

SYNERGY BETWEEN BOARD CHAIR AND CORPORATE SECRETARY

ARTICLE BY LOREN WULFSOHN



Loren Wulfsohn is an admitted attorney (South Africa) and has a master's degree in banking and stock exchange law. She has spent the last 17 years in various governance roles, including 10 years as the group secretary and head of governance of a major banking and financial services group on the African continent. She has been consulting on various strategic corporate governance matters for the past 20 months, in the private and not-for-profit sectors, both in Australia and Africa. She is now based in London.

In the commercial era of post financial crises and other global governance failures, the spotlight has firmly landed on the need to improve corporate governance in all bodies that are entrusted with a fiduciary responsibility to others. This is vital in order to regain trust and confidence in these entities as well as to ensure that past failings are not repeated. Focus on the activities of boards has received much of the attention. Out of the analysis, two role players emerge as being critical gatekeepers and facilitators for the new governance order –the board chairman and the company secretary.

The attention being given to these roles results from lessons learnt. A governance structure/framework that ticks all the boxes is not enough to meet governance objectives. Greater reliance is now being placed on the practical functioning of governance structures to ensure that shareholder interests are protected and that boards function in a way that will enhance value.

The chairman and company secretary have distinct yet symbiotic roles to fulfil in monitoring, fostering and ensuring the maintenance of best of breed governance practices within an organisation. The effectiveness of board processes and meetings is directly linked to how well these two role players are able to work together. As a consequence, their roles and the relationship between them warrants focus.

“Synergy: The interaction or cooperation of two or more organizations, substances, or other agents to produce a combined effect greater than the sum of their separate effects.”

The role of the chair

The role of the board chair is one of leadership. The tone from the top and the promotion of the

¹ <http://www.oxforddictionaries.com/definition/english/synergy>

highest standards of integrity and corporate governance are established by the chair. The chair is responsible and accountable for all aspects of governance and ensuring board effectiveness.

The UK Corporate Governance Code principles² ascribe responsibilities to the Chair including the following:

- Setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues;
- Promoting a culture of openness and debate by facilitating the effective contribution of non-executive directors in particular and ensuring constructive relations between executive and non-executive directors;
- Ensuring that the directors receive accurate, timely and clear information;
- Ensuring effective communication with shareholders;
- Ensuring that new directors receive a full, formal and tailored induction on joining the board; and
- Regularly review and agree with each director their training and development needs.

Role of the Corporate Secretary

The traditional role of the corporate secretary has been transformed over the past decade. It is no longer viewed as an administrative role, mainly responsible for procedural aspects of board meetings including the taking of the minutes. The corporate secretary has a plethora of functions to fulfil, the majority of

which provide direct support to the Chair in the achievement of governance objectives:

Setting of Agendas:

Together with the Chair, and in consultation with the Chief Executive, the corporate secretary plays a vital role in establishing the work plan for the Board, including the setting of agendas. A work plan will take a holistic view of what needs to be achieved by the board in the short to medium term and establish a schedule of how this will be achieved by the board. Assisting with the setting of agendas encompasses the correct positioning of strategic issues or matters for decision to provide adequate time for challenge and discussion. It has been said that the "effort made by a chairman to ensure that meetings are properly conducted may well be the most valuable contribution he makes to the good of his company."³ The assistance provided by the corporate secretary to the Chair to meet this responsibility includes meeting logistics as well as facilitating the management of time, attendance and materials to ensure that the Chair and board can focus on matters placed before it for consideration;

Information Flows:

The corporate secretary assists the Chair by ensuring that the information made available to the board is accurate and distributed in sufficient time to afford the non-executive directors the opportunity to review the information and challenge proposals placed before it for consideration. Other key information flows which are the responsibility of the corporate secretary are those between board and board committees and between the board and management;

Scribe:

Taking minutes remains a critical element of the corporate secretary's function. The accurate

² Section A3 and Section B;

<https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-2014.pdf>

³ Dixon, Stanley; "The Art of Chairing a Meeting", Accountants Digest, Winter 1975/76

recordal of key discussions and decisions and the maintenance of “corporate memory” are fundamental functions. This is one way in which the Chair can rely on decisions being properly recorded, implemented and followed-up by management;

Compliance:

