

IPA Governance Forum

Management of Board Process

IPA Offices

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Office of the Director
of Corporate Enforcement

*Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach*

Responsibilities of the company secretary, the law

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Overview

- Legal basis and function of the company secretary
- Duties under company law
- Common law duties
- Additional administrative duties
- Position under forthcoming Companies Bill
- Conclusion



Legal basis

- Every company must have a company secretary
- No qualifications are necessary
- However a secretary of a plc must have requisite knowledge and experience
- A company secretary is an officer of the company



Function of the secretary

- In practice functions are delegated by the Board
- Statutory functions tend to be in conjunction with directors
- Directors retain ultimate responsibility for compliance with the Acts



Duties under Company Law

- Most duties are imposed jointly along with the directors, though some specify involvement of secretary
 - Signing/certification of documents to be filed with CRO
 - Annual returns
 - Documents annexed (accounts) are true copies
 - Certain statutory declarations



Duties under Company Law

- Therefore statutory duties would be those where secretary would ordinarily be responsible
 - Registers: maintenance and updating
 - Board meetings: arrangement, notice, minutes, sub-committees
 - General meetings: notice, documentation, procedures, minutes
 - Ongoing compliance with Memo and Articles
 - Company seal: Safe-keeping and use
 - Registered office: Location and movement
 - Filings with the CRO: change in director etc.



Duties under Company Law

- Secretary also has certain statutory duties of disclosure
 - Register of directors and secretaries and their interests
 - Name, address, (registered office if a company)
 - Interests in shares/debentures, any purchases and sales thereof, or in holding or subsidiary company



Common Law Duties

- Secretary is an officer and therefore has certain fiduciary duties
 - More limited than directors due to lack of power
 - Primarily must act with due care, skill and diligence
 - Related to the degree of knowledge and experience possessed
 - Open to suit by company for negligence



Common Administrative Duties

- Apart from the statutory duties that emanate from administrative tasks, secretaries may typically also:
 - Ensure compliance with Stock Exchange rules
 - Arrange public viewing of registers
 - Arrange communications with shareholders
 - Publish any statutory notices
 - Ensure company letterhead is up to date
 - Co-ordinate publication and dissemination of accounts
 - Manage communications with non-executive directors
 - Manage administration of subsidiary companies
 - Etc.



Position under forthcoming Companies Bill

- Companies Consolidation and Reform Bill to be placed before Oireachtas by mid-2009
- Heads drafted by Company Law Review Group
- Major changes to structure of private companies
- CLS will be new standard company
- Easing of administrative burden for such companies



Position under forthcoming Companies Bill

- CLS will only require one director
- But – will still require a separate company secretary
- In other respects there is no intention to amend in any significant way the role of the secretary



Conclusion

- Role of company secretary is ancillary to, but linked with the role of the directors as all are officers of the company
- Primary statutory duties remain with the directors but secretary has a number of duties held jointly with them
- Also has responsibility if aware that company law breaches are occurring but does not take action to remedy
- Broad range of legal and practical administrative duties make their role vital to smooth running of a company



Conclusion

- ODCE Guidance available on the role of the Company Secretary
 - Information Book 3, Decision Notice D/2002/2
- Available from our website www.odce.ie
- Contact our Office, Lo-call 1890 315 015, or email info@odce.ie



Thank You



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