Duties of Company Secretary

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What will we cover?

• Aspects of the role
  – Statutory compliance including Companies House & Charity Commission compliance
  – Providing support to the board
  – Managing the membership and dealing with meetings and resolutions
  – How the company secretary can be most effective in practice
PERSON SPECIFICATION
Who can be Company Secretary?

- No formal qualifications necessary unless
- Public Limited Company (Plc) where company secretary must have formal qualification or be experienced
- May be paid or unpaid role
- A trustee (generally unpaid)
- Many company secretaries are legally or financially qualified, some may also be members of ICSA
Who can be Company Secretary?

But cannot be:
- Company’s auditors
- An undischarged bankrupt, unless given court permission

Company can
- Delegate company secretarial work to an outside expert (paid)
- But company remains legally liable
What is the role of the Company Secretary?

• The role is “different for every company, and every company, every chairman and CEO has a different style...so it’s working with them.”

The Company Secretary (ICSA), Building trust through governance

www.icsa.org.uk.
STRUCTURAL FRAMEWORK & REGULATORY LANDSCAPE
Charitable Company

• Company limited by guarantee or by shares
• Charitable objects
• Directors/trustees
• Members
• Two regulators – Companies House and Charity Commission
Community Interest Companies (CICs)

- Directors have a role in ensuring the company acts in furtherance of the community benefit stated in its Articles
- Overall responsibility for finances, strategy, structure, success and management
- Company secretary plays a role in ensuring compliance
The Charitable Incorporated Organisation (CIO)

- Has a separate legal personality and limited liability
- Single regulator – the Commission
CIO vs company limited by guarantee

• CIO can have decision making by consensus
• Electronic communication with members is easier to set up
• CIOs are more private
• CIO members have a qualified duty to act in the charity’s best interest
• Managing trustee conflicts of interest seems more complex for CIOs
Statutory framework

- Companies Act 2006
- Charities Act 2011
- The Charitable Incorporated Organisations (General) Regulations 2012
- The Small Business Enterprise and Employment Act 2015
- The Companies (Disclosure of Address) Regulations as amended by the Register of People with Significant Control Regulations 2016
The Regulators

- Companies House
- Charity Commission
- CIC Regulator
The “How” of the role

What types of responsibilities does a company secretary have?

• Company secretary is an “officer” of the company responsible for statutory compliance under Companies Act 2006
• Shares legal responsibility with company directors
Filing obligations – Companies House

• Annual filing requirements
• Event driven filings
Companies House – Annual Filings

• Check and confirm statement within **14 days** of made up date (June 2016)
  – Abolishment of the annual return
• Accounts (including Annual Report) within 9 months after financial year end
• Late filing penalties
Companies House – Event Driven Filings

• Changes in officers of the company (including directors or company secretary (within 14 days of the change))

• Changes to governing document provisions (e.g. Objects within 15 days of the change)
Filing obligations – Charity Commission

• **Annual filings**
  – Annual return *(10 months after financial year end)*
  – Public benefit reporting

• **Event driven filings**
  – Constitutional changes
  – Serious incident reporting

• **Electronic filings**
Reporting Serious Incidents

• Charity trustees must report ‘serious incidents’ to the Charity Commission as soon as they become aware of them.

• The incident has resulted or could result in a significant loss of funds or a significant risk to the charity’s property, work, beneficiaries or reputation.
Record keeping – statutory registers (1)

- Register of directors (and directors’ home addresses) and company secretaries if any- past and present
- For CIOs, a register of trustees must also be kept and is open to the public
- Register of members (and shareholding if relevant) – past and present
- For CIOs, a register of members must also be kept and is open to members and trustees
- Register of people with significant control since April 2016
Record keeping – statutory registers (2)

- Any charges on the companies assets
- Register of debenture holders
- Minutes of meetings and copies of resolutions
- *Register of directors’ interests in the company*
Record keeping – central register

- From June 2016, companies can opt to maintain publicly maintain registers of members, directors (and directors’ residential addresses, secretaries, and people with significant control (PSC).
- Unanimous approval of members’ required for existing companies
- Conclusive evidence of meeting obligations
- Available to companies registered under the Companies Act only
Record keeping – other records

- Audit
- Keeping key legal documents (leases, mortgage deeds, title deeds, contracts, etc)
- Meetings and related matters
Information Disclosure

- The company secretary is usually responsible for establishing and maintaining the registered office
- Display of registered name and other particulars
- Charitable status disclosure (where income exceeds £10,000)
- Dealing with requests for inspection or copies of company registers (be mindful of time limits, vexatious requests, and protected information!)
Constitutional compliance

• Compliance with governing document and charitable objects
• Management of matters relating to trustees/directors, members and PSCs
Engaging a trustee

If a trustee is to be paid or receive a benefit of some kind, the remuneration must be authorised:

