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The Institute of Chartered Secretaries and Administrators,

16 Park Crescent, London, W1B 1AH.

Tel: 020 7580 4741 Fax: 020 7323 1132

e-mail: [info@icsa.co.uk](mailto:info@icsa.co.uk)

Web site: [www.icsa.org.uk](http://www.icsa.org.uk)

## Introduction

As an officer of the company at the centre of the decision making process, the Company Secretary is in a powerful position of influence. The Company Secretary should assist and guide the directors in their pursuit of profit and growth but should also act with integrity and independence to protect the interests of the company, its shareholders and its employees. Today's Company Secretary should play a pro-active and central role in the governance of the company. This requires excellent communication skills, a thorough knowledge of the company's business and applicable regulations, strength of character, integrity, and above all a professional approach.

With one exception<sup>1</sup>, U.K. company law requires every U.K. registered company to appoint a Company Secretary.<sup>2</sup> This appointment is the responsibility of the board of directors; yet despite this legal requirement, the law, whether in the form of the *Companies Acts* or the common law, does not state explicitly what the Company Secretary should do once appointed.

The limited number of references to the Company Secretary in the *Companies Acts* might lead a person newly appointed to the post to underestimate the extent of the responsibilities acquired.

A closer examination of the law and modern business practice reveals that the Company Secretary is an officer with a central role in the governance and administration of its affairs. This is recognised in the London Stock Exchange' *Principles of Good Governance and Code of Best Practice* (the Combined Code)<sup>3</sup> which states that,

“All directors should have access to the advice and services of the Company Secretary, who is responsible to the board for ensuring that Board procedures are followed and that applicable rules and regulations are complied with. Any question of the removal of the Company Secretary should be a matter for the board as a whole.”<sup>4</sup>

This recognises that the Company Secretary is key to the efficiency and effectiveness of the board and to the smooth running of the company. To fulfil the role, the Company Secretary must not only keep up to date with relevant legal, statutory and regulatory requirements but also be able to give impartial advice and support to directors (in particular, non-executive directors who might not have such detailed knowledge of the company as the executive directors).

This is intended to be an authoritative guide to the duties of the Company Secretary in U.K. public and private registered companies. Its purpose is to distinguish between the duties which all Company Secretaries should perform (**core duties**) and those which they often perform (**additional duties**). Core duties are defined as those for which the Company Secretary is responsible as an officer of the company and those undertaken by the Company Secretary as a

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<sup>1</sup> The one exception is an Open Ended Investment Company (OEIC) which whilst referred to and formed as a company, is primarily an investment vehicle more akin to a unit trust. OEICs are, however, required to have an authorised corporate director which must be a body corporate and will itself, therefore, have to have a Company Secretary.

<sup>2</sup> Section 283 of the *Companies Act 1985*

<sup>3</sup> This is a restatement of the *Report of the Committee on the Financial Aspects of Corporate Governance* (The Cadbury Code), the Code of Best Practice, 1.6

<sup>4</sup> The Combined Code, Code of Best Practice, A.1.4

matter of established and best practice. Our list of core duties is therefore a distillation of statute, common law and good practice.

## **Role of the Company Secretary**

The role of the Company Secretary concerns three main areas *viz.* the Board, the Company and the Shareholder. Within each, the Company Secretary's role can be very diverse.

### *The Board*

They must ensure that the procedure for the appointment of directors is properly carried out and they should assist in the proper induction of directors, including assessing the specific training needs of directors/executive management. They need also to be available to provide comprehensive practical support and guidance to directors both as individuals and as a collective with particular emphasis on supporting the non-executive directors. They should also facilitate the acquisition of information by all board and committee members so that they can maximise their ability to contribute to board meetings, discussions etc.. Further to these tasks, they need to assist in the compilation of board papers and to filter them to ensure compliance with the required standards of good governance. It may also be part of the Company Secretary's role to raise matters which may warrant the attention of the board.

### *The Company*

They should ensure compliance with all relevant statutory and regulatory requirements and that due regard is paid to the specific business interests of the company, for example, a manufacturing company may require a different approach from that of a bank or a financial services company or from that of a charitable company. They also need to assist in the implementation of corporate strategies by ensuring that the board's decisions and instructions are properly carried out and communicated. Further to this, they should be available to provide a central source of guidance and advice within the company on matters of business ethics and good governance.

