



THE CORPORATE SECRETARY: THE GOVERNANCE PROFESSIONAL



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FOREWORD

Corporate secretaries have an important role to play as governance professionals in all types of organizations in the private, public, and not-for-profit sectors. Governance is more than just complying with laws, regulations, standards, and codes; it is also about creating cultures of good practice. This means that corporate secretaries need more than the technical skills and experience to know *what* corporate governance practices are needed in an organization and *why*. They also need the emotional intelligence, skills, and experience to ensure that they know *how* the practices typically would be implemented to work effectively.

The modern corporate secretary is no longer a “mere servant,” as often implied in earlier job descriptions and early legal text, but is now expected to provide professional guidance to shareholders, boards, individual directors, management, and other stakeholders on the governance aspects of strategic decisions. The corporate secretary typically would act as a bridge for information, communication, advice, and arbitration between the board and management and between the organization and its shareholders and stakeholders. To fulfill this role, the corporate secretary needs to be fully aware of the powers, rights, duties, and obligations of all of these groups. In addition to providing advice and communication, the corporate secretary often called on to create and manage relationships between these different players in the corporate governance system.

To carry out this role effectively, a corporate secretary needs to act with the highest integrity and independence in protecting the interests of the organization, its shareholders, and others with a legitimate interest in the organization’s affairs. This level of responsibility calls for a thorough knowledge of the business environment in which the organization operates as well as of the laws, rules, and regulations that govern its activities.

Corporate secretaries also typically would provide practical support to the chairman of the organization to ensure that board meetings are managed effectively. This typically would entail assisting the chairman with agenda development, ensuring that meetings are conducted in line with good

governance and statutory and regulatory requirements, drafting minutes, and following up on implementation of decisions made by the board.

This Handbook offers a concise and practical description of *how* corporate secretaries might carry out their role to improve governance in their organizations. It can also serve as a guidance tool for both IFC clients and advisory staff to clarify the potentially expansive duties of corporate secretaries and to help them assist corporate secretaries in understanding what skills they require to fulfill their roles.

The Corporate Secretary: The Governance Professional Handbook is based on IFC's publication, *Corporate Secretaries Toolkit*, which provides a portfolio of modules that cover topics of interest and value to those carrying out the role of corporate secretary and to the companies and organizations they serve. It also provides trainers with materials and instructions for conducting training. For more information, visit http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+CG

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CHAPTER 1:

Role as a Governance Professional

“In today’s world, the role of the Corporate 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 great focus.”

—David Jackson, Corporate Secretary, BP plc

More and more countries are introducing the position of the corporate secretary, whether in law or through regulations, standards, or codes of corporate governance. The reason is that the corporate secretary is the person responsible in an organization for:

- Identifying *what* and advising *why* certain corporate governance best practices should be adopted by the organization. This may be as a result of compliance with laws, regulations, standards and codes or because the practices make good operational sense for the organization.
- Implementing within the organization those best practices through the creation and maintenance of cultures and relationships. This usually requires the corporate secretary to answer the *how do we implement* question, which requires corporate secretaries to have emotional-intelligence skills as well as technical skills.
- Facilitating communication between board members, the board and management, the chairman and the chief executive officer, the company and its shareholders, and the company and its stakeholders.

Listed companies are required to have corporate secretaries. They are also found more and more in non-listed companies and in organizations in the

public and not-for-profit sectors. This is because these organizations are also recognizing the importance of corporate governance and of having someone responsible for it within their organization.

A recent study in the United Kingdom¹ determined that for corporate secretaries to carry out their role effectively they should be “commercially minded” or aware. This they saw as being an important feature of the job, especially as they advise the board on governance issues. To be commercially aware, an individual must understand the business he or she is in and make good practical decisions as a result. For the corporate secretary, this means having the ability to advise the board in a way that supports the board in making effective decisions. To be commercially aware a corporate secretary should be able to do the following:

- Understand how their organization makes money and creates value.
- Understand what their organization needs, now and in the future, to continue to make money and create value.
- Have a thorough understanding of their organization’s competitive advantage.
- Keep up to date with the industry/sector that their organization operates within.

Terms and Titles

The term “company secretary” is commonly used in the United Kingdom and other commonwealth countries. In the United States, Canada, Eastern Europe, and post-Soviet states, the term “corporate secretary” is more common. Another commonly used term is “board secretary.”

Although the role of the corporate secretary has been around for over 100 years, it is not well known among the general public. Many corporate secretaries tell stories of having been mistaken for an executive administrative assistant instead of someone carrying out a senior professional role in the organization.

The U.K. study mentioned above² found that many corporate secretaries thought that the role is compromised by the term “secretary” in the job title.

¹ “Elevating the Role of the Company Secretary: Lessons from the FTSE All Share” (The All Party Parliamentary Corporate Governance Group, May 2012).

² *ibid*

To deal with this confusion, many organizations are coming up with alternative titles, the most common being the corporate governance officer or director.

Corporate Governance

Corporate governance best practices as we know them today were first introduced following corporate scandals in the United Kingdom in the early 1990's.³ They were developed with listed companies in mind. All organizations, however, practice governance and can learn from the best practices that are available. Figure 1.1 explains why. All organizations have a purpose and want to be successful in attaining that purpose. The question is *how do they get there?*

Figure 1.1: Organizations and Corporate Governance



³ Cadbury Report 1992.

Organizations need to put in place structures, policies, and procedures that comply with best practice. This on its own is compliance and doesn't create good governance. For good governance to be present, the people who work in the organization need to apply/practice these structures, policies, and procedures to create a culture within the organization that enables them to work effectively. This in turn leads to the organization being successful. For example, *compliance* is putting in place a code of ethics; *governance* is about creating an ethical culture. As we saw from Enron, they do not always go hand in hand.

A good corporate secretary should be able to assist the organization with identifying what should make up the correct infrastructure for each organization. In addition, and some would say more importantly, once the correct infrastructure has been identified, the good corporate secretary should be able to assist the organization with the creation of the culture and the relationships required to ensure that the infrastructure is implemented, managed, and maintained effectively for the success of the organization.

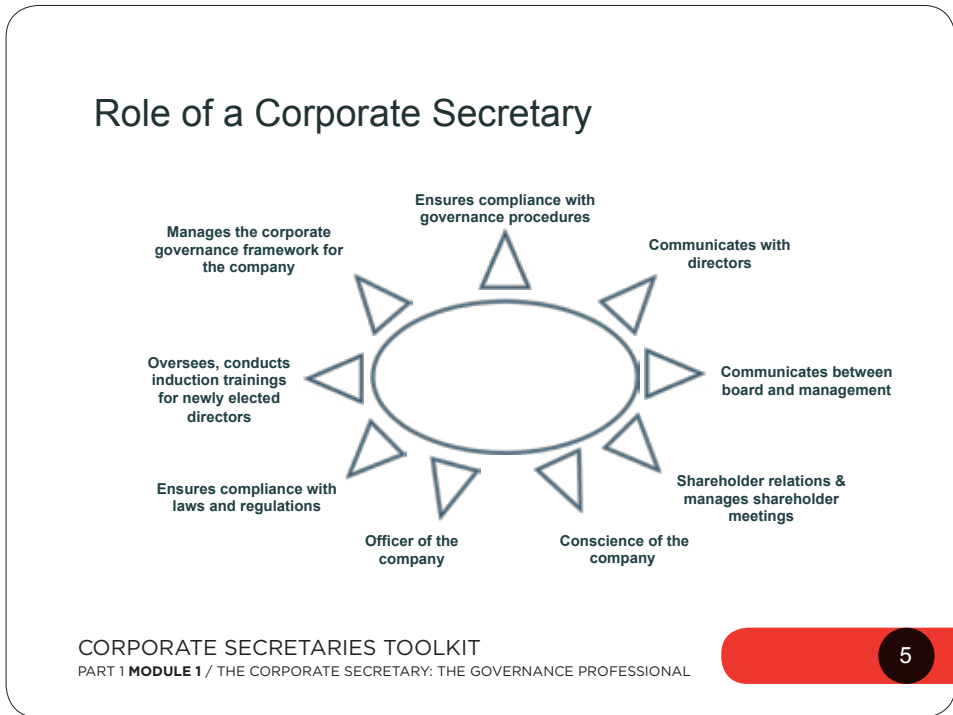
Duties of a Corporate Secretary

The duties of a corporate secretary will vary from organization to organization, depending on the type of organization, the sector it operates in, and the structures, policies, and procedures it adopts. Figure 1.2 shows some of the duties often carried out by the corporate secretary.

Whatever type of organization the corporate secretary works for, he or she usually plays a valuable role as a "bridge" for information, communication, advice, and arbitration between the board and management and the organization and its stakeholders, including its shareholders. The corporate secretary can, among other things, help management understand the requirements of the board, help the board understand the challenges faced by management in meeting the requirements of the board, and help the organization manage stakeholder relations.

The role of the corporate secretary, therefore, involves, in addition to a compliance role, the management of people to create the appropriate cultures to enable the corporate governance structures, policies, and procedures to work effectively. Unfortunately, as evidenced by corporate governance scandals across the globe, many carrying out the role of governance professional within organizations do not get this. They believe that just by complying with best

Figure 1.2: Slide 5 from IFC's *Corporate Secretary Toolkit, Part 1 Module 1/The Corporate Secretary: The Governance Professional* presentation.



Source: IFC Corporate Secretary Toolkit, 2013.

practices they are carrying out good governance. In many countries, this is mirrored by boards of directors believing that good governance is all about complying with best practices. As a result, their organizations often fail to reach their true potential.

Qualifications and Skills of Corporate Secretaries

Some countries have requirements in law, regulations, standards, or codes for the qualifications of those carrying out the role of corporate secretary. These include members of professional bodies such as ICSA (Institute of Chartered Secretaries and Administrators), the global professional body for corporate secretaries, lawyers, and accountants.

Figure 1.3: Slide 10 from IFC's *Corporate Secretary Toolkit, Part 1 Module 2/The Corporate Secretary: Foundations for the Job* presentation.



Skills Required

- Respectful, diplomatic, and effective communication
- Active listening
- Bringing issues to the surface, especially those relating to reputational risk
- Describing common concerns and interests
- Generating alternative solutions
- Respecting confidences
- Appreciation for all parties
- Disagreeing constructively
- Emphasizing commercially minded approaches

CORPORATE SECRETARIES TOOLKIT
PART 1 **MODULE 2** / THE CORPORATE SECRETARY: FOUNDATIONS FOR THE JOB

10

Source: IFC *Corporate Secretary Toolkit*, 2013.