- in the charity’s governing document
- under the statutory power to pay trustees contained in the Charities Act 2011, if it applies
- by the Charity Commission, in advance (not retrospectively)
SBEEA 2015 changes to directorships

• New offences added since October 2015:
  – Disqualification for certain convictions abroad
  – Disqualification of persons instructing unfit directors

• Corporate directors to be abolished with limited exceptions from October 2016:
  – Companies with corporate directors appointed before October 2016 will have a grace period of 12 months to comply
  – Exceptions are yet to be finalised but there are draft proposals for companies to continue to appoint a corporate director, but only if all the directors of said corporate director are natural persons. In addition, an exception may be made for corporate groups whose parent company is listed on a regulated market.
Board Meetings

- Notice
- Quorum
- Conflicts of interest
- Remote attendance
- Decision-making without a meeting
  - Written resolutions
Decision Making: what should be recorded

• Who attended the meeting (is it quorate?)
• Any conflicts of interest or conflicts of loyalty (did anyone withdraw from the discussion?)
• What the trustees decided & the reason for the decision
• The factors the trustees considered or decided to disregard
• Whether the trustees took advice, and from whom
• Key points of any discussion
• If the matter went to vote, the results of the vote
• Whether any trustee(s) disagreed with the decision
Who are our members

- The subscribers to the Memorandum of Association and “every other person who agrees to become a member of the company, and whose name is entered in its register of members”

  (Section 112 Companies Act 2006)

- Procedure for admission is usually contained in the Articles
Identifying members in practice

- Update the register
  - Look at past paperwork and minutes
- Be clear about the status
- Do they have rights to vote at a general meeting?
- Trustees as members
  - Ensure appropriate appointments/resignations
  - Change the Articles to make automatic
- Charities Act 2011 - power to determine who members are
Members’ rights

The rights of company members include

• To amend the Articles
• Company meetings
  – To require the calling of general meetings
  – To receive notice of, attend, appoint proxies for, speak and vote at general meetings
• To appoint (generally) and remove trustees
• To appoint and remove auditors
• To be sent the report and accounts
CIO – members rights

• A CIO has some flexibility to decide what rights to give members:

• Rights given to members include: the right to amend the constitution, be given notice of meetings and have access to CIO registers and certain documents.

• The Act does not give members rights to call a meeting, vote by proxy, receive the accounts or remove a trustee.
General Meetings

• Needed if company wishes to dismiss a director or auditor before the end of their term
• 14 days written notice needed, unless Articles say otherwise, or 90% agree to waive this requirement
• No longer required to circulated accounts before AGM but must be sent to members before filing
• Formal minutes must be taken
• Minutes should be approved and signed by the Chair of the meeting
• These minutes become part of the official record and can be requested by shareholders/members
Preparing for a general meeting

• Notice
  – To whom?
  – What must it contain?
    • Special resolutions
    • Rights to appoint proxies
  – Length of notice
    • “Clear days”
    • Deemed delivery
  – Manner of giving notice
Conduct of general meetings

- Chair
- Quorum
- Voting rights
- Voting majorities
- Practical issues
  - Quorum
  - Size of venue
  - Polls
General meetings - Proxies

- Rights to appoint
- Manner of appointment
- Timing of appointment
- Revocation of appointment
- Rights of proxies
  - Counted in the quorum?
  - What may they vote on?
Modern voting methods

- Voting in advance
- Remote attendance
- Electronic voting
Company Decisions

• A resolution is an agreement or decision made by the members, a class of members, or the directors of a company to carry out certain changes. This could include resolving to change the name of the company, to alter its share capital or to change its articles.
Resolutions

- **Ordinary resolutions** (decisions) may be passed by simple majority
- **Special resolution** by 75% majority of those eligible to vote (e.g. Change of name, objects etc)
- **Special resolutions** must be filed at Companies House within 15 days
- **Written resolutions**, instead of resolutions at meetings, passed by members electronically or hard copy (but not to remove auditor or director)
Alternatives to membership

• Distinguish between “company law” membership and “associate membership”
  – Friends
  – Supporters
  – Associates
  – Advisory Board or Council
PSC regime(1)

- Since 6 April 2016, most UK companies are required to keep and maintain a PSC register and file this with Companies House from 30 June 2016 with their confirmation statement.
- Records details of individuals or legal entities that have control over companies, SEs or LLPs.
- Part of Government’s openness and transparency agenda.
PSC regime(2)

- Applies to companies, SEs, and LLPs
- Does not apply to:
  - Overseas companies (even overseas branches in the UK)
  - Co-ops, Community Benefit Societies, Charitable Incorporated Society
  - Companies admitted to trade on regulated markets such as LSE and certain companies with shares listed on UK & EEA markets and on specified markets in Switzerland, the USA, Japan or Israel
  - All companies subject to the PSC regime must maintain a PSC register which cannot be blank
PSC Jargon Buster

• PSC
• Registrable RLE
• Section 760D Notice
Does your company have a PSC?

