

## TABLE OF CONTENTS

|                                                            |      |
|------------------------------------------------------------|------|
| <i>About the Author</i> .....                              | v    |
| <i>Acknowledgments</i> .....                               | vii  |
| <i>Preface</i> .....                                       | ix   |
| <i>Foreword by The Honourable Madam Justice Kwan</i> ..... | xiii |
| <i>Foreword by Professor ELG Tyler</i> .....               | xv   |
| <i>Table of Cases</i> .....                                | xxv  |
| <i>Table of Legislation</i> .....                          | xxix |
| <i>Index</i> .....                                         | 487  |

### CHAPTER 1 INTRODUCTION TO BERMUDA

|                                          |       |
|------------------------------------------|-------|
| 1. Background .....                      | 1.001 |
| 2. Company Law in Bermuda .....          | 1.003 |
| 3. Directors .....                       | 1.007 |
| 4. Establishment .....                   | 1.008 |
| 5. Taxation .....                        | 1.009 |
| 6. Inspection of Corporate Records ..... | 1.010 |
| 7. Government Fees .....                 | 1.011 |
| Annexure A .....                         | 1.012 |
| Annexure B .....                         | 1.013 |
| Annexure C .....                         | 1.014 |
| Annexure D .....                         | 1.015 |
| Annexure E .....                         | 1.016 |

### CHAPTER 2 INTRODUCTION TO THE BRITISH VIRGIN ISLANDS

|                                                   |       |
|---------------------------------------------------|-------|
| 1. Background .....                               | 2.001 |
| 2. Company Law in the BVI .....                   | 2.003 |
| 3. Directors .....                                | 2.009 |
| 4. Establishment .....                            | 2.011 |
| 5. Taxation .....                                 | 2.014 |
| 6. Document Available for Public Inspection ..... | 2.015 |
| 7. Government Fees .....                          | 2.016 |
| 8. Other Special Provisions for IBCs .....        | 2.017 |

|                                   |       |
|-----------------------------------|-------|
| 9. VIRRGIN .....                  | 2.018 |
| 10. Private Trust Companies ..... | 2.019 |
| Annexure A .....                  | 2.020 |

### CHAPTER 3 INTRODUCTION TO THE CAYMAN ISLANDS

|                                            |       |
|--------------------------------------------|-------|
| 1. Background .....                        | 3.001 |
| 2. Company Law in the Cayman Islands ..... | 3.002 |
| 3. Directors .....                         | 3.007 |
| 4. Establishment .....                     | 3.009 |
| 5. Taxation .....                          | 3.013 |
| 6. Government Fees .....                   | 3.014 |
| 7. Public Disclosure .....                 | 3.015 |
| 8. Private Trust Companies .....           | 3.016 |
| Annexure A .....                           | 3.017 |

### CHAPTER 4 JOINT VENTURES, PREFERENCE SHARE ISSUES AND SHAREHOLDERS' AGREEMENTS

|                                                        |       |
|--------------------------------------------------------|-------|
| 1. Introduction .....                                  | 4.001 |
| 2. Veto Rights and Super Majorities .....              | 4.004 |
| 3. Dividends .....                                     | 4.005 |
| 4. Conversion .....                                    | 4.006 |
| 5. Redemptions and Return of Capital .....             | 4.007 |
| 6. Rights Attaching to Shares .....                    | 4.008 |
| 7. Special Considerations for Bermuda .....            | 4.009 |
| (a) Corporate governance .....                         | 4.010 |
| (b) Dividends .....                                    | 4.014 |
| (c) Redemptions, purchases and treasury shares .....   | 4.015 |
| 8. Special Considerations for the BVI .....            | 4.016 |
| (a) Share rights .....                                 | 4.017 |
| (b) Corporate governance .....                         | 4.018 |
| (c) Dividends .....                                    | 4.020 |
| (d) Redemptions .....                                  | 4.021 |
| 9. Special Considerations for the Cayman Islands ..... | 4.022 |
| (a) Corporate governance .....                         | 4.023 |
| (b) Dividends .....                                    | 4.024 |
| (c) Redemptions and purchases .....                    | 4.025 |

