### INDEX

accepting houses, corporate borrowing and role of, 56–7

accountability
administration process and, 311–12, 359–69, 448
administrative receivers, 294–6
of company directors, 580–614
in company voluntary arrangements, 433–40
in cross-border insolvency, 684–5
of employees, 661–4
explicit values approach to insolvency and, 41–50
future challenges concerning, 688–94
independent regulatory platform and, 169–73
for insolvency practitioners, 388–90
in insolvency procedures, 165–8, 178–9
in liquidation, 485–6
London Approach to recovery and, 263
post-EA regime of, 359–69
in pre-packaged administration, 380–90
in rescue procedures, 206–7, 448
turnaround professionals, 181–4
accounting and auditing
audit explosion in rescue procedure and, 216–17
conflicts of interest during liquidation and, 160–5
corporate failure and role of, 127–8
evaluation of informal rescue and role of, 253–4
evolution of administrative structure and role of, 149–53
London Approach to recovery and, 255–6
specialist accountants, rescue operations and, 233
acquisition syndrome, corporate failure and, 130–1
actors in rescue proceedings
communication difficulties among, 351–2
expertise in CVAs of, 432–3
fairness and accountability of, 360
overview of, 225–8
rescue assessment by, 248–52
‘adequate protection’ principle, Chapter 11 (US) bankruptcy proceedings and, 230–1
adjustable priority rule, secured loan financing, 94–5
administration process. See also administrative receivership; pre-packaged administration
accountability in, 311–12, 359–69, 448
administrative receivership and, 445–6
administrator’s role in, 225–8
book debt reform and, 339–42
business preservation rates and, 304–5
Chapter 11 comparisons with, 316
concentrated creditor governance and, 290–1
corporate insolvency, 19–20
costs of, 305–6
cram-down and supervised restructuring, case for, 345–9
disputed debt in, 458 n. 42
duration of, 316, 323–7
efficacy of, 323–49
enforcement action and, 73–4 n. 106
Enterprise Act reforms and, 296–9, 312–22
establishment of, 209–28, 274–5
evaluation of, 323–69
evolution of, 149–53, 301–12, 442–3
exiting from, 321–2
expertise in, 311–12, 349–59, 447
fairness in, 359–69, 448
financial collateral arrangements and, 317–18
floating charges and, 305
information and expertise issues in, 311–12
insolvency practitioners and, 147–9
judicial accountability in, 362–9
limitations of, 305
moratorium and, 302–12, 316–17, 420–1
nominees in, 325–6
overview of, 301
preferential creditors and, 319–21

© in this web service Cambridge University Press
administration process. (cont.)
pre-packaged administration and, 380–1
prescribed portion of proceeds, 319–21
responsiveness in, 327–33
small companies’ moratorium and, 423–4
statutory framework for, 314–15, 328, 380–1
substitute for liquidation, 326–7
super-priority funding and, 333–8
TUPE regulations and, 652–3
use statistics for, 323–7
weaknesses of, 305
in wrongful trading claims, 599–604
administrative receivers
absence in US bankruptcies of, 232–3
accountability and fairness of, 294–6
bank appointment of, 256 n. 75, 289–90
categories of, 19 n. 50
collective insolvency procedures and, 285–6
in compulsory liquidation, 458–63
conflicts of interest during liquidation and, 160–5
conflicts of interest for, 163–4
duty of care for, 285
efficiency and creditor considerations, 283–93
exceptions to abolition of, 296–9
expertise of, 293–4
fixed security proceedings and, 326–7
future challenges facing, 299–300
insolvency practitioners as, 148–9
introduction of, 273–5
moratorium ineligibility and, 420–1
powers and duties of, 23, 275–83
pre-packaged administration and, 372–4
rescue procedures and, 208 n. 62
revision to appointment of, 147 n. 9
termination of, 282–3
administrative receivership, 18–19
basic principles of, 272–5
business rescues and, 238–9
collectivity of, 285–6
concentrated creditor governance theory of, 288–90
cross-border insolvency and, 675 n. 44
decline of, 442–3
development of, 273–5
efficiency and creditor considerations, 283–93
enforcement action and, 73–4 n. 106
floating charges and, 23, 272–3, 275–83, 287–8, 296–9, 543–4
insolvency practitioners and, 147–9
international distinctions concerning, 272 n. 1
processes, powers and duties, 275–83
rescue culture and, 158–60, 203–5, 442–3
responsiveness of, 327–33
revisions proposed for, 296–9
scepticism concerning, 287–8
set-off rights exclusion in, 526–7
substitution, decline in returns and, 325 n. 161
termination of, 282–3
undermining of administration by, 445–6
use statistics for, 323–7
administrators
accountability of, 359–69
corporate judgement of, 329, 331 n. 200, 364, 386
as company agents, 315–16
company voluntary arrangements and
appointment of, 419
in compulsory liquidation, 458–63
conflicts of interest for, 388–90
court removal of, in conflict of interest
claims, 162–3, 362–9
employees and, 648–9, 661–4
evidence and data collection by, 382–4
expenses in rescue process of, 342–5
expertise of, 311–12, 349–59
fairness of, 184–8, 359–69
insolvency practitioners and appointment
of, 350 n. 302
judicial intervention with, 362–9
misfeasance actions against, 363 n. 369
powers and duties of, 23
pre-packaged administration and, 372–4
powers and duties of, 23
pre-packaged administration and, 372–4
396–7
rescue procedures and, 209–25
set-off rules and distribution by, 525 n. 75
statutory objectives of, 314–15, 328, 363–4
super-priority funding decisions by, 337 n. 230
adoption of contract, administration process
and, 307–8
adverse selection, in pre-pack administration,
398–9
after-the-event (ATE) insurance, 477 n. 179, 478–9
agency costs of inefficiency, company directors
and, 635–6
alarm stage of informal rescue, 252–3
‘all-monies’ provision, retention of title and,
549–50
allocative efficiency, 49 n. 105
INDEX

American Bankruptcy Institute, 235
review of Chapter 11 by, 238
Annual Review of Insolvency Practitioner Regulation, 165–8
Argenti, J., 141–5
Armour, J., 89–90, 221, 272 n. 3, 289, 323–7, 342 n. 257, 658, 659
Armstrong, M., 342 n. 259
asbestos litigation
creditor classes in, 414 n. 27
pre-packaged administration and, 377–80
asset-backed securities, 244–8
corporate borrowing patterns, 69
credit derivatives and, 109–14
repackaging and, 109 n. 286
Asset Based Finance Association (ABFA), 104–5
asset-based financing
administrative receiverships and, 287–8, 294–6
banks’ preference for, 331–2
corporate borrowing and, 69
debt/equity conversion, asset stripping and, 269 n. 129
floating charges and, 95–8
‘prescribed part’ rule and, 88–90
quasi-security arrangements and, 105
receivers’ duties concerning, 279–82
retention of title and, 103
secured loan financing, 72–5
turnaround professionals and, 190
assets
administrators’ duties regarding, 315–16 n. 95
book debts and, 339–42
company directors’ accountability for, 580–3, 585–6
compulsory liquidation and securitisation of, 461–3
costs of liquidation in excess of, 471–2
creditors’ monitoring of, 80–1
turnaround procedures in, 240 n. 206, 241–2
CVA rescue funding and sale of, 429–30
diminution of, 305 n. 32
employee protections and sale of, 650
exclusion from pari passu of, 536 n. 1
existing assets, secured loan financing and, 93–4, 544–6
fixed charges and transfer of, 542–3
floating charges and, 75–6, 106 n. 272, 305 n. 32
‘going concern’ market value of, 411 n. 12
group creditor consolidation and pooling of, 500–3
in insurance insolvencies, 517 n. 36
liquidation and gathering of, 453, 457
mismanagement of, 124–5
parent company guarantee of distribution, 505
pari passu distribution of, 511–12
quasi-security arrangements and protection of, 546–52
reduction, informal rescue and, 265
set-off rights, 529
statutory guarantee of notice for sale of, 405–6
super-priority funding on uncharged assets, 333–8
tests of, corporate failure and, 120–1
in trust devices, 563
undervalue of, 490–4
Assets Recovery Agency (ARA), 582–3
Association of British Insurers (ABI), 382–4, 404–5
Association of Business Recovery Professionals, 135–40
Association of Chartered Certified Accountants (ACCA), 189
asymmetric information. See also disclosure obligations; information flow
corporate failure and, 126–8
credit market diversification and, 258–9 n. 91
equity financing and, 71
fairness in insolvency and, 164–5
Australia
avoidance of transaction prevention in, 479–80
common law duties of directors in, 585–6, 589–94
cross-border insolvency and, 673, 685–6
‘for profit’ litigation funding in, 475 n. 160
group creditor consolidation in, 501–3
rescue procedures in, 240 n. 206, 241–2
retention of title devices in, 548 n. 71
statutory derivative actions in, 610 n. 205
Australian Corporations Law 2001, 503
‘automatic’ trusts, 554–5 n. 113
averaging of credit pricing, secured loan financing and, 82–3
avoidance of transactions
compulsory liquidation and, 460
excessive creditor protection and, 480–1
fairness concerning, 487
avoidance of transactions (cont.)
floating charges, avoidance of, 494–5
funding for prevention of, 479–80
liquidation laws and, 470, 474–7
litigation funding and, 470
retention of title and, 550–1
undervalued transactions, 491 n. 265

balance sheet tests
compulsory liquidation and, 459
corporate failure and, 120–1
directors’ duty to creditors and, 592
preference laws and, 488 n. 245
bank-induced referrals, to turnaround professionals, 181–4

Bank of England
compulsory liquidation assets in, 461–3
equity shares financing and, 70–2
London Approach to recovery and, 256–7
overdraft lending and, 98–102
rescue procedures and, 207–9
on SME borrowing, 66–7

bankruptcy estate, responsibilities in Chapter 11 of, 233 n. 175
bankruptcy law. See also insolvency law
development and structure of law for, 9–11
insolvency law, 12
banks and banking industry. See also credit market; investment banks; secured creditors
administrative receiverships and, 274 n. 11, 289–90, 293–4
administrators’ reliance on, 349–59
anticipatory perspective on, 218–20
asset-based financing preferred by, 331–2
book debt reform and, 341–2
compulsory liquidation and liability of, 460 n. 54
concentrated creditor governance and, 290–1
conflicts of interest for holders of loans in, 163–4
credit markets and, 17–18
debt/equity conversion and, 267–70
EA reforms on rights and incentives of, 331, 352–4
employee protections funding and, 666–7
English versus US security concerning, 232–3
fairness and accountability in rescue funding of, 361
floating charges and, 78 n. 127, 272 n. 3
fragmentation of credit market and, 244–8,
258–60

hold-out strategies in rescues and, 256–7
insolvency practitioner evaluation by, 382–4
‘intensive care’ procedures, 442
IP advisory work for, 381–2
judicial review of administrators’ manipulation by, 368
monitoring and assistance regimes and, 225–8
origination and distribution role for, 111
pressure on directors from, 251 n. 49
procedural rights for, 319–21
rescue procedures and, 207–25
responsiveness of administration process and, 327–33
sale of loans by, 244–8
set-off rights and, 525–9
as shadow directors, 249–51
SME reliance on, 66
super-priority funding and, 333–8
tort creditors’ claims and, 519–20
turnaround professionals and, 190–2
unfairness of pre-packs and behaviour of, 377–80
unsecured loan financing, 98–102
Barclays Bank, Business Support Team, 220–1
bargaining power
retention of title unfairness concerning, 550–1
Belcher, A., 197–200
‘best interest’ test, cram-down procedures and, 230–1
best-practice reporting, rescue procedures and, 213–15
BHS, corporate insolvency of, 2
binding fee estimates, introduction of, 155
Black, B., 246–8
Blackstone, W., 9–11
Blair government
phoenix companies and, 581
rescue procedures and, 202–3
blameworthiness
director disqualification and, 620–3
public interest liquidation and, 466–7
blocked accounts, book debts and, 340
bona fide actions
directors’ duties concerning, 252, 583–7
of receivers, 279–82
receivers’ obligations concerning, 279–82
bonds
alternative lending with, 244–8
INDEX

