

# Role of a Company Secretary- *Inculcating Awareness*

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## ***Introduction***

There is a lot of emphasis on the way in which companies work in the real world as a set of interlocking systems in order to respond to various pressures. The directors of a company may want freedom to take their companies forward and might find that the increasing regulations, which cost time and money are mere hindrances rather than help. Nevertheless, unless the directors are prepared to show that they can act responsibly, there is no respite. The aim of this observation is to simply highlight the importance of good governance practices and why is it considered a key to success of companies. A company secretary plays a critical role in this context. This article aims to highlight the important role a company secretary plays and what are the main responsibilities tied in to this role.

The word ‘secretary’ is derived from the Latin ‘secretarius’, a confidential officer or a person, therefore, overseeing business confidentially, usually for a powerful individual (a king, pope, etc.). This in turn is connected to the word ‘secretum’, which means secret. However, under the oxford dictionary<sup>1</sup> the meaning provided is “a person employed by an individual or in an office to assist with correspondence, make

appointments, and carry out administrative task”. If you look at it closely, all these definitions are linked together by the confidential nature of duties.

A company secretary acts in the administration of the affairs of the company and business of the Board. However, we notice that there has been an enormous expansion of the content of this function. This expansion of administrative function flows from the explosion of regulation in all aspects of commercial activity such as industrial relations, the environment, health and safety, taxation, listing regulations, trade practices and now the competition law. Even though the compliance obligations are placed upon the corporate entity and its directors and executives rather than the company secretary yet the burden of administering the company’s system for regulatory compliance is usually placed on company secretary’s shoulders even where someone else has the primary responsibility to manage such obligations.

Moreover, it is important that a company secretary understands and anticipates the needs of non- executive directors who are expected to perform the monitoring role allocated to them by the tenets of corporate governance.

***Does a company secretary have a management role, with authority to bind the company contractually?***

Generally speaking a secretary’s functions are purely administrative in nature and he does not exercise any managerial powers.

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[http://oxforddictionaries.com/view/entry/m\\_en\\_gb0748400#m\\_en\\_gb0748400](http://oxforddictionaries.com/view/entry/m_en_gb0748400#m_en_gb0748400)

The English Court of Appeal in 1887<sup>2</sup> denied that a company secretary had ostensible authority to bind the company in the commercial matter of holding retention monies on behalf of contractors. And yet the same court held in 1971 in Panorama Developments v Fidelis Furnishing Fabrics Ltd<sup>3</sup> that a company secretary has ostensible authority to sign contracts connected with the administrative side of the company's affairs such as employing staff, ordering cars and so forth. The Panorama Developments case is generally acknowledged to be an important statement of the changing role of the company secretary.

A company secretary is the first portal of information in order to obtain copies of contracts and resolutions decided upon by the Board and has substantial authority in the administrative sphere with powers and duties derived directly from the company's article of association.

Administrative side of Board and committee meetings generally include:

- Managing all Board and committee meeting logistics —coordinating, preparing and distributing Board/committee pre-read materials, meeting agendas, notifications, and meeting minutes for the Board of directors and committees.
- Attending Board and committee meetings — recording minutes,

highlighting Board and committee decisions and information items.

- Reporting outstanding agenda items and ensuring information is provided to the Board/committee members in a timely manner.
- Preparing all correspondence for the Board/committees including responses to enquiries or complaints directed to the Board/committees.
- Maintaining key corporate documents and records like statutory books.
- Supporting the Chairman in performing his/her role, including the provision of appropriate briefing material to the shareholders.

***So what does a company secretary do? - company secretaries not mere clerks***

One of the most significant tasks that a company secretary undertakes is preparing for and conducting an AGM successfully. It is at the heart of a company secretary's role to ensure that AGM is conducted in a manner so that shareholders actively participate in the meeting and provide opportunity for the management and the shareholders to get the most out of the meeting whilst ensuring that full compliance with relevant provisions of the Listing Regulations, Companies Ordinance and all other applicable laws, regulatory requirements and the company's Articles are adhered to.

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<sup>2</sup> Barnett, Hoares, & Co. v The South London Tramways Company [1887] L.R. 18 Q.B.D. 815

<sup>3</sup> [1971] 2 Q.B. 711

Company secretary does not merely act as an adviser to the Chairman and the Board on corporate matters but also plays a key role in the induction of new or inexperienced directors and further assists the Chairman/CEO in determining the annual Board plan and the administration of other issues of a strategic nature at Board level.

