
THE ICSA COMPANY SECRETARY'S CHECKLISTS

Sixth edition

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The author

Douglas Armour has worked as a Chartered Secretary in public practice for over 24 years. He is now a director of David Venus & Company Limited, and has been and continues to be company secretary to many private companies as well as public companies whose shares are listed or admitted to AIM or PLUS.

He heads the company's share registration business carried out under the trading name SLC Registrars, which acts as registrar to Listed, AIM and PLUS companies, as well as companies both private and public with substantial numbers of shareholders.

Over the course of the last 24 years Douglas has accumulated a wealth of practical experience and has drawn on this to include in this book those procedures that company secretaries, directors and practitioners will find most useful.

As with all legislation, the provisions of the Companies Acts and related legislation are open to interpretation and must be assessed in the context of the particular circumstances at hand, the memorandum and articles of association of the company in question, and any relevant shareholders' agreement or other pertinent ancillary agreements. While every effort has been made to ensure the accuracy of the content of this book, neither the author nor the publisher can accept responsibility for any loss arising to anyone relying on the information contained herein.

This edition was written with considerable assistance from Douglas's colleagues within David Venus & Company Ltd and with the continued patience of ICOSA Publishing Ltd as yet another deadline came and went without sight of the manuscript and to whom Douglas is extremely grateful.

Preface

The sixth edition of this book represents a major updating of the content, to reflect full implementation of the Companies Act 2006 as at 1 October 2009.

Please note however that at the time of writing, not all the necessary statutory instruments associated with the final implementation had been passed into law and accordingly the reader will need to carefully check the actual orders made in respect of the topics on accounts for an overseas company and the schedule of sensitive words.

The ICSA Company Secretary's Checklists provides a handy, quick-reference guide to the more common company secretarial procedures. The book is not intended to be a legal reference book, and accordingly little explanation of the relevant legislation is made. As more detailed information will often be required, the book has been cross-referenced to the relevant legislation, *The ICSA Company Secretary's Handbook* (7th edition) and *Company Secretarial Practice: The Manual of the Institute of Chartered Secretaries and Administrators*, both of which are published by ICSA Publishing.

Each topic comprises a general commentary on the particular matter, checklist of items to be considered, procedural steps to be taken, Companies House filing requirements, as well as general notes and cross-references.

The Companies House references are to their series of guidance booklets which are available on request by post or may be downloaded from the Companies House website (www.companieshouse.gov.uk).

These checklists should not be regarded as exhaustive, to be followed in all circumstances, but serve as a guide to the reader, indicating procedures that should be considered in the context of the matter at hand.

Although, overall, the checklists have been prepared with private companies in mind, many of the procedures are equally applicable, and in some cases only applicable, to public companies.

The book will be of particular interest to:

- *Accountants/auditors*. Many private company directors will turn to their accountant for advice on company secretarial matters. This book sets out answers to the majority of procedural queries likely to be raised.
- *Solicitors/chartered secretary practices*. While most solicitors and chartered secretaries will have access to extensive libraries of legal reference books, these are often too detailed for quick reference. This book is intended to complement rather than duplicate existing reference sources.
- *Company secretaries/directors*. Company secretaries will find this book of particular use when advising their directors on particular matters, even if advice will ultimately be sought from the company's professional advisers. An understanding of the practical issues for any particular matter will facilitate proper discussion at board level, collation of relevant information, and the issuing of coherent instructions to professional advisers.

Douglas Armour
July 2009

Accounting reference date

All companies, whether trading or not, must prepare accounts and file a copy with the Registrar of Companies. The accounts are prepared in respect of each accounting period. Accounting periods begin at the conclusion of the previous period, or the date of incorporation, and end on the accounting reference date. Companies may choose an accounting reference date. If no alternative date is chosen the company's accounting reference date will be the last day of the month of the incorporation.

s.394

s.390

s.391(4)

s.392

A company may change its accounting reference date at any time provided the filing date for the current or new period has not expired. An accounting reference period may not exceed 18 months and, except in certain circumstances, a company may not extend its accounting period twice in any five-year period.

s.392(3)

A company may extend its accounting period more than once in any five-year period of it changing to fall in line with the accounting reference date of a holding or subsidiary company or if the company is in administration.

Checklist

- The filing period for the current year must not have expired. s.392(4)
- The filing period for the proposed new period must not have expired. s.394(5)
- The new period must not be longer than 18 months, unless an administration order is in force. s.394(5)
- If extending the period, the company must not previously have extended its accounting year end in the previous five years, or if it has, the change must be justified. s.394(3)
- If the new year end has already passed, can accounts to that date be prepared (i.e. stocktakes, asset valuation, etc.)?
- Directors' resolution is required either at a meeting or by written resolution.
- File form AA01. s.392(1)

Procedure

- Convene a directors' meeting to authorise the change in accounting year.
- Form AA01 must be filed at Companies House.

