

Modern Company Law for a Competitive Economy: The Strategic Framework

A Consultative Document from the Company Law Review Steering Group

- [start of text](#)
 - [The Consultative Document](#)
 - [Socially Responsible Investment and the Company Law Review](#)
 - ["Enlightened Shareholder Value" v "Pluralism"](#)
 - [Second Phase Working Groups](#)
 - [Issues to be addressed](#)
 - [The Range of Legal Forms for Companies](#)
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The Company Law Review launched in March 1998 has significant implications for socially responsible investors. This briefing summaries the consultative document on the review published recently and highlights associated activities by UKSIF members.

UKSIF would welcome suggestions as to how we might best support our members' interest in this continuing review.

Last year, the DTI set up a Steering Group to take forward a fundamental review of company law. This Group have now issued their first consultative document. Responses to the issues raised are sought by 1 June. Specific questions for consultation are listed in the document.

The Consultative Committee for the Company Law Review includes Stuart Bell of UKSIF member Pensions and Investment Research Consultants (PIRC) as well as representatives of The Co-operative Bank and NatWest Group.

The Consultative Document

Among other issues, the consultative document considers:

- The interests which company law should serve - "A case is recognised for ensuring that company managers have regard, where appropriate, to the need to ensure productive relationships with a range of interested parties and have regard to the longer term."
- The relative merits of the *enlightened shareholder value* approach and the *pluralist* approach to achieve such productive relationships and longtermism.
- Transparency and the case for enabling, or requiring, directors to satisfy wider "social or philanthropic" objectives.
- Changing the law to enable use of relevant information and communications technologies, including proposals on company meetings, communications with members, the holding of company information and a broad power for secondary legislation to respond to the development of electronic communications, including protecting against their abuse.
- Financial and other reporting, including the growth in non-statutory reporting.

The document also proposes a programme of activity to be undertaken as part of the review by Second Phase working groups, as well as planned research activities.

Socially Responsible Investment and the Company Law Review

Socially responsible investors are likely to have a particular interest in the following aspects considered by the consultative document:

- ➊ The **interests which company law should serve**, including the case for enabling or requiring directors to "satisfy wider social or philanthropic objectives"
- ➋ The relative merits of the "**enlightened shareholder value**" approach and the "**pluralist**" approach. In the former, directors pursue shareholders' interests in an enlightened and inclusive way. In the latter, directors are permitted (or required) to balance shareholders' interests "with those of others committed to the company"
- ➌ The case for **transparency**
- ➍ Legal changes to permit exploitation of **information and communications technologies** in support of company meetings, communications with members and the holding of company information
- ➎ Issues in **accountancy, reporting and disclosure**

"Enlightened Shareholder Value" v "Pluralism"

According to the paper, the *enlightened shareholder value* approach asserts that longtermism and regard for other stakeholders can be achieved within current principles by ensuring that directors pursue shareholders' interests in an enlightened and inclusive way. But the current law is not widely recognised as embracing this approach and so options for legal change to address this are considered.

In contrast, the *pluralist* (or "stakeholder") approach asserts that co-operative and productive relationships will only be optimised when directors are permitted or required to balance shareholders' interests with those of others committed to the company. The implications of this approach for "legal discretions, duties, remedies and board structures" are examined.

Second Phase Working Groups

Issues to be addressed by Second Phase Working Groups include:

- The range of legal forms for companies (*Working Group D*)
- Corporate Governance I, encompassing the purpose of the company and the "stakeholder" issue and the role of directors (*Working Group E*)
- Corporate Governance II, including the role of shareholders, meetings and auditors (*Working Group F*)
- Auditing, Reporting and Disclosure (*Working Group G*)

The timetable for these groups is:

<i>Mar - Dec 99:</i>	Initial consideration, preparation and publication of a first phase consultation document.
<i>Jan - Sept 00:</i>	Second phase work and final consultation on key issues
<i>Sept 00 - Mar 01:</i>	Assessment of conclusions of final consultation and transitional issues.

The Range of Legal Forms for Companies

Working Group D will include consideration of issues relating to companies limited by guarantee and charitable companies.

Corporate Governance I

Following up the work of the review to date, Working Group E will continue consideration of the purpose of the company and "stakeholder" issues. It will also address issues such as directors' qualifications, board structures and the division of powers, directors' fiduciary and other duties and the relationship between the board and shareholders.

Corporate Governance II

Working Group F will deal with governance issues. It will consider the rights and obligations of shareholders, including the General Meeting, shareholder resolutions, other resolutions, information rules and powers to question and a range of other shareholder-related matters. It will also address issues related to auditors and the role of the company secretary.

Accounting, Reporting and Disclosure

Working Group G will take forward consideration of accounting, reporting and disclosure issues, including the annual report and accounts, the philosophy and constraints of financial accounting and wider reporting questions such as reporting of "stakeholder" and wider societal issues and non-financial transparency (eg. annual return, company registers).

June 1998

UKSIF member activities on issues surrounding the review include a seminar organised by PIRC in May (details: 0171 250 3311) and another from Traidcraft Exchange on 13 April.

UKSIF would be happy to publicise details of relevant Company Law Review activities from other members.

Further Information

For a copy of the consultative document, please telephone the Department of Trade and Industry on 0171 215 0409 or see their web site at <http://www.dti.gov.uk/cld/review.htm>

Please follow these links for information on the [UK Social Investment Forum](#) or [Socially Responsible Investment](#)

Note: The use of the term "stakeholder" rather than stakeholder reflects the approach of the document itself.