

Response by the Professional Contractors Group to the Company Law Reform proposals of March 2005

Introduction

The Professional Contractors Group represents freelancers working in a range of areas including IT, engineering and project management. Typically our members are either the sole shareholder or joint shareholder in a limited company which provides their services to clients. The proposed reforms to company law are therefore of considerable interest to our members and, for the most part, very welcome. There follows a brief summary of the areas which we expect will be of benefit to our members and also a couple of points on which PCG would like reassurance.

A Sound Approach to Small Business

PCG is very pleased to see government producing reforms with small business specifically in mind rather than catering for smaller companies as an afterthought to regulations intended for large firms. In this context simplification of rules and reductions in costs and red tape will of course always be welcome.

On specific points, the following all strike us as entirely sensible: shorter and clearer models of association; making the AGM optional; retaining the option for small firms of filing abbreviated accounts with Companies House; and the abolition of the rules on financial assistance for shareholders, which are not relevant to most of our members.

Areas of Concern

Two reforms concerning the structure of a limited company have been proposed which seem to be sensible suggestions; their implementation, however, must be carefully handled to avoid unfortunate ramifications for businesses. The statutory statement of a director's duties would make sense, but beyond that we reserve judgment until we have seen a draft of the proposed statement. Similarly, while the removal of the need for a company secretary may be an innovation of which our members will wish to make use, it seems to pose a danger that it could be used to make a bogus distinction between micro-businesses and "proper" companies. The discriminatory application of special tax or regulatory regimes to such companies could be a matter of great concern.

We are most concerned, however, at the proposal to allow company law to be updated under secondary legislation. While the justification given in the proposals is fair in as far as it goes, and it is true that this area of law can be said to "evolve" over time, PCG would observe that by no means all of these evolutions are uncontroversial. We have been involved with advising and challenging government over both new legislation and the reinterpretation of existing statute and would much prefer any future changes to this area of law to go through the full legislative process. We also fear that the handing over of such powers to government is likely to be established as normal practice and never reversed, which would be unhealthy for the democratic process quite apart from the potential it would create for causing problems for business by allowing for the introduction of hastily-prepared reforms. At a time when small businesses are facing growing legal uncertainty given the introduction of unclear tax measures such as IR35 and the new interpretation of S660A, it would be yet another burden on them to have to keep an eye out for regular yet potentially subtle, minor and under-publicised amendments to company law. Company Acts have in the past been relatively rare and constant revision would up the pace of the law's "evolution" unnecessarily and undesirably.