

## The Future of Company Law?

Government review of company law (publication imminent) - 200 page consultation document looks at:

- "Stakeholder Company" - should the company take account of interest groups other than shareholders? (e.g. customers, employees, communities)

Original remit given to the committee extended to not just looking at the position of shareholders, but also other procedural elements, for example the formation of a company, the reporting requirements for AGMs, annual returns. The general feeling was that the priorities of companies in the UK is to make money, that the perception is that the main function is to make as higher return as possible - government feels that this is to narrow a duty for directors. In other words, there should be a broader duty on directors to consider what impacts there are of what the company does - should look at duties to the environment, customers, employees and the community as a whole. For example, this may mean that there will be a greater requirement on companies of ethical / green concerns.

Michael Meecher said that the voluntary nature of this had not been accepted by companies and that "the days of secrecy are over". Only 39% of the FTSE-100 companies produced a separate environmental report - he wants to see this increase to all 100 companies.

The general context of the review when published a year ago:

*"The principle arguments are that the present scheme of law fails adequately to recognise that businesses best generate wealth where participants operate harmoniously as teams and that managers should recognise the wider interests of the community"* (the first consultation document 1999)

The emphasis should not be on making the most money in the least amount of time, rather it should be responding to the needs of the community. In other words, the interests of the shareholder should no longer be the prime concerns of a company and its directors.

- Shareholders - prime concern?

Main difficulty - how to make directors responsible for wider social and ethical issues.

- Extent of directors' duties - the "railtrack" test paper will try to clarify directors' duties. *"Some [directors] seem to think that they have a duty to maximise immediate returns to shareholders rather than take a longer-term view of things"* (Prof. John Parkinson, Chair of review body)

This original approach, looking at the wider interests of the community, was termed a "pluralistic" approach, accompanied by a somewhat awkward phrase - "enlightened shareholder value". This pluralistic approach was "secretly" dropped from the committee's remit, which led to a few resignations - one was the former Chief Executive of the Body Shop.

It remains to be seen what is meant by "community". It has also been termed as the "Monsanto test", again, the main duty is to produce a good rate of return for the shareholder regardless of environmental concerns.

In whatever form, the duty to the environment is greater now than in previous proposals.

- Need for AGMs?

It was suggested that small companies should not have AGMs. However, again, the law may end up slightly confused, detail left off this latest paper, so for the time being at least, AGMs will remain compulsory.

- Company formation and administration

Again, the theory is that the formation will be made simpler and more accessible, and, again, the forward to the paper said that the existing legislation was drafted 150 years ago and is Victorian in nature. The former Secretary of State for Trade & Industry, Margaret Beckett, said that it was unable to deal with the new technologies of today. Again, the criticism concentrates on the formation and administration, perhaps to the detriment of other issues proposed. Margaret Beckett made reference to the extent of a directors' duties being Victorian in nature, especially that the extent of his duties were not defined by statute. She also said that the term "in good faith (on the

company' s behalf)" was too vague, and tended to concentrate the minds of directors on profit making for shareholders.

A report by the Institute of Directors found that 2/3 of directors incorrectly identified their duties to creditors, customers and employees, and that over 1/3 of directors felt that the definition of directors' duties was inflexible to the extent that they were unable to take account of the other so called "stakeholders" in the company.

- Changes to annual reporting and disclosure requirements - intended that companies should be forced to report on social, ethical and environmental issues - but now voluntary - only if "material" to business

Originally intended, as part of the stakeholder philosophy - a statement on green policies - attracted criticism from the city - they said that the proposed requirements went too far. Also, pressure groups should not have the right to sue companies for not living up to their reports - floodgate principle. Therefore the proposals were watered down - only if material.

- White paper not expected until 2001

The TUC have published a brief response - they have attacked some of the watering down of the initial consultation paper. They want to see a greater duty to employees, and want to see the green part of the annual return made compulsory, and that it would no longer be good enough for a company to concentrate on just making a good profit for the shareholders.

Anita Roddick, owner if the Body Shop, said that the "government has cold feet over stakeholder rights". She also said that the proposals, as written down, would contain the damaging impression that business' responsibility goes no further than making a profit - this was doing enormous damage to the environment and communities.

It has been suggested that the annual report should only be made available on request to shareholders, and that instead there should be a preliminary statement.

The original consultation paper was quite radical in its remit - trying to dismantle a 150-year-old common law rule was always going to be difficult! The initial proposals have been watered down so much that eventually they will not be "radical". Details are to be published in the next few weeks.

The future of company law will embrace a wider responsibility for companies - e.g. the impact of closing a factory on a community, environmental damage from products, etc.. With respect to directors' duties - could have gone a lot further - under current proposals, directors will have to "consider" green policies etc., but not have to take explicit account of them. There is not really any mention of increasing the standard or duty of care of directors, so the white paper will probably leave these unchanged.