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Introduction



The keeping of the statutory registers is a core part of the company secretary's job. It is important because members, directors, the Government, HMRC and the world at large are entitled to accurate, up-to-date information. The number and content of the registers is specified by the Act.

The information in the registers is used in compiling the confirmation statement and for various other forms filed with the Registrar of Companies at Companies House. Members and many others have a legitimate use for it, lenders and credit reference agencies being examples. However, in most cases the public can inspect the registers without giving a reason.

Company secretaries should take the registers very seriously, because mistakes and out of date information can reflect badly on the company and on themselves. Of course, the flow of information is not entirely within their control: directors and others may not always share their enthusiasm. The company secretary can only enter what he knows, and in some cases he can only enter information that has been notified by the correct person in the correct way. He must not act on reputed information obtained from another source. The company secretary should use his persuasive skills to encourage others to provide all the information promptly. In many cases it may be necessary for him to give directors a list of their obligations and what is required.

The chapter concludes with a study of the company seal and procedures for operating without it. This is almost always in the control of the company secretary and is conveniently studied with the statutory registers.



The form in which the statutory registers may be kept

The registers may be kept in bound books or in loose-leaf binders. Various law stationers (such as Jordans) provide excellent binders containing all the statutory registers, correctly ruled and headed. These are ideal for hand-written records kept for small companies.

Company secretarial software is widely used. It is generally very good and has significant benefits. Computerised registers must be capable

of being produced in legible form. One major supplier of company secretarial software is:

ICSA Software Ltd
Waterman House
41 Kingsway
London WC2B 6TP
Tel: 020 7497 5511

This is not a particular recommendation and there are other good suppliers.

Since 30th June 2016 all private companies have been allowed to keep the following five registers at Companies House:

- Register of members
- Register of directors
- Register of directors' residential addresses
- Register of secretaries
- Register of people with significant control

This is instead of (not as well as) keeping the registers themselves. The option is not available to public companies.

A decision to keep the registers at Companies House may be made for any or all of them. It does not have to be all five.

A decision to keep a register at Companies House is not irrevocable. It is possible for a company to withdraw the arrangement and start keeping the register itself.

The register of directors' residential addresses is not available to the public if kept at Companies House. Everything in the other registers is available to the public. This includes members' addresses, directors' full dates of birth and the dates of birth of people with significant control. The implications of this should be considered before a decision is taken to keep registers at Companies House.

Companies have a legal obligation to keep their registers up to date. This applies however the registers are kept, including at Companies House.

The register of members may only be kept at Companies house with the unanimous agreement of the members.

Protection for directors' residential addresses and other persons' residential addresses

A person with significant control may have their information protected. It is possible to apply (on paper only) that the person's information not be placed on the public register at Companies House. Copies of the forms may be obtained from the secure registers team at Companies House.

If the register of directors' residential addresses is kept at Companies House, the information in it is not available to the public. It will be available to credit reference agencies, unless a successful application has been made to prevent disclosure to credit reference agencies under section 243 of the Companies Act 2006. It will also be available to specified public authorities, including the police.

Once a company has started keeping the register of members at Companies House all changes must be notified to Companies House on form EH06.

Once a company has started keeping the register of people with significant control at Companies House changes must be notified to Companies House using forms PSC01 to PSC09 as appropriate.

Once the other three registers have started to be kept at Companies House submission of the existing forms will automatically update the register. No further action is required.

Directors must supply a service address for the register of directors and for Companies House. This may be any address with which they are associated, including the company's registered office. They must also supply their residential address, but this is kept confidential by the company and by Companies House.

The company may only release the residential address (or the fact that the service address is the residential address):

- For communication with the director concerned.
- In order to send particulars to the registrar.
- To comply with an order of the court.
- With the permission of the director concerned.

The registrar may only release the residential address (or the fact that the service address is the residential address):

- For communication with the director in question.
- To a public authority specified by regulations made by the Secretary of State.
- To an authorised credit reference agency.

Protected information will continue to be protected after a person ceases to be a director.

These protections are not retrospective. Residential addresses that were available to the public on 30th September 2009 will generally not be removed from the records and will remain available to the public. The protection of residential addresses started on 1st October 2009.

Directors who have certain occupations (a police officer, for example) or who can show that they face a serious risk of violence or intimidation may apply for extra protection, and so may certain other persons. Applications may be made by:

- An individual whose usual residential address was placed on the register on or after 1st January 2003. This is mainly (but not exclusively) to help shareholders (including subscribers to a memorandum).
- A company in respect of the addresses of all of its members and former members whose addresses were contained in an annual return or return of allotment delivered to the registrar on or after 1st January 2003.
- A person who registered a charge on or after 1st January 2003 (other than the company which created the charge or acquired the property subject to a charge).

