

The Role of the Company Secretary

The advent of the Companies Act 2006 will bring about a number of changes for companies during 2007 and 2008. One such change will be the abolition of the need to appoint a company secretary for a private company.

In this factsheet we outline the current role of the company secretary, as it applies under existing law. Please look out for future versions of this factsheet which will be updated as the new Companies Act becomes effective.

Do All Companies Need a Company Secretary?

At present company law requires every limited company to have a formally appointed company secretary. In fact, all private limited companies must have at least one director along with a company secretary and where the company has a sole director, that director cannot also be the company secretary. Where there are two or more directors, one may be appointed as the secretary. As noted above, legislation will be implemented that will abolish the requirement for private companies to have a company secretary, although one can be appointed should the shareholders wish.

All companies, whether they appoint a company secretary or not, have to ensure they comply with a number of statutory requirements.

For public companies these may be onerous tasks requiring specialist up to date knowledge of company law. As such, public companies, are and will be, required to appoint a suitably qualified company secretary. This is not currently necessary for private companies.

When and How Should the Company Secretary be Appointed?

A company secretary is appointed when a company is first incorporated. Any subsequent changes to the particulars of the company directors or secretary, for example, changes in their name or address, must be notified to Companies House using a standard form - 288c. When a director or company secretary resigns, form 288b must be completed and sent to Companies House. When a new director or secretary is appointed, form 288a should be used.

The Company Secretary and Companies House

A company secretary will have regular dealings with Companies House, as this is where public records about the company are held.

Company legislation requires that a minimum amount of information about a company must be publicly available, including, for example, annual accounts, the registered office address and details of directors, the secretary and members.

The Status and Liability of the Company Secretary

The company secretary is an officer of the company. This means that they may be criminally liable for defaults committed by the company, for example, failure to file in the time allowed, any change in the details of the company's directors and secretary and the company's annual return.

The Duties of the Company Secretary

The duties of the company secretary are not defined specifically within company law. However, these may be divided generally into three main areas:

- maintaining statutory registers
- completing and filing statutory forms
- meetings and resolutions.

Maintaining statutory registers

All companies must maintain up to date registers of their key details, which include:

- a register of members
- a register of directors and secretaries
- a register of directors' interests in shares and debentures
- a register of charges.

The details retained within these registers would include, for example, names, addresses, dates of appointment (and resignation) and the number and type of shares held.

Completing and filing statutory forms

Here the role of the company secretary would extend to ensuring that, for example:

- the annual accounts are filed on time at Companies House. For a private limited company, under normal circumstances, this must be within 10 months of the end of the accounting year
- the completion and filing of the annual return (form 363s). This is a snapshot of the general information about the company, which must be checked closely and amended if necessary, signed and dated and returned to Companies House within 28 days of the date shown on the form. If this is returned late or not returned at all, the company, its director(s) and secretary may be prosecuted
- the potential completion of over 200 forms that the company could conceivably have to file at Companies House! The most common might include:
 - changes in directors, secretaries and their particulars (288)
 - a change of accounting reference date (225)
 - a change of registered office (287)
 - allotments of shares (88(2))
 - an amendment to the Memorandum and Articles of Association of the company.

Often, these forms have to be filed at Companies House within a specified deadline following the change.

Many of the more common forms that have to be, or may have to be, filed can be completed and submitted on line by first registering at www.companies-house.org.uk.

Meetings and resolutions

Company law sets out procedures for conducting certain aspects of company business through formal meetings, where resolutions will be passed.

A resolution is an agreement or a decision taken by the directors or members. When resolutions are passed, the company is bound by them.

Here the role of the company secretary would be to ensure that proper notice of meetings is given to those who are entitled to attend and to ensure that copies of resolutions are sent to Companies House within the relevant time frame.

Notice of company meetings

Members and auditors are entitled to written notice of company meetings. The main requirements are for:

- 21 days notice for the annual general meeting
- 14 days for other meetings.

However, this does depend on the type of resolution that will be proposed at the meeting.

Resolutions

There are a number of different types of resolution that may be passed. We would be pleased to discuss these in more detail with you.

It is worth noting that the new Companies Act will also introduce a number of changes in these areas over 2007 and 2008.

How We Can Help

If you would like to discuss any of the issues raised above please do contact us. We are able to provide comprehensive assistance with company secretarial matters such as:

- the maintenance and safekeeping of the company registers
- the processing and filing of minutes
- the preparation and filing of resolutions
- the completion and filing of statutory forms
- the filing of the annual accounts.

Even when the need to appoint a company secretary in a private company is abolished, there will be a number of statutory procedures that companies must continue to comply with. We would be pleased to discuss these with you.