

## Module J Unit 18

### COMPANY SECRETARY

#### Purpose

At the end of this unit the participant should understand the role of the Company Secretary and the importance of the responsibilities the post holder fulfils.

#### Assumed knowledge

Summary of learning outcomes
1. Explain the responsibilities of a Company Secretary's role.
2. Explain the importance of accurate minutes and the maintenance of corporate records.
3. Explain the role of the Company Secretary in arranging board and shareholder meetings.

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#### 18.0 ROLE

In Guernsey it is common for the role of Company Secretary (Co Sec) to be a corporate rather than a personal appointment. This avoids the need to make changes should there be a change of personnel.

It is also common practice to appoint the Insurance Manager as the Co Sec of a captive under management, or in some cases the Insurance Manager will offer as Co Sec a related but separate company that provides fiduciary and company secretarial services.

In addition to acting as Co Sec the registered office/address of the captive will typically be that of the Insurance Manager.

The Co Sec is considered an officer of the company and must therefore observe the Memorandum and Articles (M&A) of the company in the same way as would a director. Indeed the role holder must be familiar with the M&A and refer to them for guidance on procedural matters pertaining to the operation and governance of the company. The role holder should also be familiar with the Companies (Guernsey) Law 2008 (Co Law) as it determines many aspects as to how a Guernsey company shall or may operate and stipulates the statutory responsibilities of the Co Sec. See section 171 of the Co Law. A copy of the law can be found at:

<http://www.guernseyregistry.com/article/155116/Limited-Company-Legislation--Regulations>

The Co Sec is responsible for many tasks and these are detailed below in no particular order:

#### 18.1 MINUTES

Good quality minute taking and maintaining the minute book is a key role for the Co Sec. Ideally training should be taken before personnel are permitted to take minutes of the meetings detailed in 18.1.2. Minutes should reflect the proceeding of the meetings and most importantly evidencing decisions taken at the meeting and how those decisions were arrived at. This is a relatively recent development as in the past minutes would be perfunctory and just record resolutions. Today's governance and fiscal standards require a much more comprehensive recording of the meeting's discussion.

The minutes provide an authoritative record of the meetings and can be referred to at a later date to confirm any matters of uncertainty. As such their accuracy is paramount as they can at times be considered as key evidence in the event of a dispute and can influence the outcome thereof.

It is important that minutes are produced promptly after a meeting (a common practice is within 10 working days) in draft format and circulated to the attendees for consideration and amendment as necessary. When minutes are circulated many weeks after a meeting has been held it is much more difficult to ensure they record all matters accurately.

Once feedback from all attending has been incorporated the minutes are ready for presentation, approval and signature at the next meeting. They are normally signed by the Chairman of that next meeting and should be initialled on all pages that are not signed to ensure they cannot be subsequently altered.

Once signed the minutes form an important part of the Records of the Company and must be carefully filed and retained for as long as the company exists. This is best practice regardless of the period of record retention required by Company Law and or Statute of limitations.

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#### **18.2 SHAREHOLDER ANNUAL GENERAL MEETINGS (AGMS), EXTRAORDINARY GENERAL MEETINGS (EGMS) AND MEETINGS OF THE BOARD OF DIRECTORS (BM)**

It is the task of the Co Sec to give notice and arrange all of the above meetings as they fall due or as requested by parties with the authority to do so under the M&A. The notice of the meeting must be issued as determined by the M&A or otherwise determined by the board.

The Co Sec should arrange for an agenda to be prepared and circulated with appropriate supporting papers (a common practice is for this to be not less than 5 working days) before the meeting is to be held.

Late circulation of papers for consideration at meetings will reduce the efficiency and quality of discussion at the meetings and in some cases may lead to matters on the agenda being set aside or deferred to a future meeting if the directors do not consider they have had adequate time to read the relevant material and consider the matter fully.

