

Company Secretaries: An important pillar of Corporate Governance



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"I am not bound to win, but I am bound to be true. I am not bound to succeed, but I am bound to live by the light that I have. I must stand with anybody that stands right, and stand with him while he is right, and part with him when he goes wrong."

– Abraham Lincoln

Introduction

Good Corporate Governance envisages a culture of transparency, accountability and fairness. Good governance relates to systems of supervision, monitoring and sharing of information with the stakeholders to generate confidence and trust with customers, suppliers, creditors and maximizing corporate value for its shareholders. It is an integral means to the existence of the company. It leads to adherence to the moral & ethical values, legal framework and adoption of good practices beyond the mandate of law. It is important for corporate sector because the quality of corporate governance impacts:

- the efficiency with which a corporation employs assets;
- its ability to attract low-cost capital;
- its ability to meet societal expectations; and
- its overall performance.

In today's globalised world, corporate structures change fast. We need to develop governance tools and incentive structures that are more robust in the face of rapidly changing environment. The Companies Act 2013 realizing the trends and challenges have introduced a slew of regulations focussed towards enhancing overall governance standards. The Act marks a major step forward and appreciates the current economic environment in which companies operate. It goes a long way in protecting the interests of shareholders and provides for improvement in several areas of corporate governance like board composition, board evaluation, gender diversity, role of independent directors, related party transactions, corporate social responsibility, investor protection, improved disclosure norms, role of audit committee, mandatory rotation of auditors, class action suits etc. The SEBI (Listing Obligations and Disclosure requirements) Regulations 2015 has also provided for several obligations pertaining to improving corporate governance in listed entities. The laws and regulations may be strengthened on paper but they will serve little purpose without the commitment to abide by them.

The Board of Directors acting as agents of businesses have to respond to the expectations of the societies in which they operate. They have to fulfil the expectations in order to enhance the mutually dependent relationship between business and societies. The challenge of meeting these expectations has become more complex in today's global economy, with firms typically operating in a number of legal, regulatory, cultural and business environments. The Board of directors depend upon a range of professionals to meet these expectations. The law also recognise professionals like company secretaries to play active role in the promotion of good governance in corporate sector. He not only advises the Board on various compliance requirements and co-ordinates and translates the policies of the Board into action, but also communicates the same to stakeholders.

To build the confidence among stakeholders, it is desirable that some system be in place, firstly to ensure due compliance of laws and secondly to bring transparency in informing the shareholders and other stakeholders about how the business is being managed. It is here that the company secretary, as an integrated manager, fills the gap.

Who is a Company Secretary?

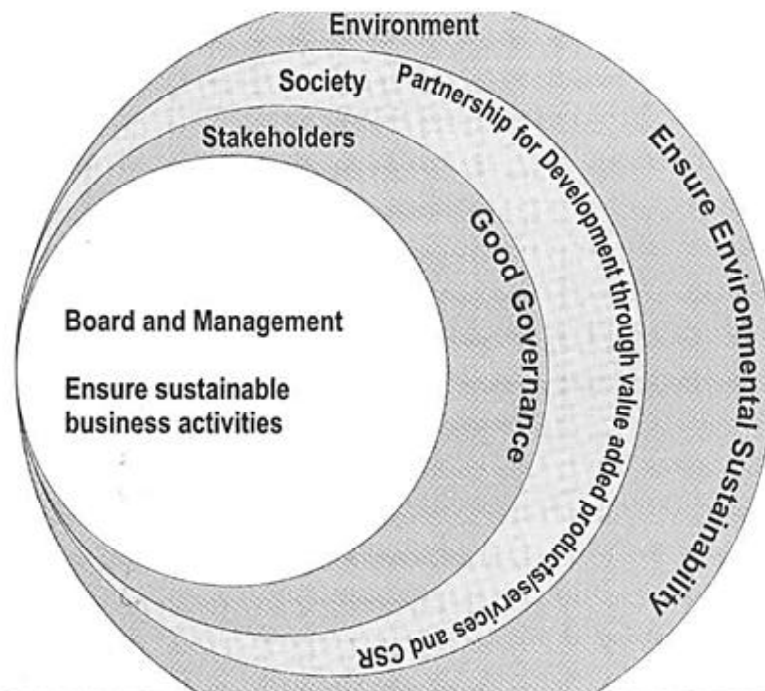
A "Company Secretary or corporate secretary" is required by the laws to be appointed by certain prescribed corporations. Their key responsibility is to ensure that Board members have the proper advice and resources for discharging their fiduciary duties to shareholders under law of the land. In recent years the Company Secretary has emerged as a senior, strategic-level corporate officer who plays a leading role in the company's corporate governance.

