

Role of the company secretary

If you accept appointment as a company secretary, you will become an officer of the company, sharing legal responsibilities with the directors for certain tasks required by the Companies Act. It is in everyone's interest to ensure that you are the right person for the job, and that you get adequate support in doing it.

Since 6 April 2008, it has not been obligatory for a private company to appoint a company secretary, although most companies continue to do so. The company secretary is often also appointed as a director, but does not have to be.

This briefing looks at the role of the company secretary and covers:

- What qualifications you need, and who can appoint you.
- What your duties are, and when they have to be exercised.
- How to make the most of your role.
- What can go wrong, and what the consequences will be.

1 The best person

A company secretary is the chief administrative officer of the company, responsible along with the directors, for certain tasks under the Companies Act. You have power to enter into certain contracts on your company's behalf under the law generally, and may also have additional duties defined in your contract of employment.

1.1 You are normally **appointed by the directors**.

- In a new company, the company secretary is automatically appointed by being named on Form 10, filed on incorporation.
- You need no formal qualifications to act as company secretary to a private company. The requirements are more stringent for public companies.
- Whether the company for which you are working is private or public, you must understand your obligations as an officer of the company. The Companies Act contains many requirements and around 150 offences.
- In many smaller private companies, the company secretary is also a director.

Like the directors of the company, company secretaries who fail in their duties can be prosecuted. (See **6**.)

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1.2 Some people **cannot be appointed** as the company secretary. These include:

- The company's auditor.
- Undischarged bankrupts (unless given court leave).

It is no longer obligatory to have a separate company secretary. The company director can hold both positions.

1.3 The company secretary may delegate work to a **third party**, but remains responsible and must check and sign paperwork.

- You can use a professional chartered secretary, the company's accountant (but not auditor), a solicitor or another provider of company administration services.
- This typically costs between £200 and £1,000 per annum.

2 Filing Annual Returns

As company secretary, the task of filing the company documents at Companies House will normally be delegated to you.

2.1 You will have to complete and submit a standard form **Annual Return** to Companies House every year.

- You may also need to include additional information on the form, for example on share capital and on the current directors.
- The form must be returned to Companies House within 28 days of the 'return' date which must be within twelve months of the 'return date' of the last annual return.

2.2 Other documents which must be filed include:

- A directors' report to the members of the company (unless your turnover is less than £6.5 million for financial years beginning on or after 6 April 2008).
- Financial statements, including details of the company's assets and liabilities.
- An auditors' report, unless the company's turnover is less than £6.5 million (or has fixed and current assets below £3.26 million) for financial years beginning on or after 6 April 2008 and you are claiming an audit exemption.

2.3 The **timing** is prescribed by law.

- The first Annual Return can be filed at any time within 12 months of incorporation. Subsequent returns must be filed at

intervals of not more than 12 months.

- The first annual accounts will have to be made up to a date not more than 18 months after the formation of the company.
- For private companies, the accounts must then be filed within ten months of the accounting year end and the first accounts must be filed with 22 months of incorporation. These deadlines have been reduced to nine months and 21 months respectively for financial periods beginning on or after 6 April 2008.

Non-compliance with the filing requirements can lead to the company being struck from the Register of Companies. Restoration can be a costly procedure.

3 Further legal requirements

You carry much of the responsibility for maintaining the company's existence as a legal entity.

3.1 You are responsible for establishing and maintaining the company's **registered office** as the address for any formal communications.

- The registered office must be a physical location, and not just a post office box.
- It need not be the place at which the company's business is normally conducted, but you must make provision for ensuring you receive documents sent there.
- The company's name must be shown outside the registered office and every other place of business.
- Shareholders (and others) have the right to inspect various registers maintained by the company at the registered office (see **3.2**).
- You must notify Companies House of any change of your registered office address, using the appropriate form.

As company secretary, you are responsible for ensuring that all the company's business stationery carries its name, registered number, country of registration and registered address. These details must also appear on your company website, emails and order forms.

There is no obligation to have directors' names on letterheads. But if you choose to list directors, you must list them all.

3.2 The directors usually delegate responsibility for maintaining the company's **statutory books and records** to you.

“Being appointed as company secretary means you are an officer of the company. This means that, along with the directors, you could be prosecuted if the company does not comply with its obligations.”
**Martin Dunne,
 Sayers
 Butterworth LLP**

These should include:

- A register of present and past directors and secretaries.
- A register of all shareholders, past and present, and their share holdings.
- A register of any charges on the company's assets.
- Minutes of general meetings and board meetings.
- A register of the debenture holders (typically banks).

3.3 You are normally required to ensure the security of the company's **legal documents**. These documents include:

- The Certificate of Incorporation, recording the formation of the company.
- The Memorandum and Articles of Association (the company's constitution).
- Share certificates and stock transfers.
- The company's seal (if it has one).
- Certificates of the company's change of name (if any).
- Directors' service contracts (if any).

