

The Role of a Company Secretary

Course book



...market leaders for Company Law training

Course book

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The Role of a Company Secretary

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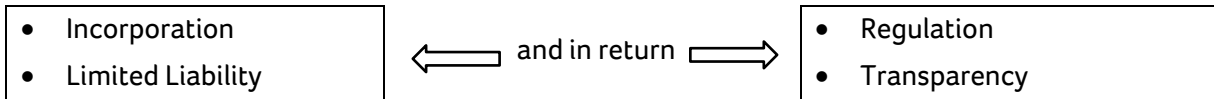
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Companies – an introduction

Key features



Incorporation

Incorporated	Unincorporated
<ul style="list-style-type: none">• Company• Chartered body• CIO• Community benefit society• LLP	<ul style="list-style-type: none">• Sole trader• Partnership• Trust• Unincorporated members association



Different types of company

- Private company limited by shares (96%)
- Public company (0.2%)
- Private company limited by guarantee without a share capital (3.7%)
- Private company limited by guarantee with a share capital
- Unlimited company (0.1%)

There are more than 4,350,000 companies on the Register



Session 1: The position of Company Secretary

Who can hold the position of Company Secretary?

- In a public company – only a person with certain qualifications
- In a private company – almost anybody, including:
 - A director
 - An employee
 - A non-employee
 - A partnership
 - A company

Appointment and removal

- The first Secretary is named in Form IN01
- Subsequent appointments are made by the directors – subject to the Articles
- Removals are made by the directors – subject to the Articles

Terms and remuneration are fixed by the directors



What are the essential duties of a Company Secretary?

- Ensure that the company complies with the Companies Act and other relevant legislation
- Encourage good governance
- Give good advice to the directors
- Ensure timely submission to Companies House
- Keep the statutory books and registers
- Ensure that documents are properly executed

What other essential duties are there?

- Call meetings as necessary
- Attend meetings and take the minutes
- Keep an eye on the Articles and the Constitution
- Ensure that membership records and share certificates are properly administered
- Ensure that the payment of dividends is properly administered

Can you think of any other common duties or tasks?



Question 1

What do you think are some of the characteristics of a good Company Secretary?

What are the reporting lines?

- Report to the Board – the full Board
- Dual reporting if required
- Duty to act as custodian of constitution
- Relationship with Chief Executive



When combined with another role

- Dedicate time and be clear on what you can and cannot do
- Define role – i.e. role description
- Clarify reporting lines
- Ensure you have access to the information (and meetings) you require
- Ensure you are registered as Secretary if performing tasks

Legal responsibilities

- Is the Company Secretary an officer of the company?
 - Yes, always – the Companies Act 2006 states... *“includes a director, manager or secretary”*
- Do the equivalent duties apply to company directors?
 - No
- Can they overrule the directors?
 - No



What steps should a Company Secretary take on appointment?

- ✓ Notify Companies House within 14 days
- ✓ Take physical control of the registers, seal and minute books
- ✓ Ensure that the statutory records are in order
- ✓ Look at the Articles and the Constitution
- ✓ Deal with notifications as necessary

Question 2

The directors appointed Tracy Brown as company secretary on 14th March and she accepted the appointment. Companies House was not informed.

Is she company secretary on 6th October with the rights and responsibilities?

Who (if anyone) might be prosecuted?



Exercise 1

- You have agreed to take on the role of Company Secretary but nothing has been specified about what this will actually involve
- You have a meeting with the Chair and CEO planned

What questions do you want to ask?



Session 2: Registers and Companies House filings

Company registers

- Register of members
- Register of directors
- Register of directors' residential addresses
- Register of secretaries (if applicable)
- Register of people with significant control

Other registers

- Register of charges
- Register of Interests Disclosed
 - Compulsory for public companies
- Register of Debenture Holders
 - Voluntary in all companies



Where to keep company registers

- Registered office address
- Single Alternative Inspection Location (SAIL)
- Companies House (private companies)
- Must be kept in the country where registered

What are company registers?

- Historic documents
 - 20 years for shareholders
- Must contain details of past shareholders, directors etc
- Most registers are public documents – there are inspection rights
- The requirements of the Companies Act 2006 means that there are some restrictions on electronic registers



Public inspection of registers

- The public can inspect all the registers except the register of directors' residential addresses
- Inspection is free for members
 - Non-members must pay a modest charge
- Proper purpose test
- The right to inspect can be challenged in the courts – within 5 days

Proper purpose test

Companies should require that any request to inspect a register or receive copies must:

- ✓ Include the name and address of the person seeking access
- ✓ Say what the information will be used for
- ✓ State whether it will be shared with anyone else and, if so, with whom and for what purpose



What details must be kept in a register of shareholders?