corporate borrowing and, 68–9
insolvency practitioner deposit
requirements, 156 n. 71
subordination of, in pari passu distribution,
529–32
bonuses, BAPCPA scrutiny of, 237–8 n. 194
book debts
EA reforms concerning, 339–42
financial collateral arrangements and, 317–18
quasi-security arrangements and, 105
boundaries issues, in rescue procedures,
197–200
Brexit
administrative receiverships and, 298 n. 161
corporate failure and, 135
cross-border insolvency and, 679–83
expertise in cross-border insolvency and,
683–4
British Bankers Association, 327
corporate borrowing patterns data from,
65–9
procedural rights for banks and, 319–21
Statement of Principles (1997), 218–20,
287–8
British Business Bank, 57–8
Enterprise Finance Guarantee Scheme for,
64–5
loan guarantees by, 64 n. 51
small and medium enterprises’ borrowing
and, 65–9
British Eagle principle, 527 n. 88, 529–32,
530–1 n. 108
collective insolvency procedures and,
536–9
deprivation provision and, 536–7 n. 5
trust devices and, 563
British Venture Capital Association, 67–8
Brown, Gordon, 202–3, 557 n. 126
burden of proof, fraudulent trading by
directors and, 596–8
‘business angels’, 57, 67–8
turnaround professionals and, 190
‘business judgement rule’ (USA), 401 n. 157,
643
Business Link, 57–8
business preservation statistics
failure rates and, 304 n. 23
receivership and, 286–8
business review
pre-packaged administration and,
384–7
rescue procedures and, 213–15
Business Support Units (BSUs), 245 n. 4
Cadbury Code on Corporate Governance
(1992), 213–15
calculative technologies, rescue assessment
and, 248–52
Canada
bankruptcy proceedings in, 236–7
preferential rights in, 523–4
capital, security loans and raising of, 77–8
Capital for Enterprise Funds, 57–8
capital markets, corporate borrowing and, 68–9
Capital Markets Union Action Plan, 242 n. 22
Carapeto, Maria, 334–5
Carruthers, B. G., 15–16
cash flow
alarm stage of informal rescue and, 252–3
corporate failure test of, 119
debt restructuring and, 265–6
mismanagement, corporate failure and,
124–5
preference laws and, 488 n. 245
super-priority funding from, 333–8
unsecured loans and, 100–2
causes of action cases, litigation financing and,
474–7
centre of main interests (COMI) principle
cross-border insolvency and, 679, 675–8
Model Law on Cross-Border Insolvency
and, 679–81
champerty, rules concerning, 474–7
change management, rescue procedures and,
225–8
Chapter 11 (US Bankruptcy Code)
administration process compared with, 316
American Bankruptcy Institute review of, 238
classes system in, 238–9
creditor control under, 233 n. 176
criticisms of, 234–9
debt restructuring and, 235 n. 185
English perspective on, 238–9
financial contexts in, 234
interest rate costs in, 334–5 n. 215
legal focus of rescue system in, 234
management job loss during, 231–2 n. 169
pre-packaged administration and, 372–4,
377–80, 395
pre-petition management and, 231–2
as reorganisation procedure, 230–1
super-priority funding in, 333–8
charge registration system, 4–5
chartered director concept, 633 n. 370
chattels, mortgage of
corporate borrowing and, 60–2
fixed-charge financing, 75
Chicago School, company directors’ efficiency and, 637
chronological debt ranking, 572–3
civil liability. See also criminal liability
director disqualification and, 618–21
fraudulent trading by directors and, 596–8, 602–4
phoenix syndrome, directors’ liability in,
604–5
in public interest liquidation, 610–14
clearing house arrangements, pari passu
distribution and, 527 n. 88, 536–9
Clifford Chance, 269 n. 129
coherence, independent regulation and, 171–3
collateralised debt obligation, credit derivatives
and, 109–14
collective insolvency procedures, 16–17
administrative receiverships and, 285–6
avoidance of transactions and, 487
concentrated creditor governance theory
and, 288–90
creditor’s bargain theory and, 31–2
creditor wealth maximisation and, 32–3
directors’ duties to creditors and, 587–9
employees and, 661–4
future challenges concerning, 688–94
legal framework for, 536–9
liquidation and, 453
pari passu distribution and, 512 n. 5, 513,
570–2
preference laws and, 487–90
collectivised debt, insolvency law as, 29
Comet, corporate insolvency of, 2
comity, cross-border insolvency and, 672–4
commercial paper, 69 n. 84
commodification of credit. See also
fragmentation of credit market
credit derivatives and, 244–8
globalisation and, 184–8, 258–60
market conditions for, 17–18
common law
conflicts of interest and, 162–3
cross-border insolvency litigation and,
669–71
directors’ duties under, 583–7, 606–10
employee protections in, 646–57
insolvency law and, 9–11
receivers’ duties and, 282–3
common pool problem
insolvency law and, 29
rescue procedures and, 201–7
Commons Select Committee on Business,
Innovation and Skills, 582–3
communication in rescue procedures. See also
notice requirements
difficulties concerning, 351–2
communitarianism, insolvency law and, 35–7
Companies House
disclosure obligations and, 137–8
pre-pack information filing at, 403 n. 161
‘rogue’ directors’ disqualification and, 582–3
Companies Investigation Branch (CIB)
public interest liquidation and, 464, 466–8,
610–14
Companies Registry, 414, 454–5
compromise charge registration rule, secured loan
financing and, 545–6
compromise directors. See also disqualification
procedures for directors; management structure
accountability of, 580–614
administration process and, 306
administrators’ expertise and relations with,
349–59
age of, 622 n. 283
agency costs of inefficiency for, 635–6
avoidance of preferences and, 480–1
beneficiaries of fiduciary duty of, 587–9
Chapter 11 procedures concerning, 237–8
chartered director concept, 633 n. 370
common law duties of, 583–7
company voluntary arrangements and,
417–18, 424–5, 432–3, 435–6
in compulsory liquidation, 458–63
creditors’ monitoring of, 640–1
cross-border insolvency and liability of,
684–5
culpability in disqualification of, 622–3
decisiveness in administration process of,
329–30
de jure versus de facto directors, 579–80
disqualification rules for, 252, 565–6, 582–3,
614–34
efficiency of, 634–41
as employees, preferential debt status and,
518–19, 523–4
employees as members of, 663–4
enforcement of, 606–10
evaluation of informal rescue and role of,
253–4
expertise of, 614–34
fairness of, 642–3
fiduciary duties of, 252
group creditors and, 495–508
informal rescue and, 264–5, 406–7
information coordination with IPs by, 349–59
initiation of rescue by, 248–52
insolvency law and role of, 126–31, 579–80
judicial review of, 366–7
liability for wrongful trading, 248–52, 260–2, 404–5
liquidation regulations and actions of, 470
mitigating factors in disqualification of, 622–3
personal liability rules and, 636–8
phoenix syndrome and liability of, 604–5
pre-package administration and, 406–7
prevention of insolvency and, 225–8
privilege approach to disqualification of, 623–5
public interest liquidation and duties of, 610–14
schemes of arrangement and, 412
small companies’ moratorium and duties of, 420–1
statutory duties and liabilities of, 594–606
subordination of debt and, 529–32
suspension of powers under receivership, 276 n. 28
timing of duties toward creditors, 589–94
training in insolvency management for, 126 n, 52, 357–9, 432–3, 440–1
unfairness of pre-packs and behaviour of, 377–80
voluntary liquidation and powers of, 455–6
Company Law Review Steering Group (CLRSG)
director efficiency and, 638–40
directors’ duties to creditors and, 593–4
directors’ expertise and, 632–4
floating charge reforms and, 107–8, 412–15, 440–1, 543–4
fraud against creditors and, 492–3
fraudulent trading by directors and, 598
retention of title proposals of, 552 n. 98
company structure, historical development of, 11–12
company voluntary arrangements (CVAs), 1–2
accountability in, 433–40, 448
administration process and, 301–12
administrative receivership and, 275–83
approval majority for creditors’ meetings, 438–9
barriers to use of, 425
challenges to nominee in, 422
conflicts of interest for supervisors of, 162–3
creditor arrangements with, 21–2
crown creditors and, 426–8
efficiency of, 424–32
establishment of, 274–5
evaluation of outcomes, 426
expertise in, 432–3, 446–7
fairness in, 433–40, 448
future challenges concerning, 440–1
insolvency practitioners and, 147–9, 158–60
landlords, lessors of tools and utilities, 231–4
liquidation regulations and actions of, 470
receiverships and, 419
motions to wind up and, 366–7
nominee requirements in, 24, 334–5
overview of, 417–40
pre-insolvency and postreorganization procedures, 186–7
recovery planning and, 429–30
rescue procedures and, 207–9, 234
schemes of arrangement and, 440–1
secured versus unsecured creditors, 78 n. 128
survival statistics and, 286
unfair prejudice principle and, 436–8
compensatory penalties
consumer prepayment, 558–62, 565–6
for directors’ fraud, 596–8
disqualification of directors and, 616–17
for employee lay-offs, 650, 663–4
for wrongful trading claims, 602–4
competence of company directors, 614–34
director disqualification on basis of, 620, 623–5
fiduciary duties and exclusion of, 584 n. 30

competence (cont.)
receivers’ obligation concerning, 280–2, 284–5
competitive markets
Chapter 11 impact on, 235–6
group creditor fairness solutions and, 506–8
rescue procedures and, 450
secured loan financing and, 78–81
complaints against IPs
independent regulatory platform, 169–73
procedures for, 165–8
compulsory deposits, rate of return on, 156–7
compulsory liquidation
accountability in, 485–6
bank liability in, 460 n. 54
cross-border insolvency and, 675 n. 44
disputed debt in, 458 n. 42
insolvency practitioners and, 149
overview of, 458–63
procedures, 21
set-off rights and, 526–7
ComRes survey, 126 n. 53, 264–5
concentrated creditor theory
administrative receiverships and, 288–90
EA reforms and, 332–3
erosion of, 258–60
fragmentation of credit market and, 292–3, 327
indirect costs of, 290–1
conditional fee arrangements (CFAs),
liquidation funding and, 477–9
conflicts of interest
in company voluntary arrangements, 432–3, 440–1
directors’ duties concerning, 587–9, 594–6
insolvency practitioner and, 160–5, 388–90
for receivers, 293–4
rescue procedures and, 206–7
connected party sales, pre-pack administration and, 378–9, 394–5, 399
consensual security
corporate borrowing and, 60–2
London Approach to recovery and, 255–6
secured loan financing, 72–5
consolidation
of funding, informal rescues and, 265–6
of group creditors in liquidation, 500–3
constructive trusts, 553–62
Consultative Document on Company Voluntary Arrangements (DTI), 286–8
consumer prepayments
corporate borrowing and, 59
pari passu distribution and, 533–5
policy-based debt ranking and, 575
preferential debt in insolvency and, 520–1
trust devices and, 558–62, 564–6
Consumer Prepayments on Retailer Insolvency, 521, 560–1
contingency fees, in US bankruptcy litigation, 477 n. 179
contingent debt
creditor wealth maximisation and, 49–50 n. 107
set-off rights and, 526 n. 84
contracts. See also employment contracts
administrative receivers and, 275–83
adoption of contract, 307–8
consumer prepayment and, 559
corporate failure and liability in, 134
corporate insolvency and, 33–5, 34 n. 44
creditor’s bargain theory and, 31–2
deprivation principle and, 536–7 n. 5
employee protections in insolvency and, 646, 648–9
liquidators’ statutory powers concerning, 456–7
subordination of debt and, 529–32
supervised restructuring and preservation of, 345–9
contractual liens, corporate borrowing and, 60–2
control strategies
administration as substitute for liquidation, 326–7
compulsory liquidation and, 459, 461–3
creditor control, US versus British comparisons of, 233 n. 176
evaluation in pre-pack of, 396–407
in formal rescue, 443–4
independent regulation and, 171–3
in liquidation, 468–9
pre-packaged administration, 390–407
rescue procedures, 231–2
cooling-off periods, corporate failure and, 145
coordination of insolvency procedures
divergent creditors, informal rescue, 253–4
EA reforms and, 369–70
expertise in CVA and, 432–3
fragmentation of credit market and, 258–60
information coordination, 349–59
in public interest liquidation, 610–14
regulations for, 175
<table>
<thead>
<tr>
<th>Index</th>
<th>753</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cork, Kenneth (Sir), 12–16, 301–2, 311–12, 357 n. 331</td>
<td></td>
</tr>
<tr>
<td>Cork Committee (Cork Report), 12–18</td>
<td></td>
</tr>
<tr>
<td>10 per cent fund proposal of, 88–90, 542–3, 565–6</td>
<td></td>
</tr>
<tr>
<td>administration process and, 19–20, 146, 148–53, 301–2, 311–12</td>
<td></td>
</tr>
<tr>
<td>administrative receivership reforms and, 274–5, 294–9, 304–5</td>
<td></td>
</tr>
<tr>
<td>company directors’ accountability in, 580–3, 592</td>
<td></td>
</tr>
<tr>
<td>company voluntary arrangements and, 417–18</td>
<td></td>
</tr>
<tr>
<td>on compulsory deposits, 156–7</td>
<td></td>
</tr>
<tr>
<td>on consumer pre-payers, 520–1, 558–62, 564–6</td>
<td></td>
</tr>
<tr>
<td>‘creditor participation’ model of insolvency and, 508–10</td>
<td></td>
</tr>
<tr>
<td>on employee creditor priority, 522–3</td>
<td></td>
</tr>
<tr>
<td>explicit values approach to insolvency and, 50–2</td>
<td></td>
</tr>
<tr>
<td>fixed fraction regimes proposal, 88–90</td>
<td></td>
</tr>
<tr>
<td>on floating charges, 77–8, 95–8</td>
<td></td>
</tr>
<tr>
<td>Insolvency Ombudsman proposal and, 176–7</td>
<td></td>
</tr>
<tr>
<td>insolvency practitioners and, 26–8, 158–60</td>
<td></td>
</tr>
<tr>
<td>legacy of, 25</td>
<td></td>
</tr>
<tr>
<td>on liquidation, 468–9</td>
<td></td>
</tr>
<tr>
<td>multiple values/eclectic approach to insolvency, 39–41</td>
<td></td>
</tr>
<tr>
<td>post-liquidation debt payment in, 513–15</td>
<td></td>
</tr>
<tr>
<td>preference laws and, 480–1, 489–90</td>
<td></td>
</tr>
<tr>
<td>preferential debt fairness and, 521–3</td>
<td></td>
</tr>
<tr>
<td>on quasi-security, 105–7</td>
<td></td>
</tr>
<tr>
<td>rescue procedures and, 202–3, 449</td>
<td></td>
</tr>
<tr>
<td>retention of title and, 550–1</td>
<td></td>
</tr>
<tr>
<td>schemes of arrangement in, 414–17</td>
<td></td>
</tr>
<tr>
<td>secured credit criticism in, 541–2</td>
<td></td>
</tr>
<tr>
<td>set-off rights and, 527–9</td>
<td></td>
</tr>
<tr>
<td>subsidiary mismanagement and, 498–500</td>
<td></td>
</tr>
<tr>
<td>on trusts, 553</td>
<td></td>
</tr>
<tr>
<td>on turnaround professionals, 180–1, 188–92</td>
<td></td>
</tr>
<tr>
<td>on wrongful trading, 599–604</td>
<td></td>
</tr>
<tr>
<td>corporate borrowing, 265–6</td>
<td></td>
</tr>
<tr>
<td>equity shares and, 70–2</td>
<td></td>
</tr>
<tr>
<td>failure from inadequate funds and, 124–5</td>
<td></td>
</tr>
<tr>
<td>fixed charge financing, 75</td>
<td></td>
</tr>
<tr>
<td>future challenges for, 114–16, 688–94</td>
<td></td>
</tr>
<tr>
<td>insolvency practitioners and, 55–6, 147–9</td>
<td></td>
</tr>
<tr>
<td>late payment trends in, 135–40</td>
<td></td>
</tr>
<tr>
<td>London Approach to rescue and, 257–8</td>
<td></td>
</tr>
<tr>
<td>new capitalism and, 109–14</td>
<td></td>
</tr>
<tr>
<td>patterns of, 65–9</td>
<td></td>
</tr>
<tr>
<td>procedures for, 59–65</td>
<td></td>
</tr>
<tr>
<td>quasi-security financing, 62–4, 102–8</td>
<td></td>
</tr>
<tr>
<td>rescue procedures and, 109–14, 197–200, 241–2</td>
<td></td>
</tr>
<tr>
<td>secured loan financing, 72–98</td>
<td></td>
</tr>
<tr>
<td>security for, 60–2</td>
<td></td>
</tr>
<tr>
<td>size-dependent factors in, 67</td>
<td></td>
</tr>
<tr>
<td>subordination of debt and, 529–32</td>
<td></td>
</tr>
<tr>
<td>third-party guarantees, 64–5</td>
<td></td>
</tr>
<tr>
<td>unsecured loan financing, 98–102</td>
<td></td>
</tr>
<tr>
<td>corporate failure causes of, 123–40</td>
<td></td>
</tr>
<tr>
<td>defined, 118–21</td>
<td></td>
</tr>
<tr>
<td>external factors in, 131–40</td>
<td></td>
</tr>
<tr>
<td>firm size and, 141–2</td>
<td></td>
</tr>
<tr>
<td>insolvency law and, 117–18, 141–5</td>
<td></td>
</tr>
<tr>
<td>internal factors, 124–31</td>
<td></td>
</tr>
<tr>
<td>late payments as cause of, 135–40</td>
<td></td>
</tr>
<tr>
<td>legal definitions of, 122–3</td>
<td></td>
</tr>
<tr>
<td>poor financial controls, 124–5</td>
<td></td>
</tr>
<tr>
<td>pre-packaged administration and incidence of, 376–7</td>
<td></td>
</tr>
<tr>
<td>corporate insolvency administration process and, 13–16, 306</td>
<td></td>
</tr>
<tr>
<td>Chapter 11 proceedings and, 235</td>
<td></td>
</tr>
<tr>
<td>creditor wealth maximisation and creditors’ bargain, 28–33</td>
<td></td>
</tr>
<tr>
<td>definitions of, 122–3</td>
<td></td>
</tr>
<tr>
<td>ethics and, 38–9</td>
<td></td>
</tr>
<tr>
<td>‘explicit values’ approach to, 41–50</td>
<td></td>
</tr>
<tr>
<td>forum approach to, 38</td>
<td></td>
</tr>
<tr>
<td>future challenges in, 688–94</td>
<td></td>
</tr>
<tr>
<td>group creditors and, 495–508</td>
<td></td>
</tr>
<tr>
<td>international comparisons of proceedings on, 239–42</td>
<td></td>
</tr>
<tr>
<td>laws involving, 24–5</td>
<td></td>
</tr>
<tr>
<td>legitimation of, 44–5</td>
<td></td>
</tr>
<tr>
<td>multiple values/eclectic approach to, 39–41</td>
<td></td>
</tr>
<tr>
<td>pari passu distribution and, 512</td>
<td></td>
</tr>
<tr>
<td>players involved in, 22–4</td>
<td></td>
</tr>
<tr>
<td>principles of, 26–8</td>
<td></td>
</tr>
<tr>
<td>procedures, 18–22</td>
<td></td>
</tr>
<tr>
<td>recognition of trusts and, 553–62</td>
<td></td>
</tr>
<tr>
<td>rescue procedures and, 197–200, 443–4</td>
<td></td>
</tr>
<tr>
<td>statistics on, 304–5</td>
<td></td>
</tr>
<tr>
<td>traditionalist versus proceduralist approaches to, 28 n. 16</td>
<td></td>
</tr>
<tr>
<td>in United States, 230–1</td>
<td></td>
</tr>
<tr>
<td>corporate reporting requirements, rescue procedures and, 213–15</td>
<td></td>
</tr>
</tbody>
</table>
**Index**

