

A GUIDE TO THE DUTIES OF A COMPANY SECRETARY

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Introduction

Prior to April 2008 every limited company was required to have a company secretary. The Companies Act 2006 removed this requirement for private companies, although they can still have a company secretary if they wish and must continue to have one if their Articles of Association make reference to the appointment of a company secretary. Public companies must still have a company secretary.

A company secretary is an officer of the company and, as such, shares the responsibility of the directors to ensure the company operates within the Companies Act and other relevant legislation. Company secretaries are usually responsible for the general administration of the company, with their specific duties depending upon the size and type of company. The directors of a private company without a company secretary must ensure these administrative duties, such as maintaining the company's accounts and records and filing documentation with Companies House, are still carried out.

This factsheet outlines who can be a company secretary and the administrative duties commonly performed by company secretaries, including the filing of an annual return and annual accounts. It also provides hints and tips and sources of further information.

Who can be a company secretary?

The company secretary of a Public Limited Company (PLC) must have achieved certain professional standards such as being a qualified accountant or solicitor. They could also be a member of the Institute of Chartered Secretaries and Administrators (ICSA) or have had similar experience necessary to carry out the role. Companies House offers detailed information on the qualifications required of a company secretary to a PLC at www.companieshouse.gov.uk/about/gbhtml/gp1.shtml#q3.

In private companies, the duties of company secretaries are less onerous than those in a PLC so no formal qualifications are required. A company director often takes on the role. In very small businesses the post is sometimes held by a family member or one of the company's professional advisers.

People disqualified by a court from taking up the role and undischarged bankrupts are not eligible to become company secretaries, regardless of the company type.

What are the duties and liabilities of a company secretary?

While legislation does not specify the duties of a company secretary, typically a company secretary is responsible for the general administration of the company.

As an officer of the company, a company secretary will also be criminally liable, along with the directors, for breaches of the Companies Act 2006 and other relevant legislation such as the Health and Safety at Work Act. Criminal offences under the Companies Act include late filing of documents and failing to notify Companies House of changes to the board or share structure.

The following are administrative duties typically performed by a company secretary:

Ensuring the company complies with the law and its constitution

Officers of the company, including company secretaries, have a general duty to ensure the company operates within the law, particularly the Companies Act 2006, but more generally health and safety regulations, trading law, employment regulations and any other legislation relevant to the business. Relevant legislation includes the Management of Health and Safety at Work Regulations 1999, the Health and Safety at Work Act 1974 and the Corporate Manslaughter and Corporate Homicide Act 2007.

Officers of the company are also responsible for ensuring the company complies with its constitution, which comprises the company's Articles of Association and any agreements and resolutions specified by Part 3 Chapter 3 of the Companies Act, such as special resolutions.

Maintaining company records

Under the Companies Act 2006, a company must keep certain records. These records must be kept up-to-date and include:

- The register of members, showing the names and addresses of the company's shareholders, the number of shares held and their nominal value.
- The register of directors, including names and service addresses.
- The register of secretaries.
- The register of charges (mortgages and charges secured on the company's assets).
- Records of directors' service contracts.
- Records relating to redemption or purchase of own shares out of capital by a private company.
- Records of resolutions and minutes of general meetings.

Company records must be made available for inspection either at the company's registered office or single alternative inspection location (SAIL). A company must inform Companies House of any records they are keeping at a SAIL using form AD02, must notify Companies House of a change of SAIL using form AD03 and inform Companies House when any records are transferred from the SAIL to their registered office using form AD04.

Filing an annual return with Companies House

All companies must file an annual return with Companies House. A company's annual return comprises basic information about the company's directors, secretary (if appointed), registered office address, shareholders and share capital and must be filed with

Companies House within 28 days of the company's 'made-up' date. The made-up date is usually the anniversary of the incorporation of the company or the made-up date of the previous annual return. Companies registered with Companies House's electronic filing system PROOF must file their annual returns using this system.

After the company has been established for a year, Companies House will send a reminder letter stating that the annual return is due. A blank AR01 can be downloaded from the Companies House website (www.companieshouse.gov.uk/forms/generalForms/AR01_annual_return.pdf).

Filing annual accounts with Companies House

All companies, whether or not they are trading, must file accounts with Companies House although those which haven't traded over the financial year are exempt from audit and do not need to send a profit and loss account or directors' report. However, they must still file abbreviated accounts and send a directors' report to members. Dormant companies (which have no entries in their accounting records, as distinct from a non-trading company, which may not be doing any business but which still has transactions going through its books) must still deliver accounts and an annual return every year. Accounts must be filed with Companies House within nine months of the end of a company's accounting period or late filing penalties will be applied.

Sending annual accounts to members

All companies must send a copy of their annual accounts to every member as well as making a copy available for inspection at their registered office before they are filed with Companies House. Public companies must lay their accounts before the AGM. If a private company has retained this requirement in their Articles of Association, a copy of the accounts must be sent to members with the notice of the AGM.