- Class of membership
 - If there is more than one class
- Name and address of member
- Dates on which membership started and ceased
- Details and dates of all transactions between these dates
- Running total of shares held
 - If applicable
- Certificate number

What details must be in the register of directors?

- Present full surname and forenames
- Any former surname and forenames
- Nationality
- Service address
- Country/State of residence
- Date of birth
- Business occupation
- Date of appointment
- Date of vacation of office

The residential address must go into a separate register



Options for keeping the registers

- Adopting a do-it-yourself approach
- Company secretarial software
- Books and loose-leaf systems provided by legal stationers
- Companies House - private companies can keep five of the registers here

Can the registers be kept at Companies House?

- Public companies cannot do this
- Private companies can choose to keep any or all of the following registers at Companies House
 - Register of members
 - If permitted by a unanimous vote of the members
 - Register of directors
 - Register of directors' Residential Addresses
 - Register of secretaries
 - Register of People with Significant Control
 - Provided that no person with significant control objects



Question 3

Peter Archer bought his first share on 4th February 2009 and sold his last share on 16th June 2016.

Could his details be removed from the register of members any time after 4th February 2029?

What must the register of people with significant control contain?

Details of people (including relevant legal entities) who:

- Hold more than 25% of the shares – directly or indirectly, *or*
- Control the exercise of more than 25% of the voting rights – directly or indirectly

What else must the register contain?

Details of persons who:

- Are entitled, directly or indirectly, to appoint or remove a majority of the board of directors
- Have the right to exercise, or actually exercise, significant influence or control over the company, *or*
- Have the right to exercise, or actually exercise, significant influence or control over a trust or firm that does anything mentioned on this slide or the previous one



Other records to be kept

- Directors' service contracts
- Directors' indemnities
- Minutes of general meetings, board and committee meetings and records of resolutions, etc
- Any contracts relating to the purchase of own shares
- Any documents relating to the redemption or purchase of own shares out of capital by a private company
- Any report to the members on the outcome of an investigation by a public company into interests in its shares

What is the accounting reference date?

- Every company has one
- It may be freely brought forward
- It may be put back, but
 - Not when accounts are overdue
 - Resulting period must be not more than 18 months
 - Only once in 5 years (with certain exceptions)



What are the steps in publishing the reports and accounts?

- Approved by the board and the decision minuted
- Signed by any director
- Reports may be signed by the Company Secretary
- Signed by the auditor (if applicable)
- Then:
 - Delivered to the members and any debenture holders
 - Delivered to Companies House
 - Laid (if it is a requirement)

Exercise 2

- On looking through the records of your company you can see that the previous Company Secretary did not keep the registers up to date
- There are no entries on the registers since 2012 and there is no Register of People of Significant Control

What should you do?



Event driven filing

- Change of Accounting Reference Date
- Change of Registered Office
- Single Alternative Inspection Location
- Change of directors and secretary
- Change of directors and secretary details
- PSCs
- Allotment of shares
- Change of articles
- Mortgages and charges
- Change of name

Filing at Companies House

- Filing electronically
- Time limits for filing
- Changes are dependent on filing for
 - Change of name
 - Change of objects



Are there time limits and penalties?

- Just a few forms are discretionary
- Everything else is compulsory and there are time limits
- There is the possibility of prosecutions – though in practice these are very rare

Automatic civil penalties are levied if accounts are delivered late. They may also apply to late delivery of changed articles.

Filing deadlines (private companies)

- Annual accounts – *9 months from ARD*
 - Confirmation statement - *within 14 days of...*
 - 12 months after the date your company incorporated, or
 - 12 months after the date you filed your last confirmation statement
 - Directors; PSC; Secretaries updates and changes – *within 14 days*
 - Resolutions – e.g. change of constitution and name – *within 15 days*
 - Charges – *21 days*
 - Shares – allotment, redenomination, sub-division and consolidation – *within 1 month*
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Session 3: Names, stationery and signing

What should you know about company names?

- A company name cannot be exactly the same as the name of another company
- Certain words and phrases can only be used with permission
- There are other restrictions
- It is possible to object to an Independent Company Names Adjudicator

How does a company change its name?

Either of the following:

- A special resolution
- Some other procedure specified by the articles

The registered office – what should you know?

- Every company has a registered office registered at Companies House
- It must be a physical location in the country in which the company is registered
- Companies House will communicate with the company at its registered office and so can anyone
- The registered office may be changed by the directors



What must be disclosed on company notepaper and other places?

