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Modernising Company Law, (DTI, CM 5553, July 2002) sets out the current state of the government's still to be completed legislative programme. The parts of this "work in progress" which have reached a fully developed stage have been embodied in the clauses of a draft Companies Bill contained in a companion volume. This Bill comprises such essential topics as company formation and status, boards of directors and their agency powers, company constitutions, and capital maintenance etc. However, a number of important areas are not yet sufficiently developed to be included in the draft Bill, which only runs to 225 clauses and four Schedules. All of this work builds on the extensive achievements of the *Final Report* of the Company Law Review Steering Committee (June 2001), as well as the earlier reports of the Law Commissions on shareholder remedies and directors' duties.

These brief comments are confined to a few significant features. The draft Bill sets out a "mandatory scheme" concerning the laying of financial statements, AGMs and auditors' automatic requirement. In general this scheme applies to public companies, but such companies may opt out with an appropriate shareholder resolution. Likewise, private companies, though they are normally excluded, may by shareholder resolution opt in. A new form of financial report is termed the "operating and financial review" (OFR), which is based on a new government policy requiring large companies (both public and private) to provide more qualitative and forward-looking reporting in addition to information that is quantitative (*e.g.* the balance sheet) or historical (the financial results in the last year) or about internal company matters (*e.g.* the size of the workforce).

The scope of the OFR recognises that companies are increasingly reliant on their intangible assets, such as the skills and knowledge of their employees, their business relationships and their reputation: "Information about their future plans, opportunities, risks and strategies are just as important to the users of financial reports as a historical review of performance". The need to produce an OFR will apply to major public companies as well as to very large private ones. In each case differing criteria in respect of turnover, balance sheet information and the average number of employees are set out.

At the other end of the corporate scale *Modernising Company Law* addresses the question of whether there should be a "special and distinct structure for small businesses". It follows the Review in rejecting this idea, and concludes: "In general, therefore, the Bill will, like the present Act, distinguish between private and public companies. But it will put private companies first".

Modernising Company Law has little to add on the important and controversial subject of directors' duties. It largely endorses the recommendations of the Review, which itself built on the Law Commissions' earlier work. Some matters are left over for further consideration. The issue of directors' remuneration has already been tackled by a statutory instrument which came into force at the end of July 2002, but many problems still remain. Political donations by companies was recently dealt with by legislation, but this may need further improvement in the light of experience. How and when to prohibit corporate directors is still open for discussion.

The *Final Report* of the Company Law Review Standing Committee largely endorsed the Law Commissions' *Final Report on Shareholder Remedies*, but made somewhat unclear qualifications on points of principle as well as detail. *Modernising Company Law* leaves these problems unresolved with the following dismissively Delphic observations: "The Review suggested that it would be desirable to codify civil remedies for breach of directors' duties, although it noted that this is a difficult and complex area of law. If a workable scheme can be devised, the government will publish draft clauses for consultation" (para. 3.18).

A similar approach was taken to group liability by the Review, which contemplated that later work might be undertaken by the DTI "to assess in more detail (than we are able to do) the way in which legislation on corporate group liability works in other jurisdictions" (*Final Report* of the Review, para. 8.28). Complete silence reigns on this subject in *Modernising Company Law*. As a result of the re-balancing of the rights of secured and unsecured creditors (as well as the abolition of preferences) brought about by the Insolvency and Enterprise Act 2002, this has become a more urgent issue.

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