

Refining and Redefining the Role of Company Secretaries in Corporate Governance

“WE MUST USE TIME WISELY AND FOREVER REALIZE THAT THE TIME IS ALWAYS RIPE TO DO RIGHT.”

NELSON MANDELA



S.N. Ananthasubramanian
President
Institute of Company Secretaries of India, The

Corporate governance is considered necessary to create a corporate culture of responsibility, transparency, accountability, confidence and trust among existing investors and the prospective investing public. It is intended to foster a mechanism which improves the efficiency of the corporates and leads to increased customer satisfaction, enhanced shareholder value and wealth creation. It enhances economic growth, entrepreneurship, innovation and value creation. Corporate Governance also represents ethical and moral framework under which business decisions are taken to maximise stakeholder value.

THE POSITION OF THE COMPANY SECRETARY

The Board at the top is enjoined to steer and activate the entire corporate governance system. Being the governance professional, Company Secretary is entrusted with the responsibility of providing effective guidance and execution of board's governance practices. Being in an elevated position in the corporate hierarchy and also a key link between management and the stakeholders, his role has assumed significance and strength.

As an officer appointed by the Board, the Company Secretary is responsible to the Board, normally through the Chairman. Ideally his or her services are available to the entire Board including Independent Directors. It is thus incumbent that he or she strives to become a trusted advisor to the Board and thereby being most sought for to develop and implement processes promoting good corporate governance.

The Boards of Directors have a right to expect the Company Secretary to give impartial advice and to act in the best interest of the company. The Company Secretary is responsible to the Board of Directors collectively rather than to any individual Director. The Cadbury Committee's Code of Best Practice reinforces

this by stating that: *“Any question of the removal of the Company Secretary should be a matter for the Board as a whole.”*

The best global practices suggest that the members of the board function with continuous support and guidance of the Company Secretary. Asked to be at the apex of the governance architecture in a Company and mandated to implement its execution, the Company Secretary's role is being refined and redefined. Indeed, the role of Company Secretary was exemplified way back in *Adrian Cadbury Report on “The Financial Aspects of Corporate Governance”* wherein the role of Company Secretary was envisaged as under:

“The Company Secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the Company Secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how those responsibilities should be discharged. All directors should have access to the advice and services of the Company Secretary and should recognise that the chairman is entitled to the strong and positive support of the Company Secretary in ensuring the effective functioning of the board. It should be standard practice for the Company Secretary to administer, attend and prepare minutes of board proceedings”.

In the emergent self regulated regime, the role of Company Secretary surpasses the boundaries of mandates of law; it touches upon the ethical and moral dimensions of decision-making. The time has come to recognise that the role of a Corporate Secretary should not merely be restricted to compiling the resolutions for board consideration and drafting artful minutes demonstrating the board's diligence, rather the time is now ripe to take on a larger canvas of being the conscience-keeper in an organisation. The Company Secretary's strategic presence in the Boardroom can have a salutary impact on the governance culture and is thus critical to generate responsible Board governance.

The Profession of Company Secretaries – Global perspective

Dynamism and globalisation requires Boards of Companies to be competent to handle the pressure of compliance under various jurisdictions. The Company Secretary is the most coveted officer to ensure compliances across jurisdictions and this is the reason

that today appointment of a Company Secretary is being made mandatory in various jurisdictions. Singapore, Malaysia, Maldives, Hong Kong, Kenya are some of the countries which have made the appointment of a Company Secretary mandatory for all companies.

In U.K. it is mandatory for every public company to have a Company Secretary. In South Africa, a public company or state-owned company must appoint a person knowledgeable or experienced in relevant laws as a Company Secretary. In Australia, a company other than a proprietary company must have a Company Secretary. In Mauritius, every company other than a small private company or a company holding Category 2 Global Business Licence should have a Company Secretary.

UK Corporate Governance Code 2012 (Revised)

The Code provides that the Company Secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non executive directors, as well as facilitating induction and assisting with professional development as required. The Company Secretary should be responsible for advising the board through the Chairman on all governance matters. 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 complied with.

South Africa- King Committee Report- 2009

Principle 2.21: The Board should be assisted by a competent, suitably qualified and experienced Company Secretary

- The board should appoint and remove the Company Secretary.
- The board should empower the individual to enable him to properly fulfil his duties.

