

Mr Paul Cahill
Companies Division - Room 514
DEPARTMENT OF TRADE & INDUSTRY
10 - 18 Victoria Street
London SW1H 0NN

27th June 1995

Dear Mr Cahill,

MODEL ARTICLES OF ASSOCIATION FOR PARTNERSHIP COMPANIES
(TABLE G)

I am responding, on behalf of the United Kingdom Shareholders' Association, to your request for comments on the above titled Consultative Document.

We have endeavoured to give realistic consideration to the content of the Consultative Document but we have some difficulty in formulating meaningful response upon detail; this difficulty consequent largely upon point numbers (i) and (ii), following:

(i) The Companies Act complete lack of precision in regard to a meaningful 'definition' of a Partnership Company (paragraphs 5 and 6 refer). What is a "substantial extent"?

(ii) The vast variations in the origins, structure and practice of presently existing Partnership Companies and the very wide range of employee profit-sharing and employee share-benefit schemes and options currently available.

(iii) As indicated in the document itself, Partnership Company formation - and hence the drafting of appropriate Articles - is complex and is inextricably linked with (and requires specialist expertise in) trust law and tax law and practice. It is suggested that no single Table G can be a totally appropriate 'model' for use in conjunction with all the many varied forms of employee share ownership schemes which may be adopted. It is further suggested that in any particular case the Articles and the (virtually essential) Trust Deed must be compatible. Indeed, paragraph 4 of the document specifically states "it is unlikely that Table G would ever be adopted without modification".

Dealing now with the specific question points listed as (a) to (k) in paragraph 43, the following views are recorded:

- (a) Prescribing Table G in the Companies Act would be helpful but solely for use in practice as a 'start point framework' for the amendment thereof, or the re-writing thereof, to suit the particular circumstances of an individual company.
- (b) The logic of this question is difficult to follow. Any Table G which is prescribed will be 'optional'. This being so, any

'employee shareholding threshold level' specified therein can (and, no doubt, will) be simply amended to whatsoever ("substantial extent") threshold level is desired by those forming the company.

For a particular 'threshold level' to be a pre-requisite of a company being a Partnership Company there would (having regard to C.A. 1985 Sect. 8A(i)) presumably have to be amending legislation.

- (c) Notwithstanding the last sentence of paragraph 13, it is considered that Table G should be drafted so as to 'stand alone' in all respects - as per paragraph 12(a).
- (d) Whether a Partnership Company's Memorandum of Association needs to make provision for employee share ownership is a matter of legal debate, but it is considered it would be prudent (and good practice) - in the interests of "the avoidance of doubt" - for the Memorandum to provide the power to do things necessary, etc. (i.e. but not as an 'object of' the company).
- (e) Yes, the Department should - as indicated in paragraph 21 - prepare and make available model trust deeds (though several variations would seem to be essential). These should, of course, each be 'compatible with' Table G and be referenced to Table G in note form.

The last sentence of paragraph 21 appears to have no obvious relevance to the subject matter of the paragraph.

- (f) Employees of Partnership Companies should not be compelled to hold shares. Paragraph 28 (c) option is preferable.
- (g) Is not this question answered by the first few words of paragraph 29? (i.e. "Table G would need to provide for, etc."). The power to apply some restriction upon share transfers would seem to be essential to enable adherence to any "threshold level" which may be specified or may be otherwise decided upon.

Option (b) of paragraph 29 is preferable. Option (a) - as written, is strongly opposed. Surely a long service employee who changes his status from 'employee of the company' to 'pensioner of the company' should be enabled to retain his shareholding in his retirement.

The first sentence of paragraph 29 refers to "situations". Should not these "situations" also include "death"?

- (h) The 'suggestions' in paragraph 31 is, in general, supported. Should consideration be given however to the provided 'valuation model' being 'operated by' the company's auditor? Would the company's auditor be classed as "an independent valuer" for the purposes of the intent of paragraph 31?
- (i) The answer to this question must, it seems, depend on the exact nature and constitution of the employee profit sharing scheme or similar type scheme adopted by each individual company.

To require 'directors to periodically consider' does not, of itself, necessarily achieve anything!

- (j) It is considered that a 'stand alone' Table G should incorporate the same provisions as Table A in this respect.

(k) Employee shareholders, it is considered, should not -
Necessarily or automatically - be accorded special voting
Rights. It is felt impossible to give a categoric
Recommendation upon the paragraph 42 options without prior
Knowledge of the particular minimum/maximum 'threshold levels'
(i.e. proportions of respective employee/non-employee
Shareholdings) in any particular case.

I trust the above comments will make a useful contribution to
your final deliberations on this document.

Your sincerely,

Donald B Butcher
Chairman