Filing requirement



- Form AA01.

Notes

- The company's first accounting period must be longer than six months, but not longer than 18 months, starting from the date of incorporation. The first accounting period begins with the date of incorporation even if the company does not immediately commence trading. s.391(5)
s.390(2)
- The second and subsequent accounting periods may be as short as the directors wish, but may not exceed 18 months. s.392(5)
- A company can extend its accounting year only once in any five-year period, unless the accounting period is being changed to coincide with that of its holding company or any subsidiary. The accounting period can be shortened as many times as required. s.392(3)
- The length of any accounting period, even one that has ended, can be altered, provided that the relevant form is received by the Registrar before the end of the period in which the accounts for that the current or proposed period must be filed. The change in year-end will become effective once the Registrar of Companies has received the appropriate form. s.392(1)
- Directors wishing to extend the accounting period must first confirm that the accounting year-end has not been extended in the previous five years.
- The date by which accounts must be submitted to the Registrar may be shortened when the accounting period is for a period of less than 12 months (see page 5).
- Normally a private company has nine months from its accounting reference date to file its accounts. For a public company the period is six months. s.442
- Companies can make their accounts up to any date within seven days of the actual accounting reference date. This is to enable companies to undertake stocktakes outside normal business hours without needing to change their year end. s.390(2)(b)
- Companies may apply for an extension to the filing deadline provided this is received by the Registrar prior to the filing deadline, however there need to be exceptional circumstances in order to be granted an extension. s.442(5)

-
- In addition to notifying the Registrar of Companies, the directors may also consider notifying the following: bankers, auditors, accountants, HM Revenue & Customs, subsidiaries, joint venture partners, London Stock Exchange (if listed).

More information

 Handbook: Chapters 10 and 14.  Manual: Chapter 16.

Articles of Association (adoption or change)

The articles of association are the rules governing the company's internal affairs. SI 2008/3229 contains model sets of articles, appropriate for private companies limited by shares, private companies limited by guarantee and public companies (see page 88). s.20

Under all previous Companies Acts, default articles of association were contained in Table A to the particular Companies Act in force when the company was incorporated.

Companies incorporated prior to 1 October 2009 will have as their default articles the version of Table A in force when the company was incorporated, and later versions do not apply unless specifically adopted by a company.

The model articles apply to any particular company to the extent that they are not excluded or varied by the company's articles. s.20(1)(b)

Alteration of any particular regulation or adoption of new articles requires a special resolution of the members in general meeting. s.21

Articles may contain entrenched provisions. Amendment of entrenched provisions requires 100 per cent consent from members entitled to vote or a court order. s.22

Checklist

- If the company has more than one class of shares, separate class meeting may also be required.
- Check whether rights to be amended are entrenched.
- Consider whether amendment can be undertaken by amending existing clauses, by the adoption of new clauses in addition to or in substitution for existing clauses or by the adoption of a complete new set of articles.

Procedure

- Convene a directors' meeting to recommend resolutions to members and to convene a general meeting or, in the case of a

private company, circulate a written resolution if appropriate (see page 210).

- Issue notice, signed by director or company secretary, convening general meeting on 14 clear days' notice, or circulate written resolution for members to consider special resolution to amend the articles. s.21
- As a special resolution the resolution must contain the full text of the proposed changes.
- Consider whether a class meeting is also required.
- If the meeting is to be convened on short notice (see page 24), the company secretary should arrange for agreement to short notice to be signed by each of the shareholders.
- Hold general meeting. Ensure valid quorum is present. Resolutions put to vote either by show of hands or by poll and to be passed by appropriate majority (special resolution by 75 per cent majority) s.283
- If the resolution is circulated by means of a written resolution the resolution must receive approval of the holders of at least 75 per cent of the members entitled to vote within 28 days of the circulation date of the resolution (see page 210).



Filing requirement


- Signed copy of special resolution within 15 days. ss.29(1)(a), 30(1)
- Amended copy of the articles of association with copy resolution. s.26

Notes

- Although it is not necessary to issue new copies of the articles of association to the shareholders, the company should ensure that it has a supply for issue to those shareholders who request a copy. In addition, a copy will normally be sent to the company's bankers and to their auditors.
- If a company files a copy of a resolution amending its articles but does not file a copy of the amended articles, Companies House may issue a notice requiring an amended copy of the articles be filed within a specified time. For failure to file the amended copy within the specified time, the company will be liable to a £200 fine. s.27
s.27(4)

More information

 Handbook: Chapter 1.  Manual: Chapter 1.

 Companies House: GBF1.