Emotional Intelligence Skills

Whatever the qualifications of the person chosen for the position, it is important that, in addition to technical skills, the individual has strong emotional intelligence skills. Figure 1.3 provides a list of these types of skills.

In their book, *Emotional Intelligence 2.0* (published in 1999), Travis Bradberry and Jean Greaves claim that 90 percent of top performers score highly in EQ, and that it is twice as important as IQ in getting to where you want to be. They suggest that EQ is the foundation for many critical skills, including decision making, change tolerance, communication, anger management, stress tolerance, presentation skills, trust, assertiveness, and empathy.

To carry out their roles effectively corporate secretaries therefore need to have skills that enable them to understand their own and other people's emotions and behaviors, and that assist them with self-management and relationship management. They should use these skills to guide their behaviors and the advice they give to the owners, boards, and management of the organizations within which they work.

Combined Role

Because of the compliance element of the corporate secretaries' role, organizations in many countries combine the role with that of head of legal. If the corporate secretary role is combined with another role, care should be taken to see that the governance role is not compromised. Both the board and the corporate secretary should ensure that there is no conflict between the functions performed in both positions. For example, a general counsel who is also given the role of the corporate secretary will often have to take sides in his or her legal role to represent the particular interests of the company. Although he or she may be complying with the letter of the law and in the interests of management, he or she may not be acting in the best long-term interests of the company. This would be inconsistent with the corporate secretary's governance role, which requires impartiality when advising on governance issues. It may also prevent a corporate secretary from speaking out against bad governance or unethical practices.

Appointment/Departure of the Corporate Secretary

It is best practice for the corporate secretary to be appointed and removed by the board, which should ensure that the person appointed is capable of carrying out the functions of the role.

The corporate secretary typically is an employee of the company; so on appointment, a contract of employment will have to be drafted and signed. In countries where there is directors and officers indemnity insurance, the corporate secretary should be included. There may also be regulatory filing requirements to be complied with on appointment and departure of the corporate secretary.

The removal of the corporate secretary by the whole board protects corporate secretaries in situations where they could face dismissal as a result of acting as the "conscience of the company" and disagreeing with management or a board

CASE STUDY: STARBUCKS

Starbucks “chooses” to pay tax for first time in five years

STARBUCKS has made its first payment to HM Revenue and Customs since 2008. The company said it had “listened to customers” and had paid GBP5m, with another GBP5m to be paid later this year and a further GBP10m in 2014, The Guardian reports.

Starbucks paid just GBP8.5m in tax between 1998 and 2008, and nothing since then, despite total sales of GBP3bn over the past three years. That’s because the company has made use of perfectly legal tax avoidance techniques and remains, on paper, unprofitable in the UK. Indeed, the chain is due to close up to 30 of its shops around Britain this year because of tough competition from rivals like Costa.

When its various tax-avoidance techniques were revealed last year, the company faced a barrage of criticism and a widespread boycott of the brand, with UK Uncut organising protests outside a number of branches.

In January, David Cameron told the World Economic Forum in Davos that tax-avoiding companies should “wake up and smell the coffee.” He never mentioned Starbucks by name but the comment was widely taken as a dig at the coffee chain.

Despite its continued insistence that it is loss-making in the UK, the company decided to pay the GBP20m corporation tax in an attempt to “please” customers. In a statement, the company said: “We felt that our customers should not have to wait for us to become profitable before we started paying UK corporation tax.”

Source: Extract from 'The Week' (www.theweek.co.uk) June 24, 2013.

member on a particular course of action. When corporate secretaries leave the position, they usually are asked to attend the board meeting and explain the reason(s) for leaving. This enables them to alert the board to any governance issues that may have contributed to the decision. Any governance reasons given should be recorded in the minutes.

Reporting Lines

An ICSA Guidance Note on “Reporting Lines for the Company Secretary” states, “If the Board fails to protect the integrity of the Company Secretary’s position, one of the most effective inbuilt internal controls available to the company is likely to be seriously undermined. The establishment of appropriate reporting lines for the Company Secretary will normally be a crucial factor in establishing that protection.”

The corporate secretary should be responsible to the board and should be accountable through the chairman on all matters relating to his or her core duties in relation to the board. In civil law countries, best practice would be for the corporate secretary to report to and be accountable for board duties to the supervisory board.

A corporate secretary may have other non-core duties. Depending on the duties assigned, the corporate secretary may report to a member of the management team such as the general counsel, the chief executive officer, or the chief financial officer.

When a corporate secretary reports to the CEO, the board members may think they are not receiving “independent,” unbiased governance advice and that the corporate secretary is spending too much time on management issues. To avoid putting the corporate secretary in this position, some organizations create a buffer and have the corporate secretary reporting to another member of the management team and/or ensure that the corporate secretary’s remuneration and benefits are decided by the board or the remuneration committee of the board.

When the corporate secretary only reports to the board, he or she can sometimes feel isolated, especially if the chairman is non-executive or part-time. There is also the risk, real or perceived, that a second line of communication has been established in competition to the main board-CEO line.

A recent United Kingdom study⁴ found that most corporate secretaries in listed companies reported to the CEO, but there was often a dual reporting responsibility, with the chairman also being identified 50 percent of the time. The advantage of reporting to the chairman was stressed by some, who felt that such a reporting line assists with the independence of the role. The lower down the FTSE the company was, the more likely that the corporate secretary reported to the CFO—from 13 percent of the time in the FTSE 100 to 31 percent of the time in the FTSE Small Cap. A number of respondents mentioned that, although they reported to a member of management for their “pay and rations,” their practical reporting lines were to the chairman and CEO.

Those reporting to the corporate secretary will differ from organization to organization, depending on the duties assigned to the corporate secretary and the size of the organization. In larger organizations, a corporate secretary may have a department of qualified corporate secretaries and support staff reporting to him or her. In this case it is common to find titles such as deputy secretary, assistant secretary, and secretarial assistant.

In addition, corporate secretaries often have a plethora of other departments reporting to them, including, for example, the company’s archive department, pensions, administration department, and so on.

Performance Appraisal of the Corporate Secretary

The performance appraisal of the corporate secretary should be carried out by the chairman of the board, with assistance from the Human Resource function.

A 360-degree appraisal, where feedback comes from members of the corporate secretary’s immediate work circle, including the board, is beneficial. Most often, 360-degree feedback will include direct feedback from an employee’s subordinates, peers, and supervisor(s) as well as a self-evaluation. It can also include, in some cases, feedback from external sources, such as customers and suppliers or other interested stakeholders.

Outsourcing the Role of the Corporate Secretary

Some organizations choose to outsource the role and functions of the corporate secretary to an independent practitioner or a law or accountancy firm.

.....
⁴ Elevating the Role of the Company Secretary.

REASONS TO/NOT TO OUTSOURCE

Reasons to Outsource

1. To ensure that all of the statutory and regulatory requirements are met by a specialized firm. These requirements in some countries are changing regularly as new laws and regulations are introduced.
2. To reduce costs of employing a person with a specific qualification, especially in a company start-up.
3. To fulfill a requirement that company documents be filed on line, which requires a PIN for security reasons. There may also be requirements that filings be done by a professional firm. For smaller companies, it may be more cost effective or efficient to outsource the role to a professional firm.

Reasons Not to Outsource

An in-house corporate secretary:

1. Acquires an in-depth knowledge and understanding of the company and its history and also develops relationships with the board and management that an external firm lacks.
2. Is available at all times to discuss corporate governance issues. An outsource firm may be much slower in providing assistance or response to questions.
3. Offers a wide range of services and is able to take on other responsibilities in a start-up or smaller company. For example, ICSA educates people in management, law, and accountancy.
4. May provide support that is difficult for an external firm to provide, for example, assisting the chairman in preparing for meetings.
5. Can truly act as the “conscience of the company” and has no conflict in that he or she does not do other work for the company, such as providing legal or accountancy services.
6. Can be relied on to maintain confidentiality. In-house corporate secretaries can in many cases be held liable for any breaches in confidentiality, whereas this may be problematic in cases of an outsourced service.

Where the role of the corporate secretary is outsourced, the directors maintain responsibility for the duties that should be carried out by the corporate secretary if one were employed in-house. Therefore, there needs to be oversight of the third party fulfilling the role.

CHAPTER 2

Role in Preparing for Meetings

In preparing for board meetings, the corporate secretary would typically be responsible for the actions described below.

1. Setting the dates for the board meeting after liaising with the chairman and CEO.

The corporate secretary should maintain an annual calendar so that members of the board and those preparing information for the board can know when items will be considered by the board. It also enables the board to schedule additional items and reallocate items to different meetings as circumstances change.

In compiling the annual calendar, the corporate secretary should ensure that it fits the business cycle of the company. Management should not be stopping its ordinary business to prepare reports for the board. The reports should be part of the business reporting cycle. Many companies just say “quarterly board meetings” and pick a date without considering the additional pressure they are putting on management to produce reports out of the cycle.

2. Ensuring that the board is properly constituted and that directors have been properly appointed and are operating within their terms.

Failure to do so will invalidate the meeting and any decisions taken.

3. Notifying the directors of the time, date, and place of the meeting.

Corporate secretaries can notify directors of meetings through an annual calendar of dates, which for larger companies can be in a three-year cycle, or through reminders to directors closer to the time. Reminders should note the venue, date, and time of the meeting. Some companies are required in their constitutions or by statute to send out notices to directors before each board meeting. Other companies do not require notice to be sent to directors overseas.

4. Meeting with management and the chairman to agree on items for the agenda, and developing the agenda for the meeting.

The corporate secretary prepares the first draft of the agenda, drawing from items on the annual calendar and discussions with management. This draft is then discussed with the chairman, who has the final say on what is on the agenda. The corporate secretary may have to manage negotiations between a CEO who wants certain items to be on an agenda and a chairman who has decided that in the interests of time they can wait to the next meeting.

When drafting agendas, the corporate secretary should attempt to find the right balance between strategic and operational/administrative matters.

A good corporate secretary will identify the six or seven things that the board needs to address each year and, using a board calendar, allocate time for discussion of these items across the scheduled meetings. Maintaining flexibility in the agenda will allow for the unexpected events requiring board attention that occur throughout the year. One board meeting a year should focus on strategy. Often boards will take this opportunity to go on a board retreat and visit operations, customers, or suppliers. The corporate secretary should be involved in identifying locations and making arrangements for the board retreat.