<table>
<thead>
<tr>
<th>Page</th>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>231–2 n. 169</td>
<td>corporate salvage agents, debtors as,</td>
</tr>
<tr>
<td>501–3</td>
<td>Corporations and Securities Advisory Committee (Australia),</td>
</tr>
</tbody>
</table>
| 508–10 | creditor wealth maximisation  
contractarian approach to insolvency and,  |
| 33–5 | 246–8 |
| 409–17 | schemes of arrangement and,  |
| 526–7 | set-off rights and,  |
| 422 | small companies’ moratorium challenges,  |
| 337–8 | super-priority funding and,  |
| 345–9 | supervised restructuring and,  |
| 436–8 | TUPE regulations and,  |
| 653–4 | unfair prejudice challenge to CVA and,  |
| 436–8 | in US bankruptcies,  |
| 233 | voluntary liquidation and,  |
| 455–6 | cram-down rules  
in administration process,  |
| 230–9 | American Bankruptcy Institute review of,  |
| 238 | Chapter 11 provision for,  |
| 230–3 | international comparisons of,  |
| 241–2 | ’in the money’/’out of the money’  
distinctions and,  |
| 347 | undue prejudice challenge to CVA and,  |
| 436–8 | creative accounting,  |
| 126–8 | corporate failure and,  |
| 754 | credit card transactions,  |
| 560–1 | consumer  
prepayments and,  |
| 105 | credit default swaps (CDSs),  |
| 246–8 | credit derivatives  
alarm stage of informal rescue and,  |
| 252–3 | commodification of credit and,  |
| 244–8 | corporate borrowing and,  |
| 109–14 | regulatory challenges with,  |
| 112 | new capitalism and,  |
| 109 | risk management and,  |
| 111 | super-priority funding and,  |
| 337–8 | supervised restructuring and,  |
| 345–9 | TUPE regulations and,  |
| 653–4 | unfair prejudice challenge to CVA and,  |
| 436–8 | in US bankruptcies,  |
| 455–6 | voluntary liquidation and,  |
| 233 | cram-down rules  
in administration process,  |
| 230–9 | American Bankruptcy Institute review of,  |
| 238 | Chapter 11 provision for,  |
| 230–3 | international comparisons of,  |
| 241–2 | ’in the money’/’out of the money’  
distinctions and,  |
| 347 | undue prejudice challenge to CVA and,  |
| 436–8 | creative accounting,  |
| 126–8 | corporate failure and,  |
| 754 | credit card transactions,  |
| 560–1 | consumer  
prepayments and,  |
| 105 | credit default swaps (CDSs),  |
| 246–8 | credit derivatives  
alarm stage of informal rescue and,  |
| 252–3 | commodification of credit and,  |
| 244–8 | corporate borrowing and,  |
| 109–14 | regulatory challenges with,  |
| 112 | new capitalism and,  |
| 109 | risk management and,  |
| 111 | super-priority funding and,  |
| 337–8 | supervised restructuring and,  |
| 345–9 | TUPE regulations and,  |
| 653–4 | unfair prejudice challenge to CVA and,  |
| 436–8 | in US bankruptcies,  |
| 455–6 | voluntary liquidation and,  |
| 233 | cram-down rules  
in administration process,  |
| 230–9 | American Bankruptcy Institute review of,  |
| 238 | Chapter 11 provision for,  |
| 230–3 | international comparisons of,  |
| 241–2 | ’in the money’/’out of the money’  
distinctions and,  |
| 347 | undue prejudice challenge to CVA and,  |
| 436–8 | creative accounting,  |
| 126–8 | corporate failure and,  |
| 754 | credit card transactions,  |
| 560–1 | consumer  
prepayments and,  |
| 105 | credit default swaps (CDSs),  |
| 246–8 | credit derivatives  
alarm stage of informal rescue and,  |
| 252–3 | commodification of credit and,  |
| 244–8 | corporate borrowing and,  |
| 109–14 | regulatory challenges with,  |
| 112 | new capitalism and,  |
| 109 | risk management and,  |
| 111 | super-priority funding and,  |
| 337–8 | supervised restructuring and,  |
| 345–9 | TUPE regulations and,  |
| 653–4 | unfair prejudice challenge to CVA and,  |
| 436–8 | in US bankruptcies,  |
| 455–6 | voluntary liquidation and,  |
| 233 | cram-down rules  
in administration process,  |
| 230–9 | American Bankruptcy Institute review of,  |
| 238 | Chapter 11 provision for,  |
| 230–3 | international comparisons of,  |
| 241–2 | ’in the money’/’out of the money’  
distinctions and,  |
| 347 | undue prejudice challenge to CVA and,  |
| 436–8 | creative accounting,  |
| 126–8 | corporate failure and,  |
| 754 | credit card transactions,  |
| 560–1 | consumer  
prepayments and,  |
| 105 | credit default swaps (CDSs),  |
| 246–8 | credit derivatives  
alarm stage of informal rescue and,  |
| 252–3 | commodification of credit and,  |
| 244–8 | corporate borrowing and,  |
| 109–14 | regulatory challenges with,  |
| 112 | new capitalism and,  |
| 109 | risk management and,  |
| 111 | super-priority funding and,  |
| 337–8 | supervised restructuring and,  |
| 345–9 | TUPE regulations and,  |
| 653–4 | unfair prejudice challenge to CVA and,  |
| 436–8 | in US bankruptcies,  |
| 455–6 | voluntary liquidation and,  |
| 233 | cram-down rules  
in administration process,  |
| 230–9 | American Bankruptcy Institute review of,  |
| 238 | Chapter 11 provision for,  |
| 230–3 | international comparisons of,  |
| 241–2 | ’in the money’/’out of the money’  
distinctions and,  |
| 347 | undue prejudice challenge to CVA and,  |
| 436–8 | creative accounting,  |
| 126–8 | corporate failure and,  |
| 754 | credit card transactions,  |
| 560–1 | consumer  
prepayments and,  |
| 105 | credit default swaps (CDSs),  |
| 246–8 | credit derivatives  
alarm stage of informal rescue and,  |
| 252–3 | commodification of credit and,  |
| 244–8 | corporate borrowing and,  |
| 109–14 | regulatory challenges with,  |
| 112 | new capitalism and,  |
| 109 | risk management and,  |
| 111 | super-priority funding and,  |
| 337–8 | supervised restructuring and,  |
| 345–9 | TUPE regulations and,  |
| 653–4 | unfair prejudice challenge to CVA and,  |
| 436–8 | in US bankruptcies,  |
| 455–6 | voluntary liquidation and,  |
| 233 | cram-down rules  
in administration process,  |
| 230–9 | American Bankruptcy Institute review of,  |
| 238 | Chapter 11 provision for,  |
| 230–3 | international comparisons of,  |
| 241–2 | ’in the money’/’out of the money’  
distinctions and,  |
| 347 | undue prejudice challenge to CVA and,  |
| 436–8 | creative accounting,  |
| 126–8 | corporate failure and,  |
| 754 | credit card transactions,  |
| 560–1 | consumer  
prepayments and,  |
| 105 | credit default swaps (CDSs),  |
| 246–8 | credit derivatives  
alarm stage of informal rescue and,  |
| 252–3 | commodification of credit and,  |
| 244–8 | corporate borrowing and,  |
| 109–14 | regulatory challenges with,  |
| 112 | new capitalism and,  |
| 109 | risk management and,  |
| 111 | super-priority funding and,  |
| 337–8 | supervised restructuring and,  |
| 345–9 | TUPE regulations and,  |
| 653–4 | unfair prejudice challenge to CVA and,  |
| 436–8 | in US bankruptcies,  |
| 455–6 | voluntary liquidation and,  |
| 233 | cram-down rules  
in administration process,  |
| 230–9 | American Bankruptcy Institute review of,  |
| 238 | Chapter 11 provision for,  |
| 230–3 | international comparisons of,  |
| 241–2 | ’in the money’/’out of the money’  
distinctions and,  |
| 347 | undue prejudice challenge to CVA and,  |
| 436–8 | creative accounting,  |
| 126–8 | corporate failure and,  |
decisiveness in administration process and, 329–30
efficiency theories and, 49 n. 105
ethical vision of insolvency and, 39–41
insolvency law and, 28–33

cross-border insolvency and, 675 n. 41,
675 n. 44
criminal liability. See also civil liability
in company voluntary arrangements, 435–6
criminal liability. (cont.)
director disqualification and, 618–21
of directors, 582–3
disqualification procedures for directors
and, 631–2
employee protection in insolvency and,
661–4
for fraudulent trading by directors, 251–2,
596–8
phoenix syndrome, directors’ liability in,
604–5
public interest liquidation, directors’ liability
in, 611 n. 211
in wrongful trading claims, 602–4
cross-border insolvency litigation, 17
accountability in, 684–5
common law mechanisms for, 669–71
efficiency benchmarks, 681–3
expertise in, 683–4
fairness and, 685–6
fraudulent trading by directors and, 598
future challenges in, 686–7
London Approach and, 258
private international law and, 669
regulations for, 679–81
scheme of arrangement procedure and,
415–16
statutory mechanisms in, 672–4
cross undertakings, provisional liquidators
and, 460–1
crowdfunding, insolvency and, 113–14
crown creditors, company voluntary
arrangements and, 426–8
Crowen preferential status
abolition of, 216–17, 427 n. 110
administrators’ expenses and removal of,
343 n. 264
alternatives to pari passu and, 536–9,
569–75
crown voluntary arrangements and,
426–8
Enterprise Act reforms and, 319–21,
328
pari passu distribution and, 533–5
preferential debt reform and, 517–18, 523 n.
68
rescue culture and abolition of, 442–3
ring-fencing measures and, 328 n. 176
Crowther Committee Report, 107–8, 552 n. 97
Cruickshank, D., 71
crystallisation, 61 n. 34
floating charges and, 75–6, 97 n. 226
culpability, director disqualification and
principles of, 620–3
cultural factors in corporate insolvency
equity financing and, 71
late payment of debt and, 135–40
liquidation and, 508–10
rescue culture and, 158–60, 202–5, 216–17,
286–8, 442–50
US-English comparisons, 231–3
customer base
corporate failure and dependence on,
128–9
supervised restructuring and power of,
345–9
CVA. See company voluntary arrangements
CVL. See creditors’ voluntary liquidation
data monitoring and analysis
in pre-packaged administration, 382–4
risk management and, 218–20
Davies, Stephen QC, 378, 395–6
de facto director, 579–80
disqualification of, 617–19
de jure director, 579–80
disqualification of, 617–19
Deakin, S., 658, 659
debentures
administrative receivership and, 275–83,
294–6, 302–12
appointment of receivers and, 273–5
avoidance of floating charges and, 494–5
book debts and, 339–42
corporate borrowing and role of, 59
floating charges and, 543–4
funding of liquidation and, 477
in insurance insolvencies, 517 n. 36
secured loan remedies, 100–1 n. 241
debt capital markets, 244–8
debt collection
chronological debt ranking and, 572–3
compulsory liquidation and, 459
creditor wealth maximisation and
rationalisation of, 29–30
ethical vision of, 38–9, 573–4
policy grounds for, 575
rescheduling of, 265–6, 268–9
shift to risk appraisal from, 216–17
size-based debt ranking, 574
small companies’ moratorium and, 421
unsecured loans and problems with,
100–2
debt/equity conversion
decoupling of, 223–5
informal rescues and, 267–70
schemes of arrangement and, 412
debt financing. See corporate borrowing; secured creditors; unsecured creditors concentrated creditor governance theory and, 288–90
debt instruments, corporate borrowing and, 68–9
debt restructuring informal rescue and, 265–6
super-priority funding and, 336–8
debtor in possession (DIP) administration process and, 316
American Bankruptcy Institute review of, 238
Canadian bankruptcy procedures versus, 236 n. 187
Chapter 11 proceedings and, 231–41
company voluntary arrangements and, 424–5
fairness and accountability of, 360–1
practitioner in possession versus, 330–1, 336–7
super-priority funding and, 334–5,
337–8 n. 232
debtors
bank relationships with, 218–20
Chapter 11 filing extensions for, 234–9
corporate borrowing and role of, 65–9
corporate salvage agents as, 231–2 n. 169
enforcement by secured creditors against,
72–5
ethical vision of, 38–9
historical development of insolvency law and, 9–11
insolvency in secured loan financing and,
81–7
insolvency law and rights of, 229
investigation and monitoring of, 78–81
late payment by, 135–40
payment ability of, 138–9, 362 n. 363
pre-packaged administration and costs to,
376–7
secured loan financing and power of, 74–5
Debtors Act 1869, 11
‘Deep Rock’ doctrine, 499 n. 317
defence strategies, fairness in insolvency and, 164–5
defered claims, pari passu distribution and,
532–3
Dell, Edmund, 13
Department for Communities and Local Government, unoccupied property,
liability exemptions for, 343–4
Department of Business, Energy and Industrial Strategy (DBEIS), 21, 57–8
conflict of interest guidelines, 160–5
disqualification powers of, 215–16
employee protections in, 661–4
evolution of administrative structure and,
149–53
IS fees paid to, 155–6
provisional directors proposal and, 607–8
public interest liquidation and, 463–8
regulation of IPs and, 173–4
Department of Business, Enterprise and Regulatory Reform (BERR), 2–3, 607–8
Department of Business, Innovation and Skills (DBIS)
corporate borrowing patterns research by,
65–6
establishment of, 2–3
departmental regulation of insolvency, 173–4
on debt/equity conversion, 268

evolution of administrative structure and,
149–53
insolvency objectives, 26–8
IS fees paid to, 155–6
shareholders’ power to approve CVA and,
439–40
super-priority funding and, 333–8
three-quarters threshold of value and, 438–9
departmental regulation of insolvency, 173–4
departmental regulation of insolvency, 173–4
deprivation principle
collective insolvency procedures and,
536–7 n. 5
estate preservation and, 537–8
deregulation
corporate failure, 133–5
Enterprise Act provisions on, 313–14
of information requirements, 325 n. 164
out-of-court debt restructuring and, 362 n. 362
‘desire’ test, avoidance of preferences and,
480–1
Diamond Committee Report, 107–8, 552 n. 97
Dicey Rule 36, 671
difference principle, contractarian approach to insolvency and, 33–5
director Conduct Reporting Service, 617
directors. See company directors
disclosure obligations
accountability and transparency in pre-pack process and, 380–90
annual returns of plcs and private companies, 137–8
chronological debt ranking and, 572–3
disclosure obligations (cont.)
in company voluntary arrangements, 433–6
Corporate reporting requirements, 213–15
court review of, 376–7
credit derivatives markets and, 224
cross-border insolvency, 681
ethics and standards concerning, 393–6, 402–4
late payment issue and, 137–8
London Approach and, 263
marketing and limits on, 391–3
multi-party actors and, 351–2
‘naming and shaming’ strategy, 137–8, 140
non-compliance with, 137–8
non-government pay-performance tables, 138, 140
notice for sale of assets, requirement for, 405–6
penalties for non-compliance, 402–4
pre-packaged administration, 263, 372–4, 382–4, 402–4
Quistclose trust arrangements, 567–9
of receivers, 282–3
regulatory proposals for insolvency and, 171–3
retention of title and, 103–4, 550–1
statutory obligations, 282–3
discounting of receivables, quasi-security of, 62-4
disqualifying procedures for directors
alternative approaches to, 631–2
compensatory penalties, 616–17
culpability as basis for, 620, 623–7
culpability in, 620–3
effect on director competence of, 627–9
fairness issues and, 642–3
impact on employment of, 625–6 n. 304
judicial decision-making in, 626
low incidence of, 629
mitigating factors in, 622–3
privilege approach to, 623–7
privilege/public interest rationales for, 626–7
‘rights’ approach to, 618–21, 629–31
for shadow directors, 617–19
statutory framework for, 252, 565–6, 582–3, 614–34