The Company Secretary should:

- have an arms-length relationship with the board;
- not be a director of the company;
- assist the nominations committee with the appointment of directors;
- assist with the director induction and training programmes;
- **provide guidance to the board on the duties of the directors and good governance;**
- ensure board and committee charters are kept up to date;
- prepare and circulate board papers;
- elicit responses, input, feedback for board and board committee meetings;
- assist in drafting yearly work plans;
- ensure preparation and circulation of minutes of board and committee meetings.

In South Africa, Section 88 of Companies Act, 2008 provides for the duties of Company secretary. It provides thus-

A company's secretary is accountable to the company's board. A Company Secretary's duties include, but are not restricted to—

- providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;
- making the directors aware of any law relevant to or affecting the company;
- reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or this Act;
- ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded;
- certifying in the company's annual financial statements whether the company has filed required returns and notices in terms of this Act, and whether all such returns and notices appear to be true, correct and up to date;
- ensuring that a copy of the company's annual financial statements is sent, in accordance with this Act, to every person who is entitled to it; and
- carrying out the functions of a person designated for the purpose of annual return compliance.

Australia-ASX Corporate Governance Principles and Recommendations with 2010 Amendments.

The Company Secretary plays an important role in supporting the effectiveness of the board by monitoring that board policy and procedures that are followed, and coordinating the timely completion and dispatch of board agenda and briefing material.

It is important that all directors have access to the Company Secretary. The Company Secretary should be accountable to the board, through the chair, on all governance matters.

Singapore Code on Corporate Governance, 2012

Directors should have separate and independent access to the Company Secretary. The role of the Company Secretary should be clearly defined and should include responsibility for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Under the direction of the Chairman, the Company Secretary's responsibilities include ensuring good information flows within the Board and its committees and between senior management and non-executive directors, advising the Board through the Chairman on all governance matters, as well as facilitating orientation and assisting with professional development as required. The Company Secretary should attend all board meetings.

The Code of Corporate Governance for Mauritius, 2004

The Company Secretary plays a key role in the application of corporate governance in a company.

The Company Secretary should ensure that the company complies with its constitution and all relevant statutory and regulatory requirements, codes of conduct and rules established by the board.

The Company Secretary must provide the board as a whole and directors individually with detailed guidance as to how their responsibilities should be properly discharged in the best interests of the company.

The Company Secretary is a central source of guidance and advice to the board on matters of ethics and good governance. The Company Secretary is the focal point of contact within a company for institutional and other shareholders.

A MULTI DISCIPLINARIAN

The Corporate Secretary is a senior officer with wide-range of responsibilities, serving as focal point for communication with the board of directors, senior management and the membership, and playing a key role in the administration of important corporate matters. In addition, the Corporate Secretary often plays the role of confidant and counsellor to the board chair, CEO, and other members of senior management.

Considering the role of Company Secretary as an advisor, partner, resource and *ombudsman* Michael Barrett, Chief Operating Officer at Gay Lea Foods Co-operative Limited, Canada quotes that “The role of the Corporate Secretary continues to evolve... Gone are the days of the horn-rimmed, pencil sharpened, visor clad, minute taker; the Corporate Secretary is now:

- an active partner with the directors to ensure board effectiveness and good governance;
- an advisor to the board to ensure that policy and intent are manifested correctly;
- a resource to provide trends and information; and
- the ombudsman for all members of the co-operative community to ensure a commitment to the values that we hold dear.

The Corporate Secretary is an integral part of the effectiveness of any co-operative.”

THE GOVERNANCE STRATEGIC ROLE

The governance enriched new Companies Bill, 2012 substantially enhances and elevates the role of Company Secretary as it includes him as a “Key Managerial Personnel” in a company. This provision in the Bill can be envisioned as a mirror showcasing strategic importance of the Company Secretary in governance architecture of any company. The position of company secretary has been equated to the position of Chief executive officer, whole time director and Chief financial officer. “Key Managerial Personnel” as an officer in default under the Bill means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer; and

- (v) such other officer as may be prescribed

Importantly, the role of the company secretary has been widened under the Companies Bill which seeks to provide 'substantive oversight' role to Company Secretaries as against a technical compliance role envisaged so far under the existing company law. It is up to the Company Secretaries to realise the strength of the profession and recognise the changed circumstances. Need of the hour is that the Company Secretaries adopt 'responsible compliance' as a mantra while being assertive and taking advantage of the enhanced role.

Lintstock Ltd., UK conducted a study on “Elevating the Role of the Company Secretary”, via questionnaires and interviews with 252 Board Directors and 166 Company Secretaries in the FTSE All Share Index, on the role of the Company Secretary in May 2012. The study reports that a number of respondents felt that the Company Secretary could have more to offer in terms of strategy than is currently being drawn upon for the benefit of the Board. This view was shared by some Board members who felt that there was potential for the role to develop more strategically.