### CHAPTER 5 SECURITY ISSUES

|                             |       |
|-----------------------------|-------|
| 1. Bermuda .....            | 5.003 |
| 2. The BVI .....            | 5.013 |
| 3. The Cayman Islands ..... | 5.018 |
| Annexure A .....            | 5.020 |
| Annexure B .....            | 5.021 |
| Annexure C .....            | 5.022 |
| Annexure D .....            | 5.023 |
| Annexure E .....            | 5.024 |
| Annexure F .....            | 5.025 |
| Annexure G .....            | 5.026 |
| Annexure H .....            | 5.027 |
| Annexure I .....            | 5.028 |
| Annexure J .....            | 5.029 |

### CHAPTER 6 INITIAL PUBLIC OFFERINGS

|                                                                           |       |
|---------------------------------------------------------------------------|-------|
| 1. Hong Kong .....                                                        | 6.001 |
| (a) Incorporation and share swap .....                                    | 6.002 |
| (b) Share premium and contributed surplus .....                           | 6.005 |
| (c) Prospectus requirements .....                                         | 6.009 |
| (d) BVI listings in Hong Kong .....                                       | 6.010 |
| (e) Underwriting agreements .....                                         | 6.011 |
| (f) Bye-laws or articles .....                                            | 6.013 |
| (g) Hong Kong rules .....                                                 | 6.014 |
| 2. Post-offering Matters .....                                            | 6.022 |
| 3. Schemes of Arrangement .....                                           | 6.023 |
| 4. Prospectus Requirements and Liabilities/Anti-takeover Provisions ..... | 6.025 |
| 5. Other Considerations .....                                             | 6.032 |
| 6. Special Purpose Acquisition Corporations (SPACS) .....                 | 6.035 |
| Annexure A .....                                                          | 6.036 |
| Annexure B .....                                                          | 6.037 |
| Annexure C .....                                                          | 6.038 |
| Annexure D .....                                                          | 6.039 |
| Annexure E .....                                                          | 6.040 |

### CHAPTER 7 DIRECTORS

|                                       |       |
|---------------------------------------|-------|
| 1. Directors' Powers and Duties ..... | 7.001 |
| 2. Common Law Considerations .....    | 7.002 |

|                                           |       |
|-------------------------------------------|-------|
| (a) Directors' powers .....               | 7.002 |
| (b) To whom are the duties owed? .....    | 7.003 |
| (c) Types of duty owed .....              | 7.004 |
| 3. Statutory Duties and Obligations ..... | 7.011 |
| (a) Bermuda .....                         | 7.012 |
| (b) The BVI .....                         | 7.017 |
| (c) The Cayman Islands .....              | 7.020 |
| 4. Meetings of Directors .....            | 7.024 |
| (a) Notice .....                          | 7.025 |
| (b) Quorum .....                          | 7.026 |
| (c) Proceedings and voting .....          | 7.027 |
| (d) Directors' interests .....            | 7.028 |
| 5. Written Resolutions .....              | 7.029 |

## CHAPTER 8 SHAREHOLDERS

|                                                      |       |
|------------------------------------------------------|-------|
| 1. Rights of Shareholders .....                      | 8.001 |
| (a) Personal actions .....                           | 8.002 |
| (b) Representative actions .....                     | 8.003 |
| (c) Derivative actions .....                         | 8.004 |
| (d) The rule in <i>Foss v Harbottle</i> .....        | 8.005 |
| (e) Winding-up .....                                 | 8.007 |
| 2. Additional Provisions for Each Jurisdiction ..... | 8.008 |
| (a) Bermuda .....                                    | 8.008 |
| (b) The BVI .....                                    | 8.010 |
| (c) The Cayman Islands .....                         | 8.014 |
| 3. Shareholder Meetings .....                        | 8.016 |
| (a) Bermuda .....                                    | 8.016 |
| (b) The BVI .....                                    | 8.022 |
| (c) The Cayman Islands .....                         | 8.024 |

## CHAPTER 9 ALTERATIONS TO CONSTITUTIONAL DOCUMENTS AND CAPITAL

|                                                 |       |
|-------------------------------------------------|-------|
| 1. Amendments to Constitutional Documents ..... | 9.001 |
| (a) Bermuda .....                               | 9.001 |
| (b) The BVI .....                               | 9.003 |
| (c) The Cayman Islands .....                    | 9.004 |
| (d) Financial assistance .....                  | 9.005 |
| (e) Alteration of share capital .....           | 9.007 |
| Annexure A .....                                | 9.020 |
| Annexure B .....                                | 9.021 |
| Annexure C .....                                | 9.022 |

|                  |       |
|------------------|-------|
| Annexure D ..... | 9.023 |
| Annexure E ..... | 9.024 |
| Annexure F ..... | 9.025 |