dissolution of companies
compulsory liquidation and, 461–3
exiting from administration and, 321–2
expedited process for, 463 n. 78
distressed companies, characteristics of, 118–21
distressed debt market
alternative lenders in, 244–8, 258–60
corporate insolvency and, 18
fairness and accountability in, 360
insolvency law and, 224–5
London Approach and, 260
practitioner in possession and, 331
pre-packaged administration and, 374–7
risk management and, 223–5
turnaround professionals and, 184–8
distributional issues
community approach to insolvency, 35–7
creditor wealth maximisation and, 32–3,
49 n. 106
multiple values/eclectic approach to
insolvency and, 39–41
diverse rescue procedures, 229
divestiture principle
estate preservation and, 537–8
insolvency procedures and, 536–7 n. 5
dividend payments
cross-border insolvency litigation and, 669–71
group creditor consolidation in liquidation and, 500–3
liquidators’ duties concerning, 457
secured loan financing, 72–5
set-off rights and, 527–9
in trusts, 555–8
documentation requirements
administration process and, 311–12, 323–7
of liquidators, 481–2
domestic investment, venture capital and
growth of, 67–8
dominant shareholders, group creditors and
duties of, 505–6
downsizing of firms, in global financial crisis,
1–2
Dramatic Ignorance, 46 n. 100
DTI-Treasury Initiative, rescue culture and,
202–3
due diligence
administrative receivers’ duty of, 283–93
in company voluntary arrangements, 428–9
directors’ liability for wrongful trading and,
248–52
directors’ obligations concerning, 594–6
Dun and Bradstreet (D&B) report, 139–40
duty of care
directors’ obligations concerning, 594–6
receivers’ obligations concerning, 285, 294–6
Ebert, R., 377–80
EC Late Payment Directive, retention of title and, 547 n. 63
eclecticism, in insolvency law, 39–41
economic approach to insolvency corportate failure and, 131–40
creditor wealth maximisation and, 29–30
liquidation and, 508–10
rescue procedures and, 200 n. 15
economic efficiency
of company directors, 634–41
corporate borrowing and, 55–6
of employees, 657–60
limits of secured loan financing and, 81–7
quasi-security arrangements, 105–7
secured loan financing justification based on, 76–81
unsecured loan financing, 98–102
‘economical, technical, or organisational’ (ETO) dismissal, TUPE regulations on, 653–4
economies of scope, independent regulation and, 171
‘effects’ test, avoidance of preferences and, 480–1, 489–90
efficiency benchmarks
administration and rescue, 314–15, 323–49, 363–4
administrative receivers, 283–93
chronological debt ranking, 572–3
company voluntary arrangements, 424–32
concentrated creditor governance theory of receivership and, 288–90
corporate borrowing and, 114–16
cross-border insolvency, 681–3
for directors, 634–41
economic theories concerning, 49 n. 105
for employees, 657–60
future challenges concerning, 688–94
independent regulation and, 171–3
insolvency law and, 28–33
legitimation of, 44–5
in liquidation, 469–83
pari passu distribution and, 513
preferential debt and, 515–24
of pre-packaged administration, 374–7
quasi-security arrangements, 62–4, 102–8, 114–16, 546–52
regulatory policies, 153–8
rescue procedures and, 201–7, 323–49, 446
‘restructuring moratorium’ proposal and, 262
secured credit and, 114–16, 323–7, 539–46
set-off rights, 527–9
in trust devices, 562–7
turnaround professionals, 181–4
EIM Turnaround Practice, 220–1
‘elective regime’, for asset distribution by holding company, 505
electronic disclosure rules
electronic registration of secured creditors proposal, 541–2 n. 33
provisions for, 325 n. 163
Ellis, Martin, 374–7, 391–3, 401
employees
accountability of, 661–4
administration process and, 311–12
administrative receivers and contracts with, 275–83
administrators’ expenses in rescue procedures and protection of, 342–5
advisory function of IPs for, 381–2
alternatives to pari passu and, 569–75
Chapter 11 proceedings and, 235
as corporate creditors, 59
corporate failure and problems with, 134
director disqualifications impact on, 625–6 n. 304
efficiency of, 657–60
employment insecurities and bargaining inequality of, 32 n. 35
expertise of, 660–1
fairness and, 523–4, 664–7
future challenges concerning rights of, 688–94
future challenges in insolvency for, 667–8
in informal rescue, 264–5
legal protections for, 646–57
National Insurance Fund payments to, 121, 517 n. 34, 523–4
pari passu distribution and, 511–13, 518–19
preferential debt and, 519–23, 523 n. 68
pre-packaged administration and protection of, 374 n. 20
rescue procedures and, 197–200
sale of business and protection of, 650
as shareholders, 646
terminology involving, 645–6
TUPE protections for, 650–5
unpaid wages of, as preferential debt, 517–18
employer defences
pension protection and, 656 n. 69
in TUPE regulations, 653–4
Employment Appeal Tribunal, 646
TUPE regulations and, 652 n. 49
employment contracts
administration process and, 307–8
administrators’ expenses in rescue procedures and, 342–5
director disqualifications’ impact on, 625–6 n. 304
pre-packaged administration and protection of, 374 n. 20
rescue procedures and, 450
super-priority funding and, 337 n. 231
employment law, insolvency protections for employees in, 647–8, 661–4
Encouraging Company Rescue (Insolvency Service), 202–3
enforcement actions
administration process and, 309–10
concentrated creditor governance and, 289
directors’ accountability concerning, 606–10
insolvency law and restructuring and, 224–5
moratorium on, 316–17
secured creditors’ power concerning, 72–5
supervised restructuring and, 345–9
Enforcement and Insolvency Service (EIS) (HMRC), 426–8
Enron/WorldCom crisis, 215–17
Enterprise Directorate, 57–8
Enterprise Finance Guarantee Scheme (EFG), 64–5
CVA rescue funding and, 429–30
Enterprise Insight, 57–8
Enterprise Investment Scheme, 57
Epley, L., 377–80
equal distribution
creditor wealth maximisation and, 32–3
group creditors and fairness in, 495–508
preference laws and, 488–9
equitable charge
corporate borrowing and, 60–2
secured loan financing, 72–5
equitable proprietary interests, trusts and, 553–62
equitable set-off, 525 n. 74
equitable subordination doctrine, 532 n. 117
equity-debt decoupling
risk management and, 223–5
supervised restructuring and, 345–9
equity financing
corporate borrowing and, 70–2
CVA rescue funding and, 429–30
debt/equity conversion and, 267–70
SME reliance on, 67–8, 71
Erskine Commission of 1840, 11
establishment concept, cross-border
insolvency and, 677
estate preservation, pari passu distribution and, 512 n. 3, 537 n. 6, 537–8
ethics
company directors’ accountability and, 580–3
corporate insolvency and, 38–9
creditor wealth maximisation and, 39–41
debt ranking based on, 573–4
ICAEW Code of Ethics, 160
IFT Code of Ethics, 185 n. 209, 189, 223 n. 144
IS Code of Ethics, 152, 160–5
pre-packaged administration and, 393–6, 398–9
Eurobonds, corporate borrowing and, 68–9
European Commission
Proposal for a New Directive, 3
rescue procedures and, 242–3
Restructuring Recommendation, 416 n. 38
European Court of Human Rights (ECHR), accountability of liquidator and, 485–6
European Court of Justice
cross-border insolvency and, 675–8
group creditor consolidation and, 500 n. 321
European Economic Area (EEA), preferential debt and, 515 n. 20
European High Yield Association (EHYA), supervised restructuring and, 345–9, 369–70
European Investment Bank (EIB), 58
European Union (EU)
British exit from, 679
government venture capital funding in, 58
group creditor consolidation in, 501 n. 327
rescue culture and, 442–50
Eurosail doctrine, 120–1
Eurotunnel restructuring case, debt/equity conversion in, 267–70
evidence collection
in pre-packaged administration, 382–4
public interest liquidation and, 466–7
INDEX 761

ex anteproseedings
for director disqualifications, 625
rescue procedures and, 209–28
shadow directors and, 251
ex gratia payments, 492–3
expectations gap, insolvency regulation and, 176–7
costs of liquidation and, 471–2
receivership accountability and fairness and, 296
expenses of administration principle, 310 n. 57
Experian, 135–40
expertise in rescue
in administration process, 311–12, 349–59, 447
of administrative receivers, 293–4
of company directors, 614–34
of turnaround professionals, 188–92
explicit values approach
corporate insolvency, 41–50, 688–94
justifications for, 50–2
Export Credits Guarantee Department, 64–5
ex post facto proceedings
director disqualification, 629–31
liquidation procedures as, 508–10
rescue procedures and, 209–28
scheme of arrangement and, 416–17
express trust
defined, 553–62
efficiency of, 562–7
external financing
SME reliance on, 66
external reviews, turnaround professionals and, 182–4
extraterritoriality
cross-border insolvency and, 671, 674 n. 34
fraudulent trading by directors and, 598

facilities acquisition
London Approach to recovery and, 255–6
peaceable re-entry principle and, 310
factoring, 67 n. 69
administrative receiverships and, 287–8
late payment problem and, 138–9
quasi-security arrangements and, 104–5, 546–52

fairness
administration process and, 311–12
of administrative receivers, 294–6
avoidance of transactions and, 487, 494–5
in company voluntary arrangements, 433–40
conflicts of interest and, 163–4
cross-border insolvency litigation, 685–6
of directors, 642–3
employees and, 523–4, 664–7
explicit values approach to insolvency and, 41–50
of floating charges, 75–6, 494–5
to group creditors, 495–508
in administration and, 41–50
in liquidation and, 484–5
in liquidation, 487–508
in London Approach to recovery, 248–64
post-EA regime of, 359–69
power and interest inequalities and, 164–5, 542–3
in preferential debt, 487–90, 521–3
in pre-packaged administration, 377–80, 396–407
in rescue, 206–7, 448–9
in retention of title, 550–1
schemes of arrangement and, 409–17
secured loan financing and issues of, 539–46
set-off rights, 527–9
subordination of debt and, 529–32
of trust devices, 567–9
of turnaround professionals, 184–8
undervaluation and creditor defrauding transactions, 490–4
undue prejudice challenge to CVA and, 436–8
for unsecured creditors, 542–3
family-run businesses, management problems with, 126 n. 53, 129 n. 67
fault-based regimes
rescue procedures and, 229
fault-based regimes (cont.)
US-English comparisons concerning, 231–3
Federation of Small Businesses (FSB), 607–8
fee structure
for insolvency practitioners, 153–8
in pre-packaged administration, 387–8
Ferguson, Nick, 182–4
fiduciary responsibility
of company directors, 252, 583–7
incentives for, 81–7
of liquidators, 457
trusts and, 553–62
‘fighting fund’ vision, ‘prescribed part’ rule and, 90
financial collateral arrangements
administration process and, 317–18
liquidation expenses and, 471–2
Financial Conduct Authority (FCA)
creation of, 2–3
public interest liquidation and, 463–8
financial control. See also specific financing structures, e.g., secured loan financing
corporate failure and, 124–5, 141–2
CVA rescue funding and, 429–30
rescue procedures and, 109–14, 241–2
US versus British rescue procedures and, 234
financial instruments
corporate borrowing and, 68–9
financial collateral arrangements and, 317–18
financial ratios, 118–21
Financial Reporting Review Panel, 127 n. 59
Financial Services Authority (FSA)
global financial crisis and, 2–3
IP regulation, 169–73
London Approach to recovery and, 256–7
public interest liquidation liability and, 611 n. 211
Financial Services Compensation Scheme (FSCS), preferential debt limit of, 515 n. 20
fixed charges
banks’ preference for, 331–2
book debts and, 339 n. 239, 339–42, 339 n. 241
corporate borrowing and, 75
economic efficiency rationale for, 77–8
fairness issues with, 542–3
financial collateral arrangements and, 317–18
preferential debt and, 514 n. 12, 516 n. 23
rescue culture and, 442–3
secured claims and, 539–46
fixed fraction regimes, secured loan financing, 88–90
fixed security, administrator proceedings and, 326–7
fixed-sum credit, unsecured credit as, 62
floating charges
10 per cent fund proposal and, 88–90, 542–3
administration process and, 305, 312–22
administrative receivership and, 18–19, 23, 272–3, 275–83, 287–8, 296–9, 543–4
administrators’ expenses as priority over, 342–5
asset-based financing and, 331–2
asset diminution and, 305 n. 32
avoidance of, 494–5
banks’ involvement in, 78 n. 127, 272 n. 3
book debts and, 339 n. 239, 339–42, 339 n. 241
costs of liquidation and, 470–1
Crown preference abolition and, 517–18
demise of administrative receivership and, 299–300
EA institutionalisation of holders of, 352–4
economic efficiency rationale for, 77–8
employee protections under rule for, 648 n. 23
enforcement action and, 73–4 n. 106, 606–10
‘filling up’ fraud involving, 596–8
financial collateral arrangements and, 317–18
fixed charge financing versus, 75, 95–8
in insurance insolvencies, 517 n. 36
liquidation expenses and, 474 n. 156
monitoring of secured loans and, 86–7
moratorium and, 316–17
preferential debt and, 514 n. 12, 516 n. 23
prescribed portion of proceeds from, 319–21
quasi-security and, 105–7
reassessment of, 95–8
receivers’ obligations concerning, 273–5, 282–3
rescue procedures and, 234, 442–3
relegation of title benefits for holders of, 551–2
secured loan financing and, 75–6, 95–8, 232–3
small companies’ moratorium and, 421
Flood, J., 158–60, 432–3
Flynn, Desmond, 378 n. 45, 395–6
focused rescue procedures, 229
football creditor rule
set-off rights and, 527 n. 88
undue prejudice challenge to CVA and, 436–8
foreign credit
bonds, 68–9
common law concerning, 669–71
cross-border insolvency and, 17, 256–7, 669–71
London Approach and, 258
rescheduling of, 268–9
statutory mechanisms for, 672–4
Forensic Insolvency Recovery Service (FIRS), 582–3, 616–17
formal rescue
administrative receiverships and, 274–5
analysis of, 207–9
procedures in, 443–4
forum approach to insolvency, 38
company voluntary arrangements as, 440–1
multiple values/eclectic approach and, 39–41
fragmentation of credit market
banks’ asset-based financing and, 331–2
banks’ rescue regime and, 244–8
communication difficulties and, 351–2
concentrated creditor theory and, 292–3, 327
coordination of insolvency and, 258–60
incentives for rescue and, 246–8
post-EA regime and, 369–70
rescue culture and, 442
France
employee protections in insolvency in, 665–6
rescue procedures in, 239–40
Franks, J., 286–8, 295–6
fraud
in company voluntary arrangements, 434
compensation for losses from, 596–8
corporate failure and, 128–9, 143
against creditors, 490–4, 596–8, 606
directors’ accountability for, 582–3, 596–8
disqualification of directors on basis of, 631–2
public interest liquidation and, 463–8
timing of directors’ duties toward creditors and, 589–94
wrongful trading by directors as, 251–2
freedom of contract, creditors’ bargain theory and, 540
free-rider problems
concentrated creditor governance theory and, 288–90
information requirements for secured loans and, 92–3
monitoring of secured loans and, 86–7
public interest liquidation and, 471–2
frictionless exchanges, 70–2
Frug, G. E., 44–5
future debt
cash-flow test, 119
directors’ duties to creditors and, 589–94
liquidators’ statutory powers concerning, 456 n. 23
Gazette, voluntary liquidation notices in, 453–8
gearing
company failure and, 126–8, 144
high gearing arrangements, 124–5, 144
investigation and monitoring costs, 78–81
overdraft costs and levels of, 133–5
secured loans and levels of, 73, 77–8
Germany
group creditor consolidation in, 501–3
rescue procedures in, 239–42
Gibson, Peter J, 623–5
global financial crisis
administrative receivership and, 299 n. 167
corporate insolvencies following, 1–2
directors’ accountability and, 582–3
Global Restructuring Group (GRG), 269 n, 129, 291 n. 125
globalisation
administrative receivership and, 296–9
commodified of credit market, 17–18, 184–8, 244–8, 258–60
cross-border insolvency litigation and, 669
fraudulent trading by directors and, 598
rescue procedures and, 209–25
scheme of arrangement procedure and, 415–16
‘going concern’ market value, 411 n. 12
Goode, R. M., 96–7
government insolvency policies
audit explosion and, 217–18
corporate failure and, 132
overview, 57–8
rescue procedures and, 203–5
secured loan financing, 72 n. 95
Graham Review, 3, 378–90
pre-pack administration and, 3, 393–6, 399–400

group creditors
 consolidation of, 500–3
cross-border insolvency and, 675–8, 681–3
dominant shareholders’ duties and, 505–6
‘elective regime’ for asset distribution and, 505
fairness in liquidation and, 495–508
subordination of, 498–500
Group Eurotunnel (GE), debt/equity conversion in case of, 267–70
 guarantees, third-party guarantees, 64–5

