

Guidance Note: The Company Secretary in a Private Company

This Guidance Note is designed to provide information in relation to the administration of a company and specifically the function of a company secretary.

This note is only relevant to private limited companies.

Is a company secretary required?

Under the Companies Act 2006 a company is no longer required to have a company secretary (unless the articles of association require the company to appoint a company secretary), although it may choose to appoint a company secretary.

Although there is no requirement in the Companies Act 2006 for a company to have a company secretary, the directors will still have to decide who is responsible for filings and meeting the obligations under the Companies Act 2006.

The Companies Act 2006 does not set out the duties or responsibilities of a company secretary but many are implied by the Act. The statutory provisions relating to the company secretary are set out in sections 270 – 280 of the Companies Act 2006. The secretary must be suitably qualified, but they must be suitable to perform the duties of a company secretary.

There are some core administrative duties of a company secretary, such as filing a confirmation of directors. In a small private company, the core tasks can be performed by a director or a company secretary. If no company secretary has been appointed, anything that should be sent to the company and anything addressed to the company must be sent to the secretary. In addition, anything authorised or required to be done by the directors must be done by someone authorised by the directors.

In a slightly larger private company, the role of a company secretary may expand considerably. The company secretary may become an impartial advisor to the board of directors for external regulators and advisors. The company secretary is responsible for keeping legislative, regulatory and company practices under review, and advising the board of directors about changes. As company practices have taken on more significance, the role of a company secretary has become more statutory and regulatory in nature, and companies are more likely to keep a company secretary to deal with these issues.

The company secretary can facilitate communication between the board and shareholders. They can ensure that the board's decisions are properly carried out.

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is no longer necessary for a private company to make no reference to a company being based on Table A (Companies Act 1985) any having a secretary. In these circumstances this requirement (note that if the company makes an amendment).

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Appointment or removal of the company secretary is usually the responsibility of the company secretary of a private company (but does not have to be the company secretary) (but does not have to be the company secretary). In the regulatory landscape, a knowledge of the company secretary is an essential component of a company secretary. The company secretary is a natural person or a corporate body, but

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ly appointed on the forms filed on
t of a company secretary is optional).
will usually be by a resolution of the
articles of association.

to notify Companies House, and to
secretaries. Notice of appointment of a
4 days on form AP03 (for individuals)
es a secretary must specifically give
(6).

approval, subject to anything to the contrary, the Secretary resigns from office, a letter of resignation shall be a claim for compensation for loss of office. Where a settlement has been agreed between the Secretary and the Government, the settlement shall be a claim for compensation for loss of office.

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bert - for example, an accountant or a
delegation, the company itself will still
means that it is important to check

Register of Secretaries

Private companies with a secretary are required by section 275 of the Companies Act 2006 to keep the register up to date or make it available for inspection. Failure to do so commits an offence. The register of secretaries must be kept at the company's registered office or a single alternative location. The location (and any changes to it) must be notified to the Registrar. The Small Business, Enterprise and Employment Act 2015 also gives private companies the option of keeping the information on the central public register.

For individuals, the register must show the secretary's name, any former names (former names must be included), and any former names (former names must be included). It must also include a service address for the secretary, which can be different from the registered address.

For corporate secretaries, the register must show the corporate name, its registered or principal office, its company number and whether it is a company kept by the registrar at Companies House.

Who is the Company Secretary responsible for?

The company secretary is largely responsible for ensuring that the company complies with its legal obligations to shareholders.

The Board:

The company secretary must ensure that the company's affairs are properly carried out and they will usually assist the directors in carrying out their duties. The company secretary needs to be available to provide practical assistance to the directors, in particular by providing information to the board and contributing to board processes so that they can discharge their statutory duties of directors and corporate governance processes.

The company secretary will normally meet with him/her, prior to drawing up and circulating the minutes of board meetings.

Many chairs and boards look to a company secretary to help embed healthy corporate governance practices.

The Company:

The company secretary should ensure that the company complies with the relevant statutory and regulatory requirements applicable to the company. They can assist the board in the discharge of their duties by ensuring that the board's decisions and instructions are properly communicated and implemented. The company secretary should be available to provide guidance and advice within the company on matters of business ethics and to ensure that the company is mindful of the strategic goals and challenges facing the business.

The Shareholders:

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Register of secretaries in accordance with section 275 of the Companies Act 2006. For 14 days, to keep a register, keep it up to date and every officer who is in default of this duty is liable to a fine. The register must be kept available for inspection at the company's registered office (or a single alternative location). The location (and any changes to it) must be notified to the Registrar. The Small Business, Enterprise and Employment Act 2015 also gives private companies the option of keeping the information on the central public register.

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Directors, the company, and its shareholders.

The appointment of directors is properly carried out and they will usually assist the directors in carrying out their duties. The company secretary needs to be available to provide practical assistance to the directors, in particular by providing information to the board and contributing to board processes so that they can discharge their statutory duties of directors and corporate governance processes.

The company secretary will normally meet with him/her, prior to drawing up and circulating the minutes of board meetings.

Many chairs and boards look to a company secretary to help embed healthy corporate governance practices.

