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## **ROLE OF THE COMPANY SECRETARY**

The Company Secretary similar to a Director is a statutory officer of the Company. He/She has particular responsibility for governance within the Company including:

- a) ensuring compliance with statutory and regulatory requirements,
- b) ensuring that decisions of the board of directors are implemented,
- c) governance practices being adopted in the Company,
- d) conduct at Board and sub-committee compositions.
- e) dissemination of information
- f) communication, advice and arbitration between the company, its shareholders and the regulatory authorities.

The duties as an officer of the Company and those undertaken as a matter of established best practice, form the basis of what has been defined as core duties and are those which all Company Secretaries must attend to in order to comply with the law, regardless of the terms of their individual contracts of employment.

The fiduciary duties of directors who are officers of the Company apply equally to the Company Secretary. Therefore, the following fiduciary duties apply equally to both the directors and the Company Secretary.

- (a) To act in good faith in the interests of the Company
- (b) Not to act for any collateral purpose, to avoid conflicts of interest, and
- (c) Not to make secret profits from dealings for and on behalf of the Company.

### **Role of the Company Secretary**

Practically, the role of the Company Secretary can be classified into three main areas, which are the Board, the Company and the Shareholders. Within each area the Company Secretary's role can be very diverse and depend on the manner of implementation by each Company.

#### ***The Board***

- Ensure that the procedure for the appointment of directors is properly carried out.
- Assist in the induction of directors, including assessing the specific training needs of directors/executive management.
- Provide comprehensive practical support and guidance to directors both as individuals and as a collective with particular emphasis on supporting the non-executive directors:

- Facilitate the acquisition of information by all board and committee members so that they can maximize their ability to contribute to board meetings, discussions etc.,
- Assist in the compilation of board papers and to filter them to ensure compliance with the required standards of good corporate governance.
- Ensure the meetings and resolutions of the board are properly held and passed to raise matters which may warrant the attention to the board.
- Act as an advisor to the Board on regulatory aspects of SEC, CSE and Companies Act and Governance rules

### ***The Company***

The Company Secretary should ensure compliance with all relevant statutory and regulatory requirements and will have duties associated with the operation of the business.

- Due regard should be paid to the specific business interests of the Company, for example, a manufacturing Company may require a different approach and will operate in a different regulatory framework from that of a bank or a financial services company.
- The Company Secretary should assist with the implementation of corporate strategies including helping to ensure that the board's decisions and instructions are properly carried out and communicated and
- Be available to provide a central source of guidance and advice within the Company on matters of business ethics, good corporate governance and the legal and regulatory compliance.

### ***The Shareholders***

The Company Secretary will be at the center of all matters connected with the Company's Shareholders or Stakeholders. The Company Secretary needs to;

- Communicate with shareholders as appropriate and to ensure that due regard is paid to their interests;
- act as a primary point of contact for all the shareholders and proxy voting / corporate governance advisers.

In servicing the aforementioned areas, i.e. The Board, Company and the Shareholders, the Company Secretary plays a major role in the day-to-day operations of a Company. Various Statutes have legalized the duties and responsibilities of the Company Secretary while certain other duties and responsibilities are implied. Appointment and the removal of the Company Secretary should be a matter for the Board as a whole.

The following list is not an exhaustive list of ***responsibilities of the Company Secretary***, but provides generally accepted duties and responsibilities in a broader perspective.

## **Board Meetings**

- Facilitating the smooth operation of the Company's formal decision making and reporting machinery.
- Organizing Board and Board Committee meetings (eg: - audit, remuneration, nomination Committees etc.).
- Formulating meeting agendas with the Chairman and/or the Chief Executive and coordinating with the management on Board papers, memoranda or presentations for the meeting.
- Collecting, organizing and distributing such information, documents or other papers required for the meeting.
- Ensuring that all proceedings of the meetings are minuted and that the minute books are maintained with signed copies of the minutes.
- Monitoring that all Board Committees are properly constituted and provided with clear terms of reference.

## **General Meetings**

- Ensuring that an annual general meeting is held in accordance with the requirements of the Companies Act and the Company's Articles of Association.
- Obtaining relevant approvals of all documentation for circulation to shareholders.
- Preparing and issuing notices of meetings and distributing proxy forms.
- Coordinating responses for any shareholder question for which notice has been given or is anticipated.
- Overseeing the arrangements for the meetings including attendance, logistics and security.
- Ensuring that proxy forms are correctly processed and that the voting is carried out properly and captured accurately and also being prepared for voting by a poll in case such is required.
- Ensuring the previous meeting minutes are available for scrutiny at the general meeting.
- Ensuring that minutes of the meetings are maintained, and they are adopted at the next Board Meeting following the general meeting.