As per section 2(24) of Companies Act 2013, "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;

The roles and responsibilities of a Company Secretary generally include, but are not limited to the following:

- Manage all board and committee meeting logistics, attend and record minutes of all board and committee meetings; facilitate board communications;
- Advise the Board on its roles and responsibilities;
- Facilitate the orientation of new Directors and assist in Director training and development;
- Maintain key corporate documents and records;
- Responsible for corporate disclosure and compliance with state corporation laws, stock exchange listing standards and SEC reporting and compliance;
- Oversee Stockholder Relations including stock issuance and transfer operations; stockholder correspondence; prepare and distribute proxy statement;
- Manage process pertaining to the annual shareholder meeting;
- Subsidiary management and governance;
- Monitor corporate governance developments and assist the Board in tailoring governance practices to meet the Board's needs and investor expectations;
- Serve as a focal point for investor communication and engagement on corporate governance issues.

Company Secretary is a key functionary in the corporate pyramid, with the changing global business environment placing thrust on compliance & governance, responsibilities of Company Secretary have increased manifold towards safeguarding the interests of the stakeholders.



Envisioning Corporate Functions from Company Secretary's perspective

Mandatory appointment of Company Secretary

The new Companies Act, 2013, read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, provides that every listed company and every other public company having paid up share capital of Rs. 10 Crores or more has to compulsorily appoint the whole time Key Managerial Personnel to ensure good corporate governance and regulation. The company shall have the following whole-time Key Managerial Personnel (KMP):

- Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director.
- Company Secretary and
- Chief Financial Officer.

Further, as per Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a company other than a company which is required to appoint a whole time key managerial personnel as discussed above and which is having paid up share capital of Rs. 5 Crores or more shall have a whole time Company Secretary.

Regulation (6)(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 also provides that every listed entity shall appoint a qualified company secretary as the compliance officer.

The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries as a key managerial person in a company, responsible to ensure the effective and efficient administration of the company and certifying the company's compliance with the provisions of the Act.

(1) Statutory responsibilities

If one were to examine the role and duties of the company secretary as currently outlined in legislation it would appear to be quite restrictive and mainly administrative in nature. Principally, the company secretary ensures the company has complied with company law, maintains certain statutory registers and makes the necessary filings with the Registrar of Companies such as annual returns, financial statements and certain forms with respect to changes to share capital etc.

For the first time in Indian legislation, the duties of the company secretary have been specified. Section 205 of the Companies Act, 2013 provides that the Company Secretary shall discharge following functions and duties.:

- To report to the Board about the compliance with the provisions of this Act.
- To ensure that the company complies with the applicable secretarial standards.
- To provide to the directors of the company the guidance they require in discharging their duties, responsibilities and powers.
- To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings.
- To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act.
- To represent before various regulators and other authorities under the Act in connection with discharge of various duties under the Act.
- To assist the Board in the conduct of the affairs of the company.
- To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.

(2) Secretarial Audit

Section 204 of the Companies Act, 2013 provides that every listed company and every public company with a paid-up share capital of Rs. 50 Crore or more or every public company with a turnover of Rs. 250 Crore or more shall provide a Secretarial Audit report done by the company secretaries in practice.

The company secretaries have been empowered as secretarial auditor to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor. It is the duty of the Company Secretary to check compliances made by the Company under Corporate Law & other laws, rules, regulations, procedures etc. he is required to monitor compliance with the requirements of stated laws and processes and place his report. It is to ensure that the regulators, stakeholders and management that company has disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

(3) Compliance with Secretarial Standards:

For the first time under section 118(10) of the Companies Act 2013, all companies have been mandated to observe secretarial standards with respect to general and Board meetings and under section 205, the duty to ensure that the company complies with the applicable Secretarial Standards has been casted upon Company Secretaries. The objective behind the formulation of secretarial standards is to integrate, harmonize and standardization of diverse secretarial practices. Secretarial Standards have been introduced to facilitate adoption of standard yardstick for meetings of the Board of Directors and the committees of the Board and this will help in compliance management of the provisions of the Companies Act, 2013 and will also ensure good corporate governance systems in the Indian corporate sector. Thus, the company secretary has been provided an important role to ensure that the interests of stakeholders are protected.

(4) Other Obligations of Compliance officer

Regulation (6)(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 provides that the compliance officer of the listed entity shall be responsible for-

- (a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
 - (b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
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- (c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
- (d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

The legal provisions are testimonies that company secretary are essential for ensuring better efficiency and governance.