3.4 As company secretary, you are responsible for informing Companies House, on the appropriate form, of any **significant changes** in the company's structure or management. For example:

Making the most of it

- A** In a small company, your role may be restricted to **delegating** and monitoring the performance of an outside expert.
- Ensure that official communications are quickly passed to your advisers.
 - Inform your advisers in advance if you want to make any changes to the structure of your company (eg shareholdings, directors).
 - Check documents carefully and sign and return them as soon as possible.
- B** In a larger company, you may want to take a more **proactive** role.
- Ensure that you are aware of the main statutory requirements for filings etc.
 - Timetable annual events and provide warnings to others as necessary.
 - Educate others about the importance of what you do.

From April 2008, private companies are not required to appoint a company secretary at all. But if they do, the role and responsibilities of the company secretary remain the same.

- Information on any new shares allotted must be notified within 28 days.
- Appointments, resignations and changes (eg home address) of directors or secretaries must be notified within 14 days using Forms 288a, b and c respectively (www.companieshouse.gov.uk/forms/introduction.shtml).

When changing a business' structure, the company's Memorandum and Articles of Association should be consulted to see if specific procedures need to be followed.

4 Other responsibilities

You normally take responsibility for summoning meetings of the directors and shareholders, and for ensuring that the proceedings are properly recorded.

4.1 You must arrange a **board meeting**, if any director asks for one.

- You must give reasonable notice to the other directors, often 14 days, otherwise the proceedings may be invalid.
- You must take formal minutes, and keep them in the company's minute book. Once approved, they should be signed by the chairman of the meeting, or the chairman of the next meeting of the board. They form the only official record of the business transacted.

4.2 AGMs are no longer obligatory for private companies, although they must hold a general meeting if any director asks for one or if 10 per cent of the members request one (or 5 per cent if a general meeting has not been held within the previous twelve months). If there is to be a general meeting:

- You must send written notice to the directors and shareholders 14 days in advance, unless your company's articles state otherwise.
- If there are any special resolutions, you must file them with Companies House.

5 Complementary roles

Particularly in small companies, the company secretary is often expected to take on other duties as well. At all times, the company secretary's principal responsibility is to the directors.

5.1 It may make sense for you to take on other **administrative responsibilities**.

For example:

- PAYE and payroll.
- VAT registration.
- Insurance and pensions.
- Managing the company's premises and facilities.

5.2 Company secretaries are often asked to take on responsibility for **legal matters**.

- You might be required to advise the directors on their duties, and to ensure that they comply with corporate legislation and the Articles of Association of the company.
- You might also be asked to ensure compliance with other legislation, including data protection and health and safety.
- You might be asked to act as a signatory on behalf of the board. For example, to sign leases or, more generally, on the bank account and statutory documents.
- You might be asked to take responsibility for arranging adequate insurance to protect the company and the directors.

Company secretaries are also frequently involved in negotiations with outside advisers, including accountants and lawyers.

People dealing with the company are entitled to assume the secretary has authority to agree contracts on behalf of the company. For example, to buy office equipment. Despite this, make sure that you do not exceed the actual authority given to you by the directors, when asked to agree a contract on your company's behalf.

6 What could go wrong?

According to the letter of the law, the job of company secretary in any company involves you in serious potential liabilities, as shown below.

In practice, it is the qualified company secretaries, employed by public companies, with employment contracts which spell out all the responsibilities, who are most likely to be prosecuted for any serious wrongdoing.

An unqualified company secretary, employed by a small private company, is unlikely to be prosecuted unless he or she is knowingly involved in serious wrongdoing.

In any company, it is the company's directors who have primary legal responsibility.

6.1 Directors and company secretaries could

be held **jointly liable** for failures to meet the provisions of the Companies Act (except for filing company accounts, for which directors alone are responsible).

- You could incur fines or even criminal charges for failure to file the Annual Return.

6.2 You could, potentially, be **disqualified, prosecuted** or made **liable for company debts** if the law is broken.

- You could be subject to criminal proceedings, if the company trades fraudulently, or if company funds are misappropriated.
- If you are also a director, you could be held personally liable for the company's debts, if there has been wrongful trading. Failure to ensure that the directors are acting properly in the conduct of the business could leave you with personal responsibility for its debts.

7 Getting help

Unlike public companies, private companies are not required to employ company secretaries. But, if they choose to do so, it pays for an inexperienced company secretary to receive some formal training before taking on the job. This will enable the company secretary to carry out his or her responsibilities properly.

7.1 The **Institute of Chartered Secretaries and Administrators** (ICSA) runs courses and provides guidance (www.icsa.org.uk).

- It also produces a booklet on the duties and responsibilities of the company secretary, and best practice guides on related areas.

7.2 A range of useful information, in addition to the necessary forms and documents, is available from **Companies House** (0870 333 3636 or www.companieshouse.gov.uk).

- This includes another booklet on duties and responsibilities, and a guide to the penalties for late filing.

Expert contributors

Thanks to **Martin Dunne** (Sayers Butterworth LLP, 020 7935 8504, www.sayersb.co.uk); **Glenn Collins** (Association of Chartered Certified Accountants, 0207 059 5956).

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