Board meetings

Directors are collectively responsible for the day-to-day management of the company. In order to discharge this responsibility, they must hold regular directors' board meetings, where the company's performance can be reviewed and key decisions can be made. The number of directors needed to attend a board meeting before it can take a valid decision (the quorum) and the notice required may be set by the Articles of Association.

Minimum notice must be given before a board meeting can be held and the agenda and papers circulated to directors before the meeting takes place. Minutes of the board meeting must be taken, signed by the board's chairman once the meeting has concluded and kept for ten years from the date of the meeting.

Shareholders meetings

The Companies Act 2006 has removed the statutory requirement for private companies to hold an AGM for their members; however, an AGM may still be required by a private company's Articles of Association. If this is the case the company's members must be given at least 14 clear days' notice electronically or in writing. An AGM can be held on shorter notice only with the unanimous agreement of the members.

A meeting of shareholders other than an AGM, known as an extraordinary general meeting (EGM) or general meeting, can be called by the directors or the requisite number of shareholders. GMs can be convened on short notice with the consent of a majority of members holding at least 90% of the shares.

All shareholder meetings must be minuted. These minutes must concisely record any resolutions or decisions that are made, note dissenting opinions and be signed off by the chairman. They must be kept for at least ten years from the date of the meeting and made available for inspection by members.

Copies of any special resolutions passed must be sent to the Registrar of Companies House within 15 days of the meeting at which they were passed. If the company's Articles of Association were altered, a copy

of the alterations must also be sent to the Registrar within this time. Other changes requiring the company to notify the Registrar include appointment of a director using form AP01 and change of registered address using form AD01, both of which must be filed within 14 days. A full list of forms can be found and downloaded at www.companieshouse.gov.uk/forms/formsOnline.shtml#Company.

Written resolutions

As well as passing resolutions at shareholders' meetings, members of a private company can pass most resolutions as written resolutions. The only exceptions are resolutions to remove a director or an auditor, which still require an AGM or GM. Written resolutions are commonly used by small companies as a cheaper and easier alternative to convening a shareholders' meeting. The same filing requirements apply to written resolutions as if they were passed at a shareholders' meeting.

A written resolution must be circulated to all eligible members (meaning members who hold voting shares on the day the resolution is circulated) as well as any appointed company auditors. The members must be told how to vote on the resolution, which will lapse if not passed by the requisite majority of eligible members within a specified period. A written resolution will be passed as soon as sufficient votes in favour have been returned. The number of votes required to pass a written resolution is the same as the number of votes required to pass a resolution at a shareholders' meeting; ordinary written resolutions need to be approved by 50% of shareholders, while special written resolutions require the approval of 75% of shareholders.

Keep the company seal

Traditionally companies used a seal as a guarantee that a document was authentic and binding on the company. This was kept by the company secretary. Small companies rarely have a company seal, as its use is optional, and instead use the signatures of two authorised signatories or of a director signing in the presence of a witness.

Hints and tips

- Make sure that you inform Companies House of any relevant changes in circumstances within the required time period.
- A company with straightforward company secretarial duties can appoint a legal services business to take on the basic tasks.
- The Companies House website (www.companieshouse.gov.uk) is a useful resource that provides guidance on registration and filing requirements. Statutory forms are available to download free of charge.

Further information

For practical start up and small business tips, ideas, know-how and news, go to:

Website: www.enterprisequest.com

To access hundreds of practical factsheets, market reports and small business guides, go to:

Website: www.scavenger.net

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| BIF 25 | A Guide to the Duties of a Director |
| BIF 69 | A Guide to Preparing and Submitting Company Accounts to Companies House |
| BIF 167 | A Guide to Setting up in Business as a Private Limited Company |
| BIF 177 | A Guide to Understanding Shareholdings in a Private Company |
| BIF 322 | A Guide to Appointing Non-executive Directors |

Books

'The ICSA Company Secretary's Handbook'
Douglas Armour
2010
ICSA Publishing Ltd

'One Stop Company Secretary'
David Martin
2011
ICSA Publishing Ltd

'Ready-Made Company Minutes & Resolutions'
Hugh Williams
2009
Lawpack Publishing Limited

Useful contacts

Companies House provides registration and filing services, as well as useful leaflets and information.

Tel: 0303 123 4500

Website: www.companieshouse.gov.uk

The Institute of Chartered Secretaries and Administrators (ICSA) is a professional association for company secretaries. It publishes useful guidance for company secretaries.

Tel: (020) 7580 4741

Website: www.icsa.org.uk

CONTACT-

for further information.

This information is meant as a starting point only. Whilst all reasonable efforts have been made, the publisher makes no warranties that the information is accurate and up-to-date and will not be responsible for any errors or omissions in the information nor any consequences of any errors or omissions. Professional advice should be sought where appropriate.

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