

COMPANIES ACT 2014

SECRETARIES' DUTIES

The Companies Act 2014 (the "Act") states that every company must have a company secretary and in relation to their duties, the act states:

"The duties of the secretary of a company shall, without derogating from the secretary's statutory and other legal duties, be such duties as are delegated to the secretary, from time to time, by the board of directors of the Company".

These duties come from statute, common law and contract and are in addition to those duties as are delegated to the company secretary by the directors. Essentially those duties cover co-signing the annual return with one of the directors of the company, maintaining the statutory registers, maintaining up to date minute books of meetings of the Board and the Annual General Meeting. They also ensure that all filings made in the Companies Registration Office and the Revenue Commissioners are made accurately and on time. In a public listed company, the duties to be delegated to the company secretary by the directors are likely to be wider.

Statutory Duties

The statutory responsibility of the Secretary to ensure compliance with the Companies Acts as previously contained in the Companies Act 1963 was removed in the Companies Act 2014 and is now the responsibility of the Directors. However, the company secretary may still be open to prosecution as an "officer in default" for failure of the company to comply with a relevant requirement.

As is the case with directors, on appointment, the company secretary must make a public declaration acknowledging that they have legal duties under the Companies Acts, other statutes and common law.

Common Law Duties

Company secretaries also owe some limited fiduciary duties to the company, unlike directors however, the Act does not set out an easily identifiable list of those fiduciary duties. The company secretary does not have any voting rights at board meetings and cannot make decisions at board level, unless the company secretary is also a director. The company secretary may be held liable for any loss arising as a result of or a breach of duty, particularly when a company secretary is also acting in some other capacity e.g. a company director or as an employee of the company.

Appointment of company secretary

The Act imposes duties on directors when appointing the company secretary in that they must ensure that the "person appointed as secretary has the skills or resources necessary to discharge his or her statutory and other duties". For private companies it is the discretion of the board to determine the appropriate skill set of the secretary.

The directors have a duty to ensure that the person appointed has the skills necessary so as to enable him or her to maintain the records required to be kept under the Act.

A Body Corporate can act as a company secretary under the legislation. It is advisable that every company secretary has regard to the terms of their engagement by the directors of the company, the articles of association or constitution of the company and the legislative environment relevant to the company in question to understand their duties relating to that particular company.

Here at BDO we can assist your company with all company secretarial aspects relating to the Act. Our professionally qualified Company Secretaries have extensive skills, knowledge and expertise to assist and advise companies with regard to their company secretarial compliance and governance requirements. In addition, BDO can act as Company Secretary for Clients as required.

Contact the BDO Corporate Secretarial
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