	Ratification by the articles: CA 1985, s 310	357
~ vaviatil	307	TO THE PARTY OF TH	025472555

Indemnities for directors	358	Automatic disclosure of substantial shareholdings	428
Background	358	Disclosure following investigation by a public company of interests	
Directors' and officers' insurance	361	in its voting shares	431
Model articles under the CA 2006	361	The company's powers	432
The DTI consultation exercise on director liability	362	The information to be given	432
Prohibition on provisions protecting directors from liability	362	Interests in shares	433
Transitional provisions	365	The register of interests disclosed	434
The CA 2006 and trustees	365	Members' requisitioning the company to exercise its powers	434
QTPIPs	368	Orders imposing restrictions on shares	435
QPSIPs	370	Supplementary articles	436
Loans to enable directors to defend proceedings	371	Contents of registers	436
Relief granted by the courts	372	Register of members	436
Criminal liabilities	373	Register of directors	437
	0,0	Register of directors' residential addresses	438
Chapter 8		Disclosure by Companies House	439
Relations with Shareholders	379	Disclosure by the company	441
Separation of Powers	379	Inspection of registers and other documents	442
Transfer of shares	379	Inspection of the register of members	443
Pre-emption rights: valuing the shares	384	Inspection of the register of interests disclosed	445
Paper-based and paperless share dealings	389	The Small Business, Enterprise and Employment Act 2015	446
Compulsory acquisition of shares	391	Unfair prejudice	463
Lien	392	The rule in Foss v Harbottle	464
Compulsory transfer under the articles	392	Derivative actions (1)	465
Deprivation of pre-emptive rights	393	Members' remedies	469
Statutory pre-emption rights on allotment of shares	393	Derivative actions (2)	469
Share capital rules	397	Actions commenced by a member	469
Financial assistance for acquisition of shares	397	Action commenced by the company	469
The general rules	397	Considerations applicable to derivative actions generally	470
Exceptions	402	Action commenced by another member	471
Issue of redeemable shares	403	Derivative proceedings in Scotland	472
Purchase of a company's own shares	405	Winding up	472
Off-market purchases	410	Relief under CA 2006, s 994	474
Market purchases	414	Remedies for unfair prejudice	478
Capital rules and taxation	415	BIS investigation	480
Insider dealing: common law and statutory control	417	DIS Hivestigation	700
Information	426	Chapter 9	
Rule 20.1	426	Relations of Directors with One Another	485
Rule 23.2	426	Summary of changes in the Companies Act 2006	485
Rule 25.1	426	Disagreement on the board: majority decides	485
Rule 27.1	426	Responsibilities of dissentients: First Re-investment Trust Ltd	486
Secrecy and confidentiality	426	The Companies Act 2006	490
Restrictions on dealings	427	Remedies	490
Rule 4	427		490
		Action in board meeting	491
Disclosure requirements	427	Action in general meeting	491
Special deals	428	The Companies Act 2006	
Rule 16 Disclosure	428	Resignation	493
Disclosure Directors' disclosure of their interests in shares and debentures	428 428	Inspection by BIS	494
LUTECTORS disclosure of their interests in shares and dependings	41/X		

Background

496

496

497

498

498

504

505

506

507

507

510

510

513

513

513

513

513

514

515

519

524

524

528 530

544

545

547

548

550

552

554

560

565

567

568

568

569

572

573

575

576

578

578

579

Changes occasioned by the Companies (Audit, Investigations and

Power to enter and remain on premises: the procedural aspects

Power to require documents and other information

General meetings other than annual general meetings

Annual general meetings - public and traded companies

Members' power to require circulation of statements under s 314

Requirement for quoted company to publish results of polls

Power of members of quoted company to require an independent

Annual general meetings - private companies

Provision for security of information obtained

Community Enterprise) Act 2004

Information provided: evidence

The Companies Act 2006

The Companies Act 2006

Resolutions at general meetings

Class rights and class meetings

Calling a general meeting

Notices of general meetings

Persons nominated by members

Resolutions at general meetings

Special rules for quoted companies

assessment of a poll

Members' written resolutions in lieu of meetings

Written resolutions proposed by the directors

Written resolutions proposed by the members

Information rights in 'traded companies'