In the event of a successful application credit reference agencies will not have access to the director's residential address. Furthermore, directors and other successful applicants may have their residential addresses removed from documents filed at Companies House since 1st January 2003. They must pay a fee per document and expenses, and specify the documents concerned.

The statutory registers

The statutory registers are as follows.

Compulsory for all companies

- Register of members
- Register of directors
- Register of directors' residential addresses
- Register of secretaries (required by public companies and private companies having a secretary)
- Register of charges (for charges created before 6th April 2013)
- Register of people with significant control (for all but a small number of quoted companies that are DTR5 issuers)

Compulsory for public companies

- Register of investigations by a public company into interests in voting shares.

Voluntary register

- Register of debenture holders



No company is required to keep a register of debenture holders, even if it has issued debentures. However, if it does, there are legal requirements concerning content, inspection etc. Companies may maintain other registers, either because it is a requirement of their articles or on a purely voluntary basis. A register of sealings is a commonly-encountered example. These are not statutory registers.

Register of members



This is a key register and is compulsory for every company (including companies limited by guarantee). It must contain:

- *The names and addresses of all members*

These details must be as supplied by the members and it is important that the register be written up exactly in this way. The order of the names, if it is a joint holding, may for example affect voting rights and the rights to receive dividends.

- *The date on which each member was first registered as a member*

- *The date on which each former member ceased to be a member*
- *Details of each holding (if the company has a share capital)*

This should specify the class of share, the individual numbers of the shares if applicable, the amount paid up on each share if applicable, and the number of shares held.

The register must retain these details for each member for a period of ten years from when he ceased to be a member.

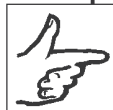
In the now very unusual event of shares having been converted into stock, the amount of stock held by each member must be shown in the register.

If the company becomes a sole-member company, the register must contain a statement to this effect and the date that it occurred. If such a company acquires a second member, the register must contain a statement that it is no longer a sole-member company and the date that the change occurred.

If there are more than 50 members and the names are not kept in alphabetical order, a separate index must be kept.

No notice of any trust should be marked on the register of a company registered in England and Wales or Northern Ireland. The position is different for companies registered in Scotland, and for these companies notices served on the company must be recorded in the register.

Register of directors



This is compulsory for all companies. Until 30th September 2009 companies were required to maintain a register of directors and secretaries, but this has been split into two separate registers.

The register must contain the following information for all directors, including any alternate directors.

- 1. Present full surname and forenames**
- 2. Any former surname and forenames**

This should be names used for business purposes during the previous 20 years and since the age of 16. It is not necessary to show

the former name of a peer, if different from his title. Women are now treated in the same way as men. A married woman must now disclose her maiden surname and any previous married surnames if they have been used for business purposes.

3. Nationality

4. Service address

This is the director's service address that is available to the public. It is permitted to put the company's registered office.

5. Country/State of residence

The director's residential address should be entered into the register of directors' residential addresses. The country or state in which this is located should be entered in this register.

6. Business occupation

This should be the directors' occupation such as 'accountant' or 'window cleaner'. If the director has no occupation other than a director of more than one company, it should be 'director of companies'. If the director has no occupation other than director of that company, it should be 'none'.

7. Date of birth

This is always required.

8. Date of appointment

9. Date of vacation of office

There are additional requirements for corporate directors. If the corporate director is an EEA company, the register must show where it is registered and its registration number.

**Register of
directors'
residential
addresses**

This register is compulsory for all companies and it must contain the residential address of each director. However, if the service address in the register of directors is not the company's registered office and is the same as the director's usual residential address, the register need only contain an entry to that effect.

The information in this register is confidential and not available for inspection.

Register of secretaries



Until 30th September 2009 companies were required to maintain a register of directors and secretaries, but this has now been split into two separate registers.

The register of secretaries is compulsory for public companies and private companies having or having had a secretary. The register must contain the following information.

1. **Present full surname and forenames**
2. **Any former surname and forenames**

This should be names used for business purposes during the previous 20 years and since the age of 16. It is not necessary to show the former name of a peer, if different from his title.

3. **Service address**

This is the secretary's service address that is available to the public. It is permitted to put the company's registered office. The secretary's residential address is not entered in any register.

