THE PHILOSOPHY OF COMPANY LAW REFORM IN THE UNITED KINGDOM

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The Philosophy of Company Law Reform

in the United Kingdom

The Main Principles of the Companies Act 1967

It is widely believed that the Companies Act 1967 which received the Royal Assent on July 27, 1967 is concerned mainly with technical matters which required urgent action. To a considerable degree this appreciation is correct, but it does not represent the whole truth. The Act of 1967 is founded on three fundamental principles two of which are entirely new.

First, by abolishing the status of the exempt private company,[1] the Act gives effect to the dubious philosophy of the Jenkins Report that "all companies which are incorporated with the privilege of limited liability [shall be required] to file their accounts with the Registrar of Companies for the benefit of those who have dealings with them".[2] Secondly, for the first time provisions of economic and political character, which can only be justified on grounds of public interest, are introduced into company law. Hereunder fall the requirements to state in the directors' report the average number of persons employed in each financial year, if the number is 100 or more, and their aggregate remuneration;[3] to include particulars of contributions for political and charitable purposes, if exceeding £50 in each case;[4] and to state the export turnover unless the total turnover for the financial year does not exceed £50;[5] similarly, the requirements for disclosure of emoluments of directors[6] and of leading employees[7] can only be explained on grounds of public interest. Thirdly, the principle of public accountability, already prominent in the Companies Act 1948, has been further strengthened; this is evident in the requirements that the annual turnover be disclosed if in excess of £50,000[8] and divided in the directors' report according to different classes of business, where the company carries on business of two or more classes;[9] further, the provisions on additional disclosure relating to holding and subsidiary companies,[10] of substantial inter-company shareholdings[11] and of substantial individual shareholdings[12] fall within this principle.

Principles of future company law reform

It has already been announced that a further Companies Bill will be introduced and enacted before the end of the present Parliament, before the end of 1971. This Bill will give effect to those recommendations of the Jenkins Report which could not be embodied into the Act of 1967, notably the introduction of no par value shares, the abolition or qualification of the ultra vires doctrine and the definition of the duties of directors. Beyond these obvious reforms, however, it has been promised that a searching inquiry into the philosophy of company law will be made and its results will be reflected in the next Companies Act.

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1. Companies Act 1967, s. 2. Unless otherwise indicated, references are to the 1967 Act.
2. Cmnd 1749, 1962, para. 61.
3. S. 18.
4. S.19.
5. S.20.
6. Ss. 6 & 7.
7. S. 8.
8. Para. 13a of Sched. 8.
9. S. 17.
10. Ss. 3 & 5.
11. S. 4.
12. Ss. 33 & 34.

Although the present climate of public opinion in the United Kingdom is favourable to law reform, it should not be overlooked that the pace of law reform is slow and that the innate conservatism of the legal profession prefers cautious evolution to radical innovation. The future Companies Act is, therefore, unlikely to provide a profound change in the general pattern of United Kingdom companies legislation. Nevertheless, it is to be hoped that new ideas and new principles will be infused into the existing pattern of company law, and thus progress will be made towards the creation of a company law which reflects the realities of modern business life and provides a flexible framework for its expansion and development.

In this paper, an attempt will be made to indicate the fundamental factors which are of relevance to modern company business. Only thus is a new approach to company law possible. The decisive question is: what interests are involved in the activities of modern company life; are these interests worthy of protection or do they constitute abuses of the company form; how can a balance be struck between the private interests which deserve protection and the public interest? The object of this paper is not to assay a prediction of what the next Companies Act of the United Kingdom is likely to contain; its object is to indicate what it should contain in order to express the great principles which today motivate the company scene.

The financial pattern

When we survey the company scene today, we notice that the form of the company limited by shares is used for very different economic and financial purposes. All forms of companies, large, medium and small, are regulated by the same legislation, the Companies Acts 1948 and 1967. These Acts recognise two types of limited share companies, the public and the private company, but the distinction is technical and lost its true meaning when the Act of 1967 abolished the privilege of balance sheet secrecy for the exempt private company.

If we disregard for a moment legal technicalities and arrange the classes of companies limited by shares according to their position in the national economy, three types of company can be distinguished:

(1) The Publicly financed company. This type includes public companies the shares of which are quoted at the stock exchange, and which are financed by issues of shares or debentures to members of the public.
(2) The joint enterprise company. This type includes public unquoted and private companies in which several persons combine to do business together.
(3) The small business company. This type includes small traders and family companies. Such a company is mainly incorporated by the owner of a business in order to separate his business assets from his private assets and to protect the latter in case of business failure.

