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Company secretarial duties update

The legal and administrative responsibilities involved in running a company are considerable, whether carried out by a company secretary, or another designated officer of the company. The advent of recent new legislation with regard to 'persons with significant control' adds further to the company secretarial burden. And as with other aspects of the company secretarial workload, there are significant penalties for getting it wrong.

This Briefing provides an up to date overview of the duties involved.

Do you need a secretary?

All public limited companies (plcs) are required by law to appoint a suitably experienced and qualified company secretary, but the position for private limited companies is different, and the secretary of a private limited company does not need specialist professional qualifications to act.

Since April 2008, private limited companies do not have to appoint a company secretary, unless this is an express requirement of their Articles of Association. In this case however, the work that would fall to a company secretary still forms an unavoidable part of a company's legal obligations.

If a company chooses not to appoint a company secretary, company secretarial duties will need to be carried out either by a director or by a person authorised by the directors. It is possible to delegate the work to professional advisers such as solicitors or accountants.

Key role

In 1993, a high-level report described the role of the company secretary in a plc like this:

'The company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities are ... and ... how these ... should be discharged. All directors should have access to the advice and services

of the company secretary and should recognise that the chairman is entitled to strong support from the company secretary in ensuring the effective functioning of the board.'

Although most relevant to plcs, there is a key message for all companies here: the work of a company secretary is vital.

As an officer of the company, the company secretary may be criminally liable for defaults of the company in some circumstances. This could be for example, failure to file changes in the details of the directors and secretary, or the company's annual return within the specified time limits. The responsibilities held by a company secretary should never be underestimated or undertaken lightly.

Duties

In return for the protection of limited liability, companies have historically been required to publish certain information in the public domain. This includes information relating to the accounts, details of the registered office, and details of directors and members, for example.

Providing and updating such information has usually fallen to the company secretary. The Companies Act 2006 does not specify the exact duties to be carried out by a company secretary, but they usually include the following:

- maintaining statutory registers (keeping company 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

Companies are required to keep an up-to-date register of such details as:

- a register of members
- a register of directors
- a register of charges
- a register of persons with significant control.

It is important to note that the Companies legislation is backed up by a significant penalty regime. Failure to keep the registers up to date for example, can lead to a penalty of up to £5,000.



Persons with significant control

There have been recent important changes to the law in respect of the 'persons with significant control' (PSC) regime, particularly as regards reporting timescale and exemptions. A person with significant control is defined as an individual ultimately owning or controlling more than 25% of a company's shares or voting rights or who otherwise exercises control over a company or its management.

PSC changes to reporting timescale

Previously PSC information was updated annually, using confirmation statement CS01. Change is now event-driven, and must be reported to Companies House whenever it occurs. It can no longer wait until the end of the year. From now on, companies will need to use forms PSC01 to PSC09 to report these changes. When the annual confirmation statement is made, confirmation will be required that PSC information which Companies House already holds is accurate.

There are 14 days to update the PSC register and another 14 days to send the information to Companies House. That gives 28 days to notify Companies House of changes to the PSC register.

PSC exemption changes

Under the old rules, some companies were exempt from the PSC rules. These were DTR5 companies which are not on a regulated market. Under the new rules, such companies may have to comply. This could affect Alternative Investment Market companies (AIM) and ISDX (ICAP Securities and Derivatives Exchange) companies. If the company has traded on an EEA or Schedule 1 specified market, it is still exempt from providing PSC information. The Department of Business, Energy and Industrial Strategy has updated its guidance on the PSC register, and helpful guidance in this area can be found at goo.gl/GZYTm1

Completing and filing statutory forms

Company secretarial duties here include:

- Filing annual accounts at Companies House within the specified time limits. For a private limited company this is within 9 months of the accounting year end in normal circumstances
- Checking and confirming the annual confirmation statement issued by Companies House within 14 days - if necessary amending inaccuracies
- Notifying changes of directors, secretaries and their particulars to Companies House; changes in accounting reference date; changes in registered office; allotment of shares.

Please note that this list is not exhaustive. Many statutory forms can now be filed online via the Webfiling service at Companies House.

Meetings

Much company secretarial work involves the day to day administration of the company, for example ensuring that meetings of directors and shareholders comply with relevant legislation. The company secretarial role here would include issuing proper notice of meetings to those who are entitled to attend; preparing agendas; circulating relevant papers and taking minutes to record decisions taken.

Both members and auditors are entitled to notice of company meetings. At least 14 days' notice is required for a general meeting for a private limited company. Notice may be given in writing, or, in certain circumstances, online.

Private limited companies are no longer required to hold an Annual General Meeting (AGM) unless their Articles of Association expressly impose this obligation. A company which is required by its Articles of Association to hold an AGM may alter this by changing its Articles by special resolution.

Resolutions

A resolution is a legally binding decision made by the company. Resolutions may be of two types: ordinary resolutions and special resolutions. An ordinary resolution is one passed by a simple majority of members. A special resolution is one passed by a 75% majority of members.

Private companies can take most decisions by written resolution. This would not need hard copy and email may be used. It is important that the majority is correctly calculated however, being a majority of all members, and not just of those returning the voting papers.

Copies should be retained of important management decisions whether taken at a meeting or by written resolution. In some circumstances, these may need to be filed at Companies House.

Company name and registered office

There are very specific requirements relating to company name and registered office, and again it usually falls to the person exercising company secretarial duties to make sure the 'i's are dotted and the 't's crossed.

Every company (unless dormant since incorporation) must display a sign with its registered name at its registered office, any inspection place and any location at which it carries on business, unless this is primarily used for living accommodation.

The registered name must also be included in all business communications, both hard copy and electronic. The provisions here

are quite specific. For instance, the signage must be in characters capable of being read with the naked eye, in such a way that visitors can see it easily, and displayed continuously. There is the proviso that if the location is shared by six or more companies, each company must display its registered name for at least 15 continuous seconds at least once in every three minutes. The high level of specificity here again serves as a reminder of the serious responsibilities involved in company secretarial duties.

The company registered name must be included in all forms of business correspondence and documentation, whether that be hard copy or electronic. Business letters; business emails; cheques signed by or on behalf of the company; orders for money, goods or services signed by or on behalf of the company, all fall into this category. Again the list is not exhaustive. The registered name must also be disclosed on company websites.

Further disclosure requirements

On all business letters, business emails, order forms and websites, a company must also state:

- the part of the United Kingdom in which the company is registered (i.e. England and Wales, or Wales, or Scotland, or Northern Ireland)
- the company's registered number
- the address of the company's registered office
- if a company is exempt from the requirement to use 'limited' in its name, the fact that it is a limited company
- if the company is a community interest company which is not a public company, the fact that it is a limited company
- if it is an investment company as defined by section 833 of the Companies Act 2006, the fact that it is this type of company
- if it is a company which has chosen to display its share capital, it must display the amount of paid up share capital.

How we can help

The legal and administrative burden placed on companies can seem very onerous indeed – especially for the small or medium sized enterprise. Should you wish to discuss company secretarial matters further, we should be more than happy to advise.

If for instance, you currently have a company secretary, and your Articles of Association permit, we can advise on the procedure to dispense with a secretary. We would also be able to undertake company secretarial duties on your behalf. Please do not hesitate to contact us if we can be of assistance in these areas.