### ***How is the role changing?***

Position of a company secretary as cited in the case of Re Maidstone Buildings Provisions Ltd<sup>4</sup> where it is aptly described as:

“The position of secretary in a company has altered out of recognition during the past 75 years. From being humble clerk he has become, in most large companies, an officer of the company having important duties and responsibilities and often considerable influence. He remains, however, in the eyes of the law what he was originally intended to be, namely, an officer in a ministerial and administerial capacity: he has no managerial functions, and it would normally, be unwise for an outsider to assume that he has any managerial powers, which are prima facie, vested in the directors and any managing directors. In practice the functions of the secretary often exceed those contemplated by the Acts and he is sometimes given considerable managerial responsibility.”

According to the Cadbury<sup>5</sup> Committee on Corporate Governance, *'the company*

*secretary must now more than ever show him or herself to be knowledgeable, reliable, discreet, an excellent communicator, a good listener and approachable.....The company secretary must have the answers - or at least know where to find them'.*

### ***Why is the role essential in this day and age?***

The core duties of a company secretary have already been discussed above which includes: servicing meetings of the Board and committees – producing agenda and minutes, ensuring effective flow of information, advising the Board through the Chairman on all governance matters and other matters relating to Board effectiveness. Also communicating with shareholders – circulars, dividend payments, most importantly engaging with major shareholders, particularly on corporate governance issues e.g. Board composition, succession and remuneration.

Apart from these certain non-core duties include managing of legal, accounting, tax, investor relations, HR, health and safety, intellectual property, pensions, share incentive schemes, insurance, risk management, office administration, property administration and licensing.

By way of contrast the work of a company secretary has increased significantly as examined in the paragraphs above. In the light of recent corporate failures certain key

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<sup>4</sup> [1971] 1 W.L.R. 1085 at 1093

<sup>5</sup> The **Cadbury Report** was published in UK in 1992. The Cadbury Committee was chaired by Sir **George Adrian**

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**Hayhurst Cadbury.** The report sets out recommendations on the arrangement of company Boards and accounting systems to mitigate corporate governance risks and failures.

issues that have had an impact on this transition include:

- More governance work
- More regulatory and legal compliance
- More stakeholder issues e.g. aware and vigilant stakeholders

### ***The role of the company secretary in Pakistan- current perspectives***

The Role of Company secretary is **now** more of a catalyst responsible for bringing change in the process of corporate governance in company.

Companies Ordinance, 1984 s.204-A provides that “a listed company shall have a whole time secretary and a single member company shall have a secretary possessing such qualifications as may be prescribed.”

In of the recent cases<sup>6</sup>, the annual report of a company revealed that the company had not appointed any person as company secretary in contravention of provisions of s.204A of the Companies Ordinance, 1984. It was stated that the objective of s.204 A was to improve corporate culture and bring good corporate governance by ensuring quality secretarial services for the corporate sector. It was held that the chief executive of the company had not acted in accordance with the provisions of law and was responsible for non-compliance of provisions of s.498 Fine of Rs. 15,000 was

imposed on the chief executive of the company.

Under the Pakistan Code of Corporate Governance, 2002<sup>7</sup>:

*The Company secretary of a listed company shall furnish a Secretarial Compliance Certificate, in the prescribed form, as part of the annual return filed with the Registrar of Companies to certify that the secretarial and corporate requirements of the Companies Ordinance, 1984 have been duly complied with.*

The above provision highlights the fact how a company secretary contributes towards ensuring that the company is adopting best practices in corporate governance as well as effectively running the business. This is highly essential for an effective Board performance where awareness of key issues play a vital role since an *informed Board* is one of the key components of good governance practices in a company.

Considering the question of *why do corporations fail?* the usual answer would include that a company has no strategic business plan and a weak and ineffective management is to blame amongst other factors. However, one of the crucial factors which cannot be overlooked is lack of information and control systems. Most companies would typically be in a position where events control them and they do not control events, it is this passive nature of companies that further aggravate the

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<sup>6</sup> Securities and Exchange Commission of Pakistan v Annoor Textile Mills Ltd. [2010 CLD 79].

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<sup>7</sup> Under the heading of Responsibility for Financial Reporting and Corporate Compliance

situation. Owing to these reasons a company secretary's role has evolved into a specialised resource, critical to the ongoing business viability of a company.

Company secretary is responsible to the Board of Directors collectively, rather than to any individual director. This reporting line is through the Chairman. Moreover, for executive and administrative duties a company secretary reports to CEO.

### ***Adding value through key relationships***

Another key task of a company secretary involves leveraging relationships with the major players in the Board. In order to facilitate effective functioning of the Board towards policy matters and oversight of management the key is to build these relationships so as to understand and relate to the differing perspectives of independent directors, executive directors and other sponsor directors.

Corporate Boards have an inherent dynamic towards poor communication, conflict and inefficiency. The Board however, is not "*one team*" but is composed of different groups with differing perspectives and priorities including independent directors, executive directors, and other sponsor directors. It is this very make up of the Board that a company secretary has to contend with. Since independent directors provide advice and stern oversight, hence moving between these two functions can easily lead to strained relationships.

