



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Business Continuity: The Benefits of Outsourcing your Company Secretary

by **Colm Hanley**

Business Continuity: The Benefits of Outsourcing your Company Secretary

30th March 2020 | by Colm Hanley

The company secretary plays a crucial role in any organisation, particularly during times of crisis and business disruption. A company secretary has statutory duties and their role is a key component of any business continuity plan.

If your company secretary is not functioning as normal due to Covid-19 or you are worried about any of the following on an ongoing basis, this article will discuss how you would benefit from outsourcing your company secretary:

- Meeting statutory filing deadlines
- Avoiding fines or other penalties
- Holding board and shareholder meetings
- Communicating with shareholders and other stakeholders
- Maintaining statutory records
- Cost-saving
- Winding up your business in a compliant manner

Do you need a Company Secretary?

Every Irish company incorporated under Companies Act, 2014 is required to have a Company Secretary.

Who can act as Company Secretary?

A company secretary may be an individual or a body corporate. Minors and undischarged bankrupts are prohibited from act as company secretary.

Can a Director act as Company Secretary?

A director of a company that has more than one director may act as company secretary.

There are many small businesses across Ireland which have two directors, one of whom tries to fill the role of the company secretary. However, it is more than a clerical role and directors often find that trying to balance the role of director and company secretary has broader negative impacts on the business. It stretches resources, directors become distracted from strategic focus and commercial decision-making, and breaches of statutory duties inevitably occur as directors try to “wear every hat”. Statutory filing deadlines are not met, monetary fines are imposed and the business as a whole suffers.

I am the only director of my company. Can I act as Company Secretary?

Where a company has only one director, that person may not also hold the office of secretary of the

company. In these circumstances, the director can engage a company secretarial services provider to fulfil the role of company secretary.

Duty to appoint a qualified Company Secretary

The directors of a company have a statutory duty to ensure that the person or entity appointed as company secretary has the skills or resources necessary to discharge their statutory and other duties.

Public limited companies (PLCs) must have a company secretary who has been a secretary for 3 of the last 5 years, is a member of a recognised body or appears to be capable of discharging their duties.

What does a Company Secretary do?

Duties are delegated by the Board. The company secretary is typically responsible for maintaining the constitution of the company and statutory records in accordance with the Companies Act, arranging and recording all meeting of the directors and shareholders, filing statutory notices, communicating with shareholders and other stakeholders, and any other responsibilities delegated by the Board.

Trying to sell your business?

A company's records may come under scrutiny as part of the due diligence process during a sale or purchase of the business or other transaction. Shareholders or government agencies may also inspect a company's records, so it is very important that they are maintained correctly by a qualified company secretary.

Why should you outsource your Company Secretary?

Business Continuity

An individual acting as Company Secretary may become ill, be affected by travel restrictions, remote working requirements or other unforeseeable circumstances. If you engage a company secretarial services provider such as LK Shields, you will have a team of company secretaries across different office locations looking after your compliance on a continuing basis.

A fully qualified company secretary will also be able to advise you on the best approach to holding board meetings and your AGM during the Covid-19 crisis.

Requirement to have a skilled Company Secretary

If you are a director of a company and you fail to appoint a suitably qualified or capable company secretary, you are in breach of your statutory duty to do so. By outsourcing this role to a specialist company secretarial provider, you can take comfort that you have fulfilled this duty as a director.

Corporate Secretary

Company secretarial providers often appoint a limited company to act as company secretary for their client. This provides limited liability in the case of breach of duty but also the company will have more than one director so documents can still be signed and services provided on behalf of the company secretary in the case where one individual is unavailable.

Cost-Saving

Many businesses in Ireland are already closed and there is great financial strain across the business sector. You might be considering cost-saving options for your business. Rather than employing a full-time company secretary, you can outsource to a company secretarial provider for a fraction of the annual salary cost.

Time Management

Outsourcing enables directors to focus on a company's key strategic goals and business growth.

Compliance

Having a specialist team of outsourced company secretaries ensures that you are aware of all filing deadlines, your company avails of the optimum filing timeframe, deadlines are met, penalties are avoided and statutory records are kept in good order in the event of inspection or should you decide to sell your business.

Specialist Advice & Support

It is important for the effective functioning of a Board that the directors receive comprehensive legal and administrative support. This can be provided by company secretarial specialists such as LK Shields. Directors are advised of their statutory duties and procedures are properly carried out.

Communication

Never has communication been so important to businesses than during Covid-19. Experienced company secretaries can assist you with timely and effective communication with shareholders, the board of directors, customers, suppliers, government agencies or other stakeholders. This includes disseminating the company's annual financial statements to shareholders and arranging the AGM.

Documentation

There are numerous statutory forms and declarations that are typically prepared, and often executed, by the company secretary. Having the skills and experience to prepare this important documentation is something that businesses often struggle with and it commonly outsourced for cost and time saving.

Closing your Business

Unfortunately, it is likely that many businesses will close permanently as a result of Covid-19. An experienced company secretary can advise you on the best approach to winding up your company and liaise with the relevant government agencies to complete the relevant formalities so that your company is closed in a compliant manner.

Outsourcing your company secretary is a cost-effective solution that businesses should consider adding to their business continuity plan. It provides for continuity in the role of your company secretary and enables your business to focus on its core strategic direction and commercial decisions while avoiding breaches of duty and statutory penalties.

The Company Secretarial & Compliance Team at LK Shields comprises of experienced qualified company secretaries in our offices in Dublin and Galway. We offer a comprehensive suite of company secretarial services which are provided in a solution-focused manner designed to save time and money for the client.

For further information, please contact Colm Hanley at chanley@lkshields.ie.

About the Author



Colm Hanley
Company Secretary

Colm is Head of the firm's Company Secretarial and Corporate Governance team.
T: +353 91 341 346 E: chanley@lkshields.ie