On company notepaper, order forms, **websites, emails** and faxes:

- Exact, registered name of company
- Place of registration
- Company's registered number
- Address of registered office (must state it is registered office)

Not usually required on compliments slips or business cards






Where must the company's registered name be disclosed?

The exact, registered name must be disclosed on:

- Notices and official publications
- Bills of exchange, promissory notes, endorsements and cheques
- Orders and bills of parcels
- Invoices, receipts and letters of credit
- Outside the registered office and SAIL
- On the company seal



When should the company seal be used?

	Entering into deeds (optional – documents may be executed without)
	Share certificates
	Seal should be kept safe and used in accordance with the articles
	Use of seal should be properly attested
	Use should be retrospectively approved and minuted

How are documents executed?

Documents are executed by the company seal or as a deed by:

- Any two directors
- Any director and the Company Secretary
- A director in the presence of a witness who attests the signature



Session 4: Articles

What are the articles of association?

- Every company must have articles
- There are three alternatives:
 - Adopt applicable model articles
 - Specially written articles
 - Mix and match
- Default provision is model articles in force when the company was registered
- Articles can be altered by special resolution, but it is possible to entrench some or all of the articles

Content of the articles

- What are the company objects (The purpose of the company)?
- What are the powers?
- How does the company operate?
 - Membership / shareholding
 - Shares and transfers
 - Board appointment
 - Meetings
 - Delegation
 - Reporting



Question 4

Thinking about the content of articles, why would a company want to adopt articles different to the model articles?

How are the articles changed?

- By a special resolution or a more demanding vote of the members
- Cannot be a less demanding requirement than a special resolution
- A certified copy of the resolution and a copy of the new articles must be sent to Companies House within 15 days



Session 5: Shareholders

Shareholder rights

- Attend general meetings (and vote)
- Receive a share of the company's profits
- Inspect statutory books and constitutional documents
- Receive certain documents from the company
- Any final distribution on the winding up of the company

Question 5

What documents do you think a shareholder might request from the company?



Minimum notice periods for company meetings

The articles can specify the notice period for company meetings but they cannot be shorter than:

- 21 clear days for AGMs of public companies
- 14 clear days for all other company meetings

Short notice may be possible

The content of notices

- Place of meeting
- Date and time of meeting
- Statement about proxies
- Whether Annual General Meeting or General Meeting
- General description of business
- Precise wording of certain resolutions

The notice must be signed and the authority stated



What types of resolution can be proposed at a company meeting?

- Special Resolution
- Ordinary Resolution
- Ordinary Resolution with special notice

Articles may require something more demanding

What is the law on written resolutions?

- Written resolutions are not permitted in public companies
- In private companies any resolution may be passed as a written resolution, except removing a director or auditor
- A written resolution must obtain the number of votes that would have sufficed at a meeting with everyone attending and voting
 - Subject to safeguards



Example classes of shares

- Ordinary Shares (perhaps in more than one class)
- Deferred ordinary shares
- Non-voting ordinary shares
- Redeemable shares
- Preference shares
- Cumulative preference shares
- Redeemable preference shares

Any other examples?

What should the Company Secretary know about dividends?

- Dividends may only be paid out of distributable profits
- Preference dividends
 - Cumulative
 - Non-cumulative
- Ordinary dividends
- Directors may declare interim dividends but the members must approve final dividends
- Each shareholder must receive a dividend voucher
- Dividend resolutions should be precisely drafted



Exercise 3

- The Articles require that a Company holds an AGM and one is due to be held
- The Articles do not contain a facility to hold a general meeting virtually, but it is the view of the Board that the shareholders would rather the meeting was held in this way.
- The meeting quorum is 5

What should you do?



Session 6: Board meetings

How do directors make decisions?

- If the latest model articles apply...
 - Communicating a unanimously held view to each other
 - A majority decision at a meeting held with directors physically present
 - A majority decision at a meeting with participating directors communicating electronically
 - Subject to conditions
- Also by directors' written resolution
 - If permitted by the Articles

Board meetings

- Usually much less detail in Articles
- Attendance and quorum
 - Who *must be* present
 - Who *may be* in attendance
- Take care regarding frequency
- Reasonable notice
 - What is reasonable



Question 7

Before we get to the Company Secretary's specific role during meetings – can you tell me what you think constitutes a good meeting?

What is the Secretary's role in board meetings?

- Call meeting if directed by any director
- Issue agenda and documents
- Arrange for the minuting of meetings
- Provide advice and arrange for external advice
- Support the Chair in the administration of the meeting
- Not vote unless a director



Who comes to the meeting?