Different types of interest are involved in these companies. In the publicly financed company the interest of the shareholder as investor deserves special attention. In the joint enterprise company it is mainly the interest of the minority shareholder which calls for protection. In the small business company, but also in the other two types, the interest of the creditor of the company calls for special attention by the legislator.

Turning from the financial to the legal arrangement, a future Companies Act should contain special provisions for:

(1) the group of companies consisting of inter-connected companies;
(2) the quoted company;
(3) the unquoted company; and
(4) the small business company.

Only an enactment which recognises that these four types of companies are intrinsically different, and require, on principle, a different legal regulation, will come close to the realities of modern company life.

The legislative and the administrative function

Present companies legislation in the United Kingdom suffers from a fundamental defect; it fails to distinguish between the legislative and the administrative function. It is for the legislator to lay down the essential legal rules applying to a particular situation, and for the administrator to fill out the details and to apply this regulation in individual cases.

The present companies legislation of the United Kingdom, which is conditioned by tradition, attempts to do too much; it attempts to deal not only with the legal rules but also with details of application. In consequence the Companies Acts 1948 and 1967 have become extremely complex and overloaded with historical irrelevancies and technical details. Business legislation should aim at being simple and comprehensible to the intelligent business man; the present United Kingdom companies legislation cannot claim this; it is comprehensible only to the company specialist.

A future Companies Code should contain only the general principles of company law and leave it to the administration to deal with regulatory matters by way of statutory instruments made under enabling powers in the Code. This technique has been applied with great success in modern enactments such as the Prevention of Fraud (Investments) Act 1958 or the Protection of Depositors Act 1963.

Another field which should be left to the administration is the application of the rules of company law to individual situations. This is already done to a considerable extent. The Act of 1948 provides, as regards the name of a company, that no company shall be registered by a name which in the opinion of the Board of Trade is undesirable; no case has been made public in which it has been alleged that the Board has abused this very wide power; on the contrary, this power has been extended by the 1967 Act to require a company to abandon a misleading name[13] although this extension has rightly been subjected to judicial control. Further, the Board of Trade is given power to exempt companies from certain disclosure requirements where such disclosure would not be in the national interest[14] or might be harmful to the company.[15] Thirdly, the powers of the Board to investigate a company have been greatly extended; the Board may at any time "if they think there is good reason so to do" require the production of the company's books and papers.[16] Lastly, the Board has power to certify that a person is _bona fide_ carrying on the business of banker, and consequently the Moneylenders Acts will not apply to him.[17]

A United Kingdom Companies Commission

It is obvious that we have to expect a further growth of the power of the executive to regulate the affairs of companies in a general manner or to regulate in individual instances. This, however, requires an organisational rearrangement. It will be necessary to establish a strong, active, and vigilant executive body dealing with the whole area of company administration, within the powers laid down by the Companies Acts and other Acts of Parliament. The best arrangement would be to constitute a United Kingdom Companies Commission on

13. S. 46.
14. S. 20 (4)
15. S. 3(3) (identity of subsidiaries); s. 4(3) (connected companies); s. 5(2) (holding companies).
16. S. 109 _et seq_.
17. S. 123.

which the Stock Exchange, other interested business bodies and the Board of Trade would join forces. Such a Commission should not be a slavish imitation of the American Securities and Exchange Commission, but it would have to be fashioned in harmony with the British requirements. It would be an instrument of independent self-government and voluntary self-discipline of the circles most interested and experienced in company practice, supported by the Ministry charged with safeguarding the public interest in this sphere.

The Commission would provide a permanent meeting place for business and the Government. It should be given power to keep the administration of companies clean, to protect with constant and unabated vigilance the interests of investors, minority shareholders, creditors and the public at large, to prevent the insidious practices of insider trading and to keep an eye on abuses of takeover procedure. It should carry out a preventive investigation of "fringe" companies. It should indulge in as little paper work and bureaucracy as possible. It should have a highly competent, alert staff of business lawyers and accountants. It should be a permanent watchdog on the company scene, ready to bark and to bite where necessary.

The Small Business Company.