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The company secretary needs to ensure that due regard is paid to their interests for any investors or other stakeholders

Authority and liability of the company secretary

The company secretary is an officer of the company with a duty of loyalty, a duty not to make secret conflicts of interest.

The company secretary can sign most documents on behalf of companies. Note however section 2 of the Companies Act 2006, authorising a thing to be done by or to the company, is not satisfied by its being done by or to the same person.

A company secretary has no power or authority to bind the company to do so by the board. Where a notice of a general meeting is approved, it can subsequently be ratified by a written resolution proposed by the members.

A duly authorised company secretary can bind the company in certain circumstances.

It is important to note that as an officer of the company, the secretary is liable for defaults committed by the company.

Duties of the Company Secretary

The “core” duties of a Company Secretary are determined by the complexity of its corporate structure and the nature of its business and industry. Ultimately, the company secretary must ensure that the company is managed in accordance with the Companies Act 2006. The main duties set out in the table below are the main duties of a company secretary including:

Core Duty	
Maintain the registered office	Administering the registered office; receiving, co-ordination and distribution of all postal correspondence received by the company
Maintain the statutory books and records, and facilitating access to them as required	The following are the duties for a private company are: • to maintain a register of members; • to maintain a register of directors; • to maintain a register of secretaries; • to maintain a register of directors' residential addresses; • to maintain a register of debenture holders (if applicable); • to maintain a register of charges created before 6 April 2006 (if applicable); and • to maintain a register of people with significant control.

holders as appropriate and to ensure that the company acts as a primary point of contact

The company secretary has a fiduciary duty to it. This includes a duty to act with care and skill and a duty to avoid conflicts of interest.

The company needs to submit to the registrar a statement of compliance. From 2006, a provision requiring or authorising a thing to be done by or to the company is **not** satisfied by its being done by or to the same person, and as, or in place of, the secretary.

The company secretary can call a general meeting unless authorised to do so by the board. The company secretary without board authority cannot call a general meeting or apply to the circulation of a resolution.

The company secretary can act on behalf of the company in certain circumstances.

The company secretary may be criminally liable for defaults committed by the company (Companies Act 2006 Act).

The duties of a company secretary depend on the size of the company, the nature of its business and the regulation that surrounds its business. Ultimately, the company secretary must ensure that the company is managed in accordance with the Companies Act 2006. The main duties set out in the table below are the main duties of a company secretary including:

		<p>Secretary will usually be responsible for the statutory registers and minute books.</p> <p>Records and registers available for inspection at the registered office or SAIL.</p>
Maintaining Company Identity		<p>Official stationery and promotional material for the company, including business letters, websites show the company's name and registered office address, registered (England and Wales, Scotland and Northern Ireland) and that it is a limited company.</p> <p>A sign must be displayed showing the company's registered company address and where the business operates. The sign must be displayed at any time.</p>
Directors		<p>Directors must be correctly appointed.</p> <p>Ensuring directors of the restrictions imposed upon them by the Companies Act of association and company law.</p> <p>Ensuring the procedures are in place to protect the interests of the company of interest.</p> <p>Ensuring procedures to ensure directors' compliance with their statutory duties.</p>
Share Administration		<p>Ensuring the issue, allotment and transfers of shares and matters affecting shareholdings; and responding to queries and requests from shareholders.</p> <p>Ensuring the issue of share certificates.</p>
Administration of Board & General Meetings		<p>Ensuring the conduct of board meetings and general meetings:</p> <ul style="list-style-type: none"> Preparing agendas; Preparing board papers and distributing them to directors; Ensuring that board meetings are minuted; Ensuring that minute books are kept in accordance with the Companies Act 2006 and the company's articles of association. Ensuring that all shareholder queries are dealt with and organising the AGM (if one is required). Ensuring that all meetings (and AGM) are held in accordance with the requirements of the Companies Act and the company's articles of association.

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		all minutes and resolutions.
Communication		<p>ers and directors with notice of dance with the Companies Act</p> <p>ers with proposed written auditors with any resolutions eholders.</p> <p>of the company's accounts to all ure holders and persons entitled to general meetings, whether in hard bsite.</p> <p>ies House about changes to the red details.</p>
Companies House filings		<p>egistration at Companies House of ng including:</p> <p>ons and agreements as required to accordance with sections 29 & 30 panies Act 2006;</p> <p>ts and reports as required to be ordance with sections 441 & 451 panies Act 2006;</p> <p>changes in accounting reference AA01) and registered office (form</p> <p>ppointments of directors or secretary (forms AP01, AP02, 04);</p> <p>change of details of directors or forms CH01, CH02, CH03, CH04);</p> <p>termination of a director or forms TM01, TM02);</p> <p>lotment of shares (form SH01);</p> <p>s of capital;</p> <p>charges (forms MR01, MR02, 04); and</p> <p>on statement (form CS01).</p>
General Compliance		<p>oments in corporate governance.</p> <p>rocedures which allow for relevant regulatory and legal ticularly under the Companies retention of documents. This may h and safety compliance, data ber security.</p>
Common Administrative duties		eparation and implementation of

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payment of any dividends.

company documentation.

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property leases etc.

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