

in accepting the request for assistance and in ordering provisional measures as they did.

Marcos *et al.* also complained that the request for assistance was in fact a fishing expedition, prohibited by Swiss law, in order to gather evidence at random. The Federal Tribunal rightfully considered the reproach ill-founded, for the request for assistance was to provide the applicant state with the necessary information to determine whether Marcos and others could be indicted.

C. CONCLUSION

One may wonder what consequences this judgment will have and whether it will affect the reputation of the Swiss financial establishment with regard to banking secrecy. On the one hand, it is evident that banking secrecy has never, and does not now, offer any protection for delinquents and funds of unlawful origin. For this purpose, Switzerland has provided itself with a Federal Act on Assistance and has signed several international treaties on assistance. Switzerland is now well equipped to respond to requests for assistance from foreign states and, according to the Federal Council, is thereby only responding to the internationalization of relations in the world. The Federal Council has, however, always insisted that innocent persons will always be covered by the banking secrecy.

On the other hand, it is evident that a mandate to freeze bank accounts before any request for assistance is presented puts a heavy responsibility on banks, and the practice of entertaining requests for assistance on the basis of a mere suspicion creates a juridical fuzziness. Both prescriptions require a subjective appreciation of the situation in order to apply them. In addition, the unstable political situation of those countries most likely to ask for international assistance (and their likeliness to change governments) is another factor contributing to the uncertainty developed by these prescriptions. What if tomorrow Marcos were returned as the head of the Philippines Republic?

United Kingdom*

I. Property

Last May the Stock Exchange published listing regulations for PINCs and the other two forms of single-property investments—Single-Property Ownership Trusts (SPOTs) and Single-Property Asset Property Compa-

*Prepared by Clifford Chance, London.

nies (SAPCOs)—but no issues have yet come to the market. The impact day for the flotation of Britain's first unitized property on the London Stock Exchange using the PINCs vehicle was to be October 29, 1987. This launch was delayed, however, due to the uncertainty surrounding the U.K. Government's regulatory terms relating to investor protection and marketing of the single-property schemes to the general public under the Financial Services Act 1986.

SPOTs, which are collective investment schemes, are also waiting for the Department of Trade and Industry to issue regulations. SAPCOs are not collective investment schemes and thus do not have to wait for Department of Trade and Industry regulations. Details of the regulatory terms relating to investor protection and the marketing of single-property schemes to the general public are being coordinated with the Treasury, the Department of Trade and Industry, the Stock Exchange, and the Securities and Investments Board. If all the hurdles are overcome by May, the new market could be established by autumn of this year.

II. Banking

A. BANKING ACT 1987

The Banking Act 1987 came into force on October 1, 1987 (apart from provisions relating to the reporting to the Bank of England of large exposures and one or two minor provisions). The large exposures provisions came into force on April 1, 1988. The principal changes from the Banking Act 1979 are:

- The two-tier system of authorization (i.e., "recognized banks" and "licensed institutions") has been replaced with the sole category of "authorized institution," although restrictions on the use of the word "bank" still apply, in a modified way.
- The definitions of deposit and deposit-taking business have been slightly changed in order, principally, to clarify the territorial limits.
- The powers of the Bank of England to obtain information from and investigate an institution have been increased.
- A system of regulating who may be a controller of an authorized institution has been introduced, together with a requirement for anyone who becomes a "significant shareholder" to notify the Bank of England.
- An authorized institution is now required (or will be, after April 1, 1988) to report to the Bank of England certain transactions in which its exposure to any one client exceeds a specified amount.
- The Board of Banking Supervision was established as a statutory body to provide a forum for independent advice on the exercise of the Bank of England of its function.

B. EC BANKING COORDINATION DIRECTIVE

The European Commission has produced a second Banking Coordination Directive, which when it is adopted by the Council of Ministers (some time to be appointed by 1992) will enable a bank incorporated and licensed in any part of the EEC to operate anywhere in the EEC without obtaining any further license. Banks incorporated outside the EEC will be reviewed for reciprocal rights for EEC banks before they can obtain a license. At present, the proposal does not extend to banks' securities operations.

