

The Company Secretary

COMPANIES ACT 2014

The Companies Act 2014 (the “**Act**”) came into effect on 1 June 2015 and has introduced significant reforms in company law in Ireland. The Act has since then been amended and updated.

Whilst some of the law relating to the role of secretary of a company is unchanged by the Act, there are some reforms worth mentioning not least because of the impact they have on the position of both the company secretary and the company’s directors.

Key Features

- every company must have a company secretary;
- the secretary may be one of the directors, unless the company has only one director (for example the new private company limited by shares (LTD)) in which case that company must have a separate company secretary;
- the company secretary must be at least 18 years old;
- the company secretary is no longer responsible for the company’s compliance with the Act;
- it is the duty of the directors to ensure that a suitably qualified secretary is appointed;
- the appointment of another company as company secretary continues to be permitted;
- references to a secretary includes references to joint secretaries.

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Preliminary

The Act reaffirms the significance of the role and duties of the company secretary. Under the Act, company secretaries are no longer obliged to ensure compliance with the Act. This change acknowledges that company secretaries lack the power and authority to ensure such compliance.

Instead, the Act provides that the directors have a duty to ensure that the person appointed to the role of company secretary has the skills or resources necessary to discharge his or her statutory duties and other duties. This includes the case of an appointment of one of the directors of the company as secretary. The duty is based on the existing duty of directors of Public Limited Companies (PLCs) although (as may be seen below) is not as substantive.

The Act also extends certain provisions in the previous Companies Acts to apply to both directors and secretaries. For example, the Act allows the Director of Corporate Enforcement to investigate whether an *officer* is an undischarged bankrupt.

Appointment

When consenting to act, company secretaries are now required to sign a declaration acknowledging their legal duties and obligations. The Act similarly extends an existing provision to an act of a director or a secretary which shall be valid notwithstanding any defect which may afterwards be discovered in his or her appointment or qualification.

Primary Duties

The statutory duties under company law of company secretaries include filing annual returns at the Companies Registration Office (the “CRO”). The Act consolidates the previous Companies Acts’ requirements relating to annual returns, such as those related to annual return dates and documents to be annexed to the return. The duties of the company secretary are owed to the company and there is no statutory obligation to have regard to the interests of the members in the exercise of their duties.

Other existing duties include administrative duties such as maintaining the company’s statutory registers and books. These should include a register of directors and secretaries (past and present), a register of all shareholders (past and present) and their shareholdings, a register of any charges on the assets of the company and minutes of general meetings and directors’ meetings.

In addition, the company secretary’s role usually involves arranging directors’ meetings and shareholders’ meetings and informing the CRO of any changes in the company’s management and constitution.

A company secretary is obliged to exercise due care, skill and diligence while performing the duties that can reasonably be expected from a person of their level of knowledge and experience and they can be held liable for loss to the company arising from their negligence. Many of the Act’s provisions stipulate that *any officer* (which includes the secretary) of the company who is in default shall also be liable to a fine or penalty.

Delegated Duties

The Act does not codify the duties of the secretary in the same manner as they do directors’ fiduciary duties. The duties and powers of the company secretary will largely comprise of those which may be delegated by the directors.

The Act does not prescribe or suggest to what extent duties should be delegated to the company secretary. The company secretary may be expressly authorised to enter into a transaction on behalf of the company either by a provision contained in the company’s constitution or by means of a resolution of the board of directors. The Act provides that an express authorisation may now be registered with the CRO. Contracts within the apparent or ostensible authority of the company secretary, for example those relating to the administration of the company, shall bind the company irrespective of whether there is an express authorisation.

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Disclosure of Interests

Directors and company secretaries are obliged to disclose certain interests in shares or debentures in the company and in associated companies. The Act eases this obligation and exempts de minimis interests from the requirement to disclose under the Act. This means that where shares held by a director or secretary (aggregated with those of connected persons, such as spouses and children) are one per cent or less in the share capital of the company's issued share capital of a class of shares carrying voting rights or where the shares or debentures do not carry a right to vote at general meetings (save a right to vote in specified circumstances), such interest need not be disclosed under the Act. The Act also extends the 'one per cent or less' threshold to apply to share options.

Company Seal and Execution of Documents

Under Table A of the previous Companies Acts, at least one director had to attest affixing of the seal, the second person could have been a director, secretary or authorised person. The Act introduces greater flexibility. There is now nothing in the Act to prevent the constitution of a company authorising one person only to affix the seal (for example, any director or secretary).

A Public Limited Company (PLC)

The directors of a PLC have a more onerous duty because they must appoint a secretary who meets specific requirements set out in legislation. These include the requirement that the person has, for at least three years of the five years immediately preceding his or her appointment as secretary, held the office of secretary of a company; or the person is a member of a recognised body; or is, by virtue of his or her holding or having held any other position or his or her being a member of any other body appears to the PLC directors capable of discharging their duties. The expectation of a company secretary of a PLC is that he or she would advise the board of directors, through its chairman on corporate governance matters.

A body corporate appointed as secretary is also required to satisfy at least one of these requirements.

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For further information please contact



Paul Heffernan

Partner, Corporate

DDI +353-1-607 1326

EMAIL paul.heffernan@mccannfitzgerald.com



Peter Osborne

Consultant, Corporate

DDI +353-1-611 9159

EMAIL peter.osborne@mccannfitzgerald.com



Frances Bleahene

Senior Associate, Knowledge
Team

DDI +353-1-607 1466

EMAIL frances.bleahene@mccannfitzgerald.com

Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.

This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting or refraining to act on any of the matters discussed.

Principal Office

Riverside One
Sir John Rogerson's Quay
Dublin 2
D02 X576
Tel: +353-1-829 0000

London

Tower 42
Level 38C
25 Old Broad Street
London EC2N 1HQ
Tel: +44-20-7621 1000

New York

Tower 45
120 West 45th Street
19th Floor
New York, NY 10036
Tel: +1-646-952 6001

Brussels

40 Square de Meeûs
1000 Brussels
Tel: +32-2-740 0370

Email

inquiries@mccannfitzgerald.com