### *The Shareholder*

The Company Secretary needs to communicate with the shareholders as appropriate and to ensure that due regard is paid to their interests. They also need to act as a primary point of contact for institutional and other shareholders, especially with regard to matters of Corporate Governance.

## Duties as an Officer of the Company

The *Companies Act 1985* imposes numerous obligations on companies regarding, the conduct of their affairs. Most of these requirements are backed up by criminal sanctions so that, in the event of a breach, the company and every officer of it who is in default is liable to a fine and, in some cases, imprisonment.

As an officer of the company<sup>5</sup>, the Company Secretary can be prosecuted for most of these offences, and these potential liabilities form the basis of what we have defined in this document as the core duties (see page #). A list of the matters for which the Company Secretary can be prosecuted under the Companies Act 1985 (as amended) is reproduced in appendix A. Items in the list have been grouped under the same headings as the list of core duties.<sup>6</sup>

Responsibility for ensuring compliance with these matters ultimately rests with the directors. However, by making the Company Secretary liable, the Act not only recognises that the directors usually rely on the Company Secretary in this regard, but also provides a strong indication that they should give the Company Secretary responsibility for (or an involvement in) these matters. This is reinforced in the case of public companies by the requirement that the directors appoint as Company Secretary someone they believe is capable of performing the functions. Indeed, a director will often escape personal liability if they are able to show that the breach was not caused by their own acts or omissions and that the board had appointed a suitably qualified Company Secretary with responsibility for these matters.

It is clear that, in view of their potential liabilities, Company Secretaries should not close their eyes to cases of non-compliance even if the directors have purported to make someone else responsible for those matters. At the very least the Company Secretary should draw such cases to the attention of the directors and advise on the company's duties and obligations. It can therefore be argued that the Company Secretary has a duty as an officer of the company to monitor these matters, regardless of the terms of their employment control.

Company Secretaries should also ensure that where certain of their responsibilities are delegated, such tasks are properly executed, since they can still be held accountable in law for any failure by the company to comply.

The fiduciary duties of directors can apply equally to executives occupying senior management positions in the company and authorised to act on its behalf.<sup>7</sup> This usually includes the Company Secretary who, in any event, as an officer of the company has the following fundamental duties:

- act in good faith in the interests of the company;
- not to act for any collateral purpose;
- to avoid conflicts of interest; and

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<sup>5</sup> Section 744 of the *Companies Act 1985*

<sup>6</sup> It should be noted that the Company Secretary may also be prosecuted for offences arising from other associated legislation. In particular, s. 432 of the *Insolvency Act 1986* and s. 14 of the *Company Directors Disqualification Act 1986* provide that where a company is guilty of a certain offence and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other similar officer that person will be guilty of an offence and may be proceeded against and punished accordingly.

<sup>7</sup> *Canadian Aero Service v O'Malley* [1973] 40 DLR

- not to make secret profits from dealings for or on behalf of the company.

## **Established and Best Practice**

Some matters have been deemed by the Institute to be core duties even though they cannot be supported by statutory references. For example, ensuring compliance with Stock Exchange rules and regulations is considered part of the core duties, although the rules of the London Stock Exchange<sup>8</sup>, which is the competent authority in the U.K. for the purposes of the admission of securities to listing, do not provide for the personal liability of the Company Secretary. Compliance with the City Code<sup>9</sup> is also considered to constitute a core duty.

In practice, these duties are closely related to the Company Secretary's other duties as an officer of the company. Indeed, it would be almost impossible for Company Secretaries of public companies to perform their statutory duties without some involvement with compliance with the Yellow Book and the City Code. It is, therefore, a matter of best practice that the Company Secretary should be made responsible for this area and is established practice in virtually all public companies.

In recent years and in particular since the Cadbury report, the role of Company Secretary has changed; they are now considered to be much more part of the "inner cabinet" than previously. There has been an increasing need for the Company Secretary to use initiative and apply a flexible approach in carrying out responsibilities. This has required maintaining a thorough knowledge of the business of the company and its operations as well as of the corporate statutory and regulatory matters.

