

## CORPORATE SECRETARIAL SUPPORT

### INTRODUCTION

Guernsey companies can be used beneficially for an extremely wide range of activities, from simple asset holding to complex financial transactions or trading activities.

Guernsey companies are governed principally by the Companies (Guernsey) Law 2008 (“the 2008 Law”), which came into effect from 1 July 2008.

On this same date a new, electronic Companies Register was launched, with the intention of modernising and making more user-friendly the interface between the Registrar of Companies and the financial and business community.

Whilst Guernsey company law is designed to be efficient and uncomplicated, there are several requirements that can catch out those unfamiliar with its nuances and which can, in some circumstances, require complex solutions and incur expensive legal costs if non-compliance is the result.

Utilising the services of an experienced corporate secretary can help avoid any such issues of non-compliance.

### REQUIREMENT FOR A COMPANY SECRETARY

The 2008 Law removed the previous obligation for all companies to appoint a Company Secretary.

Where it is chosen not to appoint one, the duties that would otherwise attach to the Company Secretary will vest directly in the board of directors.

Where directors are based overseas and/or are unfamiliar with Guernsey Law and practices, then the appointment of a professional corporate services provider to act as Company Secretary or to advise the board on their duties should be considered.

### DATE EFFECTIVE

Whilst the 2008 Law came into force on 1 July 2008, there have been certain transitional allowances enacted. The latest position is that the duties set out below do not become the responsibility (in law) of the Secretary until 1 July 2012.

### SECRETARIAL DUTIES

The duties imposed on the Company Secretary are set out in s171 of the 2008 Law. These duties and a brief explanation of them follow:

#### **s171(a) - that all registers and indices are maintained in accordance with the provisions of this law.**

The 2008 Law requires a company to maintain the following (relevant clause noted):

- Register of Members - s123
- Index of Members (if 50 or more members) - s124
- Register of Directors - s143
- Register of Secretaries (if one appointed) - s173
- Register of Annual Validations - s234(1)(c)
- Record of Beneficial Owners - s487

All of which must be kept at the company's Registered Office.

#### **s171(b) - that all notices and documents required to be filed or served upon the Registrar or other persons are duly so filed or served.**

The following are examples of some of the many filings that must be made within prescribed time limits (where applicable) to the Registrar of Companies:

- Any change in directors or any change in particulars contained within the Register of Directors (14 days)
- A copy of every Special, Waiver or Unanimous Resolution of a company (30 days)

- The company's Annual Validation and Declaration of Compliance (by 31 January each year)
- Any form of resolution to wind up a company (30 days)
- Any change in Registered Office (14 days)
- Any change in Resident Agent or any change in details in the record of Resident Agents (14 days)
- A copy of any altered Memorandum

It should be noted that failure to comply with any of the deadlines will not, ordinarily, invalidate any change or resolution, but the company will be guilty of an offence and fines will accrue, on a daily basis for late filings.

#### **s171(c) - that all resolutions, records (other than records of beneficial owners) and minutes of the company are properly kept.**

As well as any Register or Index that must be kept at the Registered Office as set out above, the Secretary is also responsible for ensuring that all other required records are ‘properly kept’.

The 2008 Law allows that records can be kept in either electronic or hard copy (or both) so long as electronic copies are capable of being reproduced in hard copy form. Examples of types of records that must be kept are:

- Minutes of all shareholders' and directors' meetings.
- Copies of all written resolutions of shareholders or directors
- Accounting Records (see below)

Accounting Records must be sufficient to show and explain a company's transactions and to:

- Disclose with reasonable accuracy, at any time, the financial position of the company at that time; and
- Enable the directors to ensure that any accounts prepared by the company are prepared properly and in accordance with any relevant enactment for the time being in force.

Where originals of any of the above records are not kept in Guernsey, copies must be sent to a place in Guernsey (typically its Registered Office).

In the case of Accounting Records, where these are not maintained in Guernsey, returns in respect of the business dealt with in the accounting records must be sent to a place in Guernsey at intervals of not more than 6 months. Records and returns must be kept for a period of at least 6 years.

Records of beneficial owners are the responsibility of the Resident Agent, not the Company Secretary, hence their specific exclusion from this section of the 2008 Law.

#### **s171(d) - that copies of the memorandum and articles are kept fully up to date**

Every company registered in Guernsey must have both a memorandum and a set of articles of incorporation. Those companies which were formed prior to the enactment of the 2008 Law will conceivably have elements within their memorandum and/ or their articles which contradict the 2008 Law. A series of transitional provisions have been enacted to allow a period of time for companies to alter any such inconsistencies by amending existing elements or adopting wholesale new articles.

The Company Secretary is responsible for ensuring that sufficient action is taken to rectify such inconsistencies.

#### **s171(e) - that the board of directors is aware of any obligations imposed by the memorandum and articles and the rules of any stock exchange the company is listed on.**

The activities of any Guernsey company are governed by the 2008 Law but also by the other elements referred to in this section and it is for the Company Secretary to ensure that he is familiar with the provisions therein and to advise the board accordingly. By way of example, a company may have articles that entrench certain pre-emption rights over the issue or transfer of shares, to protect shareholders from unwarranted dilution. Where this is the case, the Company Secretary should take such steps as to ensure the provisions of any such articles are complied with prior to the exercise of any power by the board to register a proposed share transfer.

The reference to stock exchange rules is a particularly (in our opinion) cumbersome obligation on the Company Secretary although in practice this will most likely be sub-contracted to the listing sponsor or equivalent.

#### **CHANGES FROM THE POSITION PRE 2008 LAW**

Section 171 of the 2008 Law represents a significant change to Company Secretaries as, prior to its enactment, the previous position in law was that none of these duties were expressly imposed on the Company Secretary. Indeed the role of the Company Secretary was poorly defined in the previous company law.

#### **CONCLUSION**

Any individual or company accepting the office of Company Secretary takes on a considerably higher duty of care and risk of potential liability (certainly from 1 July 2012) and is a role only to be accepted with caution, especially by those with limited or no experience of the legislation and practices.

Regardless of individual responsibilities on the Company Secretary, the duties and requirements set out in this briefing note are currently imposed on the board of directors and noncompliance can lead to the company or its directors being guilty of an offence. More and more directors and proprietors of Guernsey companies are turning to professional service providers for Company Secretarial services or support.

Guernsey Trust Company has a wealth of experience in providing these services and have the added advantage of being able to call on some of the most experienced commercial legal experts in Guernsey through our close working relationship with Collas Crill, one of the premier providers of legal services in the Channel Islands.

*Should you wish to discuss how we can assist your business in ensuring compliance with the relevant legal requirements, as well as for assistance in drafting resolutions and ancillary documentation, please contact us.*



▶ **guernsey trust company limited** Glatigny Court, PO Box 140, Glatigny Esplanade, St Peter Port, Guernsey GY1 4EW  
 ▶ **t:** +44 (0)1481 700550 **f:** +44 (0)1481 727102 **e:** [inbox@gtc.gg](mailto:inbox@gtc.gg) **w:** [gtc.gg](http://gtc.gg) ▶ Registration number: 18666 ▶ Owned by Collas Crill