## CHAPTER 10 TAKEOVERS AND ACQUISITIONS

|                                                                              |        |
|------------------------------------------------------------------------------|--------|
| 1. Bermuda .....                                                             | 10.002 |
| (a) General offers .....                                                     | 10.002 |
| (b) Compulsory acquisition when holding 95 per cent in value of shares ..... | 10.004 |
| (c) Schemes of arrangement .....                                             | 10.005 |
| (d) Amalgamations .....                                                      | 10.006 |
| (e) Reductions and consolidations .....                                      | 10.009 |
| 2. The BVI .....                                                             | 10.010 |
| (a) Redemption of minority shares .....                                      | 10.011 |
| (b) Reductions and consolidations .....                                      | 10.014 |
| 3. The Cayman Islands .....                                                  | 10.015 |
| (a) Compulsory acquisition .....                                             | 10.015 |
| (b) Scheme of arrangement .....                                              | 10.016 |
| (c) Reduction of capital .....                                               | 10.017 |
| (d) Mergers & Consolidations .....                                           | 10.018 |
| (e) Discontinuations .....                                                   | 10.019 |

## CHAPTER 11 AMALGAMATIONS, MERGERS AND CONTINUATIONS

|                                      |        |
|--------------------------------------|--------|
| 1. Bermuda .....                     | 11.002 |
| (a) Procedure .....                  | 11.004 |
| (b) Effect of amalgamation .....     | 11.012 |
| (c) Short form amalgamations .....   | 11.013 |
| (d) Continuations .....              | 11.018 |
| (e) Amalgamation into Bermuda .....  | 11.030 |
| (f) Discontinuances .....            | 11.034 |
| (g) Amalgamation from Bermuda .....  | 11.044 |
| 2. The BVI .....                     | 11.055 |
| (a) Continuations .....              | 11.073 |
| 3. The Cayman Islands .....          | 11.085 |
| (a) Mergers and consolidations ..... | 11.085 |
| (b) Continuations .....              | 11.108 |

## CHAPTER 12 MUTUAL FUNDS

|                  |        |
|------------------|--------|
| 1. Bermuda ..... | 12.001 |
| 2. The BVI ..... | 12.013 |

|                                                       |        |
|-------------------------------------------------------|--------|
| (a) Private or professional funds.....                | 12.015 |
| (b) Public funds.....                                 | 12.016 |
| (c) Other matters.....                                | 12.017 |
| 3. The Cayman Islands.....                            | 12.020 |
| (a) Registered fund.....                              | 12.022 |
| (b) Administered fund.....                            | 12.023 |
| (c) Licenced fund.....                                | 12.024 |
| (d) Offering documents.....                           | 12.025 |
| (e) Retail Mutual Funds (Japan) Regulations 2007..... | 12.029 |
| (f) Deregistration procedures.....                    | 12.030 |
| Annexure A.....                                       | 12.031 |
| Annexure B.....                                       | 12.032 |
| Annexure C.....                                       | 12.033 |

## CHAPTER 13 INVESTMENT MANAGERS

|                              |         |
|------------------------------|---------|
| 1. Bermuda.....              | 13.002  |
| 2. The BVI.....              | 13.006  |
| (a) Included activities..... | 13.007  |
| (b) Excluded activities..... | 13.007a |
| (c) Excluded persons.....    | 13.007b |
| 3. The Cayman Islands.....   | 13.008  |
| Annexure A.....              | 13.013  |
| Annexure B.....              | 13.014  |

## CHAPTER 14 SECURITISATION

|                                                                      |        |
|----------------------------------------------------------------------|--------|
| 1. Bankruptcy Remoteness.....                                        | 14.002 |
| (a) Contractual restrictions on activities and debt limitations..... | 14.003 |
| (b) Change of ownership.....                                         | 14.004 |
| (c) Independent existence.....                                       | 14.005 |
| (d) Security interests over assets.....                              | 14.006 |
| (e) Limited recourse and non-petition.....                           | 14.007 |
| 2. Maintenance of the Vehicle and Trust.....                         | 14.008 |
| 3. Purpose/Star Trusts and Charitable Trusts.....                    | 14.009 |
| (a) Bermuda.....                                                     | 14.010 |
| (b) The BVI.....                                                     | 14.011 |
| (c) The Cayman Islands.....                                          | 14.012 |
| (d) Charitable trusts.....                                           | 14.013 |
| (e) Conclusion.....                                                  | 14.014 |
| Annexure A.....                                                      | 14.015 |
| Annexure B.....                                                      | 14.016 |

|                 |        |
|-----------------|--------|
| Annexure C..... | 14.017 |
| Annexure D..... | 14.018 |