The order of business on the agenda should deal with procedural, compliance, and operational issues first, allowing the rest of the time to be spent on strategic issues. During the meeting, the corporate secretary should assist the chairman in minimizing the time spent on the first category of issues by jotting down on the chairman's agenda indicative timings for each of the items. This allows the chairman to avoid stifling debate while at the

same time seeing whether all issues will be dealt with or whether some will have to be dropped and dealt with at a future meeting.

The corporate secretary should keep an eye on the “matters arising” list. If it is getting too long it may mean that the board is not operating effectively or management is not implementing the board decisions. The corporate secretary should draw the attention of both the chairman and the CEO to the length of the list and diplomatically help discover the reason it is getting so long. A plan should then be put in place to reduce the list.

Some companies use a “Corporate Secretary’s Report” to deal with matters of an administrative nature that need board approval. The chairman can assume that board members have read the report and ask them to approve the recommendations within it. There should be little if any debate on it.

The corporate secretary’s role is to help the chairman manage the meeting. Best practice is that “any other business” should not be included as an agenda item, because that allows items to be presented to the meeting without the board being properly prepared. If a board member has items to be presented to the meeting that are not on the agenda, he or she should brief the corporate secretary, who can then talk with the chairman prior to the meeting to enable the chairman to decide whether the issue should be dealt with at this meeting or at the next or at an emergency meeting. The chairman should then, under “chairman’s comments”, inform the board about the issue and how it will be dealt with. This procedure enables the chairman to keep control of the meeting.

5. Advising those preparing papers of when they need to submit their papers.

This information should be included in the annual board calendar.

6. Making sure that the board receives information—in a format that is easily digestible—before a board meeting and that the board members are briefed before a discussion takes place or a decision is made by the board.

Depending on the type of company, the corporate secretary may also check to be sure management has carried out all the relevant consultations before bringing a proposal to the board. Many corporate secretaries have introduced document-execution processes that require managers to get sign-off on a proposal from specified functions such as finance or legal before bringing a proposal to the board. This prevents ill-informed proposals from coming to the board and avoids a situation where the board approves a proposal only to find that there is no budget for it. Good corporate secretaries should advise managers to consult widely on their projects so that they cover all the angles and gain the cooperation required for their proposal.

The purpose of board papers is to inform or stimulate debate and to seek approval. Papers for the board should be clear and concise, be in understandable language, answer all of the questions that directors are likely to ask, and should not include organizational jargon or acronyms. The corporate secretary should ensure that there is a standard format, length, and style issued for board papers. Some companies color code the papers: yellow for finance, blue for legal, and so on.

One common format for a two-page board paper or an executive summary of a report is a “STPRA” memo.

| | | | |
|----------|----------|------------------|--|
| S | = | SITUATION | Briefly describe the background of the issue. |
| T | = | TARGET | Briefly describe the goal of the proposal. |
| P | = | PROPOSAL | Briefly describe how you are going to achieve your goal. |
| R | = | RISKS | Briefly describe the risks associated with doing and/or not doing the proposal. |
| A | = | ACTION | Outline what action you want the board to take. |

In addition to papers supporting items on the agenda, the corporate secretary may also circulate specialist reports, competitor information, press releases, and market-share information that will help assist the board make informed decisions.

7. Organizing the attendance of presenters and advisers.

Boards may also meet with non-board members, consultants, or representatives of stakeholders from within and outside the organization. A good corporate secretary will identify those stakeholder groups that have legitimate interests, monitor their activities, advise the chairman and be involved in arranging such attendance at meetings.

8. Collecting and distributing the papers for the board meeting.

The corporate secretary should work with the chairman to determine when papers for board meetings should be distributed. Best practice is seven days before a meeting. However, papers may need to be distributed earlier if there are overseas directors on the board or there is a statutory requirement. With the agreement of the board, in smaller companies papers may be distributed within a shorter time. A good corporate secretary will know the directors' preferences for receiving board papers. Some are happy with electronic copies, and others prefer hard copies.

The corporate secretary should consider the sensitivity of the papers to be distributed. It may be in order to send hard copies of the documents by post or courier. Where documents are very sensitive, the corporate secretary may arrange for the documents to be hand-delivered by one of the company's staff.

The corporate secretary should advise directors to be careful where they leave and read their board packs. Board packs should not be read in public places—including airplanes. Sensitive material may need to be encrypted.

9. Organizing the room bookings and other housekeeping arrangements, such as soundproofing, security, temperature, refreshments, table shape, chairs, seating arrangements, and board etiquette.

See page 21 for more information on logistics.

10. Organizing any associated events, such as lunches, dinners, or committee meetings.

Dinners/lunches can boost the team spirit of the board, allowing board members to get to know each other and to discuss important issues prior to making a formal decision at the board meeting. The corporate secretary should ensure that these events do not become an extension of the board meeting. Issues can be discussed, but no decisions should be taken. If decisions are taken, the corporate secretary should inform the chairman, note the decision for the minutes, and ensure that any statutory and regulatory requirements are dealt with within the prescribed time frames.

The corporate secretary when setting the dates for board meetings should be aware of the board's preference regarding the time between board committee meetings and board meetings. Many boards like to have time between the committee meetings and the board meeting so minutes can be prepared and circulated for the board members to review before the board meeting. However, if committee members have to travel long distances, it may be more appropriate to have the committee meeting the day before the board meeting. In this case, the corporate secretary should help the committee chairman prepare a report summarizing the business of the committee and any recommendations for board approval.

Best practice requires that non-executive directors meet at least annually on their own to discuss issues relating to the performance of the CEO and the management team. These meetings are referred to in some jurisdictions as “executive meetings” of the board. The corporate secretary should coordinate with the chairman to arrange these meetings. As a quorum often is not present at these meetings, the corporate secretary should brief the chairman to ensure that decisions that have statutory/regulatory implications are not taken at these meetings.

11. Briefing the chairman prior to the meeting.

The corporate secretary should prepare a brief of the meeting for the chairman. Written in bullet format, it should include information on each item on the agenda—for example, whether the agenda item is for information or needs approval. It should outline the matters arising from the

previous meeting and give a brief update, to be dealt with on the agenda or to be dealt with at a future meeting.

12. Suggesting to the chairman or directors a pre-discussion of items on the agenda which require expertise that is not widespread on the board.

When items on the agenda require expertise that is not widespread on the board, the corporate secretary should suggest to the chairman or to the directors concerned that a pre-discussion take place on the issue to bring the board's knowledge to a level that an informed debate can be held and/or a decision can be made. Examples of areas where this may be necessary are Information Technology (IT), projects, reward packages for the CEO and other senior executives, and monitoring and evaluation (M&E) systems.

A major challenge for chairmen is how far to go in shaping discussions before the meeting. Best practice suggests that the more prepared the chairman and other members of the board are for the meeting, especially on contentious issues, the more effective the debate. However, the corporate secretary needs to assist the chairman in ensuring that board members are not pressured in any pre-discussions so that the decision is not a foregone conclusion.

13. Preparing any formal resolutions that need to be passed at the meeting.

14. Ensuring availability of any documents that might be referred to, such as accounts, memorandum and articles of association, and so on.

15. Checking that telephone numbers have been obtained and that the legal location of the meeting has been established (if this is an issue), if the meeting is to be held by telephone/video conference.

16. Ensuring that there is a quorum for the meeting.

17. Checking to see if any directors have potential conflicts of interest in the business to be considered at the meeting, discussing these potential conflicts of interest with the director concerned prior to the meeting, and then advising the chairman.

A decision will then be taken as to whether the director should be excluded from the meeting and have certain papers extracted from his or her board pack.

18. Checking that the board does not require independent professional advice on any agenda items.

Best practice provides that directors are entitled to independent professional advice. The corporate secretary should ensure that there is a policy in place for how directors obtain independent professional advice. This typically states that the corporate secretary would be the person responsible for arranging for the independent professional advice to be obtained following a request from an individual director or the board as a whole.

19. Organizing payment of allowances for directors to attend the meeting.

20. Checking 30 minutes before the meeting to see that the projector and laptop (if they are to be used) are operating properly.

The Corporate Secretary and Meeting Logistics

Where should you hold the meeting?

Most companies have a boardroom. For those that don't, the corporate secretary should seek out a convenient place for the board to meet. Some companies prefer to hold at least one meeting a year at an off-site location selected by the corporate secretary. There are mixed views on the wisdom of holding board meetings elsewhere than the boardroom. Those in favor cite the benefits of the board visiting other company locations to learn more about the company, what it does, and how it operates. Those against see it as a diversion of effort, costly, and often a logistical challenge.

Many companies spend a couple of days a year on a board retreat. The corporate secretary is responsible for arranging the venue for the retreat and for arranging any visits that accompany the board meeting.

Is your boardroom fit for the purpose?

The corporate secretary should ensure that the boardroom promotes effective decision making. Ideal conditions are a light, airy room with plenty of space, neither too hot nor too cold, a large enough table, comfortable (but not too comfortable) chairs, and projectors, screens, and other equipment in the right place. The directors should be able to see and hear each other. Oval board tables or horseshoe-shaped arrangements allow every director to see the other members of the board, but they can make hearing difficult for larger boards. The objective is for the board members to think only about the substance of the meeting.

Where should directors sit?

Best practice:

- The chairman should sit in the center of the table to emphasize the feeling of a team. A chairman sitting at the top of a table suggests a hierarchy.

- The chairman should also face the door to be able to see all comers and goers.
- The corporate secretary should sit next to the chairman to provide papers and prompts when required.
- The chief executive officer should sit next to the chairman to emphasize unity.
- Non-executive directors' and executive directors' seating should be mixed up. Having non-executive directors on one side of the table and executives on the other should be avoided, as it could reinforce the "them versus us" feeling.
- Directors should be encouraged to change their seats at each meeting. This helps build a team and also encourages cross-fertilization of ideas.

Confidentiality at the board

When choosing a venue for the board meeting, the corporate secretary may have to consider the issue of confidentiality. The venue will have to be checked for soundproofing. In extreme cases, the venue may need to be checked for listening devices and a Faraday ring may have to be installed. A Faraday ring is a mechanism that blocks listening devices. However, it also blocks signals for mobile phones, so the corporate secretary should be aware that by turning it on the board may be signaling to those in the building that there is a confidential meeting taking place, thus starting the spread of rumors. Wherever possible a screen for showing presentations should not be placed opposite a window where it could be seen from the outside. In extreme cases a special coating can be applied on the windows to stop those outside from viewing what is going on inside.

The corporate secretary and emergency meetings

By their nature these types of meetings are usually urgent, so timing is critical. A corporate secretary has three mechanisms for dealing with these issues:

Hold a board meeting by telephone or video conference.