Keeping in view the perspective of all groups forming the Board, a company secretary has to build relationships with each member of the Board. The company secretary, however, can help manage and overcome complex Board processes and provide meaningful support to directors in a way that is necessary and effective.

Once - and only when - the company secretary has gained the Directors trust in his or her competence, discretion and appreciation of potentially contentious issues a Secretary can expand his or her role in the areas of administration and compliance. Summarised below are some of the key relationships that a company secretary manages:

- **Building the relationship with the directors**

Whilst knowledge of the governance processes and corporate law is a company secretary's specialty they must communicate and assert that strong customer relationships and smart strategy play an essential role and without these there is no business to govern.

- **Relationship with independent directors**

Company secretary can contribute his/her unique insight of what independent directors should look for to ratify important decisions. The CEO/Chairman also entrusts the Company secretary to explore issues with independent director or other

stakeholders in order to prepare an effective discussion at the Board meeting.

- **Relationship with the independent Director and non executive directors**

A Company secretary can help an independent director and other non executive directors understand business issues in a less formal context. It is essential to make the independent directors aware of the management perspective so as to engage them more constructively in an issue.

- **Relationship with independent directors and Chairman**

Whilst a CEO's perspective is dominated by their ambition for business, on the other hand a Chairman, or other independent directors are much more concerned with "oversight" since this is their most critical role on the Board. This oversight perspective is an innate feature of a company secretary's role especially if they have a passion for "*best practice*" governance. However, most of the independent directors have other full-time occupations, directorships and/or other commitments that demand their time and attention. In view of this, a starting point should be the awareness that independent directors "*have to be brought into the issue*". Any presentation, conversation, or e-

mail must start with a big-picture introduction in order to get the discussion going.

- **Building relationships with the Board of directors –Conclusion**

Building relationships with people who are used to being in charge (as most Directors are) requires a fine balance of empathy and assertiveness. While this can be considered an art that cannot be acquired over night, however, this can be a skill which can be learnt and perfected by intentionally building the relationship repertoire, reflecting on what works well as well as mentoring and coaching.

The very nature of roles played by a company secretary presents some key challenges, including working simultaneously with the Board and management. Rising to these challenges a company secretary must have strength of character to be able to report to both the Board (via its Chairman) and the company itself (via its CEO).

No doubt the effectiveness of the company secretary's role will depend on the nature of their working relationship with the Chairman and a company secretary should be accountable to the Board through the Chairman on all governance matters.

## *Conclusion*

Concluding the discussion, the essential characteristics of a good company secretary should comprise of the following:

- Honesty/ truthfulness
- Confidence and an ability to express concerns freely
- Problem solving ability
- A team player
- Legal knowledge and experience

The importance of these innate characteristics could easily be drawn by the discussion and arguments put forward in the article.

Although a company secretary is not in a position to manage the information flow to the Board but the company secretary can work with the Chairman to enhance quality of Board papers and to assist the Chairman to distinguish between what is important and what is immaterial. He/she must be someone with sufficient seniority, skills and stature to fulfill the strategic as well as traditional roles of company secretary. He/she must be someone who is prepared to undertake significant and ongoing professional development in order to stay current with a rapidly changing field. To sum up a company secretary plays a very vital role in a competitive environment where increasing regulations emerge and are implemented; the survival of companies may well depend on it.

There are arguments for and against a double headed role of a company secretary combined with that of a legal counsel. No doubt the role of a company secretary is an arduous responsibility involving compliance of corporate laws however the role does not commence and end with mere compliance of laws. The role now requires a greater mix of skills than ever before and is highly dependent on personal strengths in addition to legal knowledge and experience. Most lawyers would themselves argue that in order for them to remain objective in their views and give independent advice they should advise the board rather than be a part of it. This view is generally supported by many commentators.

However, looking at the bigger picture there is a greater case for greater legal input at a strategic level nowadays, hence a double headed role of a company secretary and legal counsel would be valuable in such instances. This is indeed an open ended discussion and depends upon the corporate make up of companies.

Corporate governance is not a new concept, and more and more companies are now striving to adhere to the standards set by the code of corporate governance in their countries. However, at times it may be tempting for a company to break the regulations on the basis of cost/benefit analysis<sup>8</sup> as it may appear as a cheaper option than complying with the law which may be perceived as expensive and even fines may not create enough deterrence. The

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<sup>8</sup> The term 'cost benefit analysis' in this particular context is referring to how well, or how poorly, a planned action turns out.

survival of a corporation increasingly depend on how socially responsible it behaves and on good corporate governance of course. It is essential that the Directors are made accountable for their misconduct or misfeasance to the regulatory bodies, simply because whenever rules and regulations are broken it is bound to bring adverse publicity and such publicity is to be avoided by companys at any cost because of the time it takes building a good reputation.

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