PREFACE

There has been a great deal written, and particularly in the last 30 years, about corporate governance in many jurisdictions. The literature has been focused almost totally on solvent companies. In contrast, while much has been said about insolvent companies and aspects of how they are managed, save for some discussions of how companies are governed while subject to Chapter 11 bankruptcies in the United States, the literature has not provided any focus on corporate governance and some of the issues which it throws up. In this book we seek to address this lacuna.

Insolvency is an incredibly important issue in the corporate world. At this very moment there are likely to be millions of companies across the world that are insolvent. That does not mean that their existence will come to an end as many companies move in and out of insolvency on a fairly regular basis. However, many others will need to be restructured to survive while many more will have to be wound up as a precursor to their dissolution on the basis that their insolvency is terminal. While insolvency is an important issue at all times, it is an even more important issue in times of financial crisis or when, as we have had in the past two years, a pandemic in the form of COVID-19, which is causing havoc to the economic well-being of a huge number of businesses, including some of the largest and most profitable around the world. As a consequence of the importance of insolvency, it is critical that the governance of insolvent companies is examined carefully. This is what this book endeavours to do. It considers governance at two points of time. First, when a company is insolvent but remains under the control of its directors and outside any formal insolvency regime. Secondly, when a company is insolvent and subject to a formal insolvency regime. In many of the latter situations an insolvency practitioner will take control of the affairs of the company and the governance focus will shift from the directors to the insolvency practitioner. Thus, the book examines the role and work of directors and insolvency practitioners when the latter hold office, primarily as administrators and liquidators. While focusing on directors and insolvency practitioners the book does consider the position of creditors and contributories as well as the role of official receivers and the Insolvency Service.

As we explain in Chapter 2, there has been a great number of explanations of corporate governance have been provided over the years. We put forward our own for the purposes of this book and for the consideration of corporate governance in the context of insolvent companies. The explanation of corporate governance in insolvency which we offer is: 'the rules, relationships, systems and processes within and by which authority is exercised and controlled in companies for the benefit of pertinent stakeholders'. Again, as we say in Chapter 2, we believe that the two most important features of corporate governance are transparency and accountability, and this is acknowledged in a number of sources. The book, therefore, analyses the law and practice that exists through the lenses of these virtues. Where possible and appropriate we draw attention to where transparency and accountability exist and where they do not (and, perhaps, should).

After saying that, we must emphasise that what the work is designed to be is an analytical doctrinal study of corporate governance in insolvent companies. Except on a few occasions, we do not seek to make normative claims.

We would like to thank Tony Hawitt from Edward Elgar who helped us to begin this project and who has given us great support and gracious indulgence during the writing process. We would also like to thank Sabrina Lynott-May and Sabrina Zaher from Edward Elgar who have assisted us in the production of the final product. We also thank Paula Devine for editing the work.

We have stated the law as it is available to us at 1 May 2021, and, unless otherwise stated, websites cited were live as at this date.

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1 May 2021