## CHAPTER 15 SEGREGATED ACCOUNTS COMPANIES

|                                                                         |        |
|-------------------------------------------------------------------------|--------|
| 1. Bermuda.....                                                         | 15.002 |
| (a) Deregistration.....                                                 | 15.004 |
| (b) Private Acts.....                                                   | 15.005 |
| (c) Segregated account representatives.....                             | 15.006 |
| (d) Governing instruments and contracts.....                            | 15.007 |
| (e) Dividends, redemptions, re-purchases and reductions of capital..... | 15.008 |
| (f) Accounts and registers.....                                         | 15.009 |
| (g) Internal transactions.....                                          | 15.010 |
| (h) Receivers.....                                                      | 15.011 |
| (i) Winding up.....                                                     | 15.012 |
| 2. The BVI.....                                                         | 15.013 |
| (a) Shares and dividends.....                                           | 15.014 |
| (b) Contracts.....                                                      | 15.015 |
| (c) Designation of assets.....                                          | 15.016 |
| (d) Portfolio liquidation orders.....                                   | 15.017 |
| 3. Cayman Islands.....                                                  | 15.019 |
| (a) Issues of shares and dividends.....                                 | 15.020 |
| (b) Contracts.....                                                      | 15.021 |
| (c) Segregation of assets and liabilities.....                          | 15.022 |
| (d) Winding up.....                                                     | 15.023 |
| (e) Receivership orders.....                                            | 15.024 |

## CHAPTER 16 LIQUIDATIONS

|                                                                              |        |
|------------------------------------------------------------------------------|--------|
| 1. Bermuda.....                                                              | 16.001 |
| (a) Voluntary winding up.....                                                | 16.002 |
| (b) Liquidator's powers.....                                                 | 16.007 |
| (c) Winding up by the court.....                                             | 16.008 |
| (d) Power of directors to petition.....                                      | 16.009 |
| (e) Definition of inability to pay debts.....                                | 16.010 |
| (f) Provisional liquidators.....                                             | 16.012 |
| (g) Liquidators.....                                                         | 16.014 |
| (h) Liquidators' powers.....                                                 | 16.015 |
| (i) Fraudulent trading, fraudulent preference and fraudulent conveyance..... | 16.018 |
| (j) Power to summon persons.....                                             | 16.019 |
| 2. The BVI.....                                                              | 16.020 |
| (a) Winding up under the Business Companies Act.....                         | 16.020 |
| (b) Insolvency Act.....                                                      | 16.026 |
| (c) Administration orders.....                                               | 16.027 |
| (d) Receivership.....                                                        | 16.036 |

|                                                                                     |        |
|-------------------------------------------------------------------------------------|--------|
| (e) Liquidations .....                                                              | 16.041 |
| (f) Remedies against delinquent officers .....                                      | 16.050 |
| (g) Fraudulent trading .....                                                        | 16.051 |
| (h) Insolvent trading .....                                                         | 16.052 |
| (i) Disqualification orders .....                                                   | 16.053 |
| (j) Termination .....                                                               | 16.057 |
| (k) Court termination .....                                                         | 16.058 |
| (l) Termination by liquidator .....                                                 | 16.059 |
| 3. The Cayman Islands .....                                                         | 16.060 |
| (a) Voluntary winding up .....                                                      | 16.061 |
| (b) Winding up by the court .....                                                   | 16.065 |
| (c) Alternative orders to a winding up .....                                        | 16.066 |
| (d) Appointment of liquidators .....                                                | 16.067 |
| (e) Liability of officers and service providers .....                               | 16.070 |
| (f) Order of distribution on a winding up .....                                     | 16.071 |
| (g) Voidable preference, dispositions at an undervalue and fraudulent trading ..... | 16.272 |
| (h) Dissolution .....                                                               | 16.073 |
| Annexure .....                                                                      | 16.074 |

