

Roles and Responsibilities of the Company Secretary

Every company must have a company secretary, who cannot be the same person as a sole director. [Companies Act 1985 s.283(1)]

The company secretary is responsible for ensuring that the administrative responsibilities set out in company law and the articles of association are properly carried out. The post has no executive or management responsibilities unless these are explicitly delegated by the governing body. So a company secretary cannot, for example, authorise expenditure, borrow money, alter registers or appoint auditors without the authority of the directors or company members.

A company secretary who attends general meetings of the company's members has no vote unless he or she is a member of the company, and a company secretary who attends meetings of the governing body has no vote unless he or she is also a company director.

Although a company secretary may have no say in the company's decisions, he or she is an officer for the purposes of company law and can be held liable in the same way as a company director for breach of company law duties. ¹

Liability

The company secretary has personal liability if he or she fails to perform duties required under the Companies Acts. Usually such liability arises only if the default was knowing or deliberate. The company can generally insure against such liability, but if the company is charitable and the secretary is also a member of the governing body, the rules on liability insurance for trustees apply. ¹

A charitable organisation may take out trustee indemnity insurance only if:

- for a charitable company, the memorandum of association contains explicit power to take out this insurance or the Charity Commission has allowed the memorandum to be amended to include such power;
- for a charitable trust or association, the Charity Commission has given written consent or has made a scheme to amend the governing document to allow such insurance. ¹

When a company is set up the company secretary must:

- open a register of members, and if it is not to be kept at the company's registered office, send form AD02 to Companies House;
- open a register of directors and secretaries and file forms for any directors who were not named when the company was formed;
- open the relevant register of charges if there are any mortgages or debentures, and notify the charges of Companies House;
- display the company's full registered name outside the company's registered office;
- arrange for printed materials such as stationery and chequebooks to be produced with the necessary details, or get a rubber stamp or stickers with the details;
- add the same details to the organisation's website and the 'signature' used on outgoing emails;
- arrange for safekeeping of the seal (if there is one), registers, minute books and the certificate of incorporation. ¹

When taking over as company secretary of an established company:

The company secretary appointed for an existing company should obtain from the outgoing secretary, or from whoever has them:

- the original certificate of incorporation and any certificate changing the company's name;
- a copy of the memorandum and articles of association and any amendments;
- the company's statutory books;
- copies of forms detailing directors and secretary which have been submitted to Companies House;
- copies of other forms which have been submitted;
- contact addresses and telephone numbers of directors and key staff;
- copies of the company's notepaper, cheques, and forms used for invoices, receipts, orders and other financial documents;
- print-outs from the company's website and outgoing emails, showing the company and if applicable) charity registration details;
- correspondence files of the previous secretary;
- copies of the previous year's company annual accounts, reports and return and, for a charitable company, the previous year's charity return;
- an up-to-date company search[#], unless the company secretary is absolutely certain the company's documentation at Companies House is completely up to date;
- blank copies of forms to register, amend or remove directors;
- the company seal, if there is one.

If any of these items is missing the company secretary should alert the governing body and take action to replace missing items. ¹

The company secretary should also:

- complete and sign form AP03 and send it to Companies House within 14 days of being appointed;
- find out when the end of the accounting year is, and ensure that company form 255 has been filed if necessary (to notify Companies House of a change in accounting reference date when the accounting year is changed);
- check the correspondence file and if necessary notify key people of any change of address for correspondence;
- if one does not already exist, create a diary with all the key dates (end of financial year, deadline for submitting annual accounts, dates for general and governing body meetings, deadlines for giving notice of general and governing body meetings, etc);
- find out who the company's accountant (if there is one), auditor and solicitor are, and
- introduce himself or herself to them;
- if there is no company solicitor, ask the board how they expect the secretary to obtain legal advice on company matters. ¹

Table 1.1 ³

Duty	Description
Compliance with internal regulations and legislation	<p>Checking the company complies with:</p> <ul style="list-style-type: none"> • Memorandum and Articles of Association and that these are up to date • the Companies Act 1985 • companies and other legislation
Maintenance of records	<p>Keeping the company's statutory books and records, including registers of:</p> <ul style="list-style-type: none"> • mortgages and charges • directors and secretary • director's interests • members • debenture holders **
Administration of board and general meetings	<p>Procedural compliance and administration in:</p> <ul style="list-style-type: none"> • preparing and sending out notices • taking minutes of meetings and keeping the minute books
Filing forms etc at Companies House	<p>This must be done in the time limits given. Particular importance is attached to filing company accounts and returns, together with notices of changes to registers, especially charges</p>
Collation of accounts and compliance with legislation	<p>Ensuring that the company's accounting records are:</p> <ul style="list-style-type: none"> • maintained in accordance with company legislation • prepared in time • in the form required by company law and accounting standards • copies of the accounts are distributed to the appropriate persons within the correct time constraints
Shareholder communications	<p>Not applicable to a charitable company limited by guarantee</p>

Access to records	Ensuring that eligible persons can review company records and that the company is compliant with the Data Protection Act
Legal advice	Advising directors on their legal responsibilities and updating them on developments in the law concerning the running of companies
Share administration	Not applicable to a charitable company limited by guarantee
Information link	Maintaining communication links between <ul style="list-style-type: none"> • directors and non-executive directors • shareholders and the board • employees and the board • media/press and the company
Running the registered office	Administering the registered office <ul style="list-style-type: none"> • dealing with correspondence • receipt and care of official documents • making documents required by law available for inspection by third parties
Security of documentation	Managing the security of <ul style="list-style-type: none"> • company seal * • Certificate of Incorporation • certificate(s) on change of name • Memorandum and Articles of Association • directors' service contracts • share certificates and stock transfer forms • other documents of title

* **Company Seal**

The seal is a stamping device used when an incorporated body enters into a legally binding agreement. Companies no longer need to have a seal, but many continue to use one. The company's articles of association may have a clause setting out how the seal is used. Industrial and provident societies must have a seal. An incorporated trustee body does not have to have a seal but may do so if it wishes.¹

If the company has a seal, it is good practice to keep a sealing register – the list of documents on which the seal has been used.²

** **Debenture**

A debenture is a form of contract that states that an investor (such as a bank) has security over an organisation's assets (such as its premises and equipment) in the event of liquidation. A debenture holder has the option of appointing a receiver. The receiver would then decide whether it is in the debenture holder's interest to appoint a liquidator.²

Company search

A company search provides a company record showing what information has been registered at Companies House. Searches can be done on the Companies House website, in person at Companies House offices, by post or by a company registration agent (listed in Yellow Pages).¹

¹ The Voluntary Sector Legal Handbook 2nd Edition, Sandy Adirondack and James Sinclair Taylor, Directory of Social Change, 2001

² Voluntary but not amateur 6th Edition, Jacki Reason, Ruth Hayes and Duncan Forbes, London Voluntary Service Council, 2000

³ The Company Secretary's Handbook, Helen Ashton, Kogan Page Ltd, 2000