- Does an individual or a registrable RLE
  - directly or indirectly hold more than 25% of your company’s voting rights (or shares if CLS) \((\text{Condition 1 and Condition 2})\); or
  - directly or indirectly have the right to remove a majority of the directors \((\text{Condition 3})\); or
  - otherwise have the right to exercise or actually exercises significant influence or control \((\text{Condition 4})\); or
  - have the right to exercise or actually exercises significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions above if it were an individual \((\text{Condition 5})\)
Identifying PSCs

- Review register of members
- Review Articles of Association
- Review Statement of Capital
- Review agreements e.g. shareholding agreements
- Monitor voting patterns (families or groups)
The PSC requirements at a glance(1)

- **Identify**
  - take reasonable steps to identify PSCs
  - Contact these people or others who might know them to confirm whether PSC conditions apply and if they do, obtain relevant information
  - Use and adapt the example Section 790D notices in Annex 3 of PSC non statutory guidance

- **Enforce if necessary**
  - If they do not respond within one month, send a warning notice (refer to Annex 3 of PSC non statutory guidance)
  - Apply restrictions on PSC’s interest in company where there is no compliance within one further month
The PSC requirements at a glance(2)

• **Confirm**
  – If you have the required PSC information, get the PSC to confirm the relevant information and enter the information in your PSC register using one or more of the 24 prescribed descriptions of the conditions provided in Annex 2 of the PSC non statutory guidance in your PSC register

• **File**
  – File the information with Companies House depending on when your confirmation statement is due

• **Monitor**
  – Keep the information for existing PSCs up to date and update the register when there is a new PSC or someone ceases to meet any of the control conditions
The PSC requirements at a glance(3)

- An entry must also be made on the register in a prescribed form (available in Annex 2 of PSC non statutory guidance where:
  - The company does not have a PSC
  - The company believes it has a PSC but doesn't yet have the details
  - The company does not yet know if it has a PSC
  - The company has issued a section 790D notice
Significant influence or control

- “Significant influence” and “control” are alternatives.
- Where a person can direct the activities of a company, trust or firm, this would be indicative of “control”.
- Where a person can ensure that a company, trust or firm generally adopts the activities which they desire, this would be indicative of “significant influence”.
- The “control” and “significant influence” do not have to be exercised by a person with a view to gaining economic benefits from the policies or activities of the company, trust or firm.
Other Responsibilities

- Information requests and disclosure requirements
- Financial reporting
- VAT
- PAYE
- Insurance and pensions
- Managing premises and facilities
- Health and safety compliance
- Data protection
- Risk register
Financial Reporting

New Charity SORP (statements of recommended practice) for accounting years starting on or after 1 January 2015

Read Charity Treasurer’s Handbook (Gareth Morgan’s)
Data Security

Assess risks associated with breach. A breach can result from:

- a theft of equipment or data
- a deliberate attack on your systems
- unauthorised use of personal data by a member of staff
- accidental loss
- equipment failure

Serious or substantial adverse consequences for individuals

May need to notify ICO.
THE EFFECTIVE COMPANY SECRETARY
Digital Governance: meeting and document collaboration

- Place to Place vs Face to Face
- Virtual Meetings
- Board Packs (BoardPad etc)
- Agree the place of technology in your governance (smart phones, tablets, portals etc)
Top Tips to take away

1. Get to know your organisation’s business environment
2. Check your company records
3. Set Outlook reminders for at least two weeks in advance of your confirmation statement and annual report/accounts due date(s)
4. Prepare and pin up your reporting deadlines help sheet
5. Avoid ‘crossing the line’ between board engagement and board control
6. It is ok to ask for help!
Sources of more information

- Charities Act 2011
- Companies Act 2006
- The Charitable Incorporated Organisations (General) Regulations 2012
- Charity Commission website for model constitutions
- Community Interest Company (CIC) Regulator and company interest companies cicregulator@companieshouse.gov.uk
- The Small Business Enterprise and Employment Act 2015
Sources of more Information

• The Charity Treasurer’s handbook
  Gareth G Morgan (DSC)
• Companies House website
• Getting it right legally; Status and structure for community organisations (GIRL)
• Duties of Charity Trustees www.bwbllp.com
Sources of more information

• Homes and Community Agency and Social Housing (took over responsibility for the regulation of social housing providers in England from the Tenant Services Authority (TSA))

• Key reporting deadlines
Resources

- The charities SORP website at www.charitysorp.org, includes the SORPs, background information, and guidance on how to select the right SORP.

Helpsheets at www.charitysorp.org/about-the-sorp