Hahn, D., 360–1
Halliday, T. C., 15–16
harmonisation of insolvency laws
 EC Regulation on Insolvency Proceedings and, 674–8
 Model Law on Cross-Border Insolvency and, 679–81
 hedge funds
 as alternative lenders, 244–8, 258–60
 credit crisis and, 110
defined, 246 n. 12
EHYA-supervised restructuring proposal and, 347–8
Her Majesty’s Revenue and Customs (HMRC), 58, 94–5, 197–200
 company voluntary arrangements and, 426–8
‘high gearing’ arrangements, 124–5, 144
 hindsight principle
 administration process and, 354–5
 fraud claims against director and, 599–600
 in wrongful trading claims, 603 n. 16
 hire purchase agreements
 post-liquidation payments and, 514 n. 16
 quasi-security of, 62–4, 546–52
 retention of title and, 103–4
 SME reliance on, 66
hiv-down vehicle, TUPE regulations and, 654 n. 60
HM Revenue and Customs. See Her Majesty’s Revenue and Customs (HMRC)
hold-out strategies
 London Approach to recovery and, 256–7
 pre-packaged administration and, 374–7
 ‘hot pursuit’ of debtors, ‘prescribed part’ rule and, 90
 ‘hotchpot rule’, 669–71
Hsu, A., 272 n. 3, 323–7
Hu, H., 246–8
Hudson, MacIntyre, 137
Hughes, A., 66
human rights issues, liquidation and, 509 n. 375
hybrid financing
 after-the-event insurance and, 479 n. 190
credit crisis and, 110
‘improper motive’ claims, exit from administration and, 322
Improving the Transparency and Confidence in Pre-Packaged Sales in Administrations, 394–5, 406 n. 172
in personam powers
 administrative receivers, 276 n. 30
 cross-border insolvency and, 671 n. 12
in rem powers
 administrative receivers, 276 n. 30
 cross-border insolvency and, 677
retention of title devices and, 548 n. 68
incentives for rescue of banks, 290–1, 294–6, 333–8
in Chapter 11 procedures, 237–8
company directors and, 264–5, 406–7
for corporate failure, 143–5
creditor concentration and, 289
debt payment, 138–9
for financial efficiency, 81–7, 323–7
fragmentation of credit market and, 246–8
for inefficiency, 87–98
of insolvency practitioners, 174–9, 206–7
for investigation, 80–1
in London Approach, 256–7
for monitoring, 86–7, 111–12, 209–25
in pre-pack administration, 398–9
for rescue, 207–9, 304, 327–33
for risk, 111–14
of secured creditors, 257–60, 267–70
for turnaround professionals, 192–3
inclusion, principle of
contractarian approach to insolvency and, 33–5
in insolvency practitioners’ approach, 388–90
sources of expertise and, 355–6
independent business review (IBR)
turnaround professionals and, 182–4
warning signals of insolvency and, 218–20
Independent Insurance case, 130 n. 74
independent regulatory agencies, for IP regulation, proposals for, 169–73
individual creditors
 corporate borrowing and, 57
directors’ duty toward, 587–9
INDEX

industrial relations problems, corporate failure and, 134
inefficiencies
in concentrated creditor governance, 290
corporate borrowing and, 114–16
incentives for, 87–98, 111–12
judicial review of administrators and, 367–8
of liquidations, 288 n. 114
in management, Chapter 11 proceedings and, 237–8
quasi-security arrangements, 105–7
in secured loans, 81–7
in unsecured loans, 100–2
informal rescue
alarm stage in, 252–3
assessment process, 248–52
asset reductions and, 265
characteristics of, 207–9
company directors’ role in, 264–5, 406–7
consequences of, 244
cost reductions in, 265
cross-border insolvency and, 682–3
debt/equity conversion and, 267–70
debt restructuring and, 265–6
evaluation stage of, 253–4
future challenges concerning, 270–1
implementation of, 264–70
initiatives of, 244–8
limitations of, 409
managerial and organisational reforms, 264–5
pre-pack administration transition from, 397–8, 405–8
procedures in, 443–4
scheme of arrangement and, 410 n. 5
stages of, 248–64
supervised restructuring and, 345–9
information flow
administration process and, 311–12, 323–7, 349–59
for company directors, 632–4
in company voluntary arrangements, 433–6
concentrated creditor governance theory and, 288–90
corporate failure and, 126–8
credit derivatives and challenges with, 112–13
creditors’ access to, 606–10
disclosure obligations, late payment issue and, 137–8
for employees, 661–4
equity financing, 70–2
evaluation of regulatory structure concerning, 153–8
group creditor unfairness and, 506–8
of liquidators, 470, 481–2
London Approach to recovery and, 255–6
in pre-packs, 380–90
receivers’ obligations concerning disclosure and, 282–3
in rescue processes, 354–5
schemes of arrangement and, 414
secured loans, 92–3
in trust devices, 567–9
turnaround professionals and, 182–4
unsecured loan financing, 98–102, 546
Inland Revenue, company voluntary arrangements and, 426–8
Insolvency Code of Ethics, 152, 160–5, 382–5, 389–90, 393–6
Insolvency Creditors Association, 469 n. 112
insolvency law. See also bankruptcy law accountability, expertise, efficiency and fairness imperatives in practice of, 6 bankruptcy law versus, 12
corporate directors and, 126–31, 579–80
corporate borrowing and, 55–6
corporate failure and, 117–18, 141–5
definitions of insolvency of, 122–3
development and structure, 9–18
directors’ statutory duties and liabilities in, 594–6, 643–4
employee protections in, 645–6, 661–4
English versus US regimes, 230–1
fee structure for practitioners, 4
floating charges and, 95–8
future challenges in, 688–94
goals of, 9
group creditors and, 495–508
judicial decision-making and, 5
liquidation procedures, 4
pari passu distribution and, 512
pre-pack practices and, 3
procedural guidelines, 5–6
quasi-security arrangements and, 105–8
reform of, 11–18
rescue procedures and, 224–5, 229, 304–5
TUPE regulations and, 650–5
Insolvency Ombudsman, proposed establishment of, 176–7
Insolvency Practices Council (IPC), 2–3
independent IP regulation and, 171
pre-pack administration and, 399
insolvency practitioners (IPs) accountability of, 165–8, 388–90, 433–6, 448
administration process and, 316
administrative receivership by, 18–19, 148–9
administrator’s appointment and, 350 n. 302
as administrators, 23, 147–9
advisory function of, 381–2
bond deposit requirements for, 156 n. 71
company voluntary arrangements and,
417–18, 425, 432–6
conflicts of interest for, 610 n. 207
costs of liquidation and incentives of, 471–2
cross-border insolvency and, 684–5
as CVA nominee, 24, 417–18
departmental regulation of, 173–4
directors’ appointment of, 248–52
duties and responsibilities of, 147–9
economic inefficiencies in employee
dischassals and, 660
efficiency of, 153–8, 329–30
evidence and data collection by, 382–4
evolution of administrative structure and,
149–53
expertise requirements for, 158–60, 293–4
fairness principles and, 160–5, 185 n. 205,
433–6
fees charged by, 153–8
fragmentation of credit and, 260
future challenges concerning, 192–3,
688–94
independent regulation of, 167 n. 134,
169–73
information coordination with directors by,
349–59
late payment problem and, 138–9
liquidation procedures and, 484–5, 508–10
litigation funding and, 471–2
management activities of, 387–8
negligence by, 159–60
orchestration of deliberations by, 388–90
pension protection for employees and,
653–7
post-2015 regulatory regime, 179–80
pre-pack managerial solutions and, 391–3
qualifications, 158–60
receivers as, 293–4
regulatory structure for, 152–3, 157
rescue procedures and role of, 225–8, 233,
240–1
rights protection by, 388–90
scrutiny role in CVAs of, 428–9
as shareholders, 416–17
Insolvency Regulation Working Party (IRWP),
146–7 n. 4
Insolvency Ombudsman proposal and,
176–7
regulatory reform and, 168n n. 138–139
insolvency risk, secured loan financing, 72–5
Insolvency Rules Committee, electronic
disclosure rules and, 325 n. 163
Insolvency Service (IS), 3
Code of Ethics, 152, 160–5, 393–6
complaints gateway of, 165–8
costs of, 155–6
directorial misconduct reporting to, 582–3
disqualification of directors and, 616–17
Disqualification Unit, 149, 215–16
EHYA-supervised restructuring proposal
and, 347 n. 287, 348–9
evaluation of administration by, 323–7
fee review and, 155
‘Framework’ Consultation, 241–2
funding for avoidance prevention and,
479–80
insolvency practitioners and, 151
Inspector General of, 173–4
IP and RPB compliance with, 165–8
moratorium proposal of, 260–2, 415 n. 33,
423–4, 450
pre-pack administration and, 399, 402–4
public interest liquidation and, 467–8
qualifications requirements for management
and, 357–9
receivers’ accountability and fairness and,
294–6
on receivers’ duty of care, 285
rescue mechanisms assessment by, 241–2,
286–8, 450
rescue procedure statistics from, 449
Review Group 1999, 426–8
scheme of arrangement recommendations
by, 414–15
Steering and Directing Boards, 173–4
super-priority funding and, 334–5, 338
three-quarters threshold of value and, 438–9
transaction costs of liquidation and, 483
Insolvency Service Review Groups, 312–13
on preferential debt fairness, 522
on super-priority funding, 335–6
Insolvency Services Account (ISA), 156–7
litigation funding for liquidation and,
479–80
insolvency value, secured loan financing and
transfer of, 81–7
Insolvent Debtors Court, 11
INDEX

Institute for Turnaround (IFT), 182–4, 188–92
Code of Ethics, 185 n. 209, 189, 223 n. 144
management review and, 220–1
Institute of Chartered Accountants of England and Wales (ICAEW), 151
Code of Ethics and, 160–5
company voluntary arrangements and, 425
Institute of Directors (IOD), 593–4, 633 n. 370
disqualification of directors and, 642–3
institutional complexity
independent IP regulation and, 171
of liquidation procedures, 178–9, 508–10
institutional lenders, corporate borrowing and role of, 56–7
insurance
expenses of, priority in rescue proceedings for, 343 n. 264
insolvencies in, preferential debt and, 517 n. 36
secured loan financing and, 79 n. 135, 90–2
intangible property, fixed-charge financing, 75 ‘intensive care’ procedures
bank intervention as, 249–51
managerial and organisational reforms and, 264–5
receivership accountability and fairness and, 296
rescue culture and, 442–50
intention
director disqualification on basis of, 618–21
fraudulent trading by directors and, 596–8
in trust recognition, 554
inter-company loans, liquidation and fairness of, 495–508
interest costs
in Chapter 11 financing, 334–5 n. 215
debt/equity conversion and, 267–70
secured loan financing and, 74–5
tax deductions for, equity financing and, 71
interim moratorium, administration process and, 316–17
interim restraining order, public interest liquidation and, 613–14
internal funding, SME reliance on, 66
International Air Transport Association (IATA), 536–9
international law, administrative receiverships and, 296–9
Intrum Justitia survey, 135–40
investigation costs
inefficiency of secured loans and, 83–4
secured loan financing and reduction of, 78–81
investment banks, as alternative lenders, 244–8, 258–60
investors, corporate failure and actions of, 134–5
invoice dating, late payment problem and, 139–40
invoice discounting
administrative receiverships and, 287–8
quasi-security arrangements and, 104–5
turnaround professionals and, 190
involuntary creditors
corporate borrowing and, 59
information requirements for secured loans and, 92–3
secured credit risks for, 81–7, 539–46
trusts for, 558–62
Ireland
group creditor consolidation in, 501–3
rescue procedures in, 239–42
irrationality, evidence of, in administrators, 364
Jackson, T. H., 28–33, 289
Japan, rescue procedures in, 240
Jersey, Isle of, cross-border insolvency and, 673
job turnover in bankruptcies
Chapter 11 filings and, 231–2 n. 169
pre-packaged administration and reduction in, 374 n. 20
Joint Insolvency Committee (JIC), 152
independent IP regulation and, 171
Joint Insolvency Examining Board (JIEB), 150–1
joint liquidators, voluntary liquidation and, 454–5
Joint Stock Companies Act 1844, 11
judiciary review of insolvency on administration expenses, 344–5
administration process and, 305–6, 308–10 administrator accountability and, 362–9
book debts and, 340
in Chapter 11 proceedings, 234–9
commercial judgement of administrators and, 329, 331 n. 200, 364, 386–7
director disqualifications and, 626
directors’ duties to creditors and, 589–94
EA reforms and information flow to, 312–13, 354–5, 369–70
explicit values approach to insolvency and, 41–50
group creditor consolidation and, 500 n. 321
insolvency practice, 5
judiciary review of insolvency (cont.)
personal liability of directors and, 638–9
pre-package administration oversight, 400–1, 406–8
public interest liquidation and, 466–7
schemes of arrangement and, 412–15
South African rescue procedures and, 239–40
wrongful trading claims and, 602–4
jurisdictional issues
cross-border insolvency and comity in, 672–8, 684–5
group creditors in liquidation and, 498–500
schemes of arrangement and, 412, 415–16
Justice Report 1994, 28
justifiable interference, accountability of
liquidator and, 485–6
Kaldor-Hicks efficiency, 49 n. 105
Katz, A., 326–7, 479–80, 610 n. 207
Kempson, Elaine, 153–4
Key Employee Retention Plans (KERPs), 237–8 n. 194
‘knock-on’ failures
director disqualification and, 620 n. 262
rescue procedures and, 203–5
Korobkin, Donald, 33–5, 39–41, 45
labour market, director efficiency and, 638–40
landlords
company voluntary arrangements and,
431–2
directors’ fraud against, 598
undue prejudice challenge to CVA and
cram-down of, 436–8
last-resort strategies, administrative
receiverships and, 286–8
late payment
corporate failure and, 135–40
unsecured loan risk of, 100–2
Laughton, Chris, 246–8
Law Commission
charge registration system and, 4–5
on consumer pre-payers, 521, 560–1
on directors’ expertise, 632–4
electronic registration of secured creditors
proposal, 541–2 n. 33
floating charge reforms and, 543–4
‘purchase money security interests’ (PMSIs),
545
on quasi-security, 107–8
retention of title devices and, 547 n. 64,
551–2
Law Society, 170 n. 149
on scrutiny role of CVA nominee, 428–9
on small companies’ moratorium, 420, 422–3
lawyers
administrative receivership and, 286–8
in Chapter 11 proceedings, 234–9
US rescue operations and role of, 233
lay-offs of employees, insolvency and, 650
leasing arrangements
adjustable priority rule, 94–5
as administration expense, 344–5
book debts and, 340–1
company voluntary arrangements and,
431–2
quasi-security of, 62–4, 104–5, 546–52
SME reliance on, 66
Legal Complaints Service (LCS), 170 n. 149
legal framework for insolvency. See also
regulation of insolvency procedures
corporate directors’ accountability and, 580–3
employee protections and, 646–57
group creditors and, 495–508
pre-packaged administration and, 390–407
public interest liquidation and, 465–6
rescue procedures and, 200 n. 15, 209–25
legal proceedings, moratorium on, 19–20
legitimation of power, corporate insolvency
law and, 41–50
Lehman Brothers
collapse of, 1, 111 n. 298
restructuring of, 224 n. 146
lessors of tools, company voluntary
arrangements and, 431–2
liability
common law duties, director’s liability and,
583–7
of company directors, 579–80, 594–606
cross-border insolvency fairness and,
685–6
of group creditors, 498–500
insurance against, secured loans, 90–2
of parent companies, 504, 506–8
personal liability of company directors and,
636–8
of receivers, 278–9
several versus joint liability in wrongful
trading claims, 601 n. 147
of shadow directors, 504
of traders and merchants, early bankruptcy
law and, 9–11
TUPE regulations and, 658–9
wrongful trading by directors and increase
in, 601
licensing, of insolvency practitioners, 149–53
liens
corporate borrowing and, 61–2
floating charges and, 97 n. 226
on uncharged assets, super-priority funding and, 333–8
limited liability company
cross-border insolvency fairness and, 685–6
group creditors and, 495–508
group creditor unfairness and, 506–8
historical development, 11–12
phoenix syndrome abuse by, 377–80
privilege approach to director disqualification and, 623–5
secured loans insurance and, 90–2
limited recourse debt, informal rescues and, 268–9
liquidation, 21. See also compulsory liquidation;
public interest liquidation;
voluntary liquidation
accountability in, 485–6
administration as substitution for, 326–7
administration proceedings prior to, 19–20
avoidance of floating charges in, 494–5
avoidance of transactions and, 480–1, 487
basic principles of, 453
Chapter 7 (US Bankruptcy Code) as, 230 n. 164
Chapter 11 and, 235
company voluntary arrangements and, 426
conditional fee arrangements for funding of, 477–9
conflicts of interest during, 160–5
cross-border insolvency and, 673–4, 675 n. 44
debtor in possession system and, 330–1
directors’ duties to creditors prior to, 589–94, 596–8
directors’ enforcement and, 606–10
efficiency benchmarks in, 469–83
employee protections and, 650
equity shares and, 70–2
expenses of, 470, 472–4, 513–15
expenses rules in, 343–4
expertise in, 484–5
fairness in, 487–508
financing for, 474–7
fraud during, 490–4, 596–8
fruits of action assignment in, 479–80
funding issues in, 470
future challenges for, 508–10
group creditors and, 495–508
insolvency practitioners and, 147–9
management replacement and, 330–1
non-rule-centric approaches to, 508–10
overview of, 468–508
pari passu distribution and, 511–12
post-liquidation creditors, 513–15
preferences and, 480–1, 487–90
receivers’ powers and, 285–6
schemes of arrangement as alternative to, 411–12
set-off rights and, 524–9
statistics on, 304–5
statutory mandates and, 49 n. 104
substitution in, 325 n. 161
trust property and, 553
TUPE regulations and, 652–3
undervalued transactions in, 490–4
widespread use of, 4
Liquidation Committee
compulsory liquidation, 461–3
voluntary liquidation and, 453–8
liquidators
claims against directors by, 583–7
court removal of, in conflict of interest claims, 162–3
directors’ monitoring by, 640–1
employees and, 661–4
independence of, 457 n. 36
nomination of, 454–5
as officers of the court, 461–3
powers and duties of, 23–4, 455–6
removal of, 457–8
statutory powers of, 456–7
wrongful trading claims and, 599–604
litigation funding
conditional fee arrangements for, 477–9
creditors as source for, 474–7
liquidation costs and, 469–83
office-holder actions and, 471–2, 477
pari passu distribution and, 533–5
state funding of public interest litigation, 479–80
super-priority for liquidation expenses and, 472–4
third-party sources for, 474–7
loan stocks, 59
corporate borrowing and, 68–9
Lomas, Tony, 224 n. 146
London Approach
expertise and accountability issues with, 263, 446–7
London Approach (cont.)
  fairness issues in, 248–64
  new capitalism and limits of, 258–60, 442
  rescue procedures and, 207–9
  LoPucki, L., 46 n. 100, 82, 376–7
  Maastricht Report 2005, 123 n. 44, 127 n. 59,
    129 n. 70
  ‘main proceedings’ principle, cross-border
    insolvency efficiency and, 681–3
  majority in number requirement, scheme of
    arrangement provisions and, 416–17
  management buyouts (MBOs), venture capital
    for, 67–8
  management structure. See also company
    directors
    of administrators, 306
    in Chapter 11 proceedings, 236–7
    company voluntary arrangements and, 424–5,
      440–1
    concentrated creditor governance and, 290–1
    corporate failure linked to, 126–31, 141–5
    cross-border insolvency and liability of,
      684–5
    debtor in possession system and, 330–1
    employee representation in, 663–4
    group creditors and, 495–508
    informal rescue and reform of, 264–5
    pre-insolvency actions concerning, 220–1
    pre-packaged administration and, 374–7,
      387–8, 391–3
    in rescue procedures, 229, 356–7
    review of directors and, 215–16
    in scheme of arrangement, 415
    shadow directors and, 249–51
    training in insolvency management for,
      357–9, 432–3, 440–1
    US-English comparisons concerning,
      231–2
    voluntary liquidation and, 453–8
  managerial performance review, turnaround
    professionals and, 182–4
  mandatory set-off, 527–9
  Mandelson, Peter, 202–3
  Marconi restructuring negotiations, 224,
    246–8
  market processes
    Chapter 11 proceedings impact on, 235–6
    corporate failure and, 117–18, 131–40
    creditor wealth maximisation and, 29–30
    director efficiency and, 638–40
    director expertise and, 632–4
    equity shares and, 70–2
  informal rescue and, 443–4
  pre-pack administration and, 378 n. 45,
    391–3, 399
  risk management and rescue procedures
    and, 221–2
  super-priority funding and role of, 336–8
  turnaround professionals and, 181–4
  unsecured loans and, 100–2
  market value, cash flow and balance sheet tests,
    120–1
  material audits
    challenges to CVA based on, 436–8
    conflicts of interest and, 160–5
    Maxwell, Robert, 161–2, 390 n. 112
    May, Theresa, 663–4 n. 109
    McCormack, G., 337–8, 487 n. 240
    medium-term note programme, corporate
      borrowing and, 69
    Members’ Voluntary Liquidation process, 468
    cross-border insolvency and, 675 n. 44
    mens rea, director disqualification on basis of,
      618–21
  merchant banks, corporate borrowing and role
    of, 56–7
  mezzanine finance, 68–9, 244–8
  MG Rover collapse, director disqualification
    in, 628 n. 330
  micro-companies, borrowing patterns of, 67
  Miller, P., 122–3
  Minmar saga, 313–14
  misfeasance
    accountability of liquidator and, 485–6
    of administrators, 363 n. 369
    of directors, 640–1
    directors’ enforcement and, 606–10
    litigation financing in liquidation and, 474–7
    wrongful trading claims and, 599–604
  mismanagement, corporate failure and, 126–31
  Mokal, R., 513 n. 9
  monitoring systems
    of accountancy or solicitors, 175
    bank monitoring and assistance regimes,
      225–8
    for company directors, 636–8
    in company voluntary arrangements,
      435–6
    concentrated creditor governance theory
      and, 288–92
  corporate failure and, 143
  evaluation of regulatory structure and,
    153–8
  incentives for, 86–7, 111–12
  inefficiency of secured loans and, 83–4
INDEX

