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afforded the only viable way of obtaining a branch license. Resolution No. 680 by its terms permits a foreign company that has signed a prime contract with the Saudi Government or one of its instrumentalities or an approved foreign subcontractor on such a project to apply for and obtain from the Ministry of Commerce a so-called "provisional" or "temporary" license to implement such public sector contract or subcontract as the case may be. Prior to the issuance of Resolution No. 680, it had been the Ministry of Commerce's practice to issue such licenses to foreign prime contractors, but the Resolution made provisional licenses available also to foreign subcontractors on public sector projects.

Sometime in 1989, in another unannounced shift in policy, the Ministry of Commerce began denying provisional licensing to foreign subcontractors. Resolution No. 680 has not, however, been publicly amended. Applications by foreign prime contractors on public sector projects continue to be granted. The Ministry of Commerce is apparently prepared to make exceptions for certain foreign subcontractors involved in strategic projects or those of particular importance to the national interest. However, the policy shift appears to be aimed at obliging more foreign companies to team up with Saudi interests and, in association therewith, to form Saudi companies under the Foreign Capital Investment Code. The Ministry of Commerce's new posture took certain foreign subcontractors by surprise since a Resolution No. 680 license can only be applied for after the relevant prime contract or subcontract has been signed, and some subcontractors were thus already contractually committed. The Ministry's current policy will inevitably have the intended effect of forcing other foreign contractors to rethink the way in which they should pursue future opportunities in the Saudi public sector.

United Kingdom*

I. Company

A. THE COMPANIES ACT 1989

Details of the Companies Bill, now the Companies Act 1989, were given in the Spring 1990 edition of *The International Lawyer* (vol. 24, no. 1, at 283-85).

*Prepared by Clifford Chance, London.

The Act received royal assent on November 16, 1989. Some sections came into force upon royal assent, but most will come into force progressively throughout 1990 and 1991.

B. THE STOCK EXCHANGE: U.K. PRIMARY MARKETS

In February 1990 the Stock Exchange announced certain changes to the U.K. primary markets, including the abolition of the Third Market (introduced in 1987) and certain changes to the requirements for a company seeking a Stock Exchange listing or a quotation on the Unlisted Securities Market. The likely overall effect of these changes is that the Unlisted Securities Market will accommodate a wider range of companies than at present, it being anticipated that the great majority of existing Third Market companies should be able to meet the criteria for admission to the Unlisted Securities Market. The changes were designed inter alia to bring the Stock Exchange's requirements into line with those of other European Community stock exchanges and to continue to attract listings of significant numbers of foreign companies. This latter objective is to be achieved by "mutual recognition" or recognition of compliance with the requirements of other European stock exchanges for U.K. purposes and streamlining of the obligations imposed on foreign companies already listed on their domestic stock exchanges that have a secondary listing in London.

II. Property

A. CHANGES TO THE RATING SYSTEM

The main changes to the rating system are set out in the Local Government Finance Act 1988, the Local Government and Housing Act 1989, and miscellaneous regulations made pursuant to those Acts.

1. *Community Charges*

The Local Government Finance Act 1988 abolishes domestic rates based on rateable value as a means of financing local government expenditure in England and Wales. As from April 1, 1990, all persons over the age of eighteen who do not fall within certain categories of exemption will be liable to pay their local authority a flat rate payment to be known as the community charge.

There will be three types of community charge: the personal charge payable by most people; the standard charge payable on most empty dwellings and second homes; and the collective charge payable by owners of property occupied by others for short periods as their main residence.

The assessment of mixed properties will be apportioned between the domestic and nondomestic elements.

Community charge registration officers will have responsibility for the collection of the community charge. However, appeals in relation to all aspects of the

community charge will be decided by Valuation and Community Charge Tribunals, and further appeals only on points of law will be decided by the High Court.

2. *Nondomestic Rates*

The new legislation brings the rates payable by businesses under central government control. On April 1, 1990, new rating lists came into force in England and Wales with new rateable values entered for each hereditament. These rateable values are multiplied by the rating multiplier to obtain the normal rates bill in respect of particular hereditament. Instead of local authorities setting the general rate poundage, central government now sets the rating multiplier for England and Wales, respectively.

Transitional arrangements have been introduced for the new rates to be phased in, but qualifying conditions relating to occupation must be satisfied where increases in rate bills are being phased in.

The new legislation regulates rating of unoccupied property on a mandatory basis, with the discretion of the local authority being removed. In order to levy unoccupied property rates on newly erected buildings, the local authority may serve completion notices specifying a day when the building shall be deemed to be substantially complete.

Proposals may be made to the valuation officer to alter rateable values shown in a new rating list. If agreement is not reached with the valuation officer, there is a deemed appeal to the Valuation and Community Charge Tribunal, and thereafter to the Lands Tribunal. Proposals in respect of rateable values in a new rating list must generally be made by September 30, 1990.

B. LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1989

The Law of Property (Miscellaneous Provisions) Act 1989 amends the law relating to the execution of deeds by individuals, changes the requirements for the creation of a contract for sale or disposition of an interest in land, and abolishes the rule relating to damages as set out in the case of *Bain v. Fothergill*, [1873–74] L.R. 7 H.C.L. 158. The changes relating to the execution of deeds come into force on a day to be appointed by the Lord Chancellor. The sections relating to the creation of contracts and the abolition of the rule in *Bain v. Fothergill* came into force on September 27, 1989.

C. REGISTERED LAND

Several developments have taken place to extend the system of registered land in England and Wales. Under the Registration of Title Order 1989, the system of compulsory registration will be extended in stages so that the whole of England and Wales will be covered by the system from December 1, 1990.

The Land Registry has also given notice that it hopes to bring the Land Registration Act 1988 into force on December 3, 1990. The Act will allow public

inspection of the register. This Act has been on the statute books for some time, but is not yet in force.

D. RESIDENTIAL LETTINGS

The Housing Act 1988 has replaced the Rent Acts in respect of residential lettings granted after January 15, 1989. The Act, which is designed to encourage more lettings, contains only very limited rent controls, leaving the rent to be determined on the open market. The definition of tenancies giving rise to security of tenure has been amended and to some extent simplified. Lettings to companies are no longer covered by the legislation. The Act also adds to and widens the grounds on which a landlord can regain possession of premises let under the Act. Various other aspects of leasehold law are also amended or clarified by the Act.

III. Intellectual Property

The Copyright Designs and Patents Bill reported in the Fall 1988 issue of *The International Lawyer* (vol. 22, no. 3, at 864) was enacted in November 1988. A few sections came into force immediately, notably section 293, which abolishes licenses of right for pharmaceutical patents, thus encouraging research and development in the pharmaceutical industry by allowing a longer life patent.

The bulk of the provisions came into force on August 1, 1989. The Copyright Designs and Patents Act 1988 (CDPA) brings U.K. legislation even more into line with international copyright conventions such as the Berne Conventions and the Rome Convention, responding at the same time to various court decisions in the last few years.

One of the most controversial issues, which also brought fundamental changes in the Act, was the position of industrial designs. The provisions produced the anomalous result of an engineering drawing for, say, a car exhaust obtaining the full term of copyright protection (life of the author plus fifty years), while more aesthetically pleasing articles obtained only fifteen years (the length of registered design protection). The House of Lords and the Privy Council tried to reduce the effects of this anomaly in such cases as *British Leyland Motor Corp. v. Armstrong Patents Co.*, [1986] F.S.R. 222, and *Interlego AG v. Industries Inc.*, [1988] R.B.C. 343. Legislative action was needed, however.

Until the new Act, designs were protected in the United Kingdom through copyright under the Copyright Act 1956 as amended by the Design Copyright Act 1968 or by design registration under the Registered Design Act 1949. Under the Copyright Act 1956, to claim copyright protection the owner simply had to have original design drawings (irrespective of the functionality of the end product or lack of "artistic" quality). The degree of originality was low. This copyright protection did not extend to those designs that had been applied industrially (that is, more than fifty articles embodying the designs were produced) and that could

have been protected by registering them under the Registered Design Act 1949 (basically those designs that had “eye appeal” and whose design was not dictated by function).

The CDPA introduced a new means of protecting designs—the design right (section 213(2)), which subsists in an original design of “any aspect of the shape or configuration (whether internal or external) of the whole or part of an article.” The design right subsists for fifteen years from creation of the article, with the last five years being license of right. There is no system of registration—all that is needed is a drawing, a model, a prototype, or an article made to the design. The design right does not, however, subsist in any articles that “must fit” or “must match” (section 213(3)) another article, thus taking away the protection previously accorded to, for example, car body panels or other spare parts, following, therefore, the House of Lords’ recommendations in *British Leyland*.

The introduction of the design right was necessary because of the exclusion of copyright protection in section 51(1), which provides that it is no longer an infringement of *copyright* to copy, by reverse engineering, an article made from design drawing or a model.

A registered design is still available for nonfunctional designs that have eye appeal, and the term of protection has now been increased to twenty-five years, making it an attractive option in appropriate circumstances.

The CDPA also provides for a law protecting performers. The Performers’ Protection Act 1958–72, although in general quite adequate, had some gaps, particularly in relation to the making of and dealing in “bootleg” recordings. The new Act provides under sections 180–188 a statutory framework of civil law to prevent unauthorized making, broadcasting, importation, or possession of records or films in line with the Rome Convention of 1961. This is a right that cannot be assigned, only bequeathed. In addition to normal civil remedies, there are criminal provisions, similar to those available for copyright infringement, which carry a maximum penalty of an unlimited fine, or two years imprisonment, or both.

The Act also introduces for the first time in U.K. legislation the concept of “moral rights,” that is the right of paternity in a work (that is, to be acknowledged as author), the right of integrity (that is, to object to derogatory treatment of work), the right against false attribution of work, and the right to privacy of certain photographs and films.

The CDPA is a substantial and complex piece of legislation. It is divided into seven parts, has 306 sections, and includes eight schedules explaining different parts of the Act and providing the necessary transitional provisions between the old and the new legislation. The Act brings increased protection to new technologies like cable and satellite transmissions and restates the protection provided by copyright in computer programs. At the same time, it introduces tougher measures against counterfeiters by providing sentences of imprisonment

up to ten years. Some sections of the Act that are not yet in force, notably those dealing with the registers of patent and trademark agents and the special jurisdiction of Patents County Court.

