

COMPANY SECRETARIES ADDING VALUE TO ORGANISATIONS

ARTICLE BY ALISON DILLON KIBIRIGE, MANAGING DIRECTOR
AMDK CONSULTANCY & TRAINING SERVICES LIMITED



David Jackson, the Company Secretary of BP said in 2008 ' In today's world, the role of the company secretary has no one meaning and covers a multitude of tasks and responsibilities. That said the role lies at the heart of the governance systems of companies and is receiving ever greater focus.'

This is truer today than it was in 2008 for whatever type of company the company secretary is operating within. Governance as we know is more than just compliance it is how an organization structures itself to perform effectively and efficiently in the long-term. There is a lot of empirical evidence that organisations, whether they are family owned, listed, state-owned or in the not for profit sector perform better and are more likely to be sustainable if they have good governance practices.

There is often a misconception that the role of the company secretary is purely administrative, preparing and distributing packs for Board meetings, sitting quietly in the Board room taking notes of the proceedings of the meeting and thereafter producing a set of minutes. These days, however, this is only a small part of what they do. To add value to the organisations in which they work they should also act as:

- An adviser to the Board on a plethora of issues including reputation risk;
- The organisation's governance professional; and
- A communicator for the Board both internally and externally.

Adviser to the Board

An important part of the role of a modern day company secretary is to be an adviser to the Board, especially on issues such as reputational risk.

The company secretary should be able to do this as they are probably the only person in the company that has an overview of the whole organisation. This is because the company secretary should be involved in many of the major business processes, strategy development, monitoring and evaluation, risk management, human resource, liaison with stakeholders, management and the Board, production of the company's Annual Report and Accounts and other periodic reporting, legal and governance compliance, among them.

An effective company secretary should be a 'bridge' for information, communications, advice and arbitration between the different

governance parties, both within and externally to the organisation. These include the company's owners, its stakeholders, the Board, the Management Team and individual members of the Board and Management Team. This allows the Company Secretary to provide advice to the Board on all aspects relevant to the decision-making process including reputational risk.

The company secretary is often termed the 'conscience of the company' as they are required to protect the reputation of the company, some would claim its most valuable asset. They do this through acting with integrity and independence ensuring that both the Board and the company comply with not just the 'letter' but also the 'spirit' of the law, the company's values and promises and the company's license to operate.

When the role of the company secretary is combined with that of another, for example the Head of Legal, it is argued that this compromises the independence of the company secretary as they are answering to management as well as to the company.

Best practice to protect the independence of the company secretary and allow them to give unpalatable advice from management's point of view to the Board is to have the appointment and any removal confirmed by the Board as a whole. Often the company secretary will also have a reporting line into the Chairman.¹

A recent study in the UK criticized many company secretaries for not being 'commercially minded' or aware. This they saw as being an important feature of the job especially when advising the Board. To be commercially aware, an individual must understand the business they are in, and be able to advise the Board so that they can make good practical decisions. To be commercially aware a company secretary should therefore make sure they:

1. Understand how their company makes money and creates value

2. Understand what their company needs, now and in the future, so that it continues to make money and create value

3. Have a thorough understanding of their organisation's competitive advantage

4. Keep up to date with the industry/sector in which their organization operates.

Governance Professional

It is recognized best practice that to carry out their duties effectively as the governance professional a company secretary should hold a senior position in an organisation not a clerical one, be commercially minded and be appointed and removed by the Board.

Being in a senior position will enable the company secretary to provide essential practical support to the Chairman and other members of the Board, both as a group and individually, before, during and between Board Meetings. In addition to meeting management, the Secretary should also be responsible for ensuring that:

1. Good Board Practices are put in place. These include ensuring that:

- a. The roles and authorities of all governance parties are clearly defined and that the parties are aware of them and their rights, powers and liabilities

- b. The board is well structured and has the appropriate composition and skills

- c. There is an annual evaluation of the Board, any Board Committees and the individual members of the Board which results in an action plan, key performance indicators and training for all those involved.

2. The Company is transparent in all its activities whether this is its communications internally and externally, disclosures, recruitment processes, contractual arrangements etc.

¹ Elevating the Role of the Company Secretary – Lessons from the FTSE All Share may 2012 The All Party Parliamentary Corporate Governance Group.

3. That there is an effective control environment in place within the organisation. This could include:

- a. Establishing an independent audit committee or ensuring that audit issues are brought to the Board's attention.
- b. Assisting the board to evaluate the effectiveness of the risk management framework including internal control procedures
- c. Liaising with the internal and external auditors and helping the Board assess their performance and independence.
- d. Liaising with management to ensure that effective management information systems are established to create a flow of information to the Board for effective decision-making.

4. The company behaves as a Good Corporate Citizen. This should include:

- a. Ensuring that the company complies with the 'spirit' not just the 'letter' of all relevant laws,

regulations, standards and codes, thus helping to protect the reputation of the company