III. Company

A. FINANCIAL SERVICES

The "Regulation of Investment Business" provisions of the Financial Services Act 1986 came into force in April 1988, on so-called "A Day." This is the date on which it becomes an offense to carry on investment business without authorization (or exemption) under the Act. The Securities and Investments Board's (SIB) rules were formally "made" in October 1987, and the five self-regulating organizations operating under its aegis are due to be recognized by the SIB by "A Day."

The Prevention of Fraud (Investments) Act 1958 is repealed in its entirety on "A Day." Its investor protection provisions are to be replaced by the Financial Services Act 1986; but Part V of that Act, which will provide a regime for unlisted securities under Part IV, will not be in force before autumn 1988. Transitional provisions will apply in the interim.

B. TAKE-OVERS

A new edition of the City Code on Take-Overs and Mergers was issued on January 26, 1988. The principal changes concern the dealing disclosure rule, directors' responsibilities, announcements of offers, disclosure requirements in highly leveraged offers, and conflicts of interest in multi-service financial organizations. The new Code is effective from February 8, 1988.

C. THE STOCK EXCHANGE

In October 1987 a "preemption group" convened by the Stock Exchange and comprising representatives of the institutional investors (insurance companies and pension funds) and of industrial companies that use the capital market, as well as the Stock Exchange itself, produced guidelines laying down limits on the amount of share capital that can be

issued for cash on a nonpreemptive basis and restrictions on the discount and the cost of issues. The objective of the guidelines is to provide companies with some flexibility in their capital raising while at the same time protecting the preemptive rights of shareholders. Their operation will be monitored by the Stock Exchange.

IV. Commercial

A. CONSUMER PROTECTION ACT 1987

This Act received the royal Assent on May 15, 1987, and covers three main consumer issues:

- It implements the European Community Product Liability Directive, which creates a regime of strict civil liability for damage caused by defective products (Part 1 of the Act). This liability will exist alongside liability at common law in contract and tort.
- It introduces a general safety requirement, which makes it an offense to supply unsafe consumer goods and consolidates existing provisions in earlier safety legislation (Part 2).
- It introduces provisions concerning misleading price indications, which make it an offense to give such an indication and which are to be backed up by a code of practice and regulations (Part 3).

Part 2 of the Act came into force on October 1, 1987, and Part 1 on March 1, 1988. A draft code of practice and draft regulations on misleading price indications were published for comment and consultation in January 1988. It is intended that the regulations and code should be laid before Parliament by the beginning of June 1988 and come into effect, with Part 3 of the Act, on September 1, 1988.

B. DATA PROTECTION ACT 1984

The "subject access" provisions of this Act came into force on November 11, 1987, entitling any individual to receive a copy of any personal data on that individual held by a Data User. (Broadly speaking, a Data User is a person who controls the contents and use of a collection of automatically processed personal data.) The request for the data must be in writing, and a fee (currently anything up to £10) is payable. Usually, the data user must respond within forty days of the request, and if no response is received, the data subject has two options. The data subject can either complain to the data protection registrar (who can prosecute the user or serve one of various types of notices on the user), or apply to the courts for an order that the data user give access to the data.

V. Intellectual Property

Legislation in the form of the Copyright, Designs and Patents Bill 1987 was introduced in November last year. The purpose of the Bill is to revise the existing U.K. law in this area. This Bill has, however, proved to be very controversial, and has been subjected to a number of amendments as it has gone through Parliament. The Bill is anticipated to be in force some time in June or July 1988.

A fuller consideration of the new legislation will appear in a future issue of *The International Lawyer*.