The corporate secretary should find out whether a company is authorized to hold board meetings in this way. The authority to hold these meetings is usually found in the company's constitution, not in law. If the company is authorized

to hold such meetings, the corporate secretary then needs to organize the call, checking directors' availability and distributing papers and instructions for the meeting.

The corporate secretary may also have to check on where the meeting is deemed to take place when it is held electronically. Again this may be dealt with in the company's constitution, which may say that it is where the chairman is or where the majority of directors are. A common reason for this care is that directors do not want to be brought under the control of countries that will assess tax eligibility by whether "the management and control" of the company appears to be in their jurisdiction based on the number of board meetings held in their jurisdiction—even if the company is not incorporated there.

Hold an unscheduled board meeting.

The corporate secretary can advise the chairman to hold an unscheduled board meeting if a matter is material to the organization and requires the whole board to discuss it. If the matters to be discussed are confidential, then care may have to be taken to attract the least amount of attention. This may mean holding the meeting somewhere other than the boardroom. If another venue is chosen, then the corporate secretary may have to consider the logistical issues mentioned before. The corporate secretary may also decide whether to hold the meeting in person or over the phone.

Pass resolutions in writing.

A company may be able, either by law or within its constitution, to pass resolutions by circulating them in writing and having each director sign a copy of the written resolution, thereby indicating his or her approval of the resolution. Once the last director signs, the resolution can be dated and is deemed effective.

BOARD RETREATS

The corporate secretary plays a role in making sure that the retreats are a success by planning them well. Patrick Dunne in his book, *Running Board Meetings*, provides the following tips for successful retreats:

Tips for board Away Days

1. Be clear on the purpose of the away day and your desired outcomes.
2. Decide whether to use an external facilitator, and if so select one with experience relevant to the issues being discussed.
3. The chairman or CEO should brief the facilitator about the team dynamics, politics, taboo subjects.
4. External facilitators, if used, need to be credible with executive and non-executive directors; they are not there to lecture but to facilitate. They must be prepared to challenge the chairman and chief executive in the same way they are prepared to challenge other directors. They must be able to maintain a neutral approach but also be engaged and have a clearly defined process for running the day which combines an element of flexibility. Finally, they have to assist the chairman in generating the right atmosphere.
5. Decide whether there will be non-board members present, and if so brief them.
6. Hold the away day off-site.
7. Don't allow interruptions except in an emergency.
8. Don't start with an operational board meeting.
9. Participants should be prepared to challenge each other, in particular to surface differences—a key to success is the quality of the debate.
10. No one has a monopoly on wisdom, so no one should dominate the debate.
11. Responsibility for implementing actions arising should be clear.
12. Follow up and review the effectiveness of the day in the annual board review.
13. Finally, the “socializing” of the board builds a strong board, so ensure that there is sufficient time for this.

Use of Board Portals

A board portal is a Web-based workspace that allows directors to securely access board documents and collaborate with other board members electronically. Board portals can allow companies to provide directors sensitive material in a secure and timely fashion. With all of the necessary information in one central location, portals can cut down on travel, eliminate mailing and delivery hassles, increase communication among members, and make board materials easier to read. But the “always on” aspect of electronic tools also makes it harder for directors to separate their board lives from their other jobs, and the need to navigate complex security measures can add frustration to the process.

For corporate secretaries who traditionally compile board books and other materials, portals reduce the time it takes to gather, edit, organize, and distribute materials.

Usually through a board portal directors can:

- Access board meeting materials online.
- Connect with other board members online and discuss issues securely.
- Find current policy documents, news items, articles, and more.
- Conduct committee work privately and securely online.
- “Vote” on issues electronically and have their votes counted and recorded.
- Download meeting dates and events to their own personal calendars.
- Share files and post messages during conference-call meetings.

STEPS TO ESTABLISH A BOARD PORTAL

Corporate secretary lays out the plan

- ▶ Identify the costs and benefits—security issues, time and cost efficiency to justify the conversion to the electronic board portal.
- ▶ Set a deadline for conversion to the new system to mentally prepare the users.

Chairman announces the decision

- ▶ Address concerns from directors. Concerns may involve the provision of supporting technology, both hardware and software, for the new system.

Chairman involves directors

- ▶ Engage key directors in the selection of a suitable Web portal provider to allow them to become more receptive to the new system.

Corporate secretary identifies an IT person

- ▶ Consider hiring knowledgeable, full time IT personnel to assist all users with any queries on the use of the new technology.

Corporate secretary oversees provision of equipment

- ▶ Provide board members with necessary equipment such as laptops, printers, and modem.
- ▶ Give clear instructions to help new users use the technology efficiently.

Corporate secretary communicates through Web portal

- ▶ Send out all information via the portal to counter temptation to revert to former means of communication and to accustom users to the portal.
- ▶ Disseminate general information, press releases, and news feeds through the portal, so users will find more value in the new system.

Corporate secretary identifies a computer-savvy assistant

- ▶ Employ an administrative assistant who is educated in and comfortable with the use and troubleshooting of the portal.
- ▶ Validate the content to be published before loading it onto the portal. Some fundamental concerns may include font size and type as well as orientation and formatting of the document.

Source: In 2012, Gina Merritt-Epps, corporate counsel and secretary of energy services holding company South Jersey Industries, presented governance professionals with an outline of the best way to establish a board portal.

CHAPTER 3:

Role During a Board Meeting

One of the most recognized roles of the corporate secretary is the role played during the board meeting. It mainly involves ensuring that there is an effective decision-making environment, that decisions are recorded, and that they reflect good governance.

The corporate secretary typically would be responsible for the items listed below.

1. Ensuring that the proper person is in the chair.

Failure to do so will render the meeting invalid. Usually the board will appoint one of its members as the chairman to chair the meeting. If this individual is absent, the corporate secretary should consult the company's constitution to see who should be appointed to the chair. When someone other than the presiding chairman chairs a meeting, the corporate secretary should record in the minutes of the meeting the name of the individual, how he or she was appointed to chair the meeting, and the reason for the presiding chairman's absence. Failure to do so could result in a dispute later.

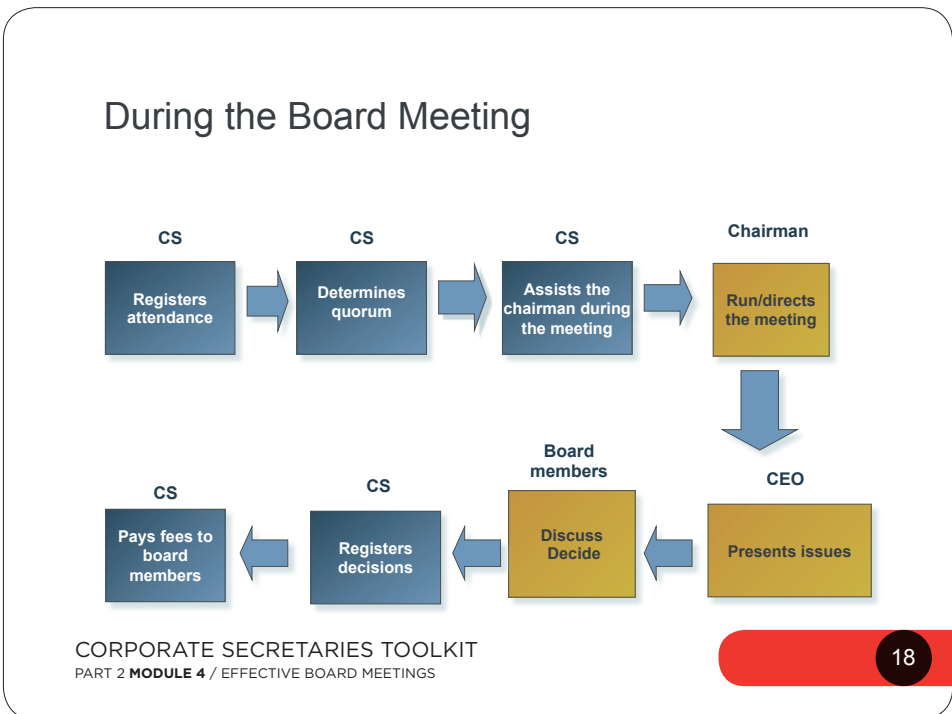
If the company's constitution gives a casting vote to the chairman, the corporate secretary should ensure that a chairman is appointed. This avoids dispute as to who can exercise the casting vote.

The corporate secretary should advise the chairman that the use of a casting vote may be divisive, because it aligns the chairman with one side of the debate and thus with certain members of the board. This may undermine the chairman's position in the future, as he or she may have lost the confidence of some members of the board.

2. Ensuring that a quorum is present and continues to be present throughout the meeting.

The company's constitution usually stipulates the number for the quorum for board meetings. In some countries such as Malawi, it is sufficient for a quorum to be present only at the beginning of the meeting. However, most countries require that a quorum be present throughout the meeting, especially when decisions are made. For this reason, a corporate secretary should record the names of directors present and those attending at the beginning of the meeting and those that arrive or depart throughout the meeting, even for a short period.

Figure 3.1: Slide 18 from IFC's *Corporate Secretary Toolkit, Part 2 Module 4/Effective Board Meetings* presentation.



Source: IFC *Corporate Secretary Toolkit*, 2013.

A director need not attend every meeting of the board. It is customary, however, for directors to send their apologies for absence, and the corporate secretary should note absent directors in the minutes.

Only members of the board should attend board meetings. The practice of senior management also attending board meetings has become customary in some parts of the world, such as in Sub-Saharan Africa. The attendance at board meetings as a matter of course by senior management could lead, especially in common law countries, to allegations that members of senior management are shadow directors—that they are involved in the board's decision making. The corporate secretary should inform the chair and management that this could make senior managers liable for board decisions, and should monitor the attendance of non-board members to ensure that this does not happen.

Management and other non-board members, such as advisers, may attend board meetings to make specific presentations, after which they should leave while the decision is made.

3. Reminding the chairman if any of the directors has a potential conflict of interest.

If a director leaves the room because of a potential conflict of interest, then the corporate secretary should check to be sure a quorum is still present. A good corporate secretary will advise the chairman to organize the agenda so that the item is discussed first or last, so the director can join the meeting late or leave early. This reduces the potential for embarrassment to the individual.

4. Ensuring that the meeting complies with the company's constitution, policies, and procedures, and with all relevant laws, regulations, standards, and codes of best practice.

A corporate secretary should resist the temptation to speak directly to the meeting rather than through the chairman, on anything other than governance or procedural matters unless asked to do so by the chairman.

The corporate secretary should not be part of the debate or the decision making unless there is a governance or procedural issue to be dealt with.