Co Law requires that AGM's must be held within 18 months of incorporation, thereafter one every calendar year, within not more than 15 months of the previous AGM. It is the Co Sec responsibility to diarise these meetings and ensure they take place.

For captives, AGM's are very much a formality and add little value unless there are multiple shareholders of the company which is untypical. The Co Law allows the company to apply for an annual or a permanent waiver from the requirement to hold AGM's and captive boards usually consider the latter option at the first board meeting of the company.

The Co Sec should ensure that there is a quorum present at each meeting before it proceeds or provide information on the quorum required to the Chairman of the meeting so that they may check the meeting is quorate.

#### **18.3 WRITTEN RESOLUTIONS (WR)**

Sometimes it is not convenient for the board to meet to make a decision. In these circumstances it is possible to circulate a WR to all members of the board. See section 182 of the Co Law. This will set out the matter to be considered and the decision to be made and confirm the director's approval of that decision. The WR must be signed and dated by all directors to become effective and will not be effective until the date of the final signature. The WR can be made in counterparts such that the signatures can be made on multiple copies of the WR which together form one document. The drafting, circulation and collation of the WR is the task of the Co Sec and he/she must ensure that they record when the last signature is applied as that becomes the date the WR becomes effective. WR should be filed and retained with the board minutes of the company. Given the focus on Economic and Tax Substance, the use of WR is not encouraged and should only be adopted when a matter requires urgent board resolution. If used the Co Sec must record where each director is situated at the time they signed the WR.

#### **18.4 SHAREHOLDER SPECIAL RESOLUTIONS (SPR)**

Company Law defines what constitutes a SPR. An SPR can be passed during an AGM or EGM or by Written Resolution of the requisite majority of shareholders. All SPR must be filed with the Guernsey Registry see <http://www.guernseyregistry.com/resolutions> within 30 days of being passed. Failure to do so is an offence but does not render the resolution void.

It is the Co Sec responsibility to ensure that SPR are appropriately filed.

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Please also see the website in relation to waiver resolutions and ordinary resolutions passed under section 287 of the Companies Law (Power of company to alter share capital).

#### 18.5 COMPANY RECORDS

Co Law requires that the books and records of the company must be maintained at the registered address of the company.

The books and records of the company comprise:

- Minutes
- Written Resolutions
- Register of members (shareholders)
- Register of beneficial owners
- Register of directors
- Register of Company Secretaries
- Proxies issued by shareholders for attendance at AGM/EGM
- Appointment by directors of alternates and their attendance at meetings
- All accounting and financial records of the company
- Annual validation confirmation

#### 18.6 RETURNS

The processing of the annual validation with Guernsey Registry falls to the Co Sec. Please visit the Guernsey Registry web site for an understanding of what is required.

The General Representative (GenRep) is responsible on behalf of the licensed insurer for filing the licensed insurer's annual return and business plan with the GFSC. The GenRep and the Co Sec are often one and the same organisation but it is important to understand the distinction between the duties and responsibilities of the two. Please refer to Unit 7 at 7.2.15 for more information on the General Representative.

The annual Data Protection registration is usually undertaken by the Co Sec. Please review <https://www.odpa.gg/registration/> for an understanding of what is required.

#### 18.7 RESIDENT AGENT

The appointment of a resident agent is not required for entities that are regulated by the GFSC.

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#### Self-test questions

Answering these questions will remind the participant as to what has been learnt. Once completed, please check your answers against the relevant text.

1. Does the Company Secretary have to be the insurance manager?
2. Why is the accuracy of the board minutes so important?
3. How often are AGM's held?
4. What is a quorum?
5. When is a written resolution considered as being passed by a board?

#### Summary of learning outcomes

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| 1. Explain the responsibilities of a Company Secretary's role.                            |
| 2. Explain the importance of accurate minutes and the maintenance of corporate records.   |
| 3. Explain the role of the Company Secretary in arranging board and shareholder meetings. |