Although the Companies Act 1967 has withdrawn the privilege of balance sheet secrecy from the small business company,[18] it is believed that this regulation will have to be modified at some future date. The future will show that, in accordance with the analysis of the financial pattern made earlier, special provisions will be required in companies legislation for the protection of small business. The difficulty is that the test of the exempt private company adopted by the 1948 Act was too cumbersome and that it is almost impossible to devise a simple legislative test which embraces the small company, but excludes large private companies and private companies which are subsidiaries of public or large private companies.

But need there be such a detailed test in the Companies Act? Here again we meet the confusion of legislative and administrative function on which we have commented earlier. If a vigorous and alert body of company administration is constituted in the form of a Companies Commission, it would be sufficient to entrust the Commission with the power to exempt companies in individual instances from the requirement to file accounts. It would be sufficient for a future Act to adopt a simple test, based on certain rudimentary provisions in the 1967 Act,[19] and provide that a company which has no shares or debentures quoted at the stock exchange need not file annual accounts if the disclosure would, in the opinion of the directors, be harmful to its business and the Commission agrees that accounts need not be disclosed.

In the course of time an administrative practice would grow up, general directions would be published by the Commission, and the company adviser would have a fair idea when a company may expect to be granted exemption from the requirement to file annual accounts, in the same manner as he can predict today with fair accuracy whether the Board of Trade is likely to accept a company name.

In any event, the small business company represents an interest worthy of the legislator's protection. Much of the nation's present wealth has developed from small enterprises, promoted by individuals who were not afraid to tread a new and original path, and much of today's large-scale enterprise started as a small business company.

Protection of Investors

The problem of adequate protection of investors is the most acute

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18. S. 2.
19. Ss. 3 (3), 4 (3) & 5 (2).

one for the future legislator. Before the Second World War, the British public used to invest its savings mainly in bonds issued by the United Kingdom or Commonwealth governments, public authorities or railway companies. After the Second World War, this investment trend changed and now the public prefers to invest, directly or indirectly, in its own industry, by acquiring equity holdings. This trend is recognised by the law; the Trustee Investments Act 1961 admits the investment of trustee funds in certain ordinary shares. Two economic reasons are responsible for this change: the desire to escape from the consequences of creeping inflation and the longing for social security which has swelled the coffers of insurance companies and pension funds. Public Investment comes from two sectors, the small investor, who either acquires shares in quoted companies directly or holds them indirectly through unit trusts or investment companies, and the institutional investor; this term includes insurance companies and pension funds which administer money entrusted to them by the public. According to a recent survey[20] 80 per cent of all quoted securities are held in the United Kingdom by the public, 50 per cent by small investors, and 30 per cent by institutional investors.[21]

In the complex of company interests, it is the first duty of the legislator to protect the investing public. This duty involves three aspects: to prevent unjustified speculation in shares at the expense of the investing public; to prevent the financial exploitation of takeover bids to the detriment of investors; and to prevent unreliable and dubious companies from availing themselves of the unlimited resources of the public capital market.

Speculation can threaten from two quarters: directors and others with inside knowledge of the company's expectations may turn this knowledge into a financial advantage by buying or selling the shares of the company - or options - before the knowledge has become public; further, stock exchange operators, jobbers or brokers, might take a quick return, using their presence in the fluctuating market. The companies legislation of the United Kingdom is aware of these dangers. The 1967 Act contains important provisions directed against option dealings by directors,[22] penalizing even certain option dealings in the name of a director's spouse or infant children,[23] and a detailed regulation of stock exchange dealings exists. Secondly, takeover bids require legislative regulation; the present United Kingdom law already provides safeguards requiring that the bidder have the necessary funds and that the terms of the takeover remain open to the non-assenting minority shareholders. Thirdly, as regards the danger of financial collapse of dubious companies, the Act of 1967 provides that the Board of Trade, "if they think there is good reason so to do"[24] may at any time require a company to produce its books and papers.

The future law of investor protection which, it should be emphasised, concerns mainly quoted companies must further strengthen the rules safeguarding openness and fairness in takeover proceedings and the orderly conduct of stock exchange transactions. In addition, however, two principles will have to be introduced. The first is that every quoted company must be prepared to open its books at any time to inspection by a public authority and to have its affairs investigated. This is the price it has to pay for access to the public capital market. An investigation into the affairs of the company is, of course, already admitted by the 1948 Act,[25] but this investigation has too often been instituted after the collapse of the company; the stable door has been closed after the horse has bolted.

