

## Company Secretarial Duties

Company legislation provides an opportunity for a business organisation to benefit from the protection of limited liability, separating the legal persona of the organisation from the individuals who own it.

In return for this protection a certain amount of information about a company must be publicly available, including, for example, the company's annual accounts; its' registered office address; and details of its' directors, company secretary (if there is one) and members. Historically, providing and updating this information has been the job of the company secretary.

### Do all companies need a company secretary?

There is no longer a requirement for all companies to appoint a company secretary. Private companies (whose name ends in ltd) do not generally need to appoint a company secretary to deal with this paperwork, unless they either wish to do so, or their Articles of Association, (their governing document), requires them to do so.

Public limited companies (whose name ends in plc) must still have a company secretary who must have specialist, up to date, knowledge of company law.

The company secretary is an officer of the company. This means that they may be criminally liable for company defaults, for example, failing to file a document in the time allowed, or to submit the company's annual return.

### If your private company does not want to have a company secretary

If a private company decides not to have a company secretary it should check its' Articles of Association to make sure that its' own regulations do not require it to appoint a company secretary, and then it will need to inform Companies House of the resignation of any existing company secretary.

Where a private company chooses not to have a company secretary, any item that would normally be sent to the company secretary is treated as being sent to the company. Any duties which would normally be the responsibility of the company secretary will be carried out either by a director or a person authorised by the directors.

### The company secretary and Companies House

A company secretary, or in the case of a private company, the person responsible for company secretarial duties, will have regular dealings with Companies House, as this is where public records about the company are held.

Most communications with Companies House nowadays will be online, using a computer package, or through the Companies House dedicated website. Indeed Companies House are hoping to move towards 100% online filing by 2013.

### Company secretarial duties

The duties of the person responsible for company secretarial matters are not defined specifically within company law, but may be divided generally into three main areas:

- maintaining statutory registers (keeping the company's records up to date)
- completing and filing statutory forms (keeping the public record up to date)
- meetings and resolutions (making sure the company abides by both its internal regulations and the law).

### ***Maintaining statutory registers***

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

- a register of members
- a register of directors
- a register of charges.

The details in these registers include, for example, names, addresses, dates of appointment and resignation (for directors) and for members, the number and type of shares held. This is not an exhaustive list.

These registers must be made available for inspection by the general public at the company's registered office or at a single alternative inspection location (SAIL) which must also be recorded at Companies House.

A company may choose to keep its directors' residential addresses private and to record a service address for them. If so it will need to keep an additional register showing the directors' residential addresses which is not open to inspection by the general public.

### ***Completing and filing statutory forms***

The company must ensure that its' record at Companies House is always up to date, and contains current details of various statutory matters.

Many of the more common types of information can be submitted on line by first registering at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk), or if a company prefers for the moment to file on paper, Companies House has a series of over 200 statutory forms to allow this.

The company secretarial duties would extend to ensuring that, for example:

- the company's annual accounts are filed on time at Companies House. For a private limited company, under normal circumstances, this must be within 9 months of the end of the accounting year. A fine will be levied if the accounts are late
- the company's annual return is completed and filed. (This is a snapshot of the information held by the Registrar of Companies about the company, which must be checked and amended if necessary, within 28 days of a given due date. If this information is returned late or not returned at all, the company, its director(s) and secretary (if appointed) may be prosecuted)
- all changes to the way the company is organised must be notified to Companies House. The most common changes might include:
  - changes in directors, secretaries and their particulars
  - a change of accounting reference date
  - a change of registered office
  - allotments of shares
- the current version of the company's Articles of Association should be filed, whenever a change in the company's internal rules is made.

Often this information must be filed at Companies House within a specified period of between 14 to 28 days following the change.

### ***Meetings and resolutions***

Company law sets out procedures for conducting certain aspects of company business through formal meetings, where resolutions will be passed. When resolutions are passed, the company is bound by them. (A resolution is an agreement or a decision taken by the members).

Here the company secretarial role would be to ensure that proper notice of meetings is given to those who are entitled to attend and minute the proceedings and to ensure that copies of resolutions which affect the way the company is run are sent to Companies House within the relevant time frame.

### ***Notice of company meetings***

Members and auditors are entitled to notice of company meetings. For a private limited company a general meeting notice of at least 14 days is needed. Notice can be in writing, by email or by means of a website (if certain conditions are met). However a private company is no longer required to hold an Annual General Meeting (AGM), unless the company's Articles of Association make express provisions for holding AGMs.

If an existing company with an existing express provision for an AGM wishes to abolish this requirement, it will need to change its articles by special resolution.

### ***Resolutions***

There are two types of resolution that may be passed, ordinary resolutions (passed by a simple majority of the members) or special resolutions (passed by a 75% majority of the members). In general, resolutions will be voted on by any members present at a meeting.

Private companies can take most decisions by written resolution. Such a resolution does not require a hard copy, and can be passed by e-mail. These resolutions, however, need to be passed by a majority of all members of the company, not just those who return the voting form!

It is important that companies retain copies of all important decisions taken in the management of the company, where they are taken at a meeting or by written resolution. Where these decisions change the way a company is run a copy needs to be filed at Companies House.

## **Keeping your public record safe**

Companies House has recently reported increasing levels of fraudulent filing of information. A favourite ploy is to change the company's registered office by submitting the appropriate form to Companies House. Once this has been accepted the fraudsters can change directors or file false accounts without the company having any idea that they have been hijacked! They can then buy goods or obtain credit based on this false information.

Companies House are keen that companies file their information online, which can be a very secure method, particularly if the company signs up for the enhanced security arrangements offered by their PROOF (protected online filing) system, which prevents the paper filing of certain forms.

## **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
- filing online.

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

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