- Directors – how do you deal with non-attendance?
- Company secretary or delegate (usually)
- Others as decided by the directors
 - CEO (If not a director)
 - Senior managers
 - Advisers

Possible issues

- All directors properly informed?
- Quorum – throughout meeting
- Conflicts of interest
- Is this a board meeting/management meeting/other?
- Board behaviours
- Are clear decisions being taken?
- Chair performance



Attendance / participation

- Quorum
- Impact of Conflicts of interest
- Need for regular attendance – what can you do to ensure this?
- Attendance at the full meeting
- Participation
- Preparation

Informal meetings

- Advisory meetings
- Briefings
- Awaydays

- Clarity regarding purpose and support
- Making it feel different – location; seating; style; dress code
- Differences in roles



Working with the Board

What contributes to an effective board?

<p>COMPOSITION OF BOARD Balanced board – knowledge, experience, character; behaviour</p>	<p>AGENDA Focus on...</p> <ul style="list-style-type: none">• Strategy• Performance• Value creation
<p>ROLE OF THE CHAIR</p> <ul style="list-style-type: none">• Leadership• Encouraging engagement by all directors	<p>WELL INFORMED DECISIONS</p> <ul style="list-style-type: none">• Reports• Advice

Board behaviours

- The hardest to fix!
- Address early before it festers
- Your relationship with Chairman
- Your relationship with directors
- Chairman's review
- Board evaluation
- Director development



Boardroom conflict

- Tension – can be beneficial
 - Robust discussion
 - Questioning
 - Diverse perspectives
 - Engagement
- Conflict – can be damaging
 - Hostile
 - Winners/Losers
 - Paralysis and retreat

Dealing with conflict

- Acknowledge concerns – properly...
- What is the cause?
 - Misunderstanding of roles?
 - Misaligned interests
 - Cultural/Personality differences?
 - History?
- Time together
- Outside the boardroom
- Third party assistance?



Boardroom support - good practice

- Clear delegated authority
- Clear matters reserved for the board
- Clarity re decisions required
- Agenda management
- Distribution of any papers in advance
- Open discussion
- Accurate minute taking

Working with the Chair

- Ensure that the Chair is clear re their role
- Training, induction and mentoring
- Practical support
- Support in the meeting
- Helping the Board to reach decisions
- Appraisal and review



Session 7: Committees

Delegation

- The Board can delegate to
 - Individual directors
 - Committees
 - Staff and advisors
- The Board always retains responsibility
- Delegations must be
 - Clear
 - Documented
 - Monitored

Committees

- Established by the board
- Good terms of reference are crucial
- Company secretarial support
- Most common committees
 - Nominations committee
 - Audit (and risk) committee
 - Remuneration committee
- Others to meet need



Committees

Terms of reference agreed by the board....

- Administration
- Membership
- Functions
- Powers
- Reporting

Ensure you meet any Article requirements (e.g. restrictions on membership)



When are minutes or written records required?

- ✓ Annual general meeting
- ✓ General meeting
- ✓ Class meeting of the members
- ✓ Written resolution of the members / directors
- ✓ Significant decision of a sole member
- ✓ Board meeting
- ✓ Meeting of a board committee
- ✓ Unanimous decision of the board communicated without a meeting
- ✓ Significant decision of a sole director

Purposes of minutes

- To record collective decisions
- To demonstrate that directors have fulfilled their duties and legal obligations – audit trail
- An accurate, impartial and balanced internal record of business transacted at a meeting
- Purposes may vary across companies and sectors



Minutes as an aid to business

- Actions log
- Link between meetings
- For reference – senior management, new directors, auditors
- Corporate memory

What should be the minimum content of minutes?

- Type of meeting
- Date of meeting
- Names of persons present in a voting capacity
- Names of persons present in a non-voting capacity
- Identity of the chair
- **Decisions made** – formal resolutions
- Reasons for those decisions

It may be desirable or necessary to have more detailed minutes



Minutes – things to consider

- Use the meeting papers as well as the notes of discussion
- Use the past tense
- Distinguish between discussions and decisions
- Avoid names if you can
- Summarise – minutes are not a verbatim record
- Neutralise the language

Tips for speedy minuting

- Prepare ahead – what can you draft before the meeting?
- Have/follow a company 'style'
- Neither too long nor too short
- Record decisions and actions
- Assess sense of what is being said and summarise
- Keep your notes full and clear and your minutes concise



Exercise 4

- As Company Secretary you draft the Board minutes
- You send the draft to the Chair to check and then they go out to Board members
- They are approved at the next meeting
- Your latest set of minutes has come back from the Chair with a decision added in that you know was not taken

What should you do?



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