Beyond this, the redefined role of the Corporate Secretary is that of a senior, strategic-level corporate officer who leads the company's corporate governance. He is fast emerging as the Chief Governance Officer (CGO). **The possible breakdown of the governance responsibilities and duties of governance for a Chief Governance Officer are enumerated as under:**

- researching, developing and proposing innovative corporate governance policies and best practices by recommending policies and procedures, while balancing governance needs and the company's goals;
- providing expertise, advice and recommendations related to a broad range of corporate governance and board issues by identifying concerns and developmental needs, and providing strategic advice to the board, committees, and CEO;
- promoting and facilitating open and full communication links, and ensuring an effective flow of information between the board, its committees, management, and outside advisors;
- acting as advocate for the board with management with respect to roles and accountabilities, and how these contribute to organisational success;
- monitoring and evaluating the implementation of governance policies and directives, risk management and recommending proposals to address deficiencies in order to achieve the company's overall strategic objectives;
- supporting and directing governance processes, including:
- supporting the board in ensuring an effective director nomination process;

According to the Lintstock Study, the Committee to which the Company Secretary provided the most

wide-ranging support was the Nomination Committee. The role of the Company Secretary in advising on and coordinating the appointment of future Non-Executives was seen as potentially one of the most important aspects of the function.

- orientation of new directors and ongoing board education;
- developing and implementing guidelines, criteria and instruments to evaluate and enhance individual member and board performance;
- support board succession planning and overseeing independent directors' rotation.
- contribute to the drafting of the directors' remuneration policy and may ensure its compliance. Accordingly, disclosure requirements as per Corporate Governance norms may also be complied with.
- As a corporate governance head of the company it is the responsibility of the Company Secretary to ensure timely dissemination of information on governance developments.

The corporate governance would definitely be a differentiating competitor when the stakeholders deal with the company, the well practiced corporate governance in a company would always have an edge over others. Bringing good corporate governance involves a set of varied relationships between the management of a company its board members and various stake holders including the shareholders.

According to the Lintstock study *"Most respondents felt that the importance of the role of the Company Secretary would increase over the next five years. It was often stated that the role ought to enjoy a higher position within the business, with the caveat, particularly from Board member respondents, that the right to an elevated position should be dependent on the individual being able to demonstrate the ability to add value beyond administrative efficiency."*

In a nutshell, we have already witnessed the growth of the profession from a record keeper to compliance officer to corporate adviser, and now it is in a crucial phase of transformation towards being Chief Governance Officer. It is the time to realise and intertwine the potential with knowledge. The strength of knowledge shall undermine the odds, Leading beyond legal parameters, the Company Secretary professionals or the Chief Governance Officers will soon be recognised as the "Guardians of Company's Governance and an independent adviser to any corporate".

THE TRADITIONAL ROLE

While taking the charge of a Chief Governance Officer, Corporate Secretaries will continue to retain their traditional "administrative" responsibility. This often includes:

- attending board and committee meetings—recording minutes, highlighting board and committee decisions and/or information items, actions and directives;

- reporting on outstanding agenda items—and taking action to ensure 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; and
- supporting the board chair in performing his/her role, including the provision of appropriate briefing material to represent the co-op to the membership and other instances as requested by the board.
- Guiding the board on legal and various other matters.

"The Company Secretary is the conscience of the Chairman and Board within the company."

BEYOND GOVERNANCE MATRIX

The role of a Company Secretary needs to be evolved within an organisation and this depends on self-realisation of moving beyond managing critical regulatory governance challenges. A Company Secretary should strive to be a part of the management team which ensures that business demonstrates profitability with long term vision and sustainability at its core. He is expected to be well versed with the commercial aspirations of the company and provide guidance on what can be achieved within a governance framework and what is not possible within the framework. The CGO needs to understand the intricacies of business-stakeholder relationship and have some extraordinary skills to ensure and protect the trust of the company yet not surpassing the interest of the stakeholders including the regulators. The professionals here are required to demonstrate not only IQ but also EQ.

The company secretary has a pivotal role to play in the provision of appropriate guidance/advice to the board regarding its duties and responsibilities pertaining to risk management. The board and senior management would look to the company secretary to assist them in the exercise of their risk management responsibilities. The company secretary needs to be equipped with the necessary expertise in order to become the risk manager in the organisation.