insurance on secured loans, 90–2
practitioner in possession and, 331
secured loan financing, cost reduction and, 78–81
unsecured loan financing, 98–102
moral hazard
company directors’ accountability and, 580–3
credit derivatives and, 111–12
secured loans insurance and, 90–2
moratorium
absence in scheme of arrangement
procedure of, 414–15
administration process and, 302–12, 316–17
administrative receivers and, 305 n. 30
in Chapter 11 proceedings, 230–1
in company voluntary arrangements, 414–15, 419
corporate failure and, 145
Insolvency Service proposal for, 260–2, 415
international comparisons of, 241–2
judiciary role in, 308–10
on legal proceedings, 19–20
London Approach and absence of, 257–8
in pre-insolvency phase, 348–9, 450
small companies’ moratorium, 420–4, 442–3
super-priority funding and, 333–8
wrongful trading liability and, 252 n. 53
Morrison, Eddie, 137
mortgages
corporate borrowing and, 60–2
faithful financial collateral arrangements and, 317–18
fixed-charge financing, 75
receivers’ appointment for, 273–5
receivers’ duties concerning, 279–82
multiple authority sources, expertise from, 355–6
multiple values/eclectic approach, corporate
insolvency and, 39–41
Mumford, M., 326–7, 479–80, 610 n. 207
mutuality conditions in insolvency
cross-border insolvency and, 674–8
set-off rights and, 524–9
‘naming and shaming’ strategy, late payment
issue and, 137–8
National Audit Office (NAO), directors’
disqualification reports of, 616–17, 629
National Insurance Fund
economic inefficiencies in, 660
employee rights to payment from, 121, 517 n. 34, 523–4, 657–60
insolvency protections in, 647–8
TUPE protections and, 650–2
natural disasters, corporate failure and, 134
near-insolvency conditions
directors’ duties to creditors and, 589–94
turnaround professionals and, 181–4
negative equity, companies in, 197–200
negative pledge clauses
floating charges and, 97, 106 n. 272
super-priority funding and, 338
negligence
administrative receivers’ duty concerning, 283–93
director disqualification on basis of, 618–21
directors’ common law duty and, 583–7
of insolvency practitioner, 159–60
negotiation process, expertise in CVA and, 432–3
net property of company, ‘prescribed part’ rule
and, 88–90
new capitalism
credit crisis and, 109–14
future of insolvency law and, 688–94
London Approach limitations and, 258–60
rescue procedures and, 223–5, 442
New Zealand, 241–2
common law duties of directors in, 585–6, 589–94
creditors’ protections in, 610 n. 207
group creditor consolidation in, 501–3
New Zealand Insolvency, 479–80
niche specialists, turnaround professionals as, 182–4
‘no economic interest’ approach
cram-down and supervised restructuring
and, 345–9
shareholders’ power to approve CVA and, 439–40
subordinated bondholders and, 410 n. 4
non-adjusting creditors
adjustable priority rule and, 94–5
inefficiency of secured loans and, 83–4
insurance compensation, secured loans, 90–2
‘prescribed part’ rule and, 88–90
non-bank credit investment
administrative receivership and, 286–8
credit crisis and, 110 n. 291
non-consensual security
corporate borrowing and, 61–2
secured loan financing, 72–5
non-domestic rates, priority disbursement in
rescues of, 343–4
non-economic values, corporate insolvency and, 28–33
non-payment, unsecured loans and risk of, 100–2
non-traders, early bankruptcy laws for, 11
Northern Rock crisis, 111 n. 298
notes, corporate borrowing and use of, 69
notice-filing system, quasi-security and, 107–8
notice requirements
corporate insolvency and, 28–33
non-payment, unsecured loans and risk of, 100–2
non-traders,... directors, 504
subordination of debt and, 529–32
subsidiary guarantees by, 505
Pareto efficiency, 49 n. 105
772 index

onerous property
avoidance of preferences and, 480–1
fraudulent trading by directors of, 598
liquidators’ statutory powers concerning, 456–7
subordination of debt and, 530–1 n. 108
online services, disqualification of directors and, 617
Operating and Financial Review (OFR), 213–15
operating strategies for healthy businesses, 242
rescue procedures
corporate failure and, 133
avoidance of preferences and, 480–1
avoidance of preferences and, 480–1
rescue procedures
corporate failure and, 133
avoidance of preferences and, 480–1
avoidance of preferences and, 480–1

object certainty, in trust recognition, 554
objective tests
avoidance of preferences and, 480–1
directors’ duty to creditors and, 592–3
preference laws and, 488–9
occupational pensions, qualifying liability and, 307 n. 47
office holder recoveries
disqualification of directors and, 617
funding of liquidation and, 477
liquidation and, 509 n. 375
Office of Fair Trading (OFT), 4
accountability of IPs and, 165–8
on consumer pre-payers, 520–1, 558–62
insolvency practitioner fees and, 153–8
pre-packaged administration recommendations, 382–4
unsecured creditors and, 385
Office of Small Business Commissioner, 140
Official Receiver
in compulsory liquidation, 461
disqualification of directors and, 614–16
duties of, 149
expenses of liquidation and, 472–4
winding up and liquidation and, 21
Ogus, A., 519–20, 564–6
OHADA countries, cross-border insolvency regulations and, 679–81
Paradigm Dominance Game, 46 n. 100
Paramount case, 278–9
parent company
cross-border insolvency and, 675–8
group creditor consolidation and contributions from, 503
risk shifting by, 506–8
as shadow directors, 504
subordination of debt and, 529–32
subsidiary guarantees by, 505
Pareto efficiency, 49 n. 105
preference laws (cont.)
costs of liquidation and, 472–4
directors’ liability and, 606
efficiency of administrators and, 323–7
employees’ rights and, 523–4, 664–7
Enterprise Act 2002 provisions on, 319–21
fairness in liquidation and, 487–90
liquitator fairness concerning, 487–90
schemes of arrangement and, 412–15
small companies’ moratorium and, 422
wrongful trading and, 601–2
preferential debt
classification of, 515 n. 20
company voluntary arrangements and, 419, 422
costs of deal-making, pre-pack
consumer prepayment and, 520–1
directors’ duty concerning, 588 n. 59
deferral claims and, 532–3
employees’ wages and salaries as, 647
floating charge reforms and, 544 n. 46
in insurance insolvencies, 517 n. 36
pari passu distribution and, 515–24
priority of, 275–83, 513–15
property rights and, 539 n. 16
ranking of, 516 n. 23
secured loan financing and, 545–6
unsecured loans and, 100–2
pre-insolvency approaches
communitarianism and, 35–7
company voluntary arrangements and, 419, 422
consumer prepayment and, 559–60
creditor’s bargain and, 32–3
directors’ duties to creditors and, 588–94
moratorium in, 348–9, 444–5
pre-packaged administration as, 371–2,
390–407
rescue procedures and issue of, 209–25
schemes of arrangement and, 412
security for corporate borrowing and, 60–2
set-off rights and, 527 n. 88
shareholder interests and, 444–5
turnaround professionals and, 180–1
premature closures, receiverships and, 288 n. 114
Prentice, D., 331–2, 487–90, 533–5
pre-pack pool
legislative reform of, 401–2
management scrutiny by, 397–8
viability review and, 399–400
pre-packaged administration
accountability and transparency in, 380–90
administration process and, 380–1,
447 n. 18
advisory work and, 381–2
basic principles of, 371–2
boundaries of, 402–4
business judgements and, 384–7
corporate insolvency and, 16–17
development requirements for, 263, 372–4,
402–4
efficiency of, 374–7
EHYA-supervised restructuring proposal
and, 347–8
employees and, 661–4
ethics and standards, 393–6
evaluation of control strategies for, 396–407
evidence and data collection for, 382–4
evolution of, 372–4
rescue procedures and, 197–209, 209–25,
384–7, 442–3
SIP standards and, 263
statistics on, 373–4
wrongful trading liability and, 404–5
prepayment insurance, consumer prepayments and, 560–1
pre-pack rules
’prescribed part’ rule
costs of liquidation and, 471–2
enforcement of directors and, 606–10
fixed fraction regimes proposal, 88–90
in insurance insolvencies, 517 n. 36
preferential debt and, 517–18
rescue culture and, 442–3
unsecured loans and, 328 n. 176, 542–3
’pre-solicitation’ deal-making, pre-pack
administration and risk of, 402–4
’presumed’ trusts, 554–5 n. 113
preventive approaches to insolvency.
See rescue procedures
prevention of insolvency and, 225–8
pricing economics
competition and corporate failure, 132
corporate failure and, 127–8
priority relationships
abortion of security proposal and, 87–8
adjustable priority rule, 94–5
improvements proposed for, 87–98
INDEX