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<sup>8</sup> The Admission of Securities to Listing, commonly known as the *Yellow Book*

<sup>9</sup> The City Code on Take-overs and Mergers which is commonly known as the 'City Code' or the *Blue Book*, is published and administered by the Panel on Take-overs and Mergers.

## Core Duties of the Company Secretary

The following list includes both those duties which are legal obligations as well as those which result from best practice. This is not a comprehensive list and the Company Secretary may have to use his/her initiative to ensure that all core duties are fulfilled. The Company Secretary may also need to refer to other pertinent acts.<sup>10</sup>

The Company Secretary will need to fulfil the following duties.

### 1. Board Meetings

Facilitating the smooth operation of the company's formal decision making and reporting machinery; organising board and board committees meetings (e.g. audit, remuneration, nomination committees etc.); formulating meeting agendas with the chairman and/or the chief executive and advising management on content and organisation of memoranda or presentations for the meeting; collecting, organising and distributing such information, documents or other papers required for the meeting; ensuring that all meetings are minuted and that the minute books are maintained with certified copies of the minutes and that all board committees are properly constituted and provided with clear terms of reference.

### 2. General Meetings

Ensuring that an annual general meeting is held in accordance with the requirements of the *Companies Act* and the companies' Articles of Association; obtaining internal and external agreement to all documentation for circulation to shareholders; preparing and issuing notices of meetings, and distributing proxy forms; trying to prepare directors for any shareholder questions and helping them create briefing materials; overseeing the preparations for security arrangements.

At meetings, ensuring that proxy forms are correctly processed and that the voting is carried out accurately; co-ordinating the administration and minuting of meetings.

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<sup>10</sup> For example, s.12 of the *Insolvency Act 1986* confers legal responsibility upon officers of a company; they must include the name of the administrator on all orders for goods, invoices and business letters when an administration order is in place. In a similar way s.115 of Pt.I of the *Pensions Act 1995* provides that if a corporate body commits an offence, officers of the company are implicated by consent, connivance or neglect. Another example of legal responsibility can be found in *The Money Laundering Regulations 1993*, s. 6 which states that when an offence has been committed under s. 5 of this act the Secretary can be held liable.

### **3. Memorandum & Articles of Association**

Ensuring that the company complies with its Memorandum and Articles of Association and, drafting and incorporating amendments in accordance with correct procedures.

### **4. Stock Exchange Requirements**

Monitoring and ensuring compliance with the *Yellow Book* requirements (as well as the City Code) as well as supervising the implementation of the model code and/or the company code for dealing in the company's securities, as appropriate, managing relations with the Stock Exchange through the company's brokers; releasing information to the market; ensuring the security of unreleased price-sensitive information; making applications for listing of additional issues of securities.<sup>11</sup>

### **5. Statutory Registers**

Maintaining the following statutory registers:

- members (see also para. 8 below);
- company charges;
- directors and secretary;
- directors' interests in shares and debentures;
- interests in voting shares (substantial holdings & those notified in pursuance of a s. 212 notice);
- debenture holders (if applicable).

### **6. Statutory Returns**

Filing information with the Registrar of Companies to report certain changes regarding the company or to comply with requirements for periodic filing. Of particular importance in this regard are:

- annual returns;
- report & accounts (see also para. 7 below);
- amended Memorandum & Articles of Association;
- returns of allotments;
- notices of appointment, removal & resignation of directors and the secretary;
- notices of removal or resignation of the auditors;
- change of registered office;
- resolutions in accordance with *The Companies Act*.

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<sup>11</sup> If the company is quoted on an overseas stock exchange, the Company Secretary will also be responsible for monitoring and ensuring compliance with that exchange's regulations and procedures.

## **7. Report & Accounts**

Co-ordinating the publication and distribution of the company's annual report and accounts and interim statements, in consultation with the company's internal and external advisers, in particular, when preparing the directors' report.

## **8. Share Registration**

Maintaining the company's register of members; dealing with transfers and other matters affecting share-holdings; dealing with queries and requests from shareholders.<sup>12</sup>

## **9. Shareholder Communications<sup>13</sup>**

Communicating with the shareholders (e.g. through circulars); arranging payment of dividends and interest; issuing documentation regarding rights issues and capitalisation issues; maintaining good general shareholder relations; maintaining good relations with institutional shareholders and their investment committees.