The Company Secretary should endeavour to achieve excellence and gain proficiency. The professionals need to take broader strategic view about their company needs; acquire significant business knowledge of processes and systems of the company and utilise the same in driving board level consultancy. A CGO should strive to become an active board level consultant guiding Boards on various emerging areas of law, risk management governance and sustainability. For instance SEBI issued circular on Business Responsibility Reports in August 2012, it is for the Company Secretaries to be prepared to shoulder the responsibility of guiding the Boards in objective decision making and ensuring that the companies develop and implement strategies that mitigate environmental and

social risks and focus on the long-term sustainability of business. Business Responsibility Reports could become the forte of Company Secretaries; low hanging fruits which could be taken advantage of.

The Lintstock Study discussed above specifies suggestions as to areas which might be included within the mandate of the Company Secretariat. It recommends the inclusion of

- i) enterprise risk management (ERM is a framework for risk management, which involves identifying assessing events or circumstances in terms of likelihood and magnitude of impact, determining a response strategy, and monitoring progress)
- ii) remuneration and share plans (assisting the relevant committee in defining parameters for remuneration plan for directors)
- iii) public affairs
- iv) corporate social responsibility matters (this is a area where company secretary can pitch in to ensure compliance as per the regulatory framework, as discussed above company secretary should strive to shoulder the responsibility of recent BRR model)

ADHERENCE TO CODE OF CONDUCT

A key expectation of members of self-governing professions is that they accept legal and ethical responsibility for their work and hold the interest of the public and society as paramount. One of the essential traits of a profession is to be subject to strict codes of conduct enshrining rigorous ethical and moral obligations. In a self regulated regime, Company Secretary subjected to a strict code of conduct is looked upon by the regulators, as ethical and trustworthy professional whose professional judgment and competence has made a mark in the corporate sector. It is a moral duty of us as Company Secretaries to strictly abide by the Code of Conduct laid down by the Council of the Institute.

CONCLUSION

A corporation is a congregation of various stakeholders, namely customers, employees, investors, vendor partners, government and society. In the changed scenario an Indian corporation should be fair and transparent to its stakeholders in all its transactions.

This has become imperative in today's globalised business world where corporations need to access global pools of capital, need to attract and retain the best human capital from various parts of the world, need to partner with vendors on mega collaborations and need to live in harmony with the community. Unless a corporation embraces and demonstrates ethical conduct, it will not be able to sustain its success. The primary role of a Company Secretary is no longer restricted to mere adherence to compliances with the Companies Act, 1956 and various regulations/guidelines related to SEBI / Stock Exchanges / and other allied statutes. In today's scenario, a Company Secretary is instrumental in establishing good corporate governance practices and robust systems necessary for sustainability and a prosperous economy. Company Secretary is looked upon by the regulators, as ethical and trustworthy professional whose professional judgment and competence will make a mark in the corporate sector. In addition, to this the Company Secretary is the trusted advisor of the Board, particularly to the Chairman. In fact bearing natural affinity towards good governance practices and closeness to compliance, company secretary is a profession which shall easily progress to higher offices. Company Secretaries with certain level of experience should strive to become Chief Executive Officers and non-executive directors.

According to the findings of Lintstock Study, 94% of Company Secretaries feel that they would make good Non-Executive Directors.

Corporate Governance is not a static monolith, it is a matrix that keeps developing over years adding new facts and means. To perpetuate good Corporate Governance, the challenge is to identify mechanisms and structures that can help create, foster and develop successful high growth companies in future. In this ever evolving corporate scenario the Company Secretary is one professional who can play a key role in ensuring the practice of good corporate governance across the organisation, acting with integrity and impartiality, assisting and guiding the senior management and the Board in their efforts towards improving profitability and growth and thereby facilitating optimal decision making in the best interests of the company and its stakeholders.

“EXCELLENCE IS NEVER AN ACCIDENT. IT IS ALWAYS THE RESULT OF HIGH INTENTION, SINCERE EFFORT, AND INTELLIGENT EXECUTION; IT REPRESENTS THE WISE CHOICE OF MANY ALTERNATIVES - CHOICE, NOT CHANCE, DETERMINES YOUR DESTINY.”

- ARISTOTLE

References:

1. THE CORPORATE SECRETARY FROM RECORD-KEEPER TO GATE-KEEPER, Governance Matters, Canadian Co-operative Association, 2005
 2. Role of Company secretary in Corporate Governance, ICSI Publication
 3. Elevating the Role of the Company secretary: Lessons from FTSE All share, Lintstock UK, May 2012
-