

3.7 Company Secretary

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The position of Company Secretary is a very important one as s/he is responsible for providing advice and guidance to the Board on company law and regulations.

Given the growing complexity of this area, it is essential that the person responsible is given every opportunity to keep up to date on all relevant matters.

The Company Secretary is appointed by the Board and can only be removed by the Board.

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Role of Company Secretary

- Provide advice and guidance to Directors on their obligations under the Company's Articles of Association, company law and other relevant laws and regulations
- Act as principal legal and compliance (including Corporate Governance) officer

Responsibilities of the Company Secretary

The responsibilities of the Company Secretary are laid down in the Companies Acts 1963-2003. These may be supplemented by other functions set out in the Articles of Association of a company, in addition to further duties which the Directors may bestow upon the Company Secretary. The precise role of the Company Secretary is not, however, clearly defined and may vary greatly from one company to the next.

Statutory duties

- Ensure, along with the Directors, that the requirements of the Companies Acts are complied with by the company in association with the Directors
- Co-sign, along with a Director, the annual return and certify along with a Director, copies of documentation to be annexed to the annual return as being a true copy
- Verify the statement of affairs required where the court has made a winding-up order, or appointed a provisional liquidator or where a receiver has been appointed

Other duties

- Maintain the statutory books of the company
- Ensure that statutory forms (including annual returns, director and auditor reports) are filed promptly with the Registrar of Companies
- Attend meetings of the Board, shareholders and Board Committees and assist with drafting of the agenda, minutes, etc.
- Counter-sign, along with a Director, the affixing of the company's seal where authorised by the Directors
- Act as a confidential sounding board to the Chairperson, Non Executive Directors and Executive Directors
- Ensure that the company holds the AGM within the time limits specified
- Organise and administer Board meetings. These responsibilities include:
 - notifying Directors of the time, date and place of the Board meeting, in good time

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- preparing an agenda in liaison with the Chairperson
- ensuring that the agenda is accompanied by all documents that need to be considered by the Board in advance of such meetings
- ensuring that any registers that need to be inspected by the Board are available
- noting the sense of the meeting in the minutes
- preparing minutes, obtaining Chairperson approval and distributing them to members for approval at the next meeting
- making the minutes available to the auditors
- Communicate, where appropriate, outcome of Board deliberations throughout the organisation

Insights and practical suggestions

- Whilst much of the Company Secretary role is administrative as opposed to managerial, the function of this officer is important given his/her extensive duties and responsibilities
- The Company Secretary is the key to the efficiency and effectiveness of the Board and to the smooth running of the company and must keep up-to-date with relevant legal, statutory and regulatory requirements
- It should be emphasised that the Company Secretary is appointed by the Board and works for the Board, not for the Managing Director/ Chief Executive
- The Company Secretary is responsible for drafting the minutes of Board meetings. This is a very important role as minutes are a legal requirement under the Companies Acts and may have to be relied upon in a court of law
- The Company Secretary needs to be an effective and involved member of the Board and should be included in informal functions outside the Boardroom. At the same time it must be made clear that s/he has no deliberation or decision-making function or vote on Board matters
- The Company Secretary can add value by anticipating regulations expected to be introduced and briefing the Board on the potential implications

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Key legal considerations

- The Company Secretary owes the company duties of skill, care and diligence in carrying out his/her role and can be liable in negligence for failing to exercise the necessary standard
- In a public limited company (unlike in private companies), a certain level of skill and expertise is statutorily required by those who fill the office of Company Secretary (Section 236 of the Companies Act 1990)
- As an officer of the company, the Company Secretary can be liable to be penalised as being an 'officer in default' where the company defaults in the duties that are imposed on it under the Companies Acts 1963-2003
- Personal liability can be imposed upon the Company Secretary in a number of situations under the Companies Acts including where a Company Secretary is concerned with fraudulent or reckless trading or where the company fails to keep proper books of account
- As the legal and compliance officer, the Company Secretary should procedurally ensure, along with the Chairperson, that Board and other company meetings are conducted in a proper manner having regard to the law and the rules of the body in question. Procedural propriety is important to ensure that the validity of the meeting and the resolutions passed cannot be questioned
- See Section 3.3 in relation to indemnities and Directors' and Officers' insurance

10 Questions to help improve the effectiveness of the Company Secretary:

- 1 How much time does your Company Secretary allot to Board-specific matters?
- 2 Does your Company Secretary regularly update the Board on the latest in Corporate Governance issues (investors' concerns, proxy topics, better Board organisational ideas, etc)?
- 3 Does the Company Secretary have a regularly updated file of each Board member's various telephone, mobile and fax numbers, e-mail addresses, general schedule, and personal assistant contact information?
- 4 Does the Board make use of the Company Secretary's office in preparing for annual meetings?
- 5 As part of the Board's evaluation programme, do members examine ways in which they could make the Company Secretary's Board duties easier? Should your Company Secretary also have an input in evaluating the Board?
- 6 In an emergency, how quickly would the Company Secretary be able to contact a quorum of outside Board members?
- 7 Have the Board and Company Secretary discussed needs and issues in the preparation of Board meeting minutes?
- 8 Does your Board know the system and schedule the Company Secretary uses in assembling Board mailings? Does either side see any problems with the current system that they could help address?

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- 9 Is the Company Secretary exploring ways to save money on Board operations or improve efficiency (use of telephonic/video conference meeting or communication technology to dispatch notice of meetings and agendas, savings on travel or accommodation, etc)?
- 10 Does the Company Secretary's office 'benchmark' other Company Secretaries for best-practice techniques on Board support and governance duties?