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 and run 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, registered office address and details of directors, its company secretary (if there is one) and its members. Historically, providing and updating this information has been the job of the company secretary.

Do all companies need a company secretary?

Since April 2008, unless there is an express requirement in the company's articles of association, the Companies Act 2006 no longer requires private limited companies ('limited' or 'ltd') to appoint a company secretary. Even if the articles do require it, it is relatively straightforward for the directors of a company to amend the provision, subject to shareholder agreement.

Although there is no requirement for private companies to employ a company secretary if their articles do not require it, in practice many still choose to do so. The important tasks that would normally fall to a company secretary, including shareholder administration and communication, corporate governance and statutory compliance must still be done. In the absence of a company secretary, company law states that directors must take on this responsibility. As a result, many private companies continue to employ a company secretary in order to reduce the administrative and corporate governance burdens that are otherwise placed on their directors.

Public limited companies (whose names end in 'plc') are still required to have a company secretary who must have "the requisite knowledge and experience" achieved by having a professional qualification (accountancy or company secretarial), a legal qualification, recent experience or other competencies which lead the directors to believe they can act as company secretary.

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 failing 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 then it should check its Articles of Association to ensure that its own regulations do not require it to appoint one. The company should 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 are through Companies House Webfiling. Companies House is moving towards 100% online filing and on the area of the website where forms are available to download and print, there are prominent flags for areas that could instead be completed electronically.

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. These include:

- a register of members
- a register of directors
- a register of charges
- a register of People with Significant Control (PSC register)*.

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.

Responsibility for maintenance of the company's statutory books and records is a duty that normally falls to the company secretary. It can be a time-consuming task that is often overlooked, but failure to keep the registers up-to-date can incur a penalty of up to £5,000.

The 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.

* A person with significant control is an individual who ultimately owns or controls more than 25% of a company's shares or voting rights or who otherwise exercises control over a company or its management.

Maintaining statutory information at Companies House

Alternatively, a private company may also choose (elect) to keep some of the statutory registers on the public register at Companies House rather than at its registered office or SAIL. This will include its registers of directors, directors' usual residential addresses, secretaries, members and People with Significant Control. While this election is in force, the company does not need to keep its own separate statutory registers updated.

The general public can access company information through Companies House instead of visiting the registered office whilst this election is in force. This will include some information, such as members' addresses or directors' full dates of birth, which is not generally available on the public record for private companies.

Completing and filing statutory forms

The company must ensure that their 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 online by first registering at www.companieshouse.gov.uk. Alternatively, Companies House currently has a series of over 100 statutory forms to allow paper filing.

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.
- Once each year, Companies House will send each company a reminder to file their **'confirmation statement'**, which replaces the old Annual Return, and can be filed online or by downloading and completing on paper (for a higher fee). The company must 'check and confirm' that the information held at a given due date is accurate. The statement must be filed within 14 days of the end of the 'review period' and the due date will be specified on the reminder; if it is returned late or not returned at all, the company, director(s) and secretary (if appointed) may be prosecuted. This confirmation statement replaced the annual return from June 2016 and companies are permitted to file them more often than annually if they wish, though they would still only pay a fee annually (rather than every time they file)
- All changes to the way the company is organised need to be notified to Companies House within a specified period of between 14 and 28 days, depending on the change. The annual confirmation statement cannot be used to change this information and a separate form should be used. The most common forms include:
  - changes in directors, secretaries and their particulars
  - a change of accounting reference date
  - a change of registered office
  - allotments of shares.
- If a company does not complete its confirmation statement, the Registrar might assume that the company is no longer carrying on business and take steps to strike it from the register.
- An updated version of the company's Articles of Association is filed whenever a change is made.
- The rules relating to the PSC register have already changed since this register was introduced. Initially, companies could update the public version of their PSC register annually as part of their confirmation statement, but now each change has to be updated on the register within 14 days and notified to Companies House within a further 14 days.

Charges

When a company gives security for a loan, either the lender or borrower should notify Companies House within 21 days by filling in the appropriate form and paying the statutory charge. Without timely registration the charge will be void - that is, the loan will still be repayable but the security given will not be valid. This does not apply to property acquired which is subject to a charge.

Good company secretarial practices ensure that any charges created are registered and that the company's credit profile is protected by removing the charge from the register as soon as the loan is repaid.

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, to 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) and 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 email. These resolutions, however, need to be passed by a majority of all members of the company, not just by 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 is keen for companies to file their information online. This 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.

Changes to come

The Government published a white paper at the end of February 2022 setting out their position on reforming Companies House ahead of introducing legislation into Parliament. The key changes being proposed include expanding the role of the Registrar in order to maintain the integrity of information held on the public register, the introduction of identity verification for those forming, managing and controlling companies and improving the financial information that is available, including the requirement for iXBRL tagging of accounts being filed and the removal of the ability for small companies to file abridged or filleted accounts. It has been confirmed that there are no plans though to amend the deadlines for filing accounts which will come as a relief to many.

How we can help

If you would like to discuss any of the issues raised above, or would like further information about the PSC register or the implications of keeping your statutory information on the public register, please do contact us.

We are able to provide comprehensive assistance with company secretarial matters such as:

- the updating, maintenance and safekeeping of the company registers
- the processing and filing of minutes from directors' and shareholders' meetings
- the preparation and filing of resolutions
- the completion and filing of correct statutory forms
- the filing of the annual accounts
- confirmation statement filing.

Even though the need to appoint a company secretary for 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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