## **10. Shareholder Monitoring**

Monitoring movements on the register of members to identify any apparent 'stake-building' in the company's shares by potential take-over bidders; making appropriate inquiries of members as to beneficial ownership of holdings.

## **11. Share and Capital Issues and Restructuring**

Implementing properly authorised changes in the structure of the company's share and loan capital; devising<sup>14</sup>, implementing and administering directors' and employees' share participation schemes.

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<sup>12</sup> Although some or all of this may be dealt with by external services, such as registrars, since they will be agents of the company, the company (including the Company Secretary) may still be held liable for any failure to comply with the law. The Company Secretary will therefore be responsible for liaison with the registrars and resolving matters of particular sensitivity.

<sup>13</sup> *Ibid.*

<sup>14</sup> This task may be within the remit of the remuneration committee.

## **12. Acquisitions, Disposals & Mergers**

Participating as a key member of the company team established to implement corporate acquisitions, disposals and mergers; protecting the company's interests by ensuring the effectiveness of all documentation; ensuring that due diligence disclosures enable proper commercial evaluation prior to completion of a transaction; ensuring that the correct authority is in place to allow timely execution of documentation.

## **13. Corporate Governance**

Continually reviewing developments in corporate governance; facilitating the proper induction of directors into their role; advising and assisting the directors with respect to their duties and responsibilities, in particular compliance with company law and, if applicable, Stock Exchange requirements; counselling them when preparing presentations and memoranda;

## **14. Non-Executive Directors**

Acting as a channel of communication and information for non-executive directors.

## **15. Company Seal**

Ensuring the safe custody and proper use of any company seals.

## **16. Registered Office**

Establishing and administering the registered office; attending to the receipt, co-ordination and distribution of official correspondence received by the company, sent to its registered office; ensuring the provision of facilities for the public inspection of company documents.

## **17. Company Identity**

Ensuring that all business letters, notices and other official publications of the company show the name of the company and any other information as required by the statutes and that company name plates are displayed in a conspicuous place.

## **18. Subsidiary Companies**

Ensuring that procedures are in place for the correct administration of subsidiary companies and that correct information is given to the holding company; maintaining a record of the group's structure.

## **19. General Compliance**

Monitoring and laying in place procedures which allow for compliance<sup>15</sup> with relevant regulatory and legal requirements, particularly under the *Companies Acts* including legal requirements on retention of documents; retaining the minimum set of records required for commercial reasons; ensuring that procedures are in place to allow adequate historical archive to be maintained.

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<sup>15</sup> The Company Secretary may not be personally involved with all areas of compliance and 'ensuring compliance' may be read as ensuring that satisfactory arrangements are in place to secure compliance.

## Additional Duties of the Company Secretary

In contrast with the duties and responsibilities arising from the list of offences in appendix A, the duties which the Company Secretary commonly undertakes in areas such as accounting, property, pensions and insurance management cannot be considered to be core duties. However, these duties will frequently take up a substantial proportion of the Company Secretary’s time and their importance should not be underestimated.

The professional background, previous work experience and general personal capabilities of the Company Secretary will generally dictate the nature and scope of these additional responsibilities. For example, a lawyer is more likely to specialise in litigation and an accountant is more likely to manage a treasury function. A Chartered Secretary, being specifically trained for the role, is more likely to take-on additional responsibilities such as property management, pensions and insurance matters. However, these are merely examples and, in practice, there are very few areas which are the exclusive preserve of any category of professional. Most Company Secretaries will be involved in one or more of the following activities:

**Legal**

Commercial law	Intellectual property	Pensions law
Contracts negotiation	Litigation	Data protection
Contract drafting	Conveyancing	Consumer credit
Contract vetting	European Community	
Property management	law	

**Accounting/Finance**

Payroll	Financial management	Credit control
Taxation	Treasury	Management accounting
Financial accounting	Project finance	
Internal audit	Corporate finance	

**Personnel & Employee**

Employment law	Employee and executive	Other employee benefits <sup>16</sup>
Profit share schemes	share option and	Pensions administration
SAYE schemes	performance related pay	& trusteeship
Personnel administration	schemes	

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<sup>16</sup> It is most common for these to include the administration of company car schemes, but also health insurance and life assurance schemes.

