
I – The company secretary

■ Introduction

The role of the **company secretary** can encompass all areas of a **company's** activities, depending on the size and nature of the company, and the qualifications and experience of the individual. These activities can be divided into three principal categories.

The board

The company secretary should ensure that proper board procedures are in place and are adhered to, and that all relevant papers are circulated to board members in advance of meetings. They should also provide practical support and guidance, particularly to non-executive directors, and monitor and guide the company's corporate governance policies.

The company

The company secretary should ensure the company's compliance with relevant legislation and codes of conduct specific to the company's business activities. The company secretary will often provide a central source of information to the board and senior executives.

The members

The company secretary is often the primary point of contact for members and institutions, particularly in matters related to corporate and environmental governance.

■ Background

The origins of the company secretary begin with the Joint Stock Act 1856. This Act established the procedures for the **formation** of a **limited company** by registering the memorandum and **articles of association**, and established the dual system of ownership and management. The Act also contained provisions for the secretary to the company. In these early years, the position held no responsibilities or duties.

Indeed, in a court case in 1887,¹ the Master of the Rolls, Lord Esher, stated that 'A secretary is a mere servant; his position is that he is to do what he is told, and no person can assume that he has any authority to represent anything at all'.

It was not until the Companies Act 1948 that the company secretary was recognised as an **officer** of the company alongside the **directors** and all companies were required to appoint a company secretary. There were no specific duties; however, the company secretary was authorised to sign prescribed forms on behalf of the company and make statutory declarations as to matters of fact concerning the company.

The position of the company secretary gradually gained formal recognition as a responsible officer under a succession of Acts including the Trade Descriptions Act 1968, the Taxes Management Act 1970 and the Unsolicited Goods Act 1971.

1971 was a good year for company secretaries, as at a Court of Appeal² judgement, Salmon LJ stated that the position of the company secretary was formally noted as being the 'chief administrative officer'.

This was expanded upon in the same hearing by the then Master of the Rolls, Lord Denning, who stated:

A company secretary is a much more important person nowadays than he was in 1887. He is an officer of the company with extensive duties and responsibilities. This appears not only in the modern Companies Acts, but also by the role which he plays in the day-to-day business of companies. He is no longer a mere clerk. He regularly makes representations on behalf of the company and enters into contracts on its behalf which come within the day-to-day running of the company's business. So much so that he may be regarded as held out as having authority to do such things on behalf of the company. He is certainly entitled to sign contracts connected with the administrative side of a company's affairs, such as employing staff, and ordering cars, and so forth. All such matters now come within the ostensible authority of a company's secretary.

Further recognition of the importance of the role of the company secretary came in the Companies Act 1980, which required company secretaries of public companies to be qualified either by professional qualification or by prior experience.

In 1992, the key role of company secretaries in good corporate governance was recognised in a report issued by a committee chaired by Adrian Cadbury, titled 'Financial Aspects of Corporate Governance', but universally referred to as the Cadbury Report. This report was launched followed a number of corporate governance failures including Maxwell Corporation, BCCI and Polly Peck.

In 2008, the role of the company secretary took a backward step. As part of the programme to deregulate companies in the general review of Company Law, the 2006 Companies Act saw the position of the company secretary become optional for private companies.

The 2018 Edition of the UK Corporate Governance Code reinforced and further recognised the role of the company secretary as being responsible for advising their boards on all governance matters in addition to having a key role in assisting the board chair with regular evaluation of the board as a whole and of individual directors.

The position does not in itself involve the exercise of management responsibility and if, as many do, the company secretary is to have powers of management, these will come from some other executive office.

A corporate body may, subject to certain restrictions, be appointed company secretary. A **partnership** may be appointed company secretary in the name of the firm. In England and Wales, where partnerships do not have corporate status, this has effect as an appointment of all the partners as joint secretaries. In Scotland, where partnerships do have corporate status, the partnership may be appointed company secretary in its own right.

It is also possible to appoint deputy or assistant company secretaries, who may act in the office of company secretary if that office is vacant or there is no company secretary capable of acting (s. 274).

■ The office of company secretary

With effect from 6 April 2008, only **public companies** are required to appoint a company secretary (s. 271). **Private companies** will be able to appoint a company secretary, if they wish to do so, and the following provisions apply equally to both private and public companies (s. 270).