5. Arranging for the entry of presenters for that part of the meeting they are joining.

If the presentation is coming to the board at the instigation of management, then the corporate secretary should establish the purpose of the presentation so the chairman can be informed. If the presentation is at the request of the board, then the corporate secretary should inform management of the purpose of the presentation.

The corporate secretary should check that PowerPoint (PPT) presentations are appropriate for the time allocated on the agenda. Often, overzealous managers try to present too many slides for the time allowed. When possible, copies of the presentations should be circulated to the board prior to the meeting, so the directors can prepare for the discussion.

6. Ensuring that directors do not make defamatory statements during a meeting.

Statements become defamatory when they constitute unreasonable and unsupportable attacks on the character or reputation of another. Corporate secretaries also need to be careful how these statements are recorded in the minutes, as slanderous statements, once they are in writing, become libelous.

7. Assisting the chairman in engendering energy, purpose, and trust at board meetings.

Groups of individuals that trust one another, are not afraid to engage in conflict, commit to decisions, and hold one another accountable are very likely to set aside their individual needs and agendas and focus almost exclusively on what is best for the group. They do not give in to the temptation to place their departments, career aspirations, or ego-driven

Figure 3.2: Slide 11 from IFC's *Corporate Secretary Toolkit, Part 2 Module 5/Board Dynamics at Meetings* presentation.

Corporate Secretary's ABC for a Productive Meeting

| Techniques | The Corporate Secretary's Role |
|--|---|
| A. Aim for a specific result | Help the chairman keep people focused on the decision to be made |
| B. Be positive | Suggest using "and" instead of "but" |
| C. See/hear/feel sensory data | Read the temperature and body language of board members and advise the chairman accordingly |
| D. Dovetail desires | Help the chairman look for common ground and build consensus |
| E. Entertain short- and long-term objectives | Help the chairman identify the quick wins and long-term gains |

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Source: IFC *Corporate Secretary Toolkit, 2013*.

status ahead of the collective results that define group success. (See Figure 3.2.)

8. Assisting the chairman in keeping to the allotted time during meetings.

If during the meeting the chairman is struggling to keep to time limits, the corporate secretary may suggest to the chairman that items on the agenda be reordered, giving priority to those of strategic importance. Often in these cases, management or committee reports can be taken as read. If the chairman and corporate secretary have agreed beforehand to indicative

times for the meeting, it is easier for them to realize that the meeting is running over time and thus the agenda needs to be adjusted.

9. Advising the chairman, if a director has not received notice of the meeting or of a particular agenda item that may be added to the agenda at the start of the meeting or any other business.

If a director does not receive notice of a particular issue, a decision taken on that issue does not become automatically invalid. The director can call for a second meeting, within a reasonable time, to be held to further discuss the issue before the decision is implemented. The corporate secretary will be responsible for organizing and giving notice of this second meeting.

When a director is absent for part of a meeting, either by arriving late or by leaving the meeting to take a call, the chairman, if there is a quorum, will decide whether to deal with an item of business. For an item on the agenda, the chairman could reopen the discussion when the director joins or returns to the meeting, but the chairman probably would not do so unless the director has new evidence that would affect the decision. If the item was not on the agenda and the director had not received notice, that director could request that the issue be reopened either at the meeting or at a second meeting. The corporate secretary should advise the chairman accordingly.

10. Voting at board meetings.

Most boards try to come to decisions by way of consensus. Voting can be seen as divisive and confrontational. In many countries, however, it is the custom to vote on decisions, though this is usually after discussions on the issue and after the chairman is satisfied that the majority of the board members are in agreement. The chairman will call for someone to recommend the resolution and then for another director to second the recommendation, in doing so the resolution is passed and the decision taken.

Directors usually have one vote. The chairman, if stipulated in the company's constitution, may have a casting vote.

FIVE STEPS TO MANAGING BOARD DYNAMICS

- 1 READ THE GROUP**

Pay attention to the changes in the group's energy or focus. When a usually enthusiastic group becomes silent or everyone is suddenly leaving to go to the bathroom, you are being given a message!
- 2 CHECK WITH YOURSELF**

Check to assess whether this is your issue or really a group issue. It is often easy in a group situation to project your own issues onto those of the group. A corporate secretary can act as a sounding board for the chairman in these instances.
- 3 NAME WHAT YOU ARE PERCEIVING**

If necessary, interrupt the discussion and name in a descriptive, not blaming, fashion what you are perceiving.
- 4 CHECK YOUR PERCEPTION**

Ask the group if your interpretation of the behavior is accurate.
- 5 MAKE A RECOMMENDATION**

Depending on the issue at hand, either you should propose a recommendation or ask the group for a recommendation. Try to come to a consensus as to the way forward.

Source: IFC Corporate Secretary Toolkit, Part 2/Module 5: Board Dynamics at Meetings.

BEHAVIORAL PREFERENCES AT MEETINGS

David Kolb¹ has identified **four different behavioral preferences**.

Bernice McCarthy² has applied these to the workplace, specifically meetings.

Listen and Observe

People who like to linger in sensing/feeling and watching. Because they sense and feel and reflect on their experiences, they are outstanding observers of people, highly imaginative, at home with their feelings, believers in their experience, listeners par excellence, caring nurturers, and committed to making the world a better place.

Analyze the Facts

People who like to linger in watching and thinking. Because they reflect on their experiences, analyze them, classify them, they are outstanding conceptualizers of content, highly organized, at home with details, planners par excellence, concerned about structure, and committed to making the world more lucid.

Strategize and Problem-Solve

People who like to linger in thinking and doing. Because they think about theory and act to apply it, they are outstanding problem solvers, highly productive, at home with tasks and deadlines, believers in their ability to get the job done, operationalizers par excellence, and committed to making the world work better.

Push for Action

People who like to linger in doing and sensing/feeling. Because they embrace their experiences and act to enrich them, they are outstanding entrepreneurs, highly energetic, at home with ambiguity and change, risk-takers par excellence, concerned about growth and renewal, and committed to challenging boundaries.

¹ David Kolb, *Experiential Learning* (Englewoods Cliff, NJ: Prentice Hall, 1984).

² Bernice McCarthy, *About Learning* (Wauconda, IL: About Learning Inc., 1996) and Bernice and Dennis McCarthy, *Teaching Around the 4MAT Cycle* (Thousand Oaks, CA: Corwin Press, 2005)

In the event of disagreement, usually the majority view will prevail. The corporate secretary may be asked to record in the minutes the names of those directors who dissented.

11. Taking notes of the proceedings, instructions given, decisions taken, and what information led the board to make its decisions.

These notes will be the basis of the minutes drafted by the corporate secretary after the meeting.

Some corporate secretaries, in an attempt to save time, have started to type notes immediately on to their laptops during the meeting. If this is done, care should be taken that the lid of the laptop does not become a barrier between the corporate secretary and the board members, preventing the corporate secretary from sensing the mood of the meeting and thus helping the chairman achieve effective decision making.

12. Using emotional intelligence.

As mentioned in Chapter 1, the corporate secretary is required to use emotional intelligence skills.

A good corporate secretary should assess the likes and dislikes of the directors and should adjust board processes and procedures to ensure that the board dynamics lends itself to an effective meeting. A corporate secretary can also work with the chairman to encourage directors to stretch themselves in their least-developed areas, to become better-rounded individuals and more effective members of boards. The behavioral preferences outlined in the box on page 34 can assist the corporate secretary and chairman with this task.

Someone's perception of a board's governance is influenced not only by his or her personality but also by the seat that person holds on the board: chairman, CEO, independent director, and so on. It is therefore important for a corporate secretary to try to look at board governance through the eyes of each of these positions and to provide advice and assistance specific to each.

For example, the combination of governance regulations and rising expectations of shareholders, the media, and other stakeholders is making the position of independent director much more important and difficult to carry out. Independent directors need to be kept more informed about the company, and corporate secretaries can help with this. Corporate secretaries should keep their “ears to the ground” and ensure that the board is kept appropriately informed. In doing so, corporate secretaries must use their judgment as to what information should be given to the board at what time. Discussions should be held with management on this issue, and corporate secretaries will need to use all their powers of diplomacy to ensure that the right information is acquired without alienating management.

In addition to providing information, the corporate secretary should also work with the board, especially the independent directors, to ensure that there is good chemistry between them and that they feel able to contribute effectively to the board. This will entail working with the chairman and potentially the CEO to ensure that there is plenty of opportunity for networking between the board members and also between the board and senior management.

The corporate secretary should know the board’s history, external forces at play, membership within the group, hidden agendas, and so on. Understanding these dynamics can help a corporate secretary advise the chairman on dealing with influences that shape board discussions. (See Table 3.1.)

13. Cultivating a sense of belonging on the board.

A sense of belonging affects dynamics on the board. The corporate secretary can develop a sense of belonging by performing items 14–16, below.

14. Organizing an induction program for the new board member.

Table 3.1: Preferred Behaviors and Board Member Participation at Board Meetings

| TYPE | PAINFUL MEETINGS | SUCCESSFUL MEETINGS |
|----------------------|--|--|
| Observe | <ol style="list-style-type: none"> 1) The chairman is insensitive to feelings 2) There is a lack of trust among the group 3) There are unresolved conflicts 4) Consideration is not given to people who will be affected by the group's decision 5) The meeting has no personal relevance | <ol style="list-style-type: none"> 1) Connections are made 2) Honesty is encouraged 3) Interests are elicited 4) Time is allowed for discussion about feelings 5) The chairman provides for building consensus |
| Analyze | <ol style="list-style-type: none"> 1) There is no agenda 2) The chairman does not understand the total picture 3) There is no time for preparation 4) There is insufficient time spent defining the problem 5) No clarity is achieved as the meeting progresses 6) There is insufficient information for problem solving | <ol style="list-style-type: none"> 1) Issues and tasks are clearly defined 2) Information is based on facts 3) There is adequate notice for preparation 4) Pros and cons are weighed 5) The group stays on task 6) There is an objective perspective |
| Problem-Solve | <ol style="list-style-type: none"> 1) There is a lack of focus, forays into side issues 2) Emotions are vented 3) Personalities are dealt with, not issues 4) There is inattention to practical realities 5) The chairman does not move to closure | <ol style="list-style-type: none"> 1) There is a productive problem-solving climate 2) Common sense is elicited 3) Ideas are used 4) Decisions are aligned with the realities of existing structures and resources 5) Closure is achieved |
| Act | <ol style="list-style-type: none"> 1) There is rigid adherence to the agenda and/or timetable 2) People are tentative and cautious 3) Strong, spirited interactions are not welcome 4) There are long monologues 5) There is only pretense at discussion, because in reality, decisions have already been made | <ol style="list-style-type: none"> 1) There is a flexible agenda 2) The participants look beyond stated objectives 3) Energy is generated 4) Actions are based on intuition 5) Talk of possible creative action is encouraged |

SOURCE: Bernice McCarthy, *About Learning*, About Learning, Inc., (1996).