## TABLE OF CASES

|                                                                                                                                                              |              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Adams v Cape Industries PLC [1990] Ch 433 .....                                                                                                              | 14.005       |
| Alexander v Automatic Telephone Co [1900] 2 Ch 56 .....                                                                                                      | 8.004        |
| Asiacorp Development Limited v Greensalt Limited and Firstlink<br>Investments Limited .....                                                                  | 16.043       |
| Bentley-Stevens v Jones [1974] 2 All ER 653 .....                                                                                                            | 7.025        |
| Birch v Sullivan [1957] 1 WLR 1247 .....                                                                                                                     | 8.006        |
| Borland's Trustee v. Steel Brothers & Co Ltd [1901] 1 Ch 279 .....                                                                                           | 4.001        |
| Boshhoek Proprietary Co Ltd v Fuke [1906] 1 Ch 148 .....                                                                                                     | 8.006        |
| Brantley Inc. v. Antarctica Asset Management Ltd November, 2007.<br>Claim No. BVIHCV2007/0227 .....                                                          | 10.011       |
| Brazilian Rubber Plantations and Estates, Re [1911] 1 Ch 425 .....                                                                                           | 7.010        |
| Browne v la Trinidad (1887) 37 Ch D 1 .....                                                                                                                  | 7.025        |
| Burland v Earle [1902] AC 83 .....                                                                                                                           | 8.006        |
| Byng v London Life Association Ltd [1990] 1 Ch 170 .....                                                                                                     | 7.026        |
| Chesterfield and Boythorpe Colliery v Black (1877) 26 WR 207 .....                                                                                           | 7.007        |
| Citv Equitable Fire Insurance Co, Re [1925] Ch 407 .....                                                                                                     | 7.010        |
| Collector of Stamp Revenue v Arrowtown Assets Limited<br>FACV 4/2003 .....                                                                                   | 6.004        |
| Cook v Deeks [1916] 1 AC 554 .....                                                                                                                           | 7.008, 8.004 |
| Corporate Affairs Commission (SA) and Another v Australian Central<br>Credit Union (Australian Law Reports vol. 61, 236) .....                               | 6.026        |
| Cuckmere Brick Co. v Mutual Finance Ltd [1971] 1 Ch 949 .....                                                                                                | 5.001        |
| Cumbrian Newspapers Group Ltd v Cumberland & Westmoreland<br>Herald Newspaper & Printing Co. Ltd. [1986] BCLC 286,<br>[1986] 2 All ER 816, [1987] Ch 1 ..... | 4.008        |
| Dimbula Valley (Ceylon) Tea Co. Ltd v Laurie [1961] Ch 353 .....                                                                                             | 4.024        |
| Discover Reinsurance Company v PEG Reinsurance Co. Ltd<br>2006 Bda LR 88 .....                                                                               | 16.012       |
| DML Resources Ltd. (In Liquidation), Re [2004] 3 NZLR 409 .....                                                                                              | 4.019        |
| Dorchester Finance Co Ltd v Stebbings [1989] BCLC 498 .....                                                                                                  | 7.010        |
| Downes v Grazebrook (1817) 3 Mer 200 .....                                                                                                                   | 5.001        |
| Drown v Gaumont-British Picture Corporation Ltd [1937] Ch 402 .....                                                                                          | 8.006        |
| E.W. Savory Ltd, Re [1951] 2 All E.R. 1036 .....                                                                                                             | 4.005        |
| Ebrahimi v Westbourne Galleries and others [1973] AC 360 .....                                                                                               | 8.009        |
| Edwards v Halliwell [1950] 2 All ER 1064 .....                                                                                                               | 8.006        |
| Eley v Positive Government Security Life Assurance Co. Ltd.<br>(1875) 1 Ex. D. 20 .....                                                                      | 4.008        |
| Emmadart Ltd, Re [1979] Ch 540 .....                                                                                                                         | 16.009       |
| First Virginia Reinsurance Ltd, Re 2003: No 411 .....                                                                                                        | 16.009       |
| Foss v Harbottle (1843) 2 Hare 461 .....                                                                                                                     | 8.005        |
| Fulham Football Club v Cabra Estate plc [1992] BCC 863 .....                                                                                                 | 7.003        |
| Gaiman v National Association for Mental Health [1971] Ch 317 .....                                                                                          | 7.003        |
| Gambotto v WCP Ltd (1985) 182 CLR 432 .....                                                                                                                  | 10.009       |
| George Inglefield Ltd, Re (1933) Ch 1 .....                                                                                                                  | 5.002        |