As discussed more fully below, the duties of the company secretary are not specified in detail in the Companies Acts. However, in various sections of the Companies Acts, the company secretary is named as one of the people who may sign prescribed forms on behalf of the company, make statutory declarations and sign the **confirmation statement**. Additionally, the company secretary is recognised as a responsible officer by the Taxes Management Act 1970, the Trade Descriptions Act 1968, the Unsolicited Goods and Services Act 1971 and the Data Protection Act 2018.

The company secretary is an officer of the company as defined by ss. 1121 and 1173, and consequently may incur personal responsibility for not complying with requirements of the Act affecting the company.

As well as the statutory requirements, a company's articles of association may contain provisions with regard to the appointment, resignation or removal of the company secretary.

■ Qualifications

The company secretary of a private company need have no professional or other qualification, or have any previous experience.

In the case of a public company, s. 273 provides that the directors must take all reasonable steps to ensure that the company secretary is a person who appears to have the knowledge and experience necessary to discharge the functions of company secretary, and who also meets other requirements laid down in that section.

Persons qualified to be the company secretary of a public company under these provisions include:

- a barrister, advocate or solicitor, called or admitted in any part of the UK;
- a member of various professional bodies, including the Institute of Chartered Secretaries and Administrators (ICSA), and members of various accountancy bodies in England and Wales, Scotland and Ireland;
- a person who is a member of any other professional body who appears to the directors to be capable of discharging the functions of the company secretary; and
- a person who, for at least three of the five years immediately preceding their appointment as company secretary, held the office of company secretary of another public company.

■ Prohibited appointments

The auditor of a company and any employee of the auditor may not be appointed as company secretary (s. 1214).

The sole director of a company is no longer prohibited from being appointed as its company secretary. However, there is little to be gained in practice from doing so, as any documents requiring signature by a sole director and the company secretary cannot be signed by the same person acting in both capacities (s. 280). Accordingly, while it is now possible for a private company to have one person as sole director and shareholder, it is still necessary for another person to be appointed either as company secretary or as an authorised signatory to execute certain documents or to witness the execution of those documents.

■ Appointment

A corporate body may, subject to certain restrictions, be appointed company secretary. A partnership may be appointed company secretary in the name of the firm. In England and Wales, this has effect as an appointment of all the partners as joint secretaries. In Scotland, where partnerships have corporate status, the firm may be appointed company secretary in its own right. It is also possible to appoint deputy or assistant company secretaries, who may act in the office of company secretary if that office is vacant or there is no company secretary capable of acting (s. 274).

Following the coming into force of the Limited Liability Partnerships Act 2000, a **limited liability partnership** (LLP), as a corporate body, whether registered in England and Wales or in Scotland, can be appointed as company secretary.

The appointment process is the same for private and public companies. On **incorporation** of a new company, the person named as company secretary on Form IN01 (not obligatory for a private company) is deemed to have been appointed as the first company secretary of the company (ss. 12 and 16). Form IN01 is delivered to the **Registrar of Companies** for **registration**, together with the memorandum and articles of association of the company. Subsequent appointments – or in the case of a private company, this may be the first appointment – are made by the directors in accordance with the provisions of the articles of association (see precedent 33). The following action should be taken:

- 1 At a meeting of the directors or by **written resolution**, the directors must resolve to appoint a new company secretary. Where the new appointment is to replace an incumbent company secretary rather than to fill a vacancy, the **resolution** will also include the replacement of the previous company secretary, be it by way of resignation, retirement, removal or another cause.
- 2 The particulars relating to the new company secretary must be entered in the company's register of secretaries (s. 275) and notified to the Registrar of Companies on Form AP03 (Appointment of Secretary) or Form AP04 (Appointment of Corporate Secretary) within 14 days of the appointment (s. 276). The form can be filed either in paper form or electronically.
- 3 If the company secretary is to be an authorised signatory of the company's bank account, notification of the change of company secretary and a specimen signature should be sent to the bank, together with any additional verification of identity documents required by the bank.
- 4 If thought appropriate, announcement of the new appointment should be made to the company's staff, suppliers and customers.
- 5 A formal **service contract** should be drawn up for signature by the company and by the company secretary.
- 6 If the company has an insurance policy covering officers of the company against the liabilities that they may incur in carrying out their duties, the insurance company should be notified, usually at renewal, of the appointment of the new company secretary.
- 7 In the case of a company with publicly traded **shares**, the company secretary should be supplied with the company's rules governing transactions in its securities, if any, which should comply with the terms of the Market Abuse Regulations, Disclosure and Transparency Rules, and the Listing, AIM or NEX Rules, as appropriate.