## **Articles of Association**

- Ensuring that the Company complies with its Articles of Association.
- Drafting and incorporating amendments in accordance with correct procedures.

## **Reports, Accounts and Documentation**

- Coordinating 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.
- Preparing the Directors' Report as specified in the Companies Act and obtaining Board's approval.
- Attending to all shareholder communications. If the maintenance of the share register is outsourced to another company, then the Company Secretary should liaise with the external registrar to ensure all shareholder matters have been promptly attended. Although an external registrar handles this part of the work, the Company Secretary will be liable for any failure of compliance with relation to the law.
- Maintaining the following registers:

- Register of Members
- Register of Company charges
- Register of Directors and Secretary
- Register of Directors' interests in shares and debentures
- Debenture Holders (if applicable)
- Interests Register (i.e., record on related parties and related party transactions)
- Seal Register
- 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
  - Financial Statements
  - Amended Articles of Association
  - Returns of Allotments
  - Notices of Appointment, Removal and 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.
- Issuing and signing of Share Certificates.

### **Corporate Governance**

- Continually reviewing developments in corporate governance (both for mandatory and voluntary compliance).
- 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 other relevant legislations and regulations including but not limited to SEC, CSE, SLAASMB, CBSL, IBSL.
- Acting as a channel of communication and information for Non-Executive Directors.
- Acting as a channel of communication with shareholders and ensuring good general shareholder relations.
- Making necessary disclosures on related parties and related party transactions required by laws and regulations.

### **Stock Exchange Requirements (for Listed Companies)**

- Monitoring and ensuring compliance with the listing rules.
- Managing relations with the Stock Exchange.

### **Other**

- Assisting the Board in implementing and administering Directors' and employees' share participation schemes.
- Ensuring the safe custody and proper use of any Company seals.
- Attending to the receipt, coordination and distribution of official correspondence received by the Company, sent to its registered office.
- Coordinating the inspection of Company documents as required by laws in consultation with the Board.

- 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.
- Maintaining a record of the group's structure.
- Monitoring and laying in place procedures which allow for compliance with relevant regulatory and legal requirements, particularly under the Companies Acts including legal requirements on retention of documents.
- Signing documents or records of proceedings requiring authentication by a Company.
- Obtaining legal advice in consultation with the Board on company law, SEC, CSE and other relevant legislations in ensuring that the Company complies with all applicable laws and regulations.
- Coordinating legal matters relating to alleged offences in company law, SEC, CSE and other relevant legislations.
- Informing any change in Company Secretary to the CSE (for listed companies).

In addition, to the above, the following provisions also should be considered by companies.

- Where a body corporate holds the position of the Company Secretary, requiring them to designate a person by name as their representative dealing with secretarial matters of the Company.

### **Liabilities of a Company Secretary**

Liabilities of a Company Secretary may be studied under two headings –

1. Statutory liabilities and
2. Contractual liabilities

Statutory liabilities – a reference has already been made to the obligations imposed on the company secretary, being the chief administrative officer of the company, under the Companies Act, and SEC rules etc. Obviously, failure to perform the duties entrusted under the various Acts exposes the Company Secretary to penalties. The statutory liabilities are prescribed by the Companies Act - a few statutory liabilities of the Company Secretary under different sections of the Companies Act are listed below.

- Failure to file statutory documents with the ROC
- Failure to maintain statutory Registers.
- For default in holding the Annual General Meeting and other Statutory Meetings and filing of statutory reports/accounts.

Contractual liabilities - A Company Secretary has also certain liabilities arising out of his/her implied contract of service with the Company. So long as he/she acts within the scope of his authority, in good faith, bona fide and take reasonable care in the discharge of his duties, he/she incurs no personal liability. He/she should also possess the knowledge to discharge the duties of a Company Secretary. But he/she will be held personally liable to make the good the loss to the Company for willful negligence or misconduct or fraud committed within the scope of his employment. He/She also becomes personally liable if he/she acts beyond his authority, for any loss suffered by the Company or any third party on account of his action.

**Authored by members of the Board Secretaries Forum**