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20. Harold Wincott, "Facts about the Ownership of British Stocks and Shares", Financial Times, September 12, 1967, p.14.
21. In these calculations investment and unit trusts are treated as institutional investors.
22. Ss. 25 - 32.
23. S. 30.
24. S. 109 (1).
25. Companies Act 1948, ss. 164 - 171.

The new principle to be included in future legislation is that of preventive investigation. In brief, investigation should not be an inquest but should aim at stopping improper practices in time and preventing the financial collapse of the company. Two provisions of the 1967 Act contain the beginnings of this principle, viz. the provision, already mentioned, that the Board of Trade may at any time require the production of books and papers, and the provision that the Board of Trade may investigate whether the requirements of the 1967 Act relating to directors' dealings in share options have been complied with.[26] It is necessary to strengthen the principle of preventive investigation still further, e.g. by requiring that an auditor who qualifies his report on the company's accounts shall send a copy of the qualified report to the Board of Trade.

The second principle is that every quoted company should have a secretary with a professional qualification. The qualifications to be admitted for the company secretary should be those of barrister or solicitor, chartered or incorporated accountant, or chartered or corporate company secretary. The responsibilities of company administration to the investing public are so great and important that it is in the public interest that the quoted company should have a permanent official who should be a member of a professional body and, as such, the duty to comply with standards of professional conduct. Moreover, the conduct of company affairs has become so complicated that a professionally trained company secretary is required who can advise the directors whether measures which they contemplate are within the spirit and letter of the law and the standards of conduct which the public expects of a quoted company.

Directors and Shareholders

Future companies legislation should also be realistic in the treatment of the relationship between the directors and shareholders.

The outstanding characteristic of today's board of directors in the large quoted companies is that it is a self-perpetuating body which, except in an emergency or in unusual circumstances, is not controlled by the shareholders. The latter elect the directors and may remove them at any time,[27] but they cannot interfere with the management of the comapny's affairs. Gone is the notion of shareholder democracy with the board of directors in the position of a government. Historically, it is doubtful that such a situation ever existed; today, when the shareholder in the large quoted companies is mainly an investor, this notion is patently untrue.

The realization that the concept of a shareholders' democracy is a fiction, as far as company law is concerned, provides an answer to a problem mooted at present in Britain, namely, whether it is advisable to adopt by statute the German division of the board into a supervisory board (Aufsichtsrat) and a managing board (Vorstand). The supervisory board was conceived in German law as a committee of shareholders; its function is to oversee the activities of the managers and to appoint and remove them. With the collapse of the concept of shareholder democracy, the theoretical justification for a supervisory board on the German model is removed. In practice, we find in Britain both types of boards, the board which admits the dualism of supervisory and executive directors, and the board which, after the American model, is directed by a managing director. The former type of board is to be found mainly in banking and insurance enterprises, the latter type in industrial enterprises. It would be an unfortunate mistake if the heavy hand of the legislator intervened and prescribed a particular constitution for the board - a constitution which would remove the directors from direct control of the general meeting, as far as their

26. S. 32.
27. Companies Act 1948, S. 184.

appointment and removal is concerned, and which would be inappropriate and bureaucratic in many instances. The legislative concept of the board of directors must be flexible and sufficiently wide to enable the company to give the Board a form which will serve its interests best.

Two consequences follow from a realistic appreciation of the position of the directors in the modern quoted company. First, the old adage that the directors are agents and trustees of the company and not of the shareholders, while legalistically correct, is contrary to the modern concept of the relationship between directors and shareholders. The strongest bond of utmost good faith exists between them. The position of the modern director, *vis à vis* the shareholders, is clearly of a fiduciary character; it is comparable with that of the bank manager *vis à vis* the bank's customers, only that the director is invested with managerial duties. Consequently, any attempt of the directors to make a financial profit out of their position without the fullest disclosure to the shareholders must be condemned and should be prevented by the law. This principle should be carried out with the utmost rigour; it should apply equally to secret profits or advantages in the course of the management of the company, in the procurement of pension and retirement benefits and in the case of takeovers. Nobody grudges the directors their salaries, bonuses and other benefits; in fact, these financial incentives should be high and attractive to the best brains of the nation, but these incentives should be fully disclosed to and approved by the shareholders.