■ Duties

None of the Companies Acts or most articles of association specifically define the powers of a company secretary. As a consequence, the position has been considered by the courts at various times. As discussed on page 2, the concept of the ostensible authority attaching to the office of the company secretary was established by the courts in 1971. Although matters falling within this administrative function are not explicitly set out or defined, this ostensible authority will often extend to the employment of staff, the company's premises, data processing and other office machinery, printing and stationery requirements, and the acquisition, maintenance and sale of company vehicles. If the company secretary is responsible for data processing, their responsibilities will be governed by the Data Protection Act 2018 and the General Data Protection Regulations, especially if they are the person appointed Data Protection Coordinator for the company. However, without express authority, the company secretary's responsibilities will not extend to negotiating trading **contracts**, e.g. sale or purchase of goods and materials or production machinery, which are matters affecting the company's business operations and will, in most cases, be the responsibility of other managers. In many companies, the company secretary may be the appropriate person and be authorised to sign contracts relating to such matters on behalf of the company.

If a company secretary acts beyond their authority, whether express or ostensible, the company will be bound by such acts, but the company secretary may be held liable by the company for any loss incurred as a result.

The Company Secretaries Group of the ICSA considered the duties of the company secretary and published a guide distinguishing between the core duties that all company secretaries should perform and those additional duties that they may be called upon to undertake, as set out below.

Board meetings

Coordinating the operation of the company's formal decision-making and reporting machinery; formulating meeting agendas with the chairman and/or chief executive; attending and minuting meetings; maintaining minute books; certifying copies of minutes; and ensuring that correct procedures are followed (see Chapter 9).

General meetings

Originating and obtaining internal and external agreement to all documentation for circulation to shareholders; coordinating the administration and minuting of meetings; and ensuring that correct procedures are followed (see Chapter 8).

Articles of association

Ensuring that the company complies with its articles of association; drafting and incorporating amendments in accordance with correct procedures. The articles

are now deemed to incorporate all clauses previously found in the **memorandum of association**, with the exception of the **subscriber** clause (see Chapter 3).

General compliance

Monitoring and ensuring compliance with relevant legal requirements, particularly under the Companies Acts (see Chapter 7).

UKLA, AIM and NEX requirements

Monitoring and ensuring compliance with the *Listing Rules* and *Disclosure and Transparency Rules*, *AIM Rules* and *NEX Exchange Primary Rules*; managing relations with the UK Listing Authority, Stock Exchange or NEX Exchange through the company's advisers; releasing information to the market; ensuring the security of unreleased, price-sensitive information; and making applications for listing and admission of additional issues of securities (see Chapters 15, 16 and 18).

Statutory registers

Maintaining the following statutory registers:

- 1 **members** (see also 'Share registration' below) – ss. 113, 114;
- 2 **company charges** – ss. 877, 891 and 892;
- 3 **directors** – s. 162;
- 4 **directors' usual residential addresses** – s. 165;
- 5 **secretaries** – s. 265;
- 6 **debenture holders** (if applicable) – s. 743; and
- 7 **people with significant control register (PSC Register)** – s. 790M.

Private companies can elect to keep their statutory registers on the central register maintained by Companies House (see Chapter 7).

Statutory returns

Filing information with the Registrar of Companies to report certain changes regarding the company or to comply with requirements for periodic filing. Of particular importance in this regard are:

- 1 **confirmation statement**;
- 2 **report and accounts** (see also next item);
- 3 **amended articles of association**;³
- 4 **returns of allotments and statements of capital**;
- 5 **notices of appointment, removal and resignation of directors or the company secretary**;
- 6 **notices of removal or resignation of the auditors**;
- 7 **change of registered office**; and
- 8 **notification of the creation or satisfaction of charges**.

(See Chapters 7, 13, 14 and 22.)