5 Making it easier to set up and run a company

5.1 Company formation

The law on the formation of companies is necessarily one of the most frequently used parts of the Companies Act. Evidence suggests that the GB formation process it is not, by international standards, particularly cumbersome for those who wish to form companies. Nonetheless, there have been suggestions for changes of substance to make the process smoother and more efficient, and the CLR was also concerned that improvements could be made to the drafting of the provisions to make them simpler and more readily comprehensible.

The drafting set out in the White Paper is designed to focus on the practicalities, for example the key requirements for a company to have a registered office and how that office can be changed. The draft clauses implement and reflect the CLR's key proposals, namely:

- one person should be able to form any sort of company;
- the key rules on the internal workings of the company should be in one document (the "articles");
- there should be separate model articles for private companies limited by shares and public companies;
- unless a company positively chooses to restrict its objects neither the company's capacity, nor the authority of the directors to bind the company, should be limited by them;
- members should be able to choose to entrench elements of the company's articles (making certain provisions harder to amend subsequently than would otherwise be the case); and
- companies should be able to migrate between different parts of GB. (Provision will be made elsewhere for migration into and out of Great Britain).

The clauses also adopt the CLR's proposed replacement of the statutory declaration required on formation with a statement of compliance. The Government is looking at whether current requirements elsewhere in the Act for statutory declarations (legally-attested signatures) can generally be removed or replaced with less onerous and costly requirements.

Company types

The Bill will not make changes to the types of company which are available to be formed, namely: private and public companies limited by shares; private companies limited by guarantee; and unlimited companies. (The C(AICE) Act 2004 has also provided for new community interest companies).

All existing possibilities for re-registration between company types will also be retained and a public company will be able to re-register as an unlimited private company without first having to re-register as a private company limited by shares. However, no new provision will be introduced to allow for re-registration between a private company limited by shares and a private company limited by guarantee, and vice versa. The CLR had suggested that this option should be explored, but given the inherent difficulties in converting an economic interest in a company (a share) into a liability (the guarantee) and the likely low level of demand for re-registrations of this sort, it is not felt that the development of a new procedure is worthwhile.

5.2 Company names and trading disclosures

It is important that anyone can use a company's registered name to trace the company's record at Companies House and so find information about it easily and reliably. The Bill will provide for Regulations to specify the trivial differences between names which will be ignored when deciding whether two names are effectively the same. They will also specify circumstances in which a name would be accepted notwithstanding that it would otherwise be considered the "same as" another: it is intended to use this power so that, for example, a parent company and its subsidiary may have names that differ by abbreviations such as "UK" or "GB".

The Bill will also implement the CLR recommendation that it be possible to require a company to change its registered name if it was chosen to exploit another's reputation or goodwill.

In addition, the Bill will change the interface between the Companies Act and the Business Names Act. At present, the Business Names Act applies when a company trades under a name other than on the register at Companies House. In particular, in future:

- the prohibition of names that are so misleading as to be likely to cause harm to the public will apply to all business names rather than, as present, only company names; and

- there will be a single set of requirements, set out in Regulations, for the company name to be included in correspondence and signs at premises – at present, the two Acts have different requirements.

5.3 Directors' home addresses

Every company director will in future be given the option of providing a service address for the public record with the home address being kept on a separate record to which access will be restricted (though this will not be retrospective). This will replace the present system under which only directors at serious risk of violence and intimidation can have their home addresses kept off the public record. While this system is satisfactory for the tiny minority of directors who can show they are at serious risk, it has some weaknesses. For example, experienced directors may be unwilling to take directorships in controversial companies as their home addresses will already be on the public record; companies whose directors have addresses on the public record may be unwilling to do business with controversial companies; and it does not protect directors of companies whose customers or suppliers become controversial. The general effect of the current law appears to be to deter some people from becoming directors.

At the same time, it is important that the service address functions effectively, and the law will be tightened to increase the obligation on directors to keep the record up-to-date, and ensure that the address on the public record is fully effective for the service of documents.