IV. The Legal Profession: The Courts and Legal Services Bill

A. INTRODUCTION

The Courts and Legal Services Bill (the Bill) is currently before Parliament, having been introduced into the House of Lords by the Lord Chancellor in December 1989. The Bill is designed to implement the Government's proposals for reform of the English legal system (discussed in the Spring 1990 issue of *The International Lawyer* (vol. 24, no. 1, at 280)). Following extensive debate and amendment in the House of Lords, it is now to be debated in the House of Commons and will presumably receive the royal assent in the latter part of 1990. The Bill is a complex measure comprising ninety-six clauses and sixteen schedules. A large part of the Bill consists of enabling provisions, which provide a legal framework for the Lord Chancellor to make further detailed rules by means of statutory instruments (to be approved by Parliament).

B. PROCEDURAL CHANGES

The Bill empowers the Lord Chancellor to make rules redistributing civil actions between the High Court and the County Courts. At present litigants have a right to bring any claim that exceeds £5,000 in the High Court. The Bill envisages the High Court's being empowered to transfer, either on the application of any party or upon its own motion, proceedings specified under rules of court made by the Lord Chancellor to any County Court. Rules of court will also be made conferring additional jurisdiction upon the County Court.

Some specific provisions, of particular interest, include: a new power conferred upon the Court of Appeal to reduce awards of damages by juries in those civil actions where jury trials still exist (this is confined to defamation and malicious falsehood—at present the Court of Appeal only has power to order a new trial where it considers an award of damages excessive and may only impose its view of the correct award if the parties agree); a statutory power is to be given to arbitrators to strike out arbitration proceedings where there has been "inordinate and inexcusable delay" upon the part of the claimant in pursuing its claim, resulting in a substantial risk that a fair resolution of the dispute will not be possible or that serious prejudice is likely to be caused to the respondent (the House of Lords in its judicial capacity last year called upon Parliament to intervene to remedy a manifest deficiency in English arbitration law); an amendment is made to the Limitation Act 1980 (although its scope is to be governed by rules of Court) which provides that the statutory time limit is to be regarded as

interrupted by the bringing of an action when proceedings are served (as opposed to when they are issued, the current rule).

C. PROVISIONS OF LEGAL SERVICES

1. *The Statutory Objective and the General Principle*

The Bill provides that its general objective, referred to as "the statutory objective," is the development of legal services in England and Wales by making provision for new or better ways of providing such services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice. The "general principle" provides that the question whether a person should be granted a right of audience in relation to any court shall be determined only by reference to:

- (a) Whether he is qualified in accordance with the education and training requirements appropriate to the court or proceedings;
- (b) Whether he is a member of a profession or other body which—
 - (i) has rules of conduct (however described) governing the conduct of its members);
 - (ii) has an effective mechanism for enforcing those rules of conduct; and
 - (iii) is likely to enforce them;
- (c) Whether that body's rules of conduct are, in relation to the Court proceedings, appropriate in the interests of the property and efficient administration of justice; and
- (d) Whether, as regards rights of audience in any of the superior Courts other than those exercisable by solicitors (in their capacity as solicitors) immediately before the 7th December 1989, that body's rules of conduct include provision embodying appropriate terms, and with any appropriate exceptions, the principal that, except in circumstances in which it would be unreasonable to require him to do so, an advocate practicing in any of those Courts is under a duty to act for any client (whether legally aided or not) in cases within his field of practice.

Subparagraph (d) embodies the so-called "cab rank rule," which currently applies to barristers and which was introduced into the Bill by an amendment moved by the Master of the Rolls, Lord Donaldson. This amendment was seen as a victory for those opposing the Bill's evident intention to extend rights of audience to solicitors. Its precise effect, assuming it survives, remains to be seen.

The Bill provides for the setting of an independent Statutory Advisory Committee on education and conduct. The Advisory Committee will advise on legal education, training, and rules of conduct. There will also be a new office of Legal Services Ombudsman.

2. *Rights of Audience and Judicial Office*

The Bill provides the enabling framework for extending rights of audience in the higher courts to persons other than barristers. Provision is made for all advocates to be eligible for high judicial office.

3. *Conditional Fee Agreements*

Conditional fee agreements will be permitted in civil cases (excluding matrimonial and child custody cases) subject to the Lord Chancellor's power to regulate the maximum allowable percentage by which a fee may be increased.

4. *Multidisciplinary Practices*

Section 39 of the Solicitors Act 1974, which, in effect, prevents solicitors from entering into partnership with persons who are not solicitors, will be abolished. The Law Society will be empowered to make rules governing solicitors' partnership. The General Counsel of the Bar will likewise be empowered to regulate partnerships between barristers and other persons. At present, barristers must practice alone.

C. CONCLUSIONS

It will be apparent from the above brief summary that although the Bill has potentially far-reaching implications its detailed effects cannot be predicted until the delegated legislation contemplated by it is published.