

# For general counsels who are also company secretary

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Private companies do not have to appoint a secretary unless their articles of association require them to, although larger private companies would often choose to appoint one. A public limited company must have a secretary.

If you have been formally appointed company secretary, duly registered at Companies House, even if not on the board of directors in your role as general counsel, you are an officer of the company under the Companies Act. As an officer of the company the secretary can be criminally liable for defaults committed by the company. Under the law, certain types of documents, such as deeds, need to be executed by the company.

This can be done by the company seal being affixed, by a director signing in the presence of a witness, or by two 'authorised signatories - one of whom can be the company secretary ('authorised signatories' for this purpose are defined in the Companies Act at s44 as the directors and the company secretary.) This is distinct from any internally authorised persons (whether explicit or implied) for the signing of contracts on behalf of the company.

The role of the secretary is wide-ranging, and more than just an administrative role. It usually has both a governance and a compliance element. For this reason, while a general counsel and company secretary would often have an executive reporting line into the chief executive or managing director, it would be good practice for them also to have a direct, if dotted, line into the chairman on governance, and matters relating to the running of the board and its committees.

The governance role often encompasses:

- Playing a lead role in the good governance of the company by supporting the chairman and helping the board and its committees to function efficiently;
- Facilitating the delivery of actions agreed by the board and its committees;
- Helping the board in its compliance with any relevant governance code, and advising the board on governance issues;
- Helping to ensure the presentation of high-quality information to the board and its committees;
- Taking a leading role in supporting the chairman in ensuring induction and training for the directors on the board, and in the board's regular evaluation of its own effectiveness;
- Having an outward focus, in terms of investor liaison and external communications;
- Playing a leading role in the annual report project, drafting governance sections and the ancillary documents for any general meetings.

Acting as an independent bridge between executive management and the board, the company secretary's effectiveness can be enhanced by his or her ability to build relationships of mutual trust with the chairman, and all the other member of the board, and facilitating dialogue between all parties.

Conflicts of interest can arise as a result of combining the general counsel and company secretary roles - these need careful management for the company secretarial aspect of the combined role to be a success.

The compliance role is not to be downplayed. As laid out in the Companies House guidance (the Life of a Company, Part 2) this often includes the following:

- Maintaining the statutory registers;
- Ensuring that the company files statutory information promptly;
- Providing members and directors with notice of meetings;
- Providing members with proposed written resolutions and auditors with any resolutions it has passed;
- Delivering copies of resolutions and agreements to Companies House;
- Supplying a copy of the accounts to every member of the company, every debenture holder and every person who is entitled to receive notice of general meetings;
- Keeping, or arranging for the keeping of copies of all members' resolutions (passed other than at general meetings), and minutes of all proceedings and general meetings;
- Ensuring that people entitled to do so can inspect company records;
- Custody and use of the company seal (if the company chooses to have one);

- Being a co-signator for execution of a document by a company;
- Authenticating forms for submission to Companies House (a company secretary cannot authenticate the company's annual accounts).

For listed and/or regulated companies, there will of course be further statutory or regulatory compliance requirements.

If not a chartered secretary yourself, it can help to have a qualifying or qualified chartered secretary in the team. The Institute of Chartered Secretaries and Administrators also issues guidance to assist company secretaries in undertaking their role. Our Governance Advisory Practice at DAC Beachcroft comprises a number of experienced chartered secretaries with practical experience across the private and public sectors.

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