editorial

Disclosure of Interests

Last year the Council for the Securities Industry and various professional bodies supported the introduction of legislative measures to tighten up disclosure requirements for parties who, acting in concert, acquire substantial holdings in companies ((1980) 1 BLR 349). The need for this had, of course, been highlighted by the Department of Trade inspectors' report into the Consolidated Goldfields Ltd "dawn raid".

On May 29 the Department of Trade published a consultative document on disclosure of interests in shares setting out draft clauses to be added to the present Companies Bill during the Commons' committee stage. The 22 clauses would lay down a self-contained set of provisions to replace ss 33 and 34 of the 1967 Act and ss 26 and 27 of the 1976 Act. Comments were requested by June 15 and there have justifiably been complaints from the CSI and the accountancy bodies regarding the markedly short time allowed for consultation.

However, a further criticism from the CSI and the accountants which seems to have less justification is that the proposed provisions are too convoluted and would be incomprehensible to the average company administrator (s 79 of the 1980 Companies Act does, it should be said, require every public company to have a qualified company secretary). While there are points of detail which require further thought, the new provisions are not materially more complex than the provisions which they are intended to replace. There are, admittedly, some new clauses covering disclosure by concert parties. The overall length of the legislation will also increase by having two self-contained codes governing disclosure of directors' shareholdings and disclosure of substantial shareholdings rather than the present arrangement under which the latter requirements apply the detailed rules of the former by reference – advisors will also now have to be aware of the many differences between the two codes.

Comparison of the styles of the 1948 Companies Act and the recent companies legislation shows that the recent Acts are drawn much more tightly, looking more like tax legislation than a company constitutional code. However, the avoidance oriented approach of many professional advisors has made this approach essential. To seek to return to a "broad brush" approach would probably be rather naive in the present climate.

An interesting feature of the proposals is that they would not just apply to listed companies but to all public companies. This seems a sensible move to cover the position of companies dealt in on the USM or the over-the-counter markets.

The approach adopted in the concert party clauses is to define the concept in relation to an agreement or arrangement requiring retention by any party of interests in the shares concerned. It remains to be seen how this will work out in practice. It is regrettable that new company law provisions regulating market conduct have had to come in such rapid succession – the insider dealing provisions have still to prove themselves in the market place.

Small Business Relief

In our May editorial we criticised the unduly restrictive conditions for the "business start-up" scheme in the Finance Bill. Some further concessions have now been made. Tax relief will be given for investments in qualifying companies for up to 50 per cent of the equity (previously 30). The denial of the relief to relatives of paid directors and employees of the company will now not extend to brothers or sisters. A director is also not denied the relief provided his only remuneration from the company comprises fees for bona fide trading or professional activities. The relief is looking more attractive but some problem areas – the exclusion from relief of companies trading in goods – remain.