Role of Company Secretaries - Global Perspective

As the importance of effective corporate governance continues to be critical in today's environment, there has been increased focus on the role of the company secretary. Globally the role of Company Secretary has evolved from that of compliance to governance professional.

The Malaysian experience: In Malaysia, the code of ethics addresses issues of professional competency and skill. The code calls for 'objective and positive attitude' in the dealings of the company secretary. A company secretary is duty bound to disclose any information that suggests a fraud is being or is likely to be practiced by the company or any of its directors or employees. The code also requires the company secretary to be impartial in his dealings with the shareholders, directors and 'without fear of favour use his best endeavours to ensure the directors of the company comply with relevant legislations, contractual obligations and other relevant requirements. The company secretary is required to be knowledgeable and be aware of all reporting and other requirements imposed by statute under which the company is incorporated.

The United Kingdom: The UK company secretary has a duty to ensure good corporate governance. The company secretary is responsible for ensuring that the code of conduct for company secretaries and the directors is adhered to. Under the direction of the chairman, the company secretary's responsibility is to ensure that good information flows within the board, its committees and between senior management, non executive directors as well as facilitating induction and professional development as required.

In South Africa: 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. Principle 2.21 of King III states: "The board should be assisted by a competent, suitably qualified and experienced company secretary". In addition, paragraph 101 of King III emphasises: "The individual directors and the board collectively, should look to the company secretary for guidance on their responsibilities and duties and how such responsibilities and duties should be properly discharged in the best interests of the company." Paragraph 102 states that "The company secretary should provide a central source of guidance and advice to the board, and within the company, on matters of good governance and of changes in legislation." It follows from the above that the board and senior management looks to the company secretary to assist them in the exercise of their risk management responsibilities.

Australia: 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: 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.

Mauritius: 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.

Maldives: Companies must employ a qualified Company Secretary to perform all compliance functions of the company. The Company Secretary must advise Management and the Board on their responsibilities and liability with regard to legal and regulatory requirements and compliance with this Code. The Company Secretary must keep an annual record of the company's compliance, non-compliance with this Code and all other relevant laws, and in the event of non-compliance an explanation should be sought for the record from the Board.

Company Secretary – Focus on Good Corporate Governance

The responsibilities of the modern day company secretary have evolved from that of a “note taker” at board meetings or “administrator of the Board” to one which encompasses a much broader role of acting as “Board advisor” and having responsibility for the organisation’s corporate governance. The responsibility for developing and implementing processes to promote and sustain good corporate governance should largely fall within the remit of the company secretary.

The Board, particularly the chairman, relies on the company secretary to advise them not only on directors’ statutory duties under the law, disclosure obligations and listing rule requirements but also in respect of corporate governance requirements and practices and effective board processes. This specialised role of the modern company secretary would emerge to position them as one of the key governance professionals within the organisation.

The dynamics of the boardroom are changing and chairmen and directors are realising that they need specialist skills and technical knowledge in this area and they are looking to company secretaries to provide this expertise. There are a number of responsibilities, where the company secretary can assist and add value. It is the time wherein company secretaries should go beyond legislation to ensure real corporate governance.

Board and Committee processes

The Company Secretary by virtue of his/her close relationship with the Board of directors, should review developments in corporate governance and advise the directors with respect to their duties, responsibilities and compliance with their personal obligations under corporate laws, Stock Exchange requirements and other applicable legislations. The company secretary should play a leading role in good governance by helping the Board and its committees function effectively and in accordance with their terms of reference and best practice. A Company secretary should fulfil following responsibilities with regard to:

1. **Board Charter:** A Company Secretary can assist in preparing a Board Charter which sets out the respective roles, responsibilities and authorities of the Board, the committee and of Senior Management in the governance, management and control of the organization. The maintenance of a Board Charter ensures that Board decisions can be measured against it. The Secretary can participate by ensuring it is current and that the Board is aware of its guidelines when decisions are made.
 2. **Board Calendar:** Company Secretary co-ordinates in drawing upon Board Calendar, a well thought out action planner for the year, with all the tasks scheduled in advance so that everybody involved can plan their work systematically. This can also be used as a tool for to better time management of the Board.
 3. **Board Papers:** It is a good practice to provide Board members with adequate discussion materials for the board meeting beforehand. Timely distribution of papers ensures that the directors including the independent directors come prepared for the Board deliberations. Company Secretary under the guidance of Chairman can coordinate the preparation of Board papers and ensure their timely circulation.
 4. **Board Meetings:** The Company Secretary plays the role of a co-ordinator of Board meetings by:
 - Facilitating the smooth operation of the company's formal decision making and reporting machinery, organising Board/committee meetings.
 - Attending meetings.
 - Preparing minutes of the meeting.
 - Maintaining minute books.
 - Ensuring that correct procedures are followed.
 - Ensuring facilitation of electronic mode for conduct of meeting in consultation with the Chairman.
 5. **Board Evaluation:** Company Secretary can help in developing the process of board performance evaluation both for the individual directors and board of directors as a whole. He can help the Board to develop performance evaluation guides and tools. The Company Secretary can assist the Board on a regular basis to review their performance in achieving their goals and taking corrective measures. He can further help in analyzing the outcome of the evaluation process and assist directors in effective transition to higher level of performance.
 6. **Board Succession Planning:** Working with outside consultants and the Board Nomination Committee, Company Secretary can act as a vital link in ensuring better communication and that actions are documented and progress reports compiled.
 7. **Board Remuneration:** Company Secretary can 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.
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Board development