There are additional requirements for corporate secretaries. If the corporate secretary is an EEA company, the register must show where it is registered and its registration number. For all other corporate bodies the register must show particulars of the company or firm, the law by which it is governed and, if applicable, where it is registered and its registered number.

Register of charges

Prior to 6th April 2013 all companies were required to maintain a register of charges, together with copies of the instruments creating the charges. This was so even if, as was frequently the case, there were no entries in the register.

The requirement to enter details of charges in a register was abolished from 6th April 2013. Companies registered before 6th April 2013 are required to keep the register for charges created before that date, even if there are no entries in it. They are not required to enter details of any charges created on or after that date.

Register of people with significant control

Companies registered on or after 6th April 2013 are not required to have a register of charges. However, copies of charge instruments must be kept available for inspection, as is the case with companies registered before that date.

Charges over property (with a few minor exceptions) are capable of being registered at Companies House. This should be done and if it is not, they will be ineffective as security against a liquidator, administrator or creditor of the company. The effectiveness of charges depends on registration at Companies House. It does not, and never did, depend on an entry in the register of charges.

A copy of the charge instrument must be filed at Companies House and this is made available for public inspection.

This compulsory register became a requirement on 6th April 2016. The requirements are complicated and far-reaching. For some companies only a little work is required, but a great deal is required for others. It is not possible to explore all the possibilities in a volume of this size.

With one exception the register must be kept by all companies registered at Companies House. This includes dormant companies, companies limited by guarantee and unlimited companies. Separate registers must be kept for all companies within a group, so if a holding company has thirty-eight subsidiaries registered in the UK, thirty-nine separate registers must be kept.

The exception is that it is not a requirement for UK companies trading on a UK regulated market. This includes the main market of the London Stock Exchange, AIM and the ISDX Growth Market. Technically this means a DTR5 issuer. A DTR5 issuer is an issuer to which Chapter 5 of the Disclosure Rules and Transparency Rules sourcebook made by the Financial Conduct Authority (as amended or replaced from time to time) applies. The Secretary of State may specify other exceptions for companies, having regard to the extent with which they comply with DTR5 rules. Regulations also exempt companies if they have shares quoted on a regulated market in an EEA state, USA, Japan, Switzerland or Israel.

The register must also be kept by Limited Liability Partnerships.

The register aims to capture details of people with significant control over the ownership of the company, with all that that entails. Unless there are special additional factors details of directors are not required.

In all cases the degree of control is split into three bands:

- More than 25% and up to 50%
- More than 50% and up to 75%
- More than 75%

It should be noted that an exact 25.0% does not trigger the requirements. It must be more than 25.0%.

Control may be exercised in one of five ways and the register must identify in which of the five ways it is being done. A 'person' exercises control if he:

- holds directly or indirectly, more than 25% of the shares in the company;
- is entitled, directly or indirectly, to exercise more than 25% of the voting rights in the company, or to control the exercise of more than 25% of those rights;
- is entitled, directly or indirectly, to appoint or remove a majority of the board of directors of the company, or to control the exercise of a right or rights (in aggregate) to appoint or remove a majority of that board;
- has the right to exercise, or actually exercises, significant influence or control over the company;
- has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm that meets any of the above conditions in relation to the company, or would do so if it was an individual.

Non-voting shares are included in the calculation in respect of the first of the above bullet points. If shares amounting to more than 25% are held in joint names, details of both parties must be entered in the register. If there is a formal or informal agreement for two or more people to exercise control or significant influence in partnership, details of all of them must be entered in the register.

There is a definition of a relevant legal entity, but the great majority of them are companies incorporated in the United Kingdom. If a company is owned by a relevant legal entity, it is only necessary to put its name in the register. If there is a chain of ownership and the immediate parent is a relevant legal entity, it is only necessary to put its name in the register. It is not necessary to go up the chain.

If the ownership is a foreign company (and this includes Jersey, Guernsey and the Isle of Man), an attempt must be made to identify a person with more than 50% control of it (not 25%). This may mean going up a chain of companies and may be difficult or impossible. If the control is exercised by a company trading on a regulated stock exchange in the European Union, the United States, Switzerland, Israel or Japan, it is only necessary to put its name in the register.

If significant control is exercised by a trust, details of persons with significant control (more than 25%) of the trust must be entered in the register. The beneficiaries of the trust are not relevant.