The corporate secretary assumes responsibility for monitoring the directors’ individual compliance with any relevant regulations/company policies. This includes maintenance of registers for such things as conflicts of interest and related party transactions;

Board Renewal:

In addition to being responsible for the regulatory and legislative processes around an appointment, the corporate secretary can provide assistance to the Chair in board renewal. By helping to identify current skills on the board and those required to fulfil strategic objectives, the corporate secretary will enable a greater understanding of priority areas for recruitment. The corporate secretary can also assist with the recruitment process;

Education - Induction and Ongoing Training:

Together with the Chair, the corporate secretary is responsible for developing an induction programme for all new directors, tailored to individual needs where relevant. This extends to developing and overseeing the implementation of an ongoing education programme to ensure that the board members are kept apprised of changes in legislation and regulation as well as any relevant issues impacting the organization;

Board Evaluation:

The corporate secretary can assist the Chair and the Nominations Committee in both the selection of a relevant methodology and implementation of the process, including feedback;

Liaison with management:

The company secretary is uniquely positioned with the board and can provide invaluable insight into board thinking for management. This in turn ensures that the information provided by management to the board is fit for purpose. The corporate secretary can also mentor management with little exposure to the board on how to present or the type of information required to be provided to the board to meet its expectations;

Advice:

The corporate secretary assists the Chair by providing independent advice to each board member/the board collectively on all matters relating to governance. This would include the maintenance of a policy and procedures to enable board members to seek external independent advice when required; and

External communication with shareholders:

The corporate secretary assists the Chair in preparing for various shareholder or stakeholder engagement including the AGM, circulars and other public reports. In light of the development of international investor codes of governance, the corporate secretary, in conjunction with the finance director or investor relations team, can facilitate relevant discussions with the Chair or Board Committee chairmen.

Relationship between the Company Secretary and the Chair

Key to the success of the corporate secretary is the ability to build relationships with shareholders and stakeholders, the board members and most importantly, the Chair. The relationship with the Chair is a precondition to the corporate secretary’s effectiveness in all other areas of responsibility.

The unfortunate nomenclature of “secretary” together with a historical perspective of the role has, in some jurisdictions, contributed

to the positioning of the corporate secretary as an administrative function with low levels of empowerment and more importantly, no direct relationship with the Chair.

Guidance from the Financial Reporting Council sets out the important support role of the corporate secretary who is not only important for the effectiveness of the boards and its committees operations, but the company secretary “should report to the chairman on all board governance matters.”⁴

Despite the growing body of work highlighting the importance of the corporate secretary function, the role remains inadequately positioned in some jurisdictions. There are a couple of prerequisites to ensure effective discharge of secretarial responsibilities and these include:

- The role being afforded the right stature within the organisation, including being sufficiently empowered to conduct the role in an unfettered manner;
- Sufficiently independent reporting lines to ensure maintenance of objective oversight in pursuit of implementation of governance objectives; and
- Fostering a direct and constructive working relationship with the Chair of the board.

The corporate secretary is a critical component of the board team. In some jurisdictions, the company secretary is regarded as an officer of the company and liable for the same fiduciary duties as directors.

Working relationships are personal to the parties involved and to a large degree involve chemistry together with a will to make them work. It is important that the company secretary builds a relationship with the

Chair. It is also necessary for chairmen to recognise the vital governance role played by the corporate secretary and to contribute to the establishment of the relationship. A solid working relationship built on mutual respect, trust and shared objectives will inevitably enhance the overall performance of the board.

Conclusion

If the Chair is to succeed and create a board that maintains the highest levels of integrity and probity, it is critical that the role of the company secretary and the Chair’s relationship with the corporate secretary be a focus.

This may mean the need to upskill an incumbent corporate secretary to fulfil the new governance tasks being asked of the profession. Or, it may require the Chair to alter his perspective on the role of the corporate secretary. Either way, the creation of a synergetic relationship is important for improving board performance and effectiveness.

A dynamic, effective board requires the company secretary and chair to work together to create optimal governance outcomes. Their individual governance responsibilities are inextricably intertwined and their relationship needs to reflect this.

⁴ Financial Reporting Council: “Guidance on Board Effectiveness” at 2.1 (March 2011)
<https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Board-Effectiveness.pdf>