Appointment of proxies

Right to demand a poll

Informal members' resolutions

Directors' meetings

Notice

Quorum

Special notice

Quorum

Voting

Chairman

Adjournment

Types of general meeting

Application to the courts

Winding up

Chapter 10 Meetings

Protection in relation to disclosures

Shareholders' (general) and directors' meetings

Calling and conduct of general meetings

Power to enter and remain on premises

Contents	xvii
Procedure	581
Minutes	582
Minutes as evidence	582
Signature of board minutes	584
Signature of minutes of general meetings	585
Contents of minutes	585
Irregularities at meetings	586
Chapter 11	
Terms of Service for Directors	587
Changes brought about by the Companies Act 2006	587
Directors' service agreements	587
Payments for loss of office	587
Directors' service contracts	588
Remuneration – determined by articles	589
Penalty clauses generally	593
Service agreements	594
Murray v Leisureplay plc	595
The Companies Act 2006	596
Taxation	596
Share incentive schemes	597
Approved profit-sharing schemes – ICTA 1988, ss 186–187	598
Approved savings-related share option schemes – ICTA 1988, s 185	598
Registered profit-related pay schemes (RPRP) - ICTA 1988,	
ss 169–184	598
Executive share option schemes - ICTA 1985, s 185	598
Employee share-ownership plans (ESOPS) - FA 1987, ss 67-74: FA	5000 8
1992, s 36	599
Remuneration may be sued for	599
Disclosure in accounts	601
Expenses	602
National Insurance	604
Service contracts	605
The Employment Rights Act 1996	605
Disclosure	606
Notice to terminate	607
Duties	608
Patents and inventions	608
Restrictive covenants	609
Pensions	610
Enforcement	610
Special directors	610
Directors as employees	613
Chapter 12	

Resignation, Removal and Retirement

Vacation of office

Summary of changes in the Companies Act 2006

617

617 617

Resignation	618	Chapter 15	
Removal under section 168	618	Corporate Governance	655
Restrictions on use of CA 2006, s 168	621	Introduction	655
Removal from office as breach of contract	622	The development of company law	656
Compensation and damages for loss of office	624	Articles of association	656
The position at law	624	The objects clause	658
Negotiated settlements	626	Third parties and companies	658
Disqualification by law	629	Types of company	659
Vacation of office under the articles	629	The dynamics of a company	660
Retirement	632	The collapse of Penn Central	661
By rotation	632	The golden threads of great corporate collapses	661
Under age limit (public companies only)	633	The Report of the Select Committee on Joint Stock Companies	662
Winding up and receivership	633	Well-meaning but perhaps misguided thoughts on the nature of	
0 1		governance	663
Chapter 13		First example	663
Bribery Act 2010	635	Second example	664
The new offences in outline	635	Maxwell - ere there any lessons?	665
Paying bribes	636	DTI investigation into Queens Moat Houses plc	667
Receiving bribes	637	Corporate collapse	667
Meaning of relevant functions	637	What approach should be adopted to corporate governance?	668
Meaning of improper performance	638	Payments to directors under the Companies Act 2006	669
Bribery of foreign officials	639	Directors' service agreements	669
Failure of commercial organisation to prevent bribery	640	Payments for loss of office	669
Prosecutions	641	Directors' service contracts	670
Extra-territoriality	642	A brief history of corporate governance	671
Conclusion	642	Cadbury's views on a workable code	672
	643	The role of the chairman	673
Chapter 14		The functions of the board	673
Corporate Manslaughter and Corporate Homicide Act 2007	643	A checklist for board effectiveness	674
The offence of corporate manslaughter	643	The UK Corporate Governance Code	674
Organisations to which the offence applies	644	Checklist – matters reserved to board	679
Corporation	644	The Turnbull guidance	680
Departments and bodies listed in Schedule 1	644	The roles of chairman and CEO	680
The police	645	Should a Chief Executive become a Non-Executive Chairman?	680
The armed forces	645	The Nomination Committee for Board Appointments	681
Partnerships	645	The training of directors	681
Senior manager	645	Two-tier boards	681
The relevant duty of care	646	Non-executive directors	681
The role of the judge in litigation	648	Independence	681
Employees etc	648	The Myners Report and non-executive directors	682
Specific exclusions from the Act	648	Voting by institutional shareholders	682
Public authorities making decisions of public policy	649	Recommendations of the Institutional Shareholders Committee	683
Military activities	650	The senior independent director	683
Policing and law enforcement	650	Board committees	683
Emergencies	651	The Smith Report on Audit Committees	684
Child protection and probation functions	652	Corporate social responsibility	684
Corporate manslaughter at common law	652		
Has statutory corporate manslaughter worked?	654		