## **Financial Services Act Compliance<sup>17</sup>**

Compliance with the Financial Services Act 1986

Compliance with Financial Services Authority (FSA)<sup>18</sup> and Self-Regulatory Organisations (SRO) rules

### **General Administration**

Insurance administration

Facilities management

Office administration

Charitable donations

Risk management

Premises administration

Information and computer systems

Political donations

### **General Management**

Strategic planning

Directorships of group subsidiaries

Corporate planning

Liaising with professional advisers

Most Company Secretaries could probably add to the above list, particularly where their company's business is subject to further specific external regulation. As a general rule, Company Secretaries of small to medium-sized companies are more likely to be involved in a wider range of administrative duties than their counterparts in larger companies.

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<sup>17</sup> Possibly as the company's appointed Compliance Officer.

<sup>18</sup> The Financial Services Authority takes over from the Bank of England the responsibility for supervising banks, listed money market institutions and related clearing houses. In broad terms it acquires those functions which were carried out by Self-Regulatory Organisations e.g. The Investment Management Regulatory Organisation, the DTI Insurance directorate, the Building Societies Commission, the Friendly Societies Commission, the Registry of Friendly Societies, Personal Investment Authority and the Securities and Futures Authority.

## Powers of the Company Secretary

The Company Secretary can authenticate documents or proceedings of the company<sup>19</sup> and the signature of the Secretary on a written resolution is evidence of the proceedings.<sup>20</sup>

*The Companies Act 1985*<sup>21</sup>, provides that a document signed by a director and the Secretary of a company and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company. If the office of Secretary is vacant, or the Secretary is incapable of carrying out his/her duties, the assistant or deputy secretary shall carry out the functions of the Secretary and the document is deemed to be executed by the company.<sup>22</sup> In addition, a document which purports to be signed by a director and the Secretary or by two directors shall be deemed to have been duly executed in favour of a purchaser in good faith for valuable consideration who acquires an interest in property.

In *Panorama Developments (Guildford) Ltd. V Fidelis Furnishings Fabrics*,<sup>23</sup> the Court of Appeal ruled that a third party could assume that the Company Secretary had authority to bind the company in contracts of an administrative nature.

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<sup>19</sup> Section 41 of the *Companies Act, 1985*.

<sup>20</sup> Section 382A (2) of the *Companies Act, 1985* as inserted by s. 113 of the *Companies Act, 1989*.

<sup>21</sup> *The Companies Act 1989* changes s. 36 and inserts 36A, 36B and 36C.

<sup>22</sup> Section 283(3) of the *Companies Act, 1985*.

<sup>23</sup> [1971] 3 ALL ER 16

## Appendix A

### Offences under the Companies Act

The Company Secretary can be prosecuted for the following offences under the *Companies Act 1985* as amended. The statutory requirements are listed below but it should be noted that this list is not exhaustive and there may be other legislative statutes which confer legal responsibility upon the Company Secretary. The list of offences has been grouped under the same headings used in the list of core duties of the Company Secretary.

#### **Board Meetings**

- 382 (5) Company failing to keep minutes of proceedings of board meetings etc..
- 450 Destroying or mutilating company documents; falsifying such documents or making false entries; parting with such documents, altering them or making omissions.
- 722 (3) Company failing to comply with s.722(2), as regards the manner of keeping registers, minute books and accounting records.

#### **General Meetings**

- 366 (4) Company default in holding annual general meeting.
- 367 (3) Company default in complying with Secretary of State's direction to hold company meeting.
- 367 (5) Company failing to register resolution that meeting held under s.367 is to be its annual general meeting.
- 372 (4) Failure to give notice, to member entitled to vote at company meeting, that he may do so by proxy.
- 372 (6) Officer of company authorising or permitting issue of irregular invitations to appoint proxies.
- 376 (7) Officer of company in default as to circulation of members' resolutions for company meeting.
- 380 (5) Company failing to comply with s.380 (copies of certain resolutions etc. to be sent to Registrar of Companies).
- 380 (6) Company failing to include copy of resolution to which s.380 applies in articles; failing to forward copy to member on request.
- 382 (5) Company failing to keep minutes of proceedings of general meetings etc..
- 383 (4) Refusal of inspection of minutes of general meeting; failure to send copy of minutes on members' request.
- 450 Destroying or mutilating company documents; falsifying such documents or making false entries; parting with such documents, altering them or making omissions.