15. Encouraging recognition (beyond their fees) of board members' contributions and the value of the board to the organization.

16. Overseeing a transparent process for refreshing the board.

Board members should know what their tenure is and what they have to do to continue into a second term if they so desire.

The corporate secretary should know whether directors are on the board voluntarily or as a result of some mandatory requirement and, if needed, provide training for directors who may not have the necessary skills and experience. This is sometimes the case with political appointees.

Longevity on the board may also affect behavior: a director who has been on the board for a long time may be less likely to challenge management.

The role of the chairman of the meeting should be clear to board members: the chairman establishes group norms and facilitates debate and decision making but does not dominate meetings.

When considering board dynamics, the corporate secretary should be aware of his or her own role in the effective functioning of the board “team” and make sure not to impose his or her behavioral preference on the board. For example, if the board asks for more information, an “analytic” corporate secretary is likely to react by providing more facts and data for board members to read. The reality may be that the board members (especially if they are “dynamics”) are looking for fewer pages of facts—and data presented in a more concise way, such as an executive summary.

CHAPTER 4:

Role After a Board Meeting

“As the great ones depart, and are eating their dinner, the secretary sits, getting thinner and thinner, racking his brains as he tries to report what he thinks that they think that they ought to have thought.”

—Anonymous

Once a board meeting has been concluded, the corporate secretary’s role is not finished. The corporate secretary typically would be responsible for the tasks listed below.

1. Removing any confidential material from the boardroom.

Once the meeting has concluded, the corporate secretary should remove any confidential material from the boardroom. This includes any pads or scrap paper the board members may have used. This is especially important if the board has been discussing confidential matters.

2. Communicating board decisions.

Best practice is for a corporate secretary to communicate board decisions and to have a process for doing so. This avoids miscommunication and helps when regulators require communication of decisions in a certain order— for example, when a listed company is required to notify the stock exchange first or in a certain way, such as through a workers council. The corporate secretary should therefore have a process in place for the following:

- Notifying regulators of any decisions that require notification, usually to be done immediately after the meeting concludes. The corporate secretary should inform board members and management when these notifications are required, so the decisions are kept confidential until the notification has occurred. This can be difficult, especially if staff are involved and consultations with them are also required. The corporate secretary should coordinate with management to ensure that all of these disclosures are completed in the most appropriate manner.
- Notifying the management team of any decisions affecting them or on which they need to take action.

3. Updating the annual calendar.

Note in the annual calendar any items deferred or requested for future meetings.

4. Drafting minutes.

Prepare and circulate draft minutes, then issue the final approved minutes (see below for more information on minute taking).

5. Following up on actions.

Between meetings the corporate secretary should follow up with management and ensure that the board's decisions are converted into action. The corporate secretary does this through creating an action log and reviewing it with management periodically between meetings to ensure that actions are being implemented. (See Figures 4.1 and 4.2.)

6. Organizing independent professional advice, if requested by the board or individual directors.

Figure 4.1: Sample Action Log

| NO. | MIN. | ACTION | RESPONSIBLE | TIMING | COMMENTS |
|------------|-------------|--|---------------------------------|---------------|-----------------|
| 1. | 3 | Updating applicable statutory registers and filing appropriate documents with the Register of Companies | Corporate Secretary | | |
| 2. | 4 | Signing of balance sheet and Directors' Report | Director Corporate Secretary | | |
| 3. | 4 | Distributing financial statements in accordance with applicable legislation and the company's constitution | Corporate Secretary | | |
| 4. | 5 | Including Final Dividend proposal in Notice of the Annual General Meeting (AGM) | Corporate Secretary | | |
| 5. | 6 | Issuing Notice of AGM and proxy card | Corporate Secretary | | |
| 6. | 6 | Making all necessary arrangement for the AGM | Corporate Secretary | | |

Source: IFC Corporate Secretary Toolkit, Part 2/Module 4: Effective Meetings.

Figure 4.2: Slide 25 from IFC's *Corporate Secretary Toolkit, Part 2 Module 4/Effective Board Meetings* presentation.

Role of the Corporate Secretary After a Board Meeting

- Notify management and relevant personnel of decisions made at the meeting that affect them
- Comply with any filings required by regulators resulting from decisions made at the meeting
- Update the annual board calendar with any items (deferred or new)
- Prepare draft minutes of the meeting
- File a copy of the agenda and supporting papers in the company archives
- Enter any minutes approved and signed in the minute book
- Prepare action log of decisions and action points from the meeting

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PART 2 MODULE 4 / EFFECTIVE BOARD MEETINGS

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Source: IFC *Corporate Secretary Toolkit*, 2013.

The Corporate Secretary's Role in Minute Taking

Protecting the Minutes

Minutes are evidence of the proceedings of the meeting. The corporate secretary should take care that they are not tampered with or falsified. One of the mechanisms for doing this is to glue the minutes into a book. Minutes should also be sequentially numbered, either through including the minute number and the date of the meeting or through including the minute number and the year of the meeting.

Content of the Minutes

A common dilemma is what should go into the minutes. In the United States, it appears that as little as possible is included, to give less for lawyers to pick over if a lawsuit arises. In the common law countries, the current best practice is for the minutes to record not just the decision but how the board came to the decision.

In many civil law countries, there are specific legal requirements for the contents of board minutes. Usually companies include in minutes obligatory items and nothing more. At the same time, best practices provide additional recommendations for board-meetings recording. For example, the Russian Code of Corporate Conduct declares that every director should be provided with full information about the meeting. Board secretaries, therefore, are required to keep a verbatim report of the meeting together with the formal minutes.

Minutes can therefore be drafted as a verbatim (word for word) record of the meeting or a summary of the proceedings or as a list of action points. A summary of the proceedings at a meeting is more common in commonwealth countries. A corporate secretary needs to be aware of the practices in the company as well as in the country where he or she is taking the minutes.

The corporate secretary must honor the request of a director to specifically record in the minutes what he or she said. A record may also need to be made of dissenting directors on particular issues and also of where a director discloses that he or she has an interest in a particular item on the agenda.

Drafting the Minutes

The corporate secretary circulates the first draft of the minutes to management for comments. The corporate secretary incorporates these comments in a second draft to the directors for comment. This should be done no more than two weeks after the meeting, while the discussions are still fresh in everyone's mind. Some companies have a policy that this is done within 48 hours of the meeting. The corporate secretary then produces the final draft, which will be presented for approval at the next board meeting. Minutes of meetings are not final until they have been approved and signed off on, usually at the next board meeting, by the chairman. Copies of the minutes would normally be circulated to the board in the board pack, prior to the meeting.

Management may request extracts of the minutes to enable them to implement decisions immediately after the board meeting. Extracts of the draft minutes can be circulated for this purpose. They should be marked as drafts and signed by the chairman and corporate secretary.

Disagreements on the Content

On contentious issues, the corporate secretary should exercise care to be sure that the directors involved have submitted their comments before draft extracts are issued, just in case there is a disagreement as to what the minutes should say. The corporate secretary should advise the chairman in situations of disagreement. In some circumstances, it may be necessary to reconsider the issue at the next meeting or call an emergency meeting to come to a consensus on an issue where there has been a misunderstanding.

Recording Decisions

Minutes should reflect how the decisions were taken at the meeting. One way of doing this is to include by reference the papers and presentations used/referred to at the meeting and to keep a copy of the paper/presentation with the minutes.

To avoid misunderstandings, especially on boards where there are directors with different mother tongues, the corporate secretary may advise the chairman to repeat back to the board decisions that have been made, before they have been recorded in the minutes, so the chairman is confident that everyone is in agreement.

Writing and Storing the Minutes

Minutes should be:

- Written in the past tense, as they are recording something that has passed.
- Written in the conditional tense (would, should, could), as this creates flexibility for the decision to be changed if the conditions change. If the change is material, then it will have to be brought back to the board for another decision. If conditional tense is not used, then the decision in theory has to be implemented no matter what.

TIPS FOR MINUTES WRITING

Before the meeting

- ▶ Many chairmen appear difficult to approach. You should take steps to develop a relationship with the chairman. Relationships will take time to develop and can be made easier if you can show the chairman that you understand the challenges that he or she faces and aim to be supportive.
- ▶ If you lack knowledge about meeting topics, prepare as much as possible prior to the meeting. Read background materials and the previous minutes. If necessary, carry out additional research. Talk to the chairman and the meeting participants to increase your knowledge and understanding of the topics.
- ▶ If you suffer from the perception that “anyone” can do minutes, be professional and politely assertive in making your case that minute taking is a skill to be developed. Take the initiative to get training or mentoring to help you develop your minute-taking skills.

During the meeting

- ▶ Don't be afraid to interrupt in the meeting if you have not been able to hear something or if you think a decision is unclear or has not actually been made. Politely ask the chairman, “For the minutes can I just clarify...?”
- ▶ Make notes of the decisions made and summarize how the board came to those decisions. This means that you don't have to write everything down, just the key points. To achieve this, listen more and write less.

After the meeting

- ▶ Composing minutes is a skill and takes practice. Before drafting the minutes you should do the following:
 - Look at previous minutes for the meeting you have been asked to attend and see how they have been structured and written. Develop a list of useful words and phrases for reference.
 - Not worry about what people think. Do your best, and ask your colleagues for advice on the parts of minutes they are more knowledgeable about.

- Formal documents that provide evidence of what occurred at the meeting. If a decision is to be implemented by a particular individual, that person should be named. If the decision is to be implemented by a particular job holder, then the job title should be used. This is to circumvent the situation where an individual no longer holds the position.

Minutes should not be written in company jargon or be full of acronyms which may make them difficult to understand in the future. The corporate secretary should spell out all words or explain jargon so that it is understandable to all that read them. This is particularly important when new directors join the board.

If passwords are used to keep projects secret, the corporate secretary needs to keep a record of what these passwords represent. Again, this helps in the future if the board minutes are read by individuals who were not part of the original discussions.

Previous minutes need to be archived along with a copy of the board pack and any papers or presentations circulated at the meeting. The materials are usually kept in a sealed envelope so that they do not get cannibalized over time.

Minutes should be kept in minute books that are stored in a secure place such as a bombproof and fireproof cabinet or safe. Separate minute books should be kept for board minutes and shareholder minutes. Shareholders are only able to inspect minutes of their meetings, not board minutes, without a court order.

