

Role of the company secretary

Every company is obliged to appoint a company secretary. If you accept this appointment, you will become an officer of the company, with legal responsibilities under the Companies Act.

From 6 April 2008, it will no longer be obligatory to have a separate company secretary and company director. The law will allow the company director to hold both positions.

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

As company secretary, you act as the chief administrative officer of the company. Your duties will be defined in your contract of employment, but normally include responsibility for fulfilling some specific obligations imposed under the Companies Act.

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 one of the directors.

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

1.2 A sole director **cannot be appointed** as the company secretary.

- Nor can the company's auditor.
- Some people are prohibited by law from

holding the office of company secretary — for example, undischarged bankrupts (unless given court leave).

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

- You can use a professional chartered secretary, the company's accountant (but not auditor), a solicitor or another provider of company secretarial 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 check and amend the information which is sent out on the **Annual Return** form.

- 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 date shown.

2.2 Other documents which must be filed include:

- A directors' report to the members of the company (ie the shareholders) unless your turnover is less than £5.6 million (for companies with a year-end on or after 30 March 2006).
- Financial statements, including details of the company's debts.
- An auditors' report, unless the company's turnover is less than £5.6 million a year.

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.
The first accounts must be filed no later than 22 months after incorporation.

Non-compliance with the requirements to file

Annual Returns and accounts 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 dealing with documents sent there (see box).
- 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.

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.

These should include:

- A register of present and past directors and secretaries.
- A register of the directors' interests in shares and debentures of the company.
- 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).

(See **Filing and records management**.)

► An annual diary of the information you need to send to authorities such as Companies House, and HM Revenue & Customs can be found in **Key dates for the tax year**.

“Although the board may delegate administrative work to the company secretary, the directors normally retain ultimate legal responsibility for complying with the Companies Act.”
Paul Reynolds, Companies House

“Before deciding to take on the role of company secretary, consider getting expert advice. An adviser can explain the implications and the processes involved.”
Peter Davison, Arian Associates

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:

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

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.

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, 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 Normally, the company must hold at least one **general meeting** of the shareholders, the AGM, in each calendar year.

Since January 2007, you can conduct AGMs over the Internet and are not obliged to have a physical meeting between directors and shareholders. From 1 October 2008, AGMs will no longer be obligatory at all. Until then:

- The first meeting must be held within 18 months of incorporation.
- Each subsequent AGM must be held within 15 months of the previous meeting.
- You must send written notice to the directors and shareholders well in advance — generally at least 21 days.
- You must also circulate copies of the company's accounts at least 21 days before any meeting at which they are to be presented.
- If there are any extraordinary or special resolutions, you must file them with Companies House.

If all the members agree, they can pass elective resolutions unanimously to avoid the need to hold the annual general meeting and for the shareholders to approve the accounts and re-appoint the auditors.

4.3 The **directors' report and accounts** must be approved by the board.

- You are responsible for circulating such documents to those entitled to see them.

5 Complementary roles

Particularly in small companies, the company

“When it comes to the company secretary role the majority of small businesses rely on the services of outside experts, not least because it doesn't cost much. Larger companies do most of the admin themselves but still make use of outside experts for specialist advice.”

Peter Van Duzer, Jordans

➔ See also **Effective board meetings**.

“Try to organise the first AGM for the middle of the calendar year, so that you can delay it or bring it forward should the need arise.”

Robert Blanks, Institute of Chartered Secretaries and Administrators

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** in general.

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

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 (see

Directors' responsibilities).

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 with specific qualifications. But with such a wide range of responsibilities and penalties for failure to exercise them properly, it pays for an inexperienced company secretary to receive some formal training before taking on the job.

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

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Further help

There are other Directors' Briefing titles that can help you. These briefings are referred to in the text by name, such as **Filing and records management**.