

WHITE PAPER PROPOSALS AND CONSULTATION

The White Paper on company law issued in July is the government's first response to the Company Law Review final report which was submitted last year.

This *Financial Director* Briefing covers some of the proposals in the consultative White Paper and touches on some of the auditing and accounting issues addressed by the Co-ordinating Group on Audit and Accounting Issues, a DTI and Treasury-sponsored working party "to oversee and co-ordinate the response in the UK" in the wake of Enron.

Law firm Hammond Suddards Edge says in a client newsletter that the company law White Paper issued by the government in July won't have any immediate impact, but a new Companies Act is expected perhaps in 2003-04. Even then, the new law may not incorporate all of the proposals contained in this "final" consultation document.

However, it could be argued that, in the post-Enron world, a number of the proposals contained within it will become a reference point for businesses seeking to adopt leading-edge corporate governance practices in anticipation of the introduction of new legislation.

Many of the changes being proposed will be of more interest to lawyers and company secretaries than to financial directors. For example, it is

suggested that the two company constitutional documents – the memorandum and articles of association – be amalgamated into a single document. There will also be a "think small" strategy on the part of the DTI by which regulatory issues for small companies will be simplified (eliminating the need for small companies to have AGMs, company secretaries, and so on).

Directors

The duties of directors – somewhat confusingly set out in common law – will be codified in a new act, making clear that "the basic goal for directors should be the success of the company in the collective best interests of the shareholders, but that directors should also recognise, as the circumstances require, the company's need to foster relationships with its employees, customers and suppliers, its need to maintain its business reputation, and its need to consider the company's impact on the community and the working environment".

Financial reporting

The government expects to create a new Standards Board, based on the current ASB, which will take over responsibility for making rules on accounting and reporting, including the operating and financial review (OFR), while a Company Law and Reporting Commission (CLRC) would succeed the Financial Reporting

Council but have a wider remit.

The OFR will be required by larger private companies and only the very largest private companies, to enable "an informed assessment" to be made. The draft bill requires a fair review of performance during the year and a fair projection of prospects.

Companies required to publish an OFR will be those that meet any two of the following criteria:

	Public	Private
Turnover	>£50m	>£500m
Balance sheet	>£25m	>£250m
Employees	>500	>5,000

This is estimated to affect some 1,000 companies. Note that smaller quoted companies will be exempt. Drawing on the duties of directors, stated above, the OFR will require information on relationships with employees, customers, suppliers, the impact on the wider community and, in particular, the environment – "which the government believes every director needs to consider as first amongst equals", says the White Paper. The aim is for companies to provide information "in the right quantity but also information of the right quality". Directors who fail to do so may ultimately "need to defend the process behind their reporting before the courts".

The auditors will be required to "report" on the OFR, meaning that they will focus on "the adequacy of the process of preparation... not its detailed content" – though they will have to report whether the OFR is inconsistent with the financial statements or any other information of which the auditors are aware.

Co-ordinating Group

Whilst having no particular power, the Co-ordinating Group on Audit and Accounting Issues issued an

interim report about the same time the company law White Paper was published. It is interesting to note that this group – comprising people such as Competition Minister Melanie Johnson MP, Comptroller and Auditor General Sir John Bourn and ASB chairman Mary Keegan – supports the White Paper proposals for a compulsory OFR and the codification of directors' duties, for example.

The CGAA did not support blanket bans on non-audit work by auditors, nor did it find adequate evidence to support compulsory rotation of auditors. It did call for rotation of audit partners, and for such rotation to be undertaken at least every five years, rather than seven as is current practice. But it did recommend that the DTI and HM Treasury discuss with the Office of Fair Trading whether there are competition issues to be addressed amongst the Big Four.

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Useful links

- **Modernising Company Law, July 2002, www.dti.gov.uk/companiesbill**
The DTI invites comments on the White Paper by 29 November 2002.
- **Co-ordinating Group on Audit and Accounting Issues – Interim Report is available at www.dti.gov.uk/cld/cga_final.pdf**
- **House of Commons Treasury Select Committee: The Financial regulation of Public Companies www.parliament.uk/parliamentary_committees/treasury_committee.cfm**
- **Hammond Suddards Edge is at www.hammondse.com**