## Memorandum & Articles of Association

- 6 (3) Company failing to deliver to registrar notice or other document, following alteration of its objects.
- 18 (3) Company failing to register change in memorandum or articles.
- 19 (2) Company failing to send to one of its members a copy of the memorandum or articles.
- 20 (2) Where company's memorandum altered, company issuing copy of the memorandum without the alteration.
- 31 (5) Company altering its memorandum or articles, so ceasing to be exempt from having "limited" as part of its name.
- 380 (5) Company failing to comply with s.380 (copies of certain resolutions etc. to be sent to Registrar of Companies).
- 380 (6) Company failing to include copy of resolution to which s.380 applies in articles; failing to forward copy to member on request.
- 461 (5) Failure to register office copy of court order under Part XVII altering, or giving leave to alter, company's memorandum.

## General Compliance

- 28 (5) Company failing to change name on direction of Secretary of State.
- 31 (6) Company failing to change name on Secretary of State's direction so as to have "limited" (or Welsh equivalent) at the end.
- 33 (2) Company carrying on trade, profession or business under a name which includes public limited company or its Welsh equivalent when not a public company.
- 54 (10) Public company failing to give notice, or copy of court order to registrar concerning application to re-register as private company.
- 117 (7) Company doing business or exercising borrowing powers contrary to s.117.
- 141 Officer of company concealing name of creditor entitled to object to reduction of capital or wilfully misrepresenting nature or amount of debt or claim etc..
- 305 (3) Company default in complying with s.305 (directors' names to appear on company correspondence etc.).
- 306 (4) Failure to state that liability of proposed director or manager is unlimited; failure to give notice of that fact to person accepting office.
- 314 (3) Director failing to comply with s.314 (duty to disclose compensation payable on take-over etc.); a person's failure to include required particulars in a notice he has to give of such matters.
- 349 (3) Officer of company issuing business letter or document not bearing company's name.
- 349 (4) Officer of company signing cheque, bill of exchange etc. on which company's name not mentioned.
- 351 Officer or agent of company issuing or authorising issue of business document not complying with those subsections.
- (5)(b)
- 389A Officer of company making false, misleading or deceptive statement to auditors.
- (2)
- 389A Subsidiary undertaking or its auditor failing to give information to auditors of parent company.
- (3)
- 389A Parent company failing to obtain from subsidiary undertaking information for the purposes of audit.
- (4)

- 392 (3) Company failing to forward notice of auditor's resignation to registrar or persons entitled under s.240 in Part VII; failing to send to persons so entitled, statement as to effect of court order or, if no such order, the auditor's resignation statement.
- 394A (4) Company failing to comply with requirements as to statement of person ceasing to hold office as auditor.
- 409 (4) Failure to give notice to registrar of appointment of receiver or manager or ceasing to act.
- 410 (4) Failure to comply with requirements of regulations under s.410 (crystallisation of charges).
- 425 (4) Company failing to annex to memorandum court order sanctioning compromise or arrangement with creditors.
- 426 (6) Company failing to comply with requirements of s.426 (information to members and creditors about compromise or arrangement).
- 427 (5) Failure to deliver to registrar office copy of court order under s.427 (company reconstruction or amalgamation).
- 444 (3) Failing to give Secretary of State when required to do so information about interests in shares etc.; giving false information.
- 447 (6) Failure to comply with requirement to produce documents or provide a proper explanation, as imposed by Secretary of State under s.447.
- 449 (2) Wrongful disclosure of information or document obtained under s.447 or s.448.
- 450 Destroying or mutilating company documents; falsifying such documents or making false entries; parting with such documents or altering them or making omissions.
- 451 Making false statement or explanation in purported compliance with s.447.
- 458 Being a party to carrying on company's business with intent to defraud creditors, or for any fraudulent purpose.
- 697 (1) Overseas company failing to comply with any of s.691 to s.693 or s.696.
- 697 (2) Overseas company contravening s.694(6) (carrying on business under its corporate name after Secretary of State's direction).

### **Stock Exchange Requirements**

- 329 (3) Company failing to notify Stock Exchange of acquisition of its securities by a director.