Corporate secretaries should have a process in place to destroy any notes of the meeting as soon as minutes have been approved. This is to make sure that they cannot be used as an alternative record of the meeting. These notes are usually fuller and have not been “sanitized.”

Where minutes are also kept in an electronic format, the corporate secretary should assess the sensitivity of the information contained within them. If it is very sensitive, provision for the minutes and board papers to be kept on a server solely used for this purpose with restricted access may be necessary.

Minutes should be approved at the next board meeting and signed by the chairman and secretary to the meeting. The corporate secretary should ensure that this happens.

CHAPTER 5:

Role in the Delegation of Authority

If an organization consists of more than one person, then it is necessary for authority to be allocated and delegated to individuals within the organization. Best practice requires that the allocation and delegation of authority be documented. Corporate secretaries usually would play an important role in documenting delegation within an organization. (See Figure 5.1.)

The role of the corporate secretary in the delegation of authority to the board and individuals typically would include the responsibilities listed below.

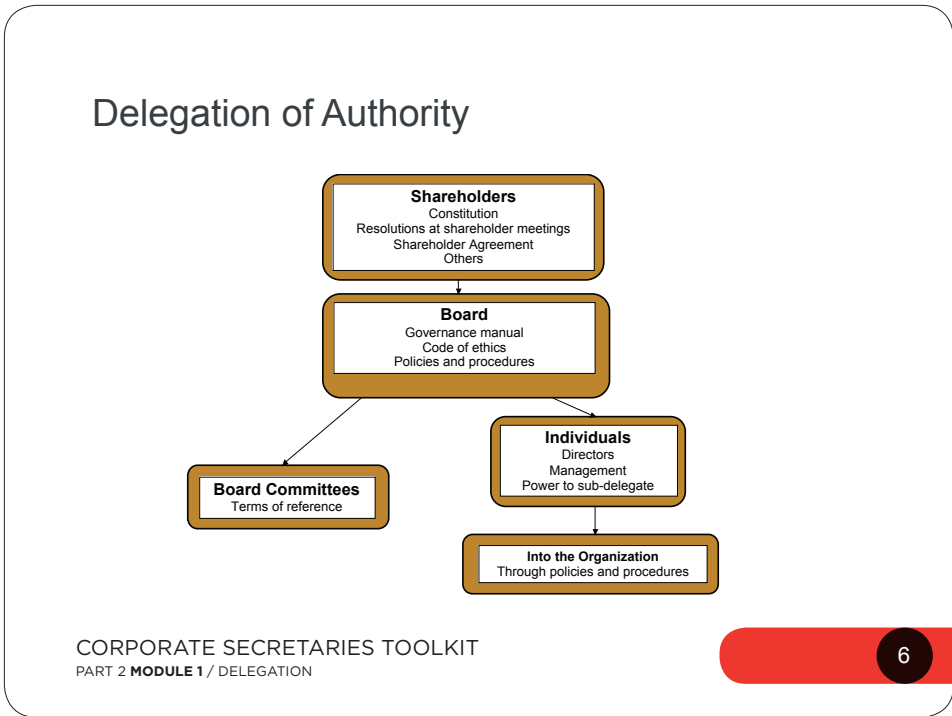
1. Ensuring that, through the company's constitution, articles of association, or bylaws, authority is delegated from the shareholders to the board.

As all power in an organization rests with the shareholders and requires delegation, the corporate secretary should ensure that (through the company's constitution, articles of association, or bylaws) authority is devolved from the shareholders to the board of directors, and in some cases to the managing director (CEO). In some companies, shareholder agreements may also devolve power to the board or to individual directors.

2. Advising the board on the delegative authority from the shareholders and ensuring that the board operates within it.

The corporate secretary should also advise the board on the delegative authority from the shareholders and ensure that the board operates within it. Where the board requires additional authority, the corporate secretary should ensure that shareholder approval is obtained by making changes to

Figure 5.1: Slide 6 from IFC's *Corporate Secretary Toolkit, Part 2 Module 1/Delegation* presentation.



Source: IFC *Corporate Secretary Toolkit*, 2013.

the articles and/or drafting and proposing for approval resolutions to the shareholders—usually in general meetings.

3. Ensuring that the board members realize they are acting as a “collective.”

Authority delegated to the board by shareholders is delegated to the board as a collective not to individual members of the board, unless those individuals are specifically mentioned in the constitution. The corporate secretary should ensure that the board members understand this concept. It means that even where members of the board do not agree with a particular proposal, if the proposal is approved they are bound by it.

4. Advising the board on delegating authority and documenting such delegation.

The board should decide what authority it wants to sub-delegate and to whom, for example, its members, committees, or other individuals within the organization. The corporate secretary can assist the board in deciding on this sub-delegation.

5. Advising the board on separating the roles of chairman and chief executive officer.

The corporate secretary should document those powers that have been reserved to the board and those that have been sub-delegated to management, usually in a governance manual or board charter. Where authority may be delegated further into the organization, the corporate secretary should ensure that the power to sub-delegate is also given as appropriate.

6. Advising the chief executive officer on delegating his or her authority.

When advising on which powers should be delegated and which should be reserved, the corporate secretary should take into account the following:

- All major decisions that should be kept with the governing body, especially those that relate to the determination of the future of the organization and that protect its assets and reputation.
- Any duties and responsibilities of directors as set out in laws, regulations, standards, and codes, many of which result in personal liability. The corporate secretary should ensure that the directors are aware of this liability.
- Any accountability to shareowners and other stakeholders.
- The responsibility of the governing body for determining the organization's values and ethical position.

Figure 5.2: Slide 21 from IFC's *Corporate Secretary Toolkit, Part 2 Module 1/Delegation* presentation.

Skills for Delegation

| What you should do | How you should do it |
|-----------------------------|---|
| Listen actively | Show genuine interest |
| Use open questions | Encourage speakers to share |
| Clarify reasons | Confirm goals and objectives |
| Be aware of body language | Be friendly and open |
| Speak on behalf of yourself | Use "I" statements |
| Focus on constructive ideas | Ask for practical suggestions |
| Stay calm | Respect different views; reschedule discussions |
| Avoid misunderstanding | Paraphrase ideas or statements |
| Allow others to save face | Help reformulate statements |

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Source: IFC *Corporate Secretary Toolkit*, 2013.

7. Advising the board on the appointment of authorized representatives and drafting of powers of attorney.

If the delegation is not included in the company's articles, the corporate secretary should advise the board on whether it is appropriate to follow best practice and separate the roles of chairman and chief executive officer (or managing director). Whether this separation is appropriate will depend on the size of the company and whether it is listed or not. If the roles are to be separated, the corporate secretary should develop terms of reference for each position.

8. Ensuring that appropriate policies and procedures for the organization are in place.

Where day-to-day authority has been delegated to a chief executive officer (or managing director), he or she may then pass on some of the authority to members of the management team. The corporate secretary is sometimes asked to help the chief executive officer in this sub-delegation to management, which is usually documented in an operations manual.

9. Appointing authorized representatives.

The board, in addition to the above delegations, can from time to time appoint authorized representatives to sign or carry out certain activities. The corporate secretary usually would advise the board on the necessity of this action and develops any resolutions or powers of attorney to give effect to these delegations. These types of delegations are usually for specific activities and have a specific time period of up to a year. In some countries the corporate secretary will be required to have the authorization/power of attorney notarized/legalized or an apostille affixed.

10. Notifying the board that its involvement is required for development of policies and procedures.

An organization must develop policies and procedures to provide high-level guidance for behavior and operations within the organization. The corporate secretary should advise the board as to which policies and procedures in the organization require board involvement.

DECISION TREE

The decision tree is a useful method of delegation. Think of your company and your board as a green and growing tree that bears fruit. To ensure its ongoing health, countless decisions are made daily, weekly, monthly.

The goal of the decision tree is to identify clearly which categories decisions and actions fall into, so board members and management know exactly where they have the authority to make decisions and take action.

There are four categories of decisions:

1. Leaf Decisions:

Make the decision. Act on it. Do not report the action you took.

Example: Management makes a decision on daily operations that does not require reporting.

2. Branch Decisions:

Make the decision. Act on it. Report the action you took.

Example: Management makes a decision and reports it to the board or a board committee.

3. Trunk Decisions:

Make the decision. Report your decision before taking any action.

Example: A committee's recommendation to the board.

4. Root Decisions:

Make the decision jointly, with input from other people. These are the major decisions that only the board has the authority to make.

Example: A board reaches consensus and approves a committee's recommendation.

Adapted from: Jeanne Wirth, Rivers Quest Consulting.

Delegation to Committees

In addition to delegation to individuals, the board may want to delegate to a committee. The corporate secretary typically would be involved in the actions described below.

1. Advising the board as to which committees should be constituted.

The corporate secretary would usually be involved in advising the board regarding which committees should be constituted. The corporate secretary should check to find out what committees may be mandated in the organization by law, regulation, standard, or code. Where committees are not mandated, the corporate secretary should advise the board when delegating to a committee is appropriate.

2. Checking to learn whether the board has the power to delegate to committees.

The corporate secretary should check that the board has the power to delegate to committees before advising the board, as the articles may also stipulate who can sit on a committee. The corporate secretary should play a vital role in developing the terms of reference and scope of responsibility for committees and for advising the chairman on what should and should not be delegated.

3. Acting as secretary to the committees.

Best practice advises that the corporate secretary should also be the secretary of any board committees. This ensures that good corporate governance practices are maintained at the committee level.

4. Ensuring strong communication and the smooth flow of information between the committee and the board.

The corporate secretary has an important role in ensuring that there is strong communication and smooth information flow between the committee and the board. If a function head or member of management acts as the secretary of the committee, that person often can be conflicted and find it difficult to carry out both roles at a meeting. When the corporate secretary serves as secretary to the committee, he or she can co-ordinate between the committee and the function head and assist with any conflicts that may arise between the two.

5. Ensuring that the performance of the committees is evaluated annually.

Best practice states that board committees should be evaluated annually. Please see Chapter 8.

6. Advising on training opportunities for the committees.

7. Obtain independent professional advice for the committee or its members, as appropriate.

Delegation for Non-Corporations

Organizations such as family businesses, not-for-profit organizations, and organizations in other sectors also need to allocate and delegate authority from the person(s) or organizations that set them up. If these organizations have

access to the services of a corporate secretary to ensure that good governance practices are adopted, the corporate secretary should assist as appropriate in the ways listed below.