quasi-security and, 105–7
secured loan monitoring and investigation costs, 78–81
private capital, governmental agencies as creditors for, 57–8
private equity groups as alternative lenders, 244–8, 258–60
credit crisis and, 110
directors’ common law duties toward, 584
private rights
creditor wealth maximisation and, 28–33
cross-border insolvency litigation and, 669
outcomes of insolvency and, 50–2
‘privilege’ approach to director disqualification, 623–5
privity of contract doctrine, subordinated debt and, 529–32
pro rata claims, pari passu distribution and, 511–13
procedural securities, corporate borrowing and, 61–2
proceduralist approach to insolvency, 28 n. 16
Productivity and Enterprise (White Paper), 312–13
professional standards
directors’ expertise and, 632–4
pre-packaged administration, 393–6
SIP standards, 263
profession-led regulation of IP
Insolvency Ombudsman and, 176–7
proposals for, 174–9
professionalisation of insolvency practitioners, 169
Prompt Payment Code, 135–40
prompt payment discounts, 139–40
proof of debt, compulsory liquidation, 462 n. 71
property regulations
administration process and protection of, 302–12
banks’ securitisation of, 331–2
compulsory liquidation rules and, 460–3
evasion of pari passu and, 537–8
fixed-charge financing, 75
moratorium and protection of, 316–17
receivers’ duties concerning protection of, 281–2 n. 70
rescue strategies and deference to, 449
schemes of arrangement and, 411 n. 12
secured claims and, 60–2, 539–46
small companies’ moratorium on property disposal, 421–3
trust property and, 553
‘prospect of insolvency’ principle, directors’ duties to creditors and, 589–94
‘protective umbrella procedure’, German restructuring laws and, 239–40 n. 205
Protum, 220–1
provisional directors, phoenix syndrome and, 607–8
provisional liquidators
court proceedings for, 459–60 n. 52, 460–1
moratorium eligibility and, 420–1
Prudential Regulatory Authority (PRA), creation of, 2–3
public equity markets, entry barriers to, 71 n. 93
public interest
administrative receiverships and, 293–4
disqualification of directors based on, 623–7
exit from administration on grounds of, 322
fraud and protection of, 466–7
funding of avoidance prevention, 479–80
outcomes of insolvency and, 50–2
public interest liquidation (PIL)
company directors’ duties concerning, 610–14
costs of, 471–2
financing for, 474–7
overview of, 463–8
provisional liquidators and, 460–1
Public Interest Unit (PIU) (Insolvency Service), 459–60 n. 52
punitve approaches
company director efficiency and, 636–8
in director disqualification, 622–3
in early insolvency law, 9–11
‘purchase money security interests’ (PMSIs), 544–6
pyramid selling, public interest liquidation and, 463 n. 80, 466–7
qualifying floating charge (QFC)
administrators’ appointments by holders of, 351 n. 304
banks as holders of, 319–21
book debt reform and, 341–2
Enterprise Act restrictions on, 312–13
interim moratorium and, 317 n. 107
judicial review of administrators for, 368
out-of-court appointments of administrators and, 329–30
preferential creditors and, 319–21
rules involving, 325–6
qualifying liabilities
administration process and, 307–8
of receivers, 278–9
quality control
for insolvency practitioners, 388–90
rescue procedures and culture of, 216–17
turnaround professionals, 190–2
quasi-informal rescue
judicial approval proposal for, 406
pre-pack transition to, 405–6
procedures in, 443–4
quasi-security arrangements
corporate borrowing, 62–4, 102–8, 114–16, 546–52
floating charges and, 97
limitations of, 105–7, 291–2
Quickeffect trust arrangements, 555–8
efficiency of, 562–7
fairness of, 567–9
‘rescue fund trusts’ and, 566–7
R3 (Association of Business Recovery Professionals), 152
accountability and, 165–8
company voluntary arrangements
guidelines from, 434
cram-down procedure criticised by, 348–9
fee monitoring of, 153–8
pre-pack ethics and standards and, 393–6, 399
‘restructuring moratorium’ proposal
support for, 262
on statutory guarantee of notice, 405–6
Survey of Business Recovery 2001 by, 264–5
Voluntary Arrangements Service and, 426–8
R3 Analysis, 374 n. 20
Railtrak bankruptcy, 133
rational behaviour
contractarian approach to insolvency and, 33–5
equity shares financing and, 70–2
monitoring and investigation of, over-reliance on, 83–4
secured loan financing and, 74–5
Rawls, J., 29, 33–5, 46 n. 100
reasonable care, receivers’ duty of, 279–82
‘reasonable director’ standard, wrongful trading claims and, 601
reasonableness testing, information requirements for secured loans, 92–3
receivers. See administrative receivership. See administrative receiverships
Recognised Professional Bodies (RPBs)
accountability of, 165–8
conflict-of-interest guidelines and, 160–5
independent regulation of, 169–73
Insolvency Ombudsman proposal and, 176–7
insolvency practitioner as, 149–53
insolvency practitioners and, 152–3
IP qualifications and, 158–60
regulatory regime for, 157–8, 175
recovery process
administrator efficiency concerning, 323–7
after-the-event insurance and, 479 n. 190
concentrated creditor governance theory
and, 288–90
credit derivatives as barrier to, 113–14
directors’ accountability and, 582–3
responsiveness of administration process and, 327–33
redundancies from insolvency, employee protections against, 650–5, 663–4
refinancing options, turnaround professionals and, 190
Regional Venture Capital Funds, 57–8
Registrar of Companies, 395–6
expedited dissolution and, 463 n. 78
small companies’ moratorium and, 421–2
regulation of insolvency procedures
accountability in, 165–8
audit explosion and, 216–17
coordination or amalgamation of, 175
corporate failure and, 133–5
cross-border insolvency and, 679–81
departmental regulation, 173–4
efficiency of, 153–8
expertise and qualification requirements, 158–60
fairness principles, 160–5
future challenges for, 192–3
independent regulatory agency proposed for, 169–73
post-2015 regime, 179–80
pre-pack administration and, 381–2, 401–2, 407–8
profession-led regulation, revision of, 174–9
public interest liquidation and, 465
reform proposals for, 168–79
structure for, 153–68
turnaround professionals and, 188–92
rehabilitation procedures
communitarian approach to insolvency and, 35–7
corporate failure and, 145
corporate insolvency and, 14
eyear insolvency law and, 9–11
non-economic values in insolvency
management and, 28–33
remedial constructive trusts, 555 n. 117
remuneration
employee protections under rules for, 648–9
for liquidators, 472–4
rental accruals
as administration expense, 344–5
post-liquidation payments and, 514 n. 16
reorganisation approach to insolvency
Chapter 11 as, 230–1
creditor wealth maximisation and, 29–30
repackaged debt
asset-backed securities, 109 n. 286
corporate borrowing and, 69
repayment practices
chronological debt ranking and, 572–3
ethical debt ranking and, 573–4
London Approach to recovery and, 256–7
policy-based debt ranking, 575
size-based debt ranking, 574
'rescue fund trusts', 566–7
rescue procedures. See also formal rescue;
informal rescue
accountability in, 206–7, 448
actors' roles in, 225–8
administration process and, 302–12, 314–15, 323–49
administrators' expenses and, 342–5
alternative lending sources and, 244–8
awareness of and intervention in insolvency
and, 225–8
book debt reforms and, 339–42
Chapter 11 and US approach to, 230–1, 234–9
characteristics of, 197–200
communication difficulties in, 351–2
company preservation versus business
rescue, 238–9
company voluntary arrangements and,
417–18, 424–32
comparative analysis of, 228–42
corporate insolvency and, 16–17
credit derivatives as barrier to, 113–14
current focus on, 209–28
directors' role in initiation of, 304–5, 329–30
economic and legal perspectives on,
200 n. 15
efficiency issues in, 201–7, 323–49, 446
employee accountability and, 661–4
employee efficiency and, 657–60
employee protections during, 648–9,
649–50 n. 31
evaluation of, 201–7, 243
exit from administration and, 321–2
expertise in, 446–8
failure of, 304 n. 23
fairness in, 206–7, 448–9
fault issues and, 231–3
financing of, 234
formal and informal routes to, 207–9
insolvency practitioners and, 147–9
international comparisons of, 239–42
intersecting regimes for, 443–4
IP expertise and, 158–60
judicial review of administrator fairness and
accountability in, 362–9
managerial and control functions, 231–2
philosophical principles of, 209–25
pre-packaged administration strategies for,
384–7
pros and cons of, 201–7
quantification of work involved in, 222–3
Quistclose trust as, 563–4
reassessment of, 442–50
receivers and, 286–8
responsiveness of administration process
and, 327–33
schemes of arrangement and, 409–17
shareholders' role in, 233
stages of insolvency and, 445
statistics on, 117 n. 1
statutory objectives in, 328, 363–4
streamlining of, in Enterprise Act reforms,
319–21
systems-based design for, 445
training for corporate directors concerning,
357–9, 432–3, 440–1
turnaround professionals and, 180–92,
197–200
United Kingdom encouragement of, 242–3
US-British comparisons of, 228–42
values identification in, 446–8
'rescue referral', turnaround professionals and,
181–4
residual estate
chronological debt ranking for, 572–3
ethical debt ranking and, 573–4
residual estate (cont.)
limitations of pari passu distribution and, 570–2
pari passu distribution of, 512 n. 3, 536–9, 575–6
policy-based debt ranking, 575
size-based debt ranking, 574
responsiveness, in administration process, 327–33
restraining order system, public interest
liquidation and, 613–14
restructuring process
administrative receivership and, 302–12
cross-border insolvency and, 678
debt/equity conversion and, 267–70
insolvency law and, 224–5
‘new model’ of, 258–60
pre-packaged administration and, 372–7
‘restructuring moratorium’ proposal and, 260–2, 415 n. 33, 423–4
small companies’ moratorium and, 423–4
super-priority funding and, 338
supervised restructuring, 345–9
turnaround professionals as counsellors during, 182–4
resulting trust
defined, 553–62
efficiency of, 562–7
retail insolvency, consumer prepayment and, 520–1
retention of title (reservation of title)
‘all-monies’ provision and, 549–50
estate preservation and, 512 n. 3, 537 n. 6
fairness issues in, 164–5, 550–1
quasi-security of, 62–4, 102–8, 546–52
registration and notice requirements excluded from, 541–2
simple versus complex clauses, 102–3 n. 256
retributive justice, director disqualification and, 620–1
Review of Civil Litigation Costs (Jackson)
conditional fee arrangements and, 478–9
director accountability and, 582–3
Review of Company Rescue and Business Reconstruction Mechanisms (IS), 334–5
A Review of the Corporate Insolvency Framework: A Consultation on Options for Reform, 3, 338, 348–9, 369–70, 426, 450
revolving credit, unsecured credit as, 62
‘rights’ approach to director disqualification, 618–23, 629–31
ring-fencing
asset-based financing and, 331–2
EA abolition of, 328
funds covered by, 331
preferential debt and, 517–18, 523 n. 68
prescribed portion of proceeds for, 319–21
secured loans, 89 n. 185
in trusts, 557–8
unsecured loans and, 101 n. 247, 328 n. 176
risk management
adjustable priority rule and, 94–5
alternatives to pari passu and, 569–75
company director efficiency and, 636–8
corporate failure and, 144
equity financing, 70–2
government insolvency policies and, 217–18
group creditors and, 495–508
new capitalism model and, 111–14
preferential debt and inequity in, 518–20
rescue procedures and, 213–15
secured loan financing and, 72–5, 78–83, 539–46
shift from debt collection to, 216–17
Rolls Royce RB211 engine affair, 133
Romalpa case, retention of title in, 547–9
Rowley, C., 519
Royal Bank of Scotland
rescue culture and, 286–8
Specialised Lending Services Division, 220 n. 130, 269
Rule 2.2 report, 305–6, 311–12
Enterprise Act abolition of, 312–13
Sach, Derek, 220 n. 130
salaries
administrators’ expenses in rescue
procedures and protection of, 342–5
as preferential debt, 517–18
protections for, 647
as qualifying liability, 307 n. 47
sale and lease-back agreements
adjustable priority rule, 94–5
debt restructuring and, 265–6
quasi-security arrangements and, 62–4, 104–5, 546–52
SME reliance on, 66
sale of business, employee protections and, 650
INDEX

savings schemes, trust devices and, 558–62, 564–6
schemes of arrangement procedure
accountability in, 206–7, 448
business rescues and, 3
Companies Act 2006 provisions for, 234, 409–17
company voluntary arrangements versus, 411–12, 416–17, 436–8, 440–1, 445–6
creditor classes definitions and, 412–15
cross-border insolvency and, 675 n. 41, 675 n. 44
information and notification requirements and, 414
limitations of, 412–15
management structure and, 415
moratorium absent in, 414–15
revisions to, 416–17
revival of, 415–16
Schermer, B. S., 37
Scottish Law Commission, 632–4
search services, for turnaround professionals, 190–2
seasonality, corporate failure and, 132
secondary preferential debt, 515 n. 20
Secretary of State
compulsory liquidation audit by, 461–3
disqualification of directors and, 614–16, 627–9
employee rights in insolvency and, 522–3
exit from administration and, 322
insolvency practitioners and, 151–3, 157–60
public interest liquidation and, 463–8, 613–14
regulation of IPs and, 174–9
small companies’ moratorium regulation and, 420
secured creditors
administration proceedings and, 19–20
administrative receiverships and returns for, 288 n. 114
company voluntary arrangements and, 78 n. 128, 186–7, 419
corporate insolvency procedures, 15–16
creditor’s bargain theory, 31–2
cross-border insolvency and rights of, 677
CVA rescue funding and, 429–30
efficiency of administrators in returns for, 323–7
electronic registration of, 541–2 n. 33
employee protections funding and, 666–7
exit from administration and protection of, 321 n. 135
in-group creditor structure, 495–508
IP judicial accountability to, 387–8
judicial intervention in administration on behalf of, 362–9
liquidation financing and, 474–7
London Approach and role of, 257–8
monitoring of directors by, 640–1
pari passu distribution and, 514 n. 12
preferential treatment in administration of, 319–21
pre-pack fairness to, 379–80
receiverships and, 272 n. 1
rescue procedures and, 207–9, 449
schemes of arrangement and rights of, 412–15
secured loan financing and protection of, 72–5
small companies’ moratorium and, 422
US versus English approaches to, 232–3
secured loan financing
abolition of, proposal for, 87–8
adjustable priority rule, 94–5
bypassing of pari passu with, 539–46
capital development and, 77–8
corporate borrowing and, 69, 72–98
credit derivatives, 109–14
economic efficiency justification for, 76–81
employee protections funding and, 666–7
existing assets, limits on, 93–4, 544–6
fixed charges, 75
fixed fraction regimes proposal, 88–90
floating charges, 75–6
improvements proposed for, 87–98
insurance requirements, 90–2
investigation and monitoring cost reduction, 78–81
limits of economic efficiency in, 81–7
overview, 72–5
‘purchase money security interests’ (PMSIs), 544–6
value justification for, 544–6
securities law (US), pre-pack administration and, 395
security for corporate borrowing, 60–2, 539–46
security law, charge registration system, 4–5
Seed Enterprise Investment Scheme, 57
Select Committee on Social Security, 177–8
self-employed persons, absence of insolvency protections for, 647 n. 13
self-regulation of insolvency practitioners, 171–3
of pre-packs, 400–2, 407–8
self-regulation (cont.)
proposals for revision of, 174–9
reserve legislative power and, 3
risk management and, 217–18
self-standing test, administration as, 314 n. 89
Selkirk, Ron, 110 n. 290
separate entity principle
consolidation of group creditors and, 500–3, 506–8
trusts and, 553
Serious Fraud Office (SFO), public interest
liquidation and, 464 n. 84
Serious Organised Crime Agency, 582–3
set-off rights
conditions for, 525 n. 76
corporate borrowing and, 61–2
efficiency and fairness and, 527–9
exit from administration and, 321–2 n. 136
floating charges and, 97 n. 226
mandatory application of, 526–7
pari passu distribution and, 524–9
shadow directors
disqualification of, 617–19
liability for wrongful trading and, 249–51
wrongful trading by, 504
share capital, corporate borrowing and, 70–2
shareholders
administration process and, 311–12
Chapter 11 proceedings and, 235, 238–9
company voluntary arrangements and, 417–18
as corporate creditors, 59
debt/equity conversion and, 269–70
directors’ common law duties toward, 584, 635–6
dominant shareholders, duties of, 505–6
duty of circumspection, 148
employees as, 646
equity shares, corporate borrowing and, 70–2
group creditors and, 495–508
inefficiency of secured loan financing and, 83–4
manipulation of, 360–1
power to approve CVA by, 439–40
pre-insolvency stage and interests of, 444–5
rescue procedures and, 197–200, 206–7
risk management and rescue procedures and, 221–2
schemes of arrangement and rights of, 411–12, 416–17
subordination of debt and, 529–32
supervised restructuring and protection of, 345–9
unfairness of pre-packs and behaviour of, 377–80
US versus British role of, in rescue proceedings, 233
short-term financing, 98–102
by alternative lending sources, 246–8
CVA rescue funding and, 429–30
debt restructuring and, 265–6
Shuchman, Philip, 38–9
signalling theory
inefficiency of secured loans and, 83–4
pari passu distribution and, 533–5
’significant professional and personal relationship’, conflicts of interest and, 160–5
single authority sources, expertise from, 355–6
size-based debt ranking, 574
skills and skills development. See training in insolvency management
disqualification of directors and absence of, 631–2
skills development in insolvency management for company directors, 126 n. 52, 357–9, 432–3, 440–1
wrongful trading claims and, 601
small and medium-size enterprises (SMEs)
administration process use by, 323–7
bank support for, 245 n. 4, 290–1
borrowing patterns of, 65–9, 71
Chapter 11 proceedings and, 235
concentrated creditor governance theory and, 288–90
Enterprise Finance Guarantee Scheme for, 64–5
fairness in insolvency for, 164–5
late payments to, 135–40
preferential debt and risk to, 519–20
receivership appointments for, 289–90
size-based debt ranking for, 574
small companies’ moratorium in CVA and, 420–4, 442–3
supervised restructuring and, 348–9
Small Business Service (SBS), 57–8
small companies’ moratorium, overview of, 420–4
Small Firms Loan Guarantee Scheme (SFLGS), 57–8, 71, 429–30
SMEs. See small and medium-size enterprises
social justice
contractarian approach to corporate insolvency and, 33 n. 42
employee protections and, 663–4
explicit values approach to insolvency and, 45, 46 n. 100
receivership accountability and fairness and, 296
rescue procedures and, 203–5
shareholders’ interests and, 311–12
social security system
employee protections in insolvency and, 657–60
insolvency protections in, 647–8
Society for Practitioners in Insolvency (SPI), 152
managerial and organisation reforms and, 264–5
SPI Eighth Survey, 141 n. 127
SPI Twelfth Survey, 126 n. 53
Society of Turnaround Professionals (STP), 182–4, 188–92
sociological approach to insolvency, liquidation and, 508–10
Solicitors Regulation Authority (SRA), 170 n. 149
South Africa, rescue procedures in, 239–40
Specialised Mouldings letter, 278–9
special purpose vehicle (SPV)
banks’ preference for, 331–2
credit derivatives and, 109–14
spill-over effects, inefficiency of secured loans and, 83–4
stakeholders
administration process and, 148–9
Chapter 11 proceedings and, 232–3, 238
company directors and, 593–4
disclosure obligations to, 213–15
employees as, 664–7
ethics and standards concerning, 393–6, 398–9
informal rescue and, 244
interests of, 32–3
London Approach and fragmentation of, 258–60, 263
minority stakeholders, fairness to, 448–9
pre-packaged administration and, 399, 401–2
receivership fairness and, 294–6
rescue procedures and, 197–200, 450
risk management and, 221–2
scrutiny of management by, 216–17
as shadow directors, 249–50
state as, 2
turnaround professionals and, 181–4, 186–7, 189
standstill period, London Approach to recovery and, 255–6
state entitlements
creditor wealth maximisation and, 32–3
employee protections funding and, 666–7
Statement of Affairs, voluntary liquidation meeting and, 454
Statement of Principles (1997), 218–20
Statements of Insolvency Practice (SIPs)
administrative structure and, 152
conflicts of interest and, 160–5
pre-pack procedure and, 3, 381–2, 393–6, 399, 402–4
revisions to SIP 16, 399–400
SIP 16, 3, 203–4 n. 35, 263, 393–6, 405–6
statutory charge, corporate borrowing and, 61–2
statutory derivative actions, creditors’ enforcement of directors and, 609–10
statutory framework for insolvency accountability and, 165–8
administration process and, 314–15, 328, 380–1
administrative receivers’ obligations and, 282–3, 296–9
corporate insolvency, 18–22
cross-border insolvency litigation, 672–4
directors’ statutory duties and liabilities, 594–606
employee protections and, 646–57
explicit values approach to insolvency and, 41–50
fairness of administrators and, 184–8
liquidation procedures, 49 n. 104
overview of, 409
pre-package administration and, 407–8
public interest liquidation and, 465–6
remuneration of IPs and, 155
super-priority funding and, 336–8
voluntary liquidation powers and, 456–7
statutory guarantee of notice, undervalue of pre-pack sale and, 405–6
‘statutory lead’ principle, directors’ duty, creditors and, 593 n. 100
statutory set-off, 525 n. 74
steel industry, corporate insolvency in, 2
Stein, J., 130–1
strict liability standards, disqualification of directors on basis of, 631–2
sub-contracted regulatory bodies, proposal for, 175
subjective motivation, avoidance of preferences and, 480–1
subjective test
directors’ duty to creditors and, 592–3
preference laws and, 488–9
subject matter, in trust recognition, 554
subordination of debt, 244–8
  group creditors in liquidation and, 498–500, 506–8
informal rescues and, 268–9
  pari passu distribution and, 529–32
  scheme of arrangement and, 410 n. 4
subsidies
  liquidation and mismanagement of, 495–508
  shadow directors of, 504
subordination of debt, 529–32
‘substantial justice’ principle, set-off rights and, 529
sunk cost bias, corporate failure and role of, 128
super-priority financing, 241–2, 279 n. 55
criticism of, 566–7
CVA rescue funding and, 429–30
EA reforms and, 333–8
employee wage protections and, 648–9, 657–60, 664–7
for liquidation expenses, 472–4
  in post-liquidation period, 513–15
supervised restructuring
  in administration process, 345–9
  in company voluntary arrangements, 435–6
suppliers
  consumer prepayments protection and, 564–9
  corporate failure and dependence on, 128–9
CVA rescue funding and, 429–30
  post-liquidation payments for, 513–15
  preferential debt fairness and, 521–3
  retention of title unfairness to, 550–1
  supervised restructuring and power of, 345–9
support agreement, informal rescue and, 254–5
Sussman, O., 286–8, 295–6
Sweden, rescue procedures in, 241–2
syndicated loans, corporate borrowing and, 68–9
tax policy
  administrators’ expenses and, 343 n. 264
  corporate failure and, 134
  corporate liability in liquidation and, 472–4