### **Statutory Registers**

- 211 (10) Company failing to keep register of interests disclosed under part VI; other contraventions of s.211.
- 288 (4) Default in complying with s.288 (keeping register of directors and secretaries, refusal of inspection).
- 318 (8) Company default in complying with s.318(1) or (5) (directors' service contracts to be open to inspection); 14 days default in complying with s.318(4) (notice to registrar as to where copies of contracts and memoranda are kept); refusal of inspection required under s.318(7).
- 326 (2), (3), (4), & (5) Various defaults in connection with company register of directors' interests.
- 352 (5) Company default in complying with s.352 (requirement to keep register of members and their particulars).
- 411 (4) Failure to keep copies of charging instruments or register, or failing to supply copies.

- 412 (4) Refusing inspection of charging instrument or register or failing to supply copies.
- 722 (3) Company failing to comply with s.722(2), as regards the manner of keeping registers, minute books and accounting records.
- Sch. 14, Pt. 11, para. 4 (2) Company failing to transmit to its registered office in Great Britain copies of entries in overseas branch register, or to keep a duplicate or overseas branch register.

### Statutory Returns

- 88 (5) Officer of company failing to deliver return of allotments etc. to registrar.
- 111 (3) Officer of company failing to deliver copy of asset valuation report to registrar.
- 111 (4) Company failing to deliver to registrar copy of resolution under s.104(4), with respect to transfer of an asset as consideration for allotment.
- 169 (6) Default by company's officer in delivering to registrar the return required by s.169 (disclosure by company of purchase of own shares).
- 176 (4) Company failing to give notice to registrar of application to court under s.176 or to register court order.
- 231 (7) Company failing to annex to its annual return certain particulars required by s.231 and not included in annual accounts.
- 232 (4) Default by director or officer of a company in giving notice of matters relating to himself for purposes of Sch. 6, part I.
- 287 (6) Company failing to have registered office; failing to notify change in its situation.
- 363 (3) Company with share capital failing to make annual return.
- 363 (4) Company failing to submit returns.
- 387 (2) Company failing to give Secretary of State notice of non-appointment of auditors.
- 391 (2) Failing to give notice to registrar of removal of auditor.
- 392 (3) Company failing to forward notice of auditor's resignation to registrar or persons entitled under s.240 in part VII; failing to send to persons so entitled statement as to effect of court order or if no such order the auditor's resignation statement.
- 398 (3) Company failing to deliver particulars of charge to registrar.
- 408 (3) Company failing to deliver particulars in the prescribed form of the date on which debentures of the issue are taken up and amount taken up.
- 409 (4) Failure to give notice to registrar of appointment receiver or manager, or his ceasing to act.
- 427 (5) Failure to deliver to registrar office copy of court order under s.427 (company reconstruction or amalgamation).
- 461 (5) Failure to register office copy of court order under Part XVII altering or giving leave to alter company's memorandum.
- 703D (5) Overseas company failing to deliver particulars of charge to registrar.
- 720 (4) Insurance company etc. failing to send twice yearly statement in form of Sch. 23.
- Sch. 14, Pt. 11, para. 1(3) Company failing to give notice of location of overseas branch register etc.

## **Report & Accounts**

- 221 (5) & 222 (4) Company failing to keep accounting records (liability of officers).  
222 (6) Officer of company failing to secure compliance with, or intentionally causing default under s.222(5) (preservation of accounting records for requisite number of years).  
233 (6) Directors' report unsigned. Laying or delivery of unsigned balance sheet; circulating copies of balance sheet without signatures.  
234A (4) Laying, circulating or delivering directors' report without required signature.  
236 (4) Laying, circulating or delivering auditors' report without required signature.  
238 (5) Failing to send company's annual accounts, directors' report and auditors' report to those entitled to receive them.  
239 (3) Company failing to supply copy of accounts and reports to shareholder on his demand.  
240 (6) Failure to comply with requirements in connection with publication of accounts.  
251 (6) Failure to comply with requirements in relation to summary financial statements.

## **Share Registration**

- 183 (6) Company failing to send notice of refusal to register a transfer of shares or debentures.  
185 (5) Company default in compliance with s.185(1) (certificates to be made ready following allotment or transfer of shares etc.).  
191 (4) Refusal of inspection or copy of register of debenture-holders etc..  
352 (5) Company default in complying with s.352 (requirement to keep register of members and their particulars).  
353 (4) Company failing to send notice to registrar as to place where register of members is kept.  
354 (4) Company to keep index of members.  
356 (5) Refusal of inspection of members' register; failure to send copy on requisition.