Appendix A	
Jordans Draft Articles of Association for a Private Limited Company	687
Draft Articles of Association for a Private Company Limited by Shares Draft Articles of Association for a Private Company Limited by	687
Guarantee	714
Appendix B	
Form IN01: Application to Register a Company	729
Appendix C	
Draft Standard Form Service Agreement for an Executive Director	749
Index	765

## TABLE OF STATUTES

References are to paragraph numbers.

Anzac (Restriction on Trade Use of		Charities Act 1993
Word) Act 1916		s 72(6)(b) 7.151
s 1	2.66	s 73A 7.151
5 1	2.00	s 73F(1) 7.151
	1231 272	s 73F(2) 7.151
Banking Act 1987	7.164	Charities Act 2006
s 96	7.164	s 36 7.151
Banking Act 2009	9.53	s 39 7.151
Banking (Special Provisions) Act 2008	9.53	s 77 5.29
Bribery Act 2010	13.1	Charter Trustees Act 1985
s 1(1)	13.7	s 185 11.30
s 1(2)	13.7	Civil Liability (Contribution) Act 1978 6.175
(4)	13.8	
s 1(5)	13.8	Co-operative and Community Benefit
s 2(1)–(5)	13.9	Societies Act 2014 8.6
s 2(6)	13.10	Companies Act 1862 2.110
s 2(7)	13.10	Companies Act 1908 2.110, 7.11
s 2(8)	13.10	Companies Act 1928 7.11
s 3(2)	13.12	Companies Act 1929 2.110
s 3(3)–(5)	13.13	Companies Act 1948 2.3, 2.5, 2.110, 2.128,
s 3(6)	13.14	3.5, 4.42, 4.46, 5.42, 7.11, 8.181
s 4(1)	13.16	s 19 2.65
s 4(2)(a)	13.17	s 54 8.36
s 4(2)(b)	13.17	s 54(1)(b) 2.128
s 5(1)	13.18	s 165(6) 5.135
s 5(2)	13.18	s 199 6.100
s 5(3)	13.18	s 210 8.181
s 6(1)	13.19	s 248 7.145
s 6(2)	13.19	Sch 1 4.40
s 6(3)	13.19	Companies Act 1967 2.3, 2.5, 2.94, 2.111,
s 6(4)	13.20	5.34, 7.11
s 6(5)	13.21	Companies Act 1976 2.3, 2.5, 2.111, 3.61,
s 6(6)	13.21	5.39
s 7(1)	13.23	s 29 3.61
s 7(2)	13.25	Companies Act 1980 2.3, 2.5, 2.6, 2.97,
s 7(5)	13.24	2.110-2.113, 4.1, 4.42, 4.44,
s 8(1)	13.26	4.46, 7.11, 10.14, 15.44
s 8(2)	13.26	s 88 10.14
s 8(3)	13.26	Companies Act 1981 2.3, 2.5, 2.6, 2.66,
s 8(5)	13.26	2.97, 2.110, 2.111, 2.119, 5.13,
s 9(1)k	13.27	5.34, 5.38, 8.34, 8.54
	13.28	Companies Act 1985 2.5, 2.6, 2.12, 2.15,
s 10(1)	13.29	2.89, 2.95, 3.5, 3.63, 4.5, 4.7,
s 10(4)		4.11, 4.39, 4.41, 4.45, 4.47, 4.65,
s 10(5)	13.30	5.1, 5.2, 5.9, 5.13, 5.19, 5.24,
s 12(4)	13.32	5.25, 5.29, 6.32, 6.59, 6.167,
Sch 2	13.1	7.81, 7.159, 8.4, 8.99, 8.109,
Building Societies Act 1986 5.114, 8		8.121, 8.169, 8.180, 8.196–8.198,
	55, 2.66	12.7, 12.16
s 1	2.65	s 2 2.64, 2.92
s 4	2.67	s 3A 2.72