employee post-insolvency payments, 523–4
employee protections funding and, 666–7
equity financing and, 71
preferential debt and, 516–17 n. 31
technical efficiency, 49 n. 105
outcomes of insolvency and, 50–2
Ten (10) per cent fund (Cork Committee), 88–90, 542–3, 565–6
term lending, SME reliance on, 66–7
Thatcher, Margaret, 15–16
tiered objectives, preferential creditors and, 319–21
timescales in rescue procedures
  on administration process, 316, 323–7
  avoidance of floating charges and, 494–5
  banks’ role in rescue process and, 332–3
director disqualification proceedings and, 629–31
timelessness and, 355–6
judicial review of, 369
limitations of pari passu distribution and, 570–2
preference laws and, 488 n. 244
pre-packaged administration and, 374–7
tiered objectives, preferential creditors and, 319–21
Tomlinson, Lawrence, 269 n. 129
tort creditors
  adjustable priority rule and, 94–5
  insurance against secured loans, 90–2
  preferential debt and, 519–23
  receivers’ obligations concerning, 279–82
  retention of title and, 549–50 n. 79
  secured credit and victimisation of, 539–46
total quality management (TQM), 216–17
total realisations, administrator efficiency concerning, 323–7
tracing, right to, corporate borrowing and, 61–2
trade creditors
alternatives to pari passu and, 569–75
group creditor unfairness and, 498–500, 506–8
IP accountability and, 178–9
monitoring and investigation incentives for, 80–1

pari passu distribution and, 533–5
policy-based debt ranking and, 575
post-liquidation debt payment for, 513–15
preferential debt and risk to, 519–23
pre-pack unfairness to, 379
quasi-security financing, 102–8
receivership accountability and fairness and, 296
risks of secured loan financing for, 81–7, 251 n. 49
secured loan financing and, 74–5
SME reliance on, 66
unsecured loans and, 100
traders and merchants, early bankruptcy law and, 9–11
traditionalist approach to insolvency, 28 n. 16
training in insolvency management for company directors, 126 n. 52, 357–9, 432–3, 440–1
directors’ expertise and, 632–4
public interest liquidation and, 613–14
tranches, credit derivatives and, 109–14
transaction costs. See also avoidance of transactions
abolition of security and reduction of, 87–8
employee protections and, 663–4
equity financing, 70–2
exemption as administration expense, 344 n. 274
floating charges and, 95–8
investigation costs, 78–81
liquidation and, 483
secured loan financing, 74–5, 77–81
in TUPE regulations, 659–60
undervalue and creditor fraud, 490–4
unsecured loans and, 100–2
Transfer of Undertakings (Protection of Employment) Regulations 1981 (old TUPE), 650–1

transparency
in company voluntary arrangements, 433–6
credit derivatives and lack of, 112–13, 248

independent regulatory platform and, 169–73
in pre-packaged administration, 380–95
trust devices
administrative costs of, 562–7
advanced funding for, 555–8
bypassing of pari passu with, 553–69
consumer prepayments and, 558–62, 564–6
fairness of, 567–9
recognition of, 553–62
‘rescue fund trusts’, 566–7
trust relationships
in CVA procedures, 432–6
turnaround professionals and, 182–4
trustee, under Chapter 11, 231–2
Turnaround Management Association (TMA), 189 n. 228
turnaround professionals
accountability of, 263
clients of, 190–2
credit market fragmentation and, 246–8
efficiency and accountability, 181–4
expertise of, 188–92, 263
fairness and, 184–8
future challenges concerning, 192–3
insolvency procedures and, 180–92
management review and, 220–1
managerial and organisational reforms and, 264–5
quantification of work by, 222–3
rescue culture and, 442–50
rescue procedures and, 180–92, 197–200
risk management and, 221–2
techniques used by, 265 n. 117
Turnbull Report, 213–15
turnover in bankruptcies, Chapter 11
proceedings and, 231–2 n. 99, 237–8
trupitude, director disqualification on basis of, 623–5
‘twilight trusts’, 562–7
‘two trust’ approach to trust management, 555–8
UK Business Angels Association (UKBAA), 57
UK High Technology Fund, 57–8
UK Innovation Investment Funds, 57–8
Umfreville, C., 374 n. 20, 378–9, 393–6
uncertainty problems
group creditor unfairness and, 506–8
monitoring of secured loans and, 86–7
quasi-security, 105–7
uncertainty problems (cont.)
in TUPE regulations, 659–60
wrongful trading claims and, 602–4
uncharged assets
liens on, 333–8
preferential debt and, 515–24
underinvestment, secured loan financing, 72–5
undertakings regime
disqualification of directors and, 614–16, 627–9
public interest liquidation and, 612–14
undervalued transactions
directors’ liability concerning, 606
in liquidation, 490–4
wrongful trading and, 601–2
unfair dismissal claims
employee rights and, 661–4
priority of, in rescue process, 343 n. 267
super-priority funding and, 337 n. 231
TUPE regulations and, 652–3, 657–60
unfair prejudice
company voluntary arrangements and, 436–8
subsidy conduct and, 506 n. 358
Uniform Commercial Code (US), Article 9, 97, 544–6, 551–2
United Kingdom
common law duties of directors in, 383–6
cross-border insolvency litigation and, 416, 669, 679–81
disclosure requirements for pre-packs in, 402–4
EHYA-supervised restructuring proposal and, 345–9
expertise in cross-border insolvency in, 683–4
fairness of pre-pack in, 377–80
future of insolvency law in, 688–94
group creditor consolidation in, 500 n. 321
late payment trends in, 135–40
litigation funding in, 479 n. 192
pre-packaged administration in, 372–4
for-profit litigation funding in, 475 n. 160
rescue procedures in, 239–43
442–50
statistics on corporate insolvencies in, 1
super-priority funding in, 333–8
US bankruptcy laws compared to insolvency proceedings in, 231–3
US rescue approaches compared with, 228–42
wrongful trading by shadow directors in, 504
United Nations Commission on International Trade Law (UNCITRAL)
group creditor consolidation and, 500–3
Model Law on Cross-Border Insolvency, 679–83
United States
airline industry and Chapter 11 protection in, 235–6
‘business judgement rule’ in, 401 n. 157
Chapter 11 proceedings in, 234–9
contingency fees for bankruptcy litigation in, 477 n. 179
corporate insolvency regime in, 230–1
disclosure requirements for pre-packs in, 402–4
economic efficiency justification for security in, 76–7
English rescue proceedings compared with, 228–42
equitable subordination doctrine in, 532 n. 117
equitable subordination of group creditors in, 498–500, 500 n. 321
pre-packaged administration in, 372–4, 395, 401–2
secured creditors and bankruptcy in, 232–3
substantive consolidation of assets in, 503
super-priority funding in, 333–8
universalism, cross-border insolvency litigation and, 669–71, 681–3
unsecured creditors. See also preferential debt accountability to, 294–6, 359–60
administration process and, 311–12, 326–7
administrative receiverships and, 288 n. 114, 302–12
advisory function of IPs for, 381–2
class action by, 588 n. 63
commodification of credit and, 244–8
company voluntary arrangements and, 78 n. 128, 186–7, 426
corporate borrowing and, 98–102
corporate insolvency procedures, 14
court challenges by, 355–6
cross-border insolvency fairness issues for, 685–6
decline in returns for, 323–7
directors’ duty toward, 587–9
directors’ fraud against, 596–8
distribution to after exit, 321–2 n. 136
employees as, 646–57
enforcement of directors and, 606–10
ethical debt ranking for, 573–4
expertise of, 358–9
fixed charges and, 542–3
floating charges and problems of, 542–3
in-group creditor structure, 495–508
information barriers for, 92–3, 354, 384–7,
402–4
insolvency practitioners’ protection of, 387–90
liquidation process and, 477, 494–5
London Approach and role of, 257–8
notes, corporate use of, 69
pari passu distribution and, 511–13, 518–19, 533–5
policy-based debt ranking and, 575
preferential debt and, 517–18
pre-liquidation status of, 513–15
pre-pack transparency for, 379–80, 384–7,
394–5, 405–8
‘prescribed part’ rule and, 88–90
preventive regime in corporate insolvency and, 225–8, 521–3
rescue procedures and, 209–25
responsiveness toward, 327–33
retailer insolvency use of, 560–1
retention of title and, 550–1
ring-fencing and, 319–21
schemes of arrangement and, 412–15
secured creditor risk to, 539–46
subordinated debt and, 529–32
supervised restructuring and, 345–9
trust devices and, 564–5
undue prejudice challenge and, 436–8
wrongful trading protections for, 404–5
utilitarianism, ethical debt ranking and, 573–4
utility suppliers
company voluntary arrangements and, 431–2
post-liquidation debt payment for, 513–15
restructuring and obligations of, 346 n. 283
undue prejudice challenge to CVA and, 436–8
value transfer
bankruptcy process and preservation of, 230–1
company voluntary arrangements and, 417–18
floating charges and, 95–8
inefficiency of secured loan financing concerning, 83–4
information requirements for secured loans and, 92–3
pari passu distribution and, 513 n. 9
pre-packaged administration and, 374–7
retention of title and, 549–50
schemes of arrangement and, 412
secured credit justification based on, 544–6
statutory guarantee of notice for sale of assets, 405–6
three-quarters threshold in, 436–9, 448
veil of ignorance
contractarian approach to insolvency and, 33–5
group creditor consolidation and lifting of, 500–3
venture capital
corporate borrowing and, 56–69
from government agencies, 57–8
SME reliance on, 66
viability reviews, pre-pack administration and, 399–400
‘voice body’ proposal, accountability of IPs and, 165–8
Voluntary Arrangements Service (VAS), 426–8
voluntary compensation schemes, consumer repayment and, 558–62, 565–6
voluntary creditors
secured loan financing risks for, 81–7
voluntary liquidation
accountability in, 485–6
conflicts of interest and, 160–5
insolvency practitioners and, 149
procedures, 21, 453–8
set-off rights and, 526–7
statutory framework for insolvency and, 409
voting powers
company voluntary arrangements and, 417–18
at CVA creditors’ meetings, 433–6
schemes of arrangement and, 411–12, 416–17
shareholders’ power to approve CVA, 439–40
small companies’ moratorium and, 422
three-quarters threshold of value and, 438–9, 448
undue prejudice challenges and, 436–8
of voluntary liquidation creditors, 453–8
vulnerability alternatives to pari passu and, 536–9, 569–75
contractarian approach to insolvency and, 35
‘vulture funds’, pre-packaged administration and, 374–7
wages administrators’ expenses in rescue procedures and protection of, 342–5
as preferential debt, 517–18
protections for, 647
as qualifying liability, 307 n. 47
Walters, A., 272 n. 3, 323–7, 423–4, 426
Walton, P., 374 n. 20, 378–9, 393–6
warning signals of insolvency, monitoring of, 218–21
‘waterfall cases’, surplus management and, 1 n. 2
wealth creation, unsecured loan financing and maximisation of, 98–102
Wheeler, S., 164–5, 485–6, 629
whistle blowers, concentrated creditor governance and, 289
White Paper 1984
DTI objectives on, 26–8
insolvency law and, 14–15
Williams, Richard, 604, 629
Wilson, P., 374 n. 20, 378–9, 393–6
winding-up process
administration moratorium and, 316–17
administrative receivership and, 302–12
cash flow or balance sheet tests, 121
compulsory liquidation, 458–63
court involvement in, 362, 460–1
expenses of, 514 n. 13
financial collateral arrangements and, 317–18
fraudulent trading by directors during, 251–2
insolvency practitioners and, 149
insurance insolvencies and, 517 n. 36
pari passu distribution and, 511–12
procedures for, 21
public interest liquidation and, 463–8
retrospectivity of, 460
set-off rights and, 524–9
small companies’ moratorium protections and, 421–3
voluntary liquidation as, 453–8
Woolworths, corporate insolvency of, 2
working capital financing, consumer versus commercial sources for, 564–5
‘write around’ risk, ‘prescribed part’ rule and, 88–90
wrongful dismissal claims. See unfair dismissal claims
wrongful trading
corporate failure and, 144–5
costs of liquidation and, 472–4
criminal liability for, 596–8
cross-border insolvency and, 684–5
disqualification of directors on basis of, 631–2
economic inefficiency of, 635
enforcement limitations concerning, 603 n. 161, 610n208
liquidation and protections against, 470
litigation financing in liquidation and, 474–7
regulatory reforms in, 604
by shadow directors, 504
‘zombie’ companies, 131–2
rescue procedures and, 197–200
rise of, 1–2, 59–65 n. 3
‘zone of uncertainty’, in directors’ duties and obligations, 596