This report has been prepared before the Bill has been considered by the House of Lords and its provisions may, therefore, be subject to further changes. With that caveat in mind, the main areas covered by the Bill are:

- The introduction of a new *unregistered* property right ("the unregistered design right") intended to protect, for a ten-year period, original designs whether or not a copyright work (such as an engineering drawing) exists. The Bill permits licenses (on terms fixed by the Comptroller General of Patents) to be granted to exploit such designs after five years (or earlier if the Monopolies and Mergers Commission consider it to be in the public interest).
- The granting of a twenty-five-year monopoly for aesthetic (rather than functional) industrial designs provided they are properly registered. "Artistic" works that are commercially exploited (such as a commercial fabric design) will enjoy a similar twenty-five-year copyright term.
- The increase in existing protection against counterfeiting (including the introduction of a new criminal offense of fraudulently using a registered trade mark—punishable by up to ten years imprisonment).
- The introduction of provisions to provide protection in the fields of computing and broadcasting (although the Bill does not, currently, introduce a levy on blank audio or video tapes).
- The protection to be given to the proprietors of certain pharmaceutical product patents to prevent "licenses of right" being granted to competitors in the final years of the patent.
- The establishment of a new system of Patent County Courts.
- The introduction of "moral rights" for authors of copyright works (so they can, for example, prevent distortions of their work that could prejudice their reputations).

VI. Taxation

On March 15, 1988, the Chancellor of the Exchequer proposed widespread changes and reforms in business and personal taxation. These

proposals are subject to any changes that may be made before the passing of the 1988 Finance Act. The principal changes proposed are:

A. COMPANY TAXATION

1. *Company Residence*

The test governing company residence is to be changed so that companies incorporated in the United Kingdom will be or will become U.K. resident. Existing U.K. incorporated nonresident companies will become U.K. resident on March 15, 1993, unless in the interim their central management and control is transferred to the United Kingdom. The central management and control test will continue to apply to non-U.K. incorporated companies.

2. *Company Migration*

The need to apply for Treasury consent for companies to migrate is abolished from March 15, 1988. Companies will now be allowed to migrate subject to meeting tax liabilities, including a charge on unrealized chargeable gains.

3. *Chargeable Gains*

Gains prior to March 31, 1988, are to be exempt.

4. *Corporation Tax*

The main rate is unchanged at 35 percent. The small companies rate becomes 25 percent.

5. *Advance Corporation Tax*

The rate is one-third of a dividend paid after April 5, 1988.

6. *Capital Duty*

This is abolished on transactions completed after March 15, 1988.

7. *Unit Trust Instrument Duty*

This duty is also abolished on transactions made after March 15, 1988.

8. *Business Entertainment*

Expenses on overseas business entertainment are to be disallowed for corporation tax and VAT input tax purposes.

9. *Building Societies*

Provision will be introduced to ensure that various tax charges otherwise arising on transfer on a building society's business to a commercial company pursuant to the Building Society Act 1986 will not occur.

B. PERSONAL TAXATION

1. *Husband and Wife*

The existing basis of joint taxation of husband and wife for income tax and capital gains tax is to be discontinued from April 6, 1990, and will be replaced by a system of individual taxation with separate reliefs and rate bands. Spouses will complete their own tax returns.

2. *Income Tax*

For 1988/89 there will be only two rates of income tax instead of the existing six rates. The top rate of tax will be 50 percent and will apply to chargeable income exceeding £19,300, below which the new basic rate of 25 percent will apply.

3. *Covenants*

Noncharitable covenants taken out after March 15, 1988, are to be taken out of the tax system so that payment will be made gross and the recipient will be exempt.

4. *Maintenance Orders*

These are to be taken out of the tax system and the new provisions will affect existing orders.

5. *Mortgage Interest Relief*

The £30,000 limit on loans qualifying for relief will apply (for new loans for August 1, 1988) to each property instead of to each individual claimant.

6. *Capital Gains Tax*

This tax is radically reformed to exempt gains (of companies and individuals) that arose prior to March 31, 1982. The old base date of April 6, 1965, is discontinued in favor of valuation at the new date. Chargeable gains from 1988/89 onwards will be charged at income tax rates.

7. *Inheritance Tax*

The existing rates are replaced with a flat rate of 40 percent.