

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

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.

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 duties, will have regular dealings with Companies House, as this is where public records about the company are held.

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 company defaults, for example, failure to file a document in the time allowed, or to submit the company's annual return.

Do all companies need a company secretary?

There is no longer a requirement for all companies to have a company secretary.

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

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

If your private company does not want to have a 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.

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

If you choose to have one, how should the company secretary be appointed?

Any changes to the particulars of company officers - directors or secretary, (for example, new appointments, resignations, or changes to names or addresses) must be notified to Companies House using a standard form.

Company secretarial duties

Private company without an appointed company secretary

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 their 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 an alternative location which must be registered with 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.

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.

Companies House issues a series of statutory forms to help companies do this. Until October 2009 these forms will continue to be known by the section of the 1985 Act under which the duty arises, but from 1 October a new series of forms, grouped by the type of information to be submitted, will be substituted. Draft versions of these forms are already available on the Companies House website, but cannot be used before October. (New form references are shown in bold below.)

Here the company secretarial duties 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 9 months of the end of the accounting year.
- the annual return (form 363s / **AR01**) is completed and filed. (This is a snapshot of 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 (if appointed) may be prosecuted)
- all the required forms are filed at Companies House. These are potentially over 200 forms! The most common might include:
 - changes in directors, secretaries and their particulars (288 / **AP01** / **TM01** / **CH01**)
 - a change of accounting reference date (225 / **AA01**)
 - a change of registered office (287 / **AD01**)
 - allotments of shares (88(2) / **SH01**).
- the current version of the company's Articles of Association are filed, whenever a change is made.

Company Secretarial Duties

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. 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 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 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 most decisions by written resolution. Such a resolution does not require a hard copy, and 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.

Public company or private company with an appointed company secretary

If your company has a company secretary appointed, the company secretary will also need to keep a register of company secretaries and inform Companies House whenever a change takes place.

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 on-line, which can be a very secure method, particularly if the company signs up for the enhanced security arrangements offered by their PROOF system.

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 on-line.

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.

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