Secondly, the present principle that the appointment and removal of the directors is the domain of the general meeting must be fully maintained. In fact, s. 184 of the 1948 Act, according to which a company may by ordinary resolution requiring special notice "remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him", has become a cornerstone of the modern philosophy of company law in Britain. It is characteristic that not one voice has been heard in recent years advocating the qualification of this far-reaching statutory authority to break existing contracts. This is a necessary modern expedient enabling the body of shareholders to control its directors.

The Minority Shareholder

As far as voting at the General Meeting is concerned, the need to protect the minority shareholder is today a problem of diminishing importance. In the modern context, it is important only in the type of company which has been described earlier as the *joint enterprise company*.[28] This is the medium-size public unquoted and the private company.

In early company law, the protection of the minority shareholder was sought to be achieved by the requirement of qualified majorities for major decisions of the general meeting, thus giving the dissenting minority an effective right of veto. This philosophy is now abandoned. Only where rights of a particular class of shareholders are likely to be affected, vetoing resolutions by such a class of shareholders, or of a minority, can be justified.

The most effective protection which the minority can obtain is by intervention of the court, and every attempt must be made to make access to the court as easy as possible. Twenty years ago, the 1948 Act has made a good start by introducing the alternative remedy of S.210 which is available if the affairs of the company are conducted in a manner oppressive to some part of the members. Experience during these twenty years has shown that the conditions for the exercise of this remedial jurisdiction of the court were drafted too narrowly in the 1948 Act. The court should be open to the minority shareholder who complains that the majority has acted unfairly against

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28. See p.72 *supra*.

him. The safeguard against abuse of the minority right would be that the minority shareholder, if he loses his case in court, would have to bear the costs; one could also authorise the court to order security for costs if it thinks fit. In course of time a case law would develop, giving the practitioner an indication of what the courts will consider to be fair and unfair, in the same manner in which the courts have explained what constitutes oppressive conduct in the meaning of s. 210.[29] The restrictive requirements of this section should be abolished by a future Companies Act and the minority should be placed under the broad and unqualified protection of the court.

A special problem arises in the case of the voteless share. As a means of investment the issue of shares carrying on voting rights, but enabling the public to participate in the profits and growth prospects of a well-managed enterprise, is defensible but, on principle, the idea that some shareholders shall have no say on the few occasions on which their voice might be of importance is repugnant to modern thought. For that reason, future companies legislation should provide that in certain circumstances voteless shares shall be entitled to vote, though it is not necessary to prohibit the creation of voteless shares generally. The circumstances in which voteless shares shall carry a vote can be defined in different ways. The future Act may provide that the court shall have discretionary jurisdiction to allow voteless shares to vote or the Act itself may provide a catalogue of events in which voteless shares may exceptionally be entitled to vote. The latter course would not be without precedent although the precedent is found in articles and not in the Act. The articles provide sometimes that preference shares shall not carry voting rights, except if "their dividend is in arrear, or on questions specifically affecting them - as, for instance, winding up or sale of the undertaking or reduction of capital".[30] It is thought that the latter course would be preferable; the future Companies Act should contain a catalogue of cases in which non-voting shares should exceptionally have voting rights and provisions in articles and agreements restricting these voting rights should be invalid.

Participation of Employees in Management

In a social democracy such as modern Britain, there is general agreement that the employees of the company represent an interest which calls for effective protection. This protection is primarily the concern of the law of employment[31] and trade unions. The interests of the employees should, however, likewise be taken into account in the constitution of the modern company.

One way of doing this is to provide that in the case of companies employing a certain minimum number of employees, the latter shall elect worker-directors to serve on the board, together with the directors elected by the shareholders. This suggestion is not without precedent. In Germany the institution of the worker-director has existed for fifty years; today one-third of the supervisory board of public companies must be employees of the enterprise, and in coal and steel enterprises (which are not nationalised in Germany) working-directors sit even on the managing board. In New Zealand "labour shares" and, in New South Wales "workers' shares" are known[32] although the company laws of these countries do not provide for an automatic representation of employees on the board. It is probable, in the

29. Scottish Co-operative Wholesale Society Ltd. v. Meyer [1959] A.C. 324; [1959] 2 All.E.R. 486; Re H.R. Harmer Ltd. [1959] 1 W.L.R. 62; Re Bellador Silk Ltd. [1965] 1 All. E.R. 667; Re Lundie Brothers Ltd. [1965] 1 W.L.R. 1051, [1965] 2 All. E.R. 692.
30. Palmer's Company Precedents, Part I (17th ed., 1956), 778.
31. See the Contracts of Employment Act 1963 and the Redundancy Payments Act, 1965, discussed by G.R. Bretten at p. 119 infra
32. David A. Godwin Sarre, "Company Laws of the Commonwealth" in [1958] J.B.L. 369.

