



GENERAL BUSINESS

Company Secretarial Duties

The advent of the Companies Act 2006 has brought about a number of changes for companies. One such change is that private companies can choose whether to have a company secretary or not. This choice was available from 6 April 2008.

In this factsheet, we outline the company secretarial matters which need to be dealt with by your company under the Companies Act 2006, whether you have officially appointed a company secretary or not.

Do All Companies Need a Company Secretary?

As noted above, there is no longer a requirement for all companies to have a company secretary.

As of 6 April 2008, private companies (Ltd) are no longer required to appoint a company secretary although the option to appoint one remains.

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

Even after 6 April 2008 public limited companies (plc) must have a company secretary with specialist up to date knowledge of company law.

The Company Secretary and Companies House

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 (if there is one) and members.

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

Where there is no 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 other

duties which would normally be the responsibility of the company secretary would be carried out either by a director or person authorised by the director.

If you Choose to Have One, How Should the Company Secretary be Appointed?

Any 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 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.

Company Secretarial Duties

Private company without an appointed company secretary

The duties of the person responsible for company secretarial matters are not defined specially 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
- a register of charges.

Continued >>>

The details retained within these registers would 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 of the information required. These registers must be made available for inspection.

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. However for accounting periods beginning on or after 6 April 2008, the annual accounts of a private limited company must be filed within 9 months 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.companieshouse.gov.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 notice of company meetings. For a private limited company a general meeting must be called by

a notice of at least 14 days. Notice of the general meeting 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 articles of the company 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).

Private companies can take decisions by written resolution. Such a resolution does not require a hard copy. It can be passed by e-mail. Decisions can also be taken at general meetings for private companies and for public companies at both general meetings and AGMs.

It is worth noting that the new Companies Act will continue to introduce a number of changes in these areas over the remainder of 2008 and 2009. We would be pleased to discuss these in more detail with you.

Public company or private company with an appointed company secretary

If your company has a company secretary appointed, the company secretary will have the following duties laid down by the Companies Act 2006:

- the duty to keep a register of secretaries
- the duty to notify the registrar of any changes.

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 though the need to appoint a company secretary in a private company has been 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.

For information of users: This material is published for the information of clients. It provides only an overview of the regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material can be accepted by the authors or the firm.