

How can the Company Law Review contribute to socially responsible investment?

On 16 June 1999 the APPG on Socially Responsible Investment discussed the implications of the current review of company law. Nigel Peace, DTI Director Company Law outlined progress so far and Rob Lake Traidcraft Exchange Head of Policy presented NGO views on what could be achieved. There followed a discussion on disclosure of companies' social and environmental performance and the need for better consultation with NGOs.

The view from the DTI

Nigel Peace director of company law at the Department of Trade and Industry outlined the background to the Company Law Review.

He said that the Companies Act is seriously out of date and does not meet the needs of, for example, small start-ups. Mr Peace added the Act had some serious omissions such as not informing directors about their basic duties.

Mr Peace said no fundamental review had happened for over 150 years. The current review is run by a Steering Group supported by an official Richard Rogers, who Mr Peace introduced to the meeting. The project director is Jonathan Rickford, an independent consultant, who was also introduced to the meeting.

The principal objective of the review is to create a framework of regulation that supports and encourages enterprise, he said. The DTI has set up a small firms steering group aiming to use the best elements of present law.

The review also has to ask whose interests companies should serve? Currently the law says their ultimate objective is to generate maximum value for shareholders, said Mr Peace.

The DTI consultation document published in February identifies two opposing views. The first view is the Enlightened Shareholder Value approach. Those who argue for this view say that the present law - that a company's objective is to generate maximum capital for its shareholders - is the best way of securing overall prosperity and welfare.

However proponents of this view might argue there is a strong case for putting directors' duties on statute. Such a law might also suggest that a director's duties should take into

account relationships with others, on which the companies depend. These may include employees, customers, suppliers and the wider community.

The opposing view is dubbed the Pluralist approach by the Steering Group. This argues that companies should serve a wider range of interests, as their primary objective, not just as a means of achieving shareholder value. At the very least directors should be permitted to further the interests of the participants other than shareholders.

At one end of the spectrum those who hold most strongly to this view might want to see a mandatory rule requiring directors to take account of wider ethical considerations which may reasonably be regarded as appropriate to the responsible conduct of business, said Mr Peace. Others would argue for increased disclosure requirements on environmental and social interests. Directors should be free to at least have discretion to sacrifice commercial advantage for ethical and public objectives, and to expend limited company funds for philanthropic purposes.

Mr Peace finally touched on recent reporting developments related to these disclosure requirements. Highlighting the recent growth in social and environmental impact reporting he said the consultation document had asked whether this should be allowed to develop as best practice or if further statutory intervention was needed.

The view from the NGO

Rob Lake Head of Policy at Traidcraft Exchange said his organisation which seeks to fight poverty through trade saw companies as having a huge impact on British people and people throughout the world.

It is therefore important how the law regulates them in exchange for limited liability. Mr Lake said he was not arguing that company law should do the job of every other piece of legislation. But he said the basic framework should support high standards of protection for people in work, local communities and the environment.

Traidcraft Exchange argues that the review should be asking what a civil society expects of companies today?

One of the first points is disclosure and reporting requirements. Mr Lake said information about social and environmental performance was in high demand. He argued that society expects companies to be accountable for their actions.

Traidcraft Exchange would argue that all companies should be required to state their social and environmental impact and their relationship with stakeholders. Large companies should have audited social and environmental accounts. Basic requirements should be in primary legislation and detailed information set by a specialist body.

Mr Lake also highlighted other relevant developments such as the pensions disclosure regulation which will require trustees of occupational funds to declare whether or not they take environmental and social issues into consideration.

He said the Turnbull Committee which examined corporate governance issues discussed environmental and social factors in its approach to business risk.

Traidcraft Exchange is arguing that in the new law company directors' duties should have a regard to the impact of their decisions on stakeholders.

Discussion

Stock exchange listings

Tony Colman MP chair of the All Party Parliamentary Group on Socially Responsible Investment said the Advisory Committee on Business and the Environment has been pressing the stock exchange for five years for companies to have disclose environmental risk as part of their stock exchange listing. He asked if this was something the Company Law Review would examine?

Richard Rogers said the company law review was sufficiently large without examining regulation of the Stock Exchange.

NGO representation

Penny Shepherd Executive Director of the UK Social Investment Forum (UKSIF) said the Socially Responsible Investment industry required disclosure of company social and environmental performance to provide future products. She said UKSIF is concerned that the Company Law Review should take account of the views of NGOs because these are very often reflected in the needs of socially responsible investors. She asked what plans the Company Law Review team has to involve NGOs in its work.

Richard Rogers said the DTI view was that company law should be for the benefit of society as a whole including those for whom NGOs act as the advocates. More requests for involvement from NGOs are welcome he said.

Jonathan Rickford said there are already a very wide range of interests represented in the working groups and consultative committees. However Steve Waygood from WWF said his view was that there was very poor representation of NGOs on the working groups.

Unenlightened shareholders

Stuart Bell PIRC said that the current situation tended to reflected greater shareholder value and less enlightenment. He said that the problem of arguing for directors to have a primary duty to shareholders is the great diversity of shareholders and therefore of their interests. For example: pension funds, insurance funds and individuals.

Tony Colman MP asked if there is an overseas model for company law which should be considered by the UK. Mr Bell said there was nothing available off the shelf.

Accounting standards

Mr Colman asked if the company law review team is looking at the issue of a world accounting standard. Richard Rogers acknowledged it as a very live issue and that the OECD is looking at ways of developing standards in areas of corporate governance. Rob Lake said the OECD guidelines do not go far enough. Nigel Peace of the DTI said that in corporate governance best practice and the market can be more forceful. He said that for social and environmental reporting there are as yet no standards. Tony Colman MP pointed to the ISO standards.

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