climate of opinion in contemporary Britain, that the next Companies Act will introduce the institution of the worker-director. This scheme may have advantages; it would enable the management on directorial level to have direct contact with the shop floor and might reduce mutual distrust and misunderstanding. It is doubted, however, whether it will create the sense of involvement on the part of the staff which is desirable to increase productivity and efficiency of the enterprise. Similar doubt exists with respect to the recent French legislation according to which the employees have to be given a share in the increased profits if the profitability of the enterprise rises. Profit-sharing schemes are often arranged in British company practice and no legislative intervention appears to be necessary in this respect. Of greater social relevance are the far-reaching training schemes introduced by the major British companies and designed to enable ambitious young employees to reach a position in which they can use their abilities to their satisfaction. These training schemes and personnel selection schemes after the American model give employees an opportunity of reaching the top rungs of the managerial ladder. They open new sources of recruitment for top management and restrict the operation of the "old boy network" which has sometimes hampered the full deployment of managerial efficiency in British business. These social reforms, however, cannot be achieved by edict of the legislator.

Social accountability

Further, already under the 1967 Act the principle of public accountability has undergone a radical change, and the tendency is likely to become more evident in future legislation. Formerly, the sole purpose of the publication of company accounts has been to provide the shareholders and creditors of the company with information on the financial history of the company during the year of account; comparative figures of the previous year have to be added to enable the shareholders and creditors to inform themselves on the financial success or otherwise of the company.

The modern trend is to require the company to give figures and details which are also of interest to the public at large.[33] It is probable that this tendency to require disclosure for social and economic purposes will be continued in future companies legislation.

Much has still to be done in the direction of standardisation of accountancy concepts and of the use of accountancy methods as measurements of the profitability of an enterprise.[34]

Protection of Creditors

In this important field which essentially forms part of the demand for consumer protection, four topics call for attention. First, a company should no longer be allowed to plead *ultra vires* to third parties who entered into contracts with it; in addition, the next Companies Act should provide that a company should have such ancillary objects and powers as are listed in the Act, unless expressly excluded by the company's memorandum; in brief, the precedent of Schedule 2 of the New Zealand Companies Act 1955 should be followed which contains such a catalogue of ancillary objects and powers. Secondly, it should be provided that two directors jointly or a director and secretary jointly (if different persons) should be deemed to have ostensible authority to act on behalf of the company; this would mean a just and proper enlargement of the rule in *Turquand's* case,[35] as clarified in *Freeman and Lockyer* v. *Buckhurst*

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33. See p.71 *supra*.
34. See Professor T.R. Johnston's paper at pp. 57-68.
35. *Royal British Bank* v. *Turquand* (1856) E & Bl. 327.

Park Properties (Mangal) Ltd. [36] Thirdly, although by virtue of the Companies Act 1967 the Board of Trade has power to direct a company to change its name if it is so misleading as to be likely to cause harm to the public,[37] it is thought that this power does not go far enough; the Board should also have power to control misleading descriptions of the company on its published documents, including advertisements. Lastly, the provisions on fraudulent trading in s. 328 of the 1948 Act are unduly restrictive; there should be general jurisdiction in the courts that, if satisfied that the form of the limited company has been abused for the purpose of delaying or defeating the creditors, they may hold the person who operated the company personally liable for the debts of the company; in cases of abuse of the company form the court should have power to pierce the veil of corporateness and the rule in Salomon v. Salomom & Co.[38] should not apply.

Conclusion

The company law of the United Kingdom is entering into a new, decisive phase. Interests wider than those traditionally guarded by company law call for protection; the conduct of company affairs has largely become a matter of public concern.

The next Companies Act will have to give expression to the protection of these new interests. Its aim will be to achieve a balance of all the forces motivating today's company life.

Clive M. Schmitthoff

36. [1964] 2 Q.B.480; [1964] 1 All. E.R. 630; see also Hely Hutchinson v. Brayhead Ltd. [1967] 3 W.L.R. 1408; [1967] 3 All. E.R. 98.
37. S. 46.
38. [1897] A.C. 22.