Company officers (including the company secretary) are required to use their reasonable best efforts to obtain the information and keep it up to date. It is an offence for them not to do so. A person who knows or should know that they have significant influence or control must volunteer the fact and the required information, even if not asked. It is an offence not to do so. The company must not make an entry in the register unless the fact and the details have been confirmed by the person concerned or with the knowledge of the person concerned. The exception is the ownership of shares by a relevant legal entity.

Notices may be served on people that they think may have significant influence or control requiring them to say if it is true and, if it is, to supply the required information. Notices may also be served on people who they think might know details of a person with significant control, requiring them to supply the required information. It is an offence for a person receiving notices not to co-operate.

If replies are not received to the notices, specified warnings may be issued, then if necessary sanctions can be imposed. This should only be done if it is reasonable to do so and the rights of third parties are not unreasonably affected. Sanctions may include preventing the person

selling the shares, preventing the person receiving dividends and preventing the person voting.

The precise details that must be entered in the register vary according to whether the person is an “individual”, a “relevant legal entity” or an “other relevant person”. The last of these covers a variety of possibilities, a foreign government or government department being examples. The required details are set out in 790K in Schedule 3 of the Small Business, Enterprise and Employment Act.

It is not permitted for the register to contain no information at all, even if no person has significant influence or control. Prescribed wording must be entered to reflect various circumstances. The following is taken from the statutory guidance issued by the Secretary of State.

Your company has no PSCs or registrable RLEs

- a) *The company knows or has reasonable cause to believe that there is no registrable person or registrable relevant legal entity in relation to the company.*

Unidentified PSC

- b) *The company knows or has reasonable cause to believe that there is a registrable person in relation to the company but it has not identified the registrable person.*

Unconfirmed particulars

- c) *The company has identified a registrable person in relation to the company but all of the required particulars of that person have not been confirmed.*

Taking reasonable steps

- d) *The company has not yet completed taking reasonable steps to find out if there is anyone who is a registrable person or a registrable relevant legal entity in relation to the company.*

Where any of the above statements are no longer applicable, you must enter that on your company’s PSC register along with the date on which the statement ceased to be true.

Register of investigations by a public company into interests in voting shares

Notices

- e) *The company has given a notice under section 790D of the Act which has not been complied with.*
- f) *The addressee has failed to comply with a notice given by the company under section 790E of the Act.*

Further wording is prescribed to deal with a range of different circumstances.

This register is compulsory for all public companies. Such companies may use the authority of section 793 of the Act to try and discover the identity of the beneficial owners of its shares where this may not be apparent from its register of members. Section 793 reads in part as follows:

- '1) A public company may give notice under this section to any person whom the company knows or has reasonable cause to believe:*
 - a) to be interested in the company's shares, or*
 - b) to have been so interested at any time during the three years immediately preceding the date on which the notice is issued.*
- 2) The notice may require the person:*
 - a) to confirm that fact or (as the case may be) to state whether or not it is the case, and*
 - b) if he holds, or has during that time held, any such interest, to give such further information as may be required in accordance with the following provisions of this section.*
- 3) The notice may require the person to whom it is addressed to give particulars of his own present or past interest in the company's shares (held by him at any time during the three year period mentioned in subsection (1)(b)).'*

Section 793 contains additional important details.

Section 808 requires the company to enter responses to these notices to be recorded in the register of interests disclosed.

Register of debenture holders

Debenture holders do not own shares. They have no equity in the company, do not receive dividends and do not vote. They are secured lenders. However, depending on the terms of issue and the company's articles the debentures may be convertible into shares in certain circumstances.

There is no legal requirement for a company to have a register of debenture holders, but it is probably desirable if there are a number of them. The contents of the register, if there is one, is not prescribed. It is normal for the layout to be similar to the layout of the register of members.

Improper use of the registers

Enquirers may inspect the register of members and (if there is one) the register of debenture holders. They may also require the company to provide copies. The company can insist that the request must:

- include the name and address of the person requiring access;
- say what the information will be used for;
- state whether it will be shared with anyone else and if so, with whom and for what purpose

If the company believes that the information is wanted for an improper purpose, it may refer the request to the court. There will normally be a hearing and the court will give a decision binding on all parties. The court may make any order on costs that it deems appropriate. The Act gives no guidance on which constitutes an improper purpose and this is left for the court to decide. However, it is generally believed that exploitation of the details for commercial purposes, such as a mailing list, would be considered to be an improper purpose.

It is possible to prevent access to some or all of the information in the register of people with significant control. This relates to disclosure by the company and also by Companies House. The application may be made by the company, or by the individual or individuals concerned. The provisions are lengthy and detailed.