

## editorial

### Small is Beautiful?

The recent Budget has been heavily criticised for the limited help it has given to industry generally. Without doubt, however, the Budget and recent company law proposals seek to improve the position of small businesses. We have already mentioned in last month's editorial the accounts concessions for "small" companies contained in the new Companies Bill.

The Green Paper, *A New Form of Incorporation for Small Firms* (Cmd 8171) is concerned with more basic issues. The small business lobby has been urging the Government to consider relaxing the present strict and complex provisions of the Companies Acts in their application to small businesses – the Paper assesses the possibilities.

What is not envisaged by the Paper is a relaxation in the rules for small private limited companies under the existing companies legislation. The approach is rather the creation of a new form of incorporated business organisation drawing on partnership law as regards internal regulation and having a measure of limitation of liability for members. The Green Paper is based on a memorandum by Professor Gower, the research advisor on company law to the Department of Trade.

The likely requirements for the new form of incorporation are that there may not be more than, say, ten members all of whom must be individuals (none of whom is disqualified from acting as a company director), and every member must be entitled to take part in the management of the business. The underlying concept of the new form is that there should not be any separation of ownership (ie membership) and control. Professor Gower recognises that there is an attraction to business proprietors in calling themselves "company directors", which might thereby cause them to continue to prefer the limited company form, and suggests that members of the new form of incorporated firms could be described as "business directors".

There would be a simple registration procedure broadly similar to that presently used for business names. Rather than requiring a full audit, the new firms would only be required to file annually an auditor's certificate that the company was solvent; a simple form of annual return would also be required. If the certificate or return were filed late, the members would be liable for the firm's liabilities incurred during the default. The new firms would probably be able to grant floating charges by way of security.

On a winding up the liability of members would be limited so that each member would be liable up to a prescribed amount plus the amount of any drawings by the member (or his associates) in the two years preceding the winding up, except to the extent that it can be shown that at the time of each drawing the firm was able to pay its debts as they fell due without regard to the money or property drawn.

The Government are frank in admitting that as well as assisting small businesses, the proposals would produce savings on central administrative costs. To encourage use of the new form, disincentives (such as a minimum capital requirement for newly incorporated private limited companies) could be placed on the use of private companies limited by shares.

The proposals deserve serious consideration and a list of the questions on which views are sought appears on p 113, post.

The Budget also contained some measures which will be helpful to small businesses such as the "business start-up" scheme giving income tax relief to outside investors in some new business ventures and the "loan guarantee scheme" which will clearly help as regards raising capital (see p 106, post). Profitable companies will also gain from the increases in the limits for the small companies' 40 per cent corporation tax rate. However the Budget would seem to do little directly which would improve the profitability of small businesses.