All directors should have access to the advice and services of the company secretary. The company secretary should build effective working relationships with all board members, offering impartial advice and acting in the best interests of the company. In promoting board development the company secretary should assist the chairman with all development processes including board evaluation, induction and training. This should involve implementing a rigorous annual Board, committee and individual director assessment and ensuring actions arising from the reviews are completed. Further, the company secretary should take the lead in developing tailored induction plans for new directors and devising a training plan for individual directors and the Board. Although these tasks are ultimately the responsibility of the chairman, the company secretary can add value by fulfilling, or procuring the fulfilment of, these best practice governance requirements on behalf of the chairman.

Organisational governance

Company secretaries should ensure that robust governance arrangements are in place, they are clearly documented and communicated to the organisation. The position of the company secretary enables them to have a holistic view of the governance framework and as a result they should generally take the responsibility of ensuring that governance framework and any supporting policies and procedures are clearly documented.

Supporting the chairman

The company secretary has a duty to advise the Board, through the chairman, on all governance matters. Together they should periodically review whether the Board and the company's other governance processes are fit for purpose, and consider any improvements or initiatives that could strengthen the governance of the company. The relationship between the company secretary and the chairman is central to creating an efficient Board.

Communication with stakeholders

The company secretary is a unique interface between the Board and management and as such they act as an important link between the Board and the business. Through effective communication they can coach management to understanding the expectations of, and value brought by the Board. The company secretary also has an important role in communicating with external stakeholders, such as investors, and is often the first point of contact for queries. The company secretary should work closely with the chairman and the Board to ensure that effective shareholder relations are maintained.

Disclosure and reporting

In recent years there has been increased emphasis in the quality of corporate governance reporting and calls for increased transparency. The company secretary usually has responsibility for drafting the governance section of the company's annual report and ensuring that all reports are made available to shareholders according to the relevant regulatory or listing requirements.

Internal Control & Risk Management

As a corporate governance manager of the company it is the responsibility of the Company Secretary should ensure that the system of internal control:

- is embedded in the operations of the company and form part of its culture;
- is capable of responding quickly to evolving risks to the business arising from factors within the company and to changes in the business environment; and
- include procedures for reporting immediately to appropriate levels of management any significant control failings or weaknesses that are identified together with details of corrective action being undertaken.
- effective compliance management system is properly put in place.
- ensuring the implementation of and monitoring the effectiveness of the whistle blowing procedures

Corporate Social Responsibility

Companies have today realized the concept of Responsible Business i.e. doing business with the sense of conscious commitment towards society, environment and generations to come. For the discharge of social responsibilities Company Secretary can encourage the adoption of the concept of "Triple Bottom Line" - "People, Planet & Profit". He can further assist in acquiring certification under International standards for social responsibility such as ISO 26000; SA 8000.

Increased burden of regulation

In the light of economic developments in recent years stakeholders of companies, are increasingly concerned with the conduct of the affairs of the company and therefore it is essential that best practice is adhered to at all times and evidence is available to demonstrate same. The monitoring of all compliances applicable to the company is

on the shoulders of Company Secretary. It is the role of the company secretary to keep the Board informed of new legislation and how it applies to them. With this increased focus on corporate governance, the role of the company secretary has been extended such that the secretary is now seen as the guardian of the company's compliance with legislative requirements and best practice.

Conclusion

Company secretaries add real value to their role and increase their impact by bringing commercial acumen, strategic understanding and softer people skills in addition to their legal and governance knowledge. The focus of the company secretary's responsibilities differs depending on the type of company, whether it is public or private, and also depending on the industry. Irrespective of the type of company, the role of company secretary must expand and will expand beyond simply ensuring statutory compliance to become a pivotal one where the skills of the company secretary can have a direct impact on the effectiveness of the Board and organisation and ensuring corporate governance being followed in true letter and spirit.