## **Shareholder Communication**

- 192 (2) Company failing to send one of its members a copy of the memorandum or articles of association.  
238 (5) Failing to send company's annual accounts, directors' report and auditors' report to those entitled to receive them.  
239 (3) Company failing to supply copy of accounts and reports to shareholder on his demand.  
372 (4) Failure to give notice, to member entitled to vote at company meeting, that he may do so by proxy.  
376 (7) Officer of company in default as to circulation of members' resolutions for company meeting.

- 383 (4) Failure to send a copy of the minutes of a general meeting on member's request

### **Shareholder Monitoring**

- 19 (2) Company failing to keep register of interests disclosed under Part VI; other contraventions of s.211.
- 214 (5) Company failing to exercise powers under s.212 when so required by the members.
- 215 (8) Company default in compliance with s.215 (company report of investigation of share-holdings on members' requisition).
- 217 (7) Company failing to notify a person that he has been named as a shareholder; on removal of name from register, failing to alter associated index.
- 218 (3) Improper removal of entry from register of interests disclosed; company failing to restore entry improperly removed.
- 219 (3) Refusal of inspection of register or report under Part VI; failure to send copy when required.

### **Share & Capital Issues and Restructuring**

- 95 (6) Knowingly or recklessly authorising or permitting misleading, false or deceptive material in statement by directors under s.95(5).
- 114 Contravention of any of the provisions of s.99 to s.104, s.106.
- 122 (2) Company failing to give notice to registrar of re-organisation of share-capital.
- 123 (4) Company failing to give notice to registrar of increase of share capital.
- 127 (5) Company failing to forward to registrar copy of court order when application made to cancel resolution varying shareholders' rights.
- 128 (5) Company failing to send to registrar statement or notice required by s.128 (particulars of shares carrying special rights).
- 129 (4) Company failing to deliver to registrar statement or notice required by s.129 (registration of newly created class rights).
- 143 (2) Company acquiring its own shares in breach of s.143.
- 149 (2) Company failing to cancel its own shares, acquired by itself as required by s.146(2); of failing to apply for re-registration as private company as so required in the case there mentioned.
- 151 (3) Company giving financial assistance towards acquisition of its own shares.
- 156 (6) Company failing to register statutory declaration under s.155.
- 169 (6) Default by company's officer in delivering to registrar any return required by s.169 (disclosure by company of purchase of own shares).
- 169 (7) Company failing to keep copy of contract etc. at registered office; refusal of inspection to person demanding it.
- 175 (7) Refusal of inspection of statutory declaration and auditors' report under s.173 etc..
- 176 (4) Company failing to give notice to registrar of application to court under s.176 or to register court order.
- 455 (2) Issuing shares in contravention of restrictions of Part XV.

### **Acquisitions & Disposals**

- 314 (3) Director failing to comply with s.314 (duty to disclose compensation payable on take-over etc.); a person's failure to include required particulars in a notice he has to give of such matters.

### **Company Seal**

- 350 (2) Officer of company etc. using company seal without the company's name engraved on it.

### **Registered Office**

- 288(4) Company failing to have registered office; failing to notify change in its situation.
- 348 (2) Company failing to paint or affix name outside place(s) of business; failing to keep it painted or affixed.

## **Appendix B**

### **A List of Some Other Relevant Statutes and Regulations**

*The Pensions Act 1995*

*The Insolvency Act, 1994*

*The Criminal Justice Act, 1993*

*The Financial Services Act, 1986*

*The Insolvency Act, 1986*

*The Insolvency Rules, 1986*

*The Company Directors Disqualification Act, 1986*

*The Companies Consolidation (Consequential Provisions) Act, 1985*

*The Business Names Act, 1985*

*The Fair Trading Act, 1973*

This list is intended to highlight only some of the major legislative instruments to which a Company Secretary must attend; the list is not exhaustive and the Company Secretary should pay special attention to regulatory instruments which may be pertinent to his/her special business interest. For example, the Company Secretary may have to consider Health and Safety Regulations, Data Protection Regulations and even Money Laundering Regulations.