editorial

Companies Bill

Just over a month after the Companies Act 1980 was brought into force, the new Companies Bill 1981 has been introduced in the House of Lords. The 109 page Bill contains much to be digested by company lawyers. However one of the most controversial features of the Bill is what it does not contain – there are no provisions regarding disclosure of interests in shares by "concert parties". The Council for the Securities Industry urged the Government to amend the disclosure provisions in the 1967 Companies Act to extend to persons "who acquire shares as a result of an agreement (formal or informal) or who combine to acquire shares" (see (1980) 1 BLR 349). The Government prefers, however, to leave this matter to self regulation by the CSI. This decision seems most incongruous since if the Government has faith in the abilities of the CSI to police market conduct, surely similar reliance should be placed on the ability of the CSI to assess the powers which it needs to carry out its functions. It appears that there will be no further opportunities to legislate on this question for at least the next two years because of pressure on legislative time.

The Bill also does not include any provisions authorising companies to buy their own shares (see (1980) 1 BLR 281). The Government intends to add suitable provisions to the Bill at the Committee Stage in the Lords. This is to be regretted as it will inevitably reduce the time available to consider the proposed clauses.

As anticipated, the Bill would abolish the Business Names Registry. This highlights the scant regard which seems frequently to be accorded to the views expressed (as part of the Government's own consultative machinery) by the professions and by industry. Abolition of the Registry was almost unanimously opposed in the submissions to the Department of Trade on this question (see (1980) 1 BLR 282). Clearly, however, the Government intends not to be deflected by the views of those who use the Registry in practice. The reasons given for the decision are that the Registry loses money and that the business names legislation is defective in that it makes no provision for regular re-registration. As to the latter point the remedy would be in the Government's own hands and suitable amending provisions could have been included in the new Bill. This would also help in the efficient administration of the Registry and help to save costs which are about £1.1m in the current financial year, partly offset by fees of some £200,000. Increasing the registration fee from the present unrealistic level of £1 to a fee of, say, £8 would enable the Registry at least to break even. Interestingly, clause 30 of the Bill would enable the Secretary of State to "sell or otherwise transfer" the present business names records – which may cause concern to some. However, if the Secretary of State had this power – backed by tougher legislation to ensure that the information on the register is complete and up-to-date – he could no doubt market much useful commercial and statistical information which could help to ensure the financial viability of the Registry. Hopefully there is still time for the Government to think again on this question.

The major concern of the Bill is, of course, the implementation of the EEC 4th directive on company accounts and the Bill contains a completely recast 8th Schedule to the 1948 Act. As indicated in the Green Paper (Cmnd 7654), the Schedule contains prescribed accounts formats. "Small" companies will be able to file just an abridged balance sheet but will still be required to have their accounts audited.

A welcome feature of the Bill is the tightening-up of the procedures for penalising fraudulent directors. The 1948 Act, s 332 will now apply whether or not the company is yet in liquidation. Further, the maximum period for which courts may disqualify fraudulent directors from managing companies will be extended from 5 to 15 years.

The Bill is summarised at p 92, post.