The first edition of Corporate Insolvency Law proposed a fundamentally revised concept of insolvency law – one intended to serve corporate as well as broader social ends. The second edition took on board a host of changes that reshaped insolvency law and practice, such as the consolidation of the rescue culture in the UK, the arrival of the ‘pre-packaged’ administration and the broad replacement of administrative receivership with administration. It also considered the movement of an increasing amount of ‘insolvency work’ towards the pre-formal insolvency stage of corporate affairs, and the explosion, on the insolvency scene, of a new cadre of specialists in corporate turnaround. This third edition covers the array of new laws, policies and practices that have emerged in the wake of the financial crisis of 2008, and it examines the role of insolvency law in a commercial and financial environment that has changed considerably since the second edition was published. This edition also includes a new chapter on the growing issue of cross-border insolvency.

As with the first edition, this volume aims to provide a framework for evaluating insolvency procedures and laws, and a basis for shaping these so as to rise to evolving challenges.

Vanessa Finch is a Professor of Law Emeritus at the London School of Economics and Political Science, where she taught Insolvency Law, Company Law and Corporate Accountability at undergraduate and Master’s levels. She has published a large number of scholarly articles in the insolvency and corporate law fields, she is a subscriber member of R3, and an honorary member of the Insolvency Lawyers’ Association.

David Milman has studied corporate insolvency law since undertaking his PhD on the subject in 1976. He has published numerous texts and articles on the subject. He is an honorary member of the Insolvency Lawyers’ Association, a subscriber member of R3 and a Professorial Associate at Exchange Chambers. Before moving to the University of Lancaster in 2005, he taught at Manchester University for 27 years, where he was Dean of the Law School from 1995 to 1997.
CORPORATE INSOLVENCY LAW

Perspectives and Principles

THIRD EDITION

VANESSA FINCH AND DAVID MILMAN
To Rob and CMD
CONTENTS

Acknowledgements  page xi
Table of Cases  xii
Table of Statutes and Other Instruments  xxxii
List of Abbreviations  xlix

Introduction to the Third Edition  1

PART I  Agendas and Objectives  7
1 The Roots of Corporate Insolvency Law  9
   Development and Structure  9
   Corporate Insolvency Procedures  18
   The Players  22
   The Tasks of Corporate Insolvency Law  24
   Conclusions  25

2 Aims, Objectives and Benchmarks  26
   Cork on Principles  26
   Visions of Corporate Insolvency Law  28
   An ‘Explicit Values’ Approach to Insolvency Law  41
   Conclusions  50

PART II  The Context of Corporate Insolvency Law: Financial and Institutional  53
3 Insolvency and Corporate Borrowing  55
   Creditors, Borrowing and Debtors  56
   Equity and Security  70
   The ‘New Capitalism’ and the Credit Crisis  109
   Conclusions  114

4 Corporate Failure  117
   What Is Failure?  118
   Who Defines Insolvency?  122
Why Companies Fail 123
Conclusions: Failures and Corporate Insolvency Law 141

5 Insolvency Practitioners and Turnaround Professionals 146
   Insolvency Practitioners 147
   The Evolution of the Administrative Structure 149
   Evaluating the Regulatory Structure 153
   Reforming IP Regulation 168
   Conclusions on Insolvency Practitioners 179
   Turnaround Professionals 180
   Conclusions 192

PART III The Quest for Turnaround 195

6 Rescue 197
   What Is Rescue? 197
   Why Rescue? 201
   Informal and Formal Routes to Rescue 207
   The New Focus on Rescue 209
   Comparing Approaches to Rescue 228
   Conclusions 242

7 Informal Rescue 244
   Who Rescues? 244
   The Stages of Informal Rescue 248
   Implementing the Rescue 264
   Conclusions 270

8 Receivers and their Role 272
   The Development of Receivership 273
   Processes, Powers and Duties: The Insolvency Act 1986 Onwards 275
   Efficiency and Creditor Considerations 283
   Expertise 293
   Accountability and Fairness 294
   Revising Receivership 296
   Conclusions 299

9 Administration 301
   The Rise of Administration 301
   From the Insolvency Act 1986 to the Enterprise Act 2002 302
   The Enterprise Act Reforms and the New Administration Process 312
   Evaluating Administration 323
   Conclusions 369
## CONTENTS

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Pre-Packaged Administrations</td>
<td>371</td>
</tr>
<tr>
<td>11</td>
<td>Company Arrangements</td>
<td>409</td>
</tr>
<tr>
<td>12</td>
<td>Rethinking Rescue</td>
<td>442</td>
</tr>
<tr>
<td>13</td>
<td>Gathering the Assets: The Role of Liquidation</td>
<td>453</td>
</tr>
<tr>
<td>14</td>
<td>The Pari Passu Principle</td>
<td>511</td>
</tr>
<tr>
<td>15</td>
<td>Bypassing Pari Passu</td>
<td>536</td>
</tr>
<tr>
<td>16</td>
<td>Directors in Troubled Times</td>
<td>579</td>
</tr>
<tr>
<td>17</td>
<td>Employees in Distress</td>
<td>645</td>
</tr>
</tbody>
</table>

### PART IV Gathering and Distributing the Assets

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Gathering the Assets: The Role of Liquidation</td>
<td>453</td>
</tr>
<tr>
<td>14</td>
<td>The Pari Passu Principle</td>
<td>511</td>
</tr>
<tr>
<td>15</td>
<td>Bypassing Pari Passu</td>
<td>536</td>
</tr>
</tbody>
</table>

### PART V The Impact of Corporate Insolvency

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Directors in Troubled Times</td>
<td>579</td>
</tr>
<tr>
<td>17</td>
<td>Employees in Distress</td>
<td>645</td>
</tr>
</tbody>
</table>
x CONTENTS

Efficiency 657
Expertise 660
Accountability 661
Fairness 664
Conclusions 667

18 Cross-Border Insolvency 669
   Cross-Border Insolvency: Current Mechanisms Operating in English Law 669
   Efficiency 681
   Expertise 683
   Accountability 684
   Fairness 685
   Conclusions 686

19 Conclusion 688

Bibliography 695
Index 745
ACKNOWLEDGEMENTS

We would like to thank all our colleagues at the London School of Economics and the University of Lancaster who have helped us with this third edition and who have made our Law Departments such stimulating environments in which to research law in its broader contexts.