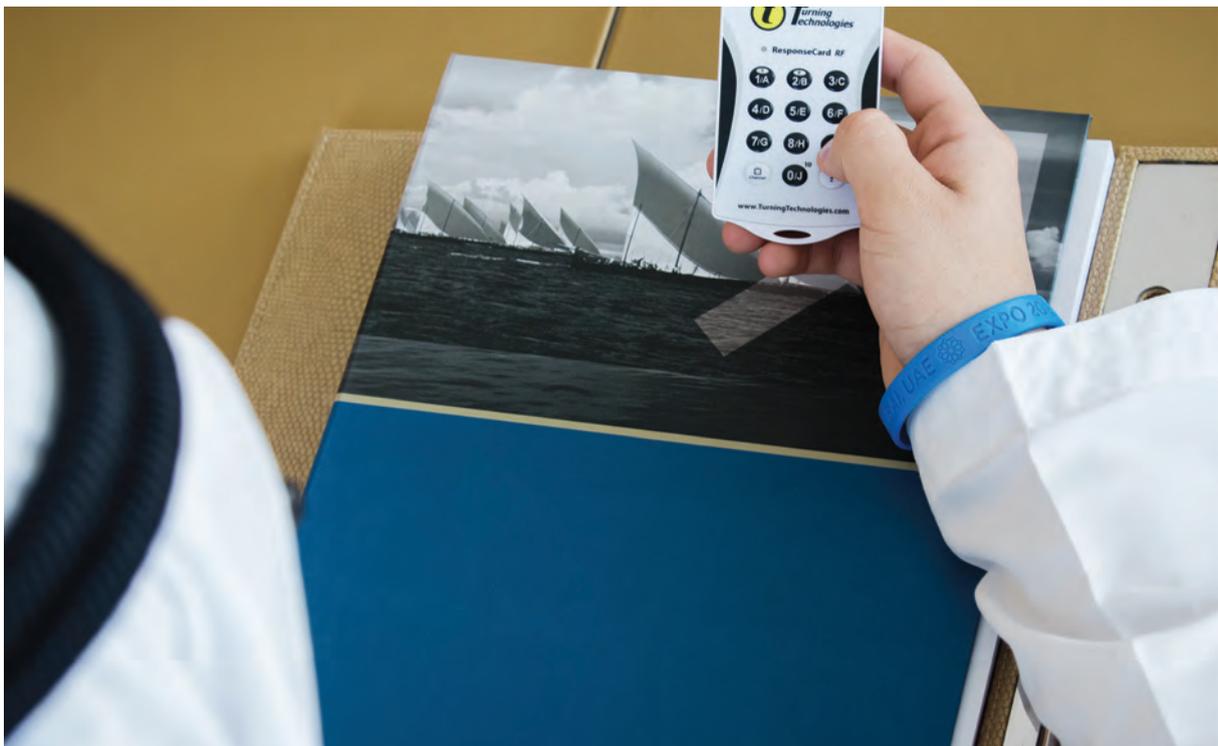
- b. Helping the Board to develop an ethical culture based on shared values and a code of ethics applicable internally and also externally through the supply chain.

- c. Advising the Board on how ethical behaviour should be rewarded

- d. Assisting the Board to consider the economic, social and environmental factors for the company and how to increase the positive and lessen the negative effects of each

- e. Promoting the long-term view of value creation and sustainability

5. The company is committed to good governance. As the primary governance professional the company secretary should be very familiar with a country's corporate governance framework including its code of corporate governance. The company secretary has responsibility for advising the Board not just on the letter of the Code but also on 'spirit' of it. A commercially minded company secretary should



be able to advise a Board on how corporate governance can be applied as a benefit to the organization not just as a mechanism for 'checking boxes' on a list of requirements in the Code.

Communicator for the Board

Between Board meetings the company secretary should be the focal point for communications between the Chairman and members of the Board and between members of the Board and Management. S/he is at the centre of the decision-making process and is key to the efficiency and effectiveness of the Board and hence the smooth running of the company.

A company secretary should have a close relationship with their Board and individual Board members. S/he should also have a close relationship with management especially the Chief Executive Officer as they often form a bridge between the two. This is why it is important for a company secretary to have strong diplomatic and negotiation skills.

The company secretary is often also the primary point of contact for the Company's owners and is responsible for the maintenance and management of shareholder records, organising shareholder-related events such as Annual General Meetings, the paying of dividends, shareholder communications and producing and issuing the annual report and accounts.

Company secretaries also have a role in stakeholder management. They should be able to advise and assist their Boards on identifying which stakeholder interests and expectations are legitimate and how these stakeholder interests and expectations can be managed efficiently to protect the reputation of the organisation.

The Misunderstood Role

The problem is that the role of the company secretary is often misunderstood even by those who have the responsibility for carrying out the role. Unlike for lawyers, accountants and other professionals most countries do not prescribe that company secretaries have to be a qualified member of the global professional body 'The Institute

of Chartered Secretaries and Administrators'. They allow other professionals such as lawyers and accountants to carry out the role. These professionals often slant the requirements of the role to their own discipline's strengths, skills and experience. A qualified company secretary should be able to provide a 'holistic approach' encompassing all disciplines, legal, financial and strategic.

If a company secretary is senior enough, has the proper skills, is commercially minded, and most importantly has the backing of the Board they should be able to provide advice that helps a Board avoid the type of governance scandals we have had of late. I am not saying there will never be another scandal but at least Boards will be better informed. Having a properly qualified, commercially aware company secretary is of vital importance especially if organisations are to perform better and be more sustainable bringing the economic benefits through wealth and job creation to countries.

Boards also need to ensure that the governance role is not seen as purely a compliance role within their companies. Many companies are asking their lawyers to act as their governance professionals instead of employing a qualified company secretary as they see a corporate governance code as something to be complied with. Lawyers are used to complying with laws and regulations which are minimum standards. They often apply the same approach to governance and hence fail to protect the reputation of the company which may require the application of a higher standard than just the law. The recent PR issues at Starbucks Coffee Company are an example of this. The company complied with the laws relating to its tax liability in the UK. It did not, however, consider the potential reputational impact of not paying taxes in a country suffering from recession.

In conclusion it can be said that while the Board makes the policies and takes decisions, it is the company secretary that has the responsibility to ensure that they are in 'the best interest of the company' and that they are implemented by management as such it could be argued that the company secretary is the 'backbone' of the company and a very essential role in any kind of organisation.