1. Ensuring that once the organization gets the right people for the jobs that have been identified, they understand their roles.

These people are given a list of key responsibilities, so they know what they should be doing and what they are going to be held accountable for. This is very important in family businesses, where disputes can arise between family members over who should have done what.

2. Informing an organization and those working within it about who is responsible for making what decisions in the organization.

This again can be done by making a list and agreeing who has responsibility for making which decisions. The corporate secretary also needs to record what has been decided and who has accountability for implementing the decisions—usually by reporting on progress in achieving the implementation of the decisions.

Whatever the size of the organization, it is important for those running it to recognize that “fit for size” structures, policies, and procedures will need to be put in place for the organization to succeed. These will differ from organization to organization. (See Table 5.1.)

Table 5.1: Elements of a Board Charter

| Defining governance roles | Key board functions | Improving board processes | Board effectiveness |
|----------------------------------|----------------------------|----------------------------------|----------------------------|
| Board composition | The board and strategy | Board meetings | Director protection |
| Role of the board | The board and the CEO | Board meeting agenda | Board evaluation |
| Role of individual directors | Monitoring | Board papers | Director remuneration |
| Role of the chairman | Risk management | Board calendar | Director selection |
| Role of the company secretary | Compliance | Committees | Director induction |
| Role of the CEO | Policy framework | | Director development |
| | Networking | | |
| | Stakeholder communication | | |
| | Decision making | | |

CHAPTER 6:

Role in Board Composition and Succession Planning

Board Composition

The corporate secretary should advise the chairman on the size and composition of the board, the tenure of board directors, and board directors selection and appointment. Policies on all of these should be developed by the corporate secretary and approved by the board. These policies should be part of a governance manual.

Most corporate governance codes provide that companies have a balanced board, though definitions of a balanced board may vary. It is therefore important for the corporate secretary to know what constitutes a balanced board in the organization's jurisdiction.

The corporate secretary typically would be responsible for the tasks listed below.

1. Advising the board on the requirements for a balanced board.

Generally speaking, a balanced board should contain an appropriate mix of:

- Members from the executive management team;
- Members who are linked in some way to the organization but are not employed within it, non-executive members, such as shareholder representatives;
- Independent members—those who have no link to the organization and meet best-practice guidelines for independence; and
- Members who have the skills, experience, and attributes required by the organization to meet its strategic goals.

2. Ensuring that the requirements for independence are met and maintained.

The corporate secretary should ensure that independent non-executive directors have the following characteristics:

- Independence of character and judgment;
- Not involved in the day-to-day management of the organization;
- Receive no benefits other than fees and approved expenses;
- Undertake no advisory work unless approved by the board in advance;
- Constructively challenge and contribute to board discussions; and
- Demand accurate financial information and robust internal risk management.

3. Advising on the most effective board size for the organization.

Each organization has its own ideal board size, and the corporate secretary should assist the chairman in deciding what size is the best for their organization. In doing so, the corporate secretary should choose a board size that will enable the board to:

- Hold productive, constructive discussions;
- Make prompt, rational decisions;
- Efficiently organize the work of its committees, if these are established; and
- Ensure that the organization operates effectively.

4. Advising on directors' tenure.

The corporate secretary should be aware of the requirements for term limits in the organization's jurisdiction. Requirements may differ depending on the type of organization.

In addition to term limits, most countries require directors to seek reelection by shareholders periodically. This process is often referred to as rotation of directors. A corporate secretary should keep a record of who has been reelected when and when their next reelection is due. Reelection of directors usually takes place at a company's annual general meeting.

The corporate secretary will usually be responsible for organizing all of the regulatory filings and announcements related to the departure of a board director.

The corporate secretary will also have to advise the board on whether it can appoint a replacement director or will require shareholder approval for the appointment. This would usually be done at the next board meeting unless the resignation threatens the quorum. Following the departure, if the board is unable to meet the quorum requirements, the corporate secretary should advise the board that a shareholders meeting will need to be called and additional directors appointed.

Succession Planning

Corporate governance best practice states that there should be a progressive refreshing of the board and an organized succession plan, as finding new directors can take time.

Planning for succession in advance, especially for the chairman and CEO, helps the company avoid disruptions to decision making or to changes in policies or strategic direction. The corporate secretary is usually the person who drafts the succession policy for approval by the board and the succession plan. (See Figure 6.1 on page 60.)

Figure 6.1: Slide 22 from IFC's *Corporate Secretary Toolkit, Part 2 Module 2/Board Composition and Succession Planning* presentation.

Succession Planning

The corporate secretary's role in succession planning:

- Develop a succession plan for submission to the board
- Stagger succession to ensure that institutional memory and knowledge are maintained
- Review and keep up to date the board composition matrix and director succession timetable

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PART 2 **MODULE 2** / BOARD COMPOSITION AND SUCCESSION PLANNING

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Source: IFC *Corporate Secretary Toolkit*, 2013.

The corporate secretary's role in succession planning typically would include the actions listed below.

1. Identifying board capability gaps and creating a board composition matrix.

The corporate secretary should create a “skills and experience matrix” for the board, setting out on one axis which director is to retire when, and on the other axis the skills and experience required for the board. The corporate secretary then plots where and when gaps are likely to occur and can advise the chairman of them.

BOARD COMPOSITION MATRIX

| DIRECTORS | SKILLS AND EXPERIENCE REQUIRED OF THE BOARD | | | | | |
|-----------|---|---------|---------|---------|---------|---------|
| | SKILL A | SKILL B | SKILL C | SKILL D | SKILL E | SKILL F |
| MR. Z | ● | | | ● | | |
| MRS. Y | ● | ● | | | | |
| MRS. X | | | ● | ● | | |
| MR. W | | | | ● | | ● |

In this matrix, the corporate secretary should advise the board to look for a director with Skill E and possibly skills B, C, and F, but not D, because the board has several directors with that skill.

Source: IFC Corporate Secretary Toolkit, Part 2/Module 2: Board Composition and Succession Planning, 2013.

Areas that could be included in a “skills and experience matrix” are as follows:

- Financial expertise
- Relevant industry experience
- Legal expertise
- Capacity to represent key stakeholders
- Experience operating internationally
- Honesty and integrity
- Diversity (including gender, age, and so on)

2. Developing director specifications.

The corporate secretary should draw up director specifications based on the skills, experience, and personal attributes needed to fill any current or future gaps. The skills and experience needed for board members should be in alignment with the company's strategic goals.

3. Developing a search plan.

The corporate secretary should, in coordination with the chairman, develop a search plan and lead the search process. This may involve the use of search consultants and agreement on which non-executive directors will compose the interview panel. Some countries require that the position be advertized. If so, the corporate secretary will arrange advertisements in appropriate newspapers.

4. Agreeing on the terms and conditions for the director.

The corporate secretary should help the board (or the remuneration committee, if one exists) design a remuneration package that is compatible with the company's financial status and is likely to attract the right kind of candidates. The corporate secretary should be mindful of the reactions of stakeholders, including shareholders, to the package being offered, especially if the board member is to be part of the management team, such as the CEO.

5. Getting to know the candidates.

The corporate secretary should arrange for the chairman and a group of non-executive directors to interview candidates.

This is especially important when the board member is also to be part of the management team. The Enron scandal evolved partly because the board did not know the incoming CEO. Boards should consider having potential

CEOs give presentations to allow the board to learn more about candidates' business plans and how they are perceived within the organization.

6. Selecting the best qualified candidate.

The corporate secretary should ensure that a transparent process is followed to select the best candidates for the vacant positions on the board. Typically the corporate secretary would be involved in circulating CVs and any other information on the shortlisted individuals, with the feedback from the interview panel. There should be a clear recommendation of the selected candidate, including why. This should be presented to the full board for approval.

7. Recommending the candidate for election at the general meeting.

In most countries, shareholders have the right to elect and remove board members. The corporate secretary should be aware of the rules in the organization's jurisdiction. If shareholder approval is required, the corporate secretary should ensure that the board respects this right, and that all aspects of the nomination and election process are transparent.

8. Ensuring age limits for directors.

Contention abounds in many counties about age limits for directors. In the U.S. S&P 500, the average retirement age is between 70 and 72. Best practice would be to ensure that you have the best person for the job, regardless of age. The corporate secretary should be aware of any requirements relating to the age of members of the board for the organization and ensure that they are respected.

Appointment of Directors

Following the appointment of the director, the corporate secretary typically would be responsible for the tasks listed below.

1. Initiating regulatory filings and announcements.

2. Drafting and issuing appointment letters for independent directors.

When corporate secretaries draft letters of appointment, it is important for them to set out, as a minimum, the following (see also Figure 6.2 on page 66):

- The term of the appointment (For example, a term of three years, renewable for an additional term of three years).
- The amount of time the director should expect to commit to board duties. For four board meetings a year, it may be in the neighborhood of 20 days, if you include, for example, the meeting days, preparation for meetings, training, board evaluation, and strategy retreats.
- The duties the director will be expected to perform, including any committees to which the director will be appointed.
- Remuneration and expenses.
- Independence and outside interests.
- Review process.
- Process for obtaining independent professional advice.

3. Reviewing service contracts for executive directors.

Corporate secretaries can sometimes be involved in reviewing drafts of service contracts for executive directors to ensure that they comply with prevailing stakeholder concerns and corporate governance best practices.

TIPS FOR DIRECTORS INDUCTION, DESIGN, AND DELIVERY

- ENGAGE** Engage with the new director before designing the induction program, as each program should be designed with the needs of the individual director in mind.
- AVOID** Avoid overloading the director with new information by phasing the timing of delivery.
- AGREE** Agree on the schedule for the induction program with the director.
- VARY** Vary the delivery of the information—reading materials, meetings, presentations, site visits, and training courses.
- ARRANGE** Arrange meetings with management, advisers, shareholders, and other relevant stakeholders over a reasonable period of time.
- CONSIDER** Consider pairing the director with one of the current directors on the board to assist with assimilation of information.
- DOUBLE-CHECK** Keep double-checking with the director in case any further induction is required.

4. Securing directors and officers (D&O) insurance.

5. Organizing directors indemnities.

Directors indemnities are permitted in some countries. The corporate secretary is often responsible for issuing them and, if they are claimed against, dealing with claims.

6. Facilitating director induction.

All directors should receive induction on joining a board and should be made aware of future training opportunities to update and refresh their skills and knowledge. The corporate secretary usually organizes the induction of and any briefing materials for new directors. The corporate secretary should ensure that the induction is comprehensive, formal, and tailored to the needs of each director. The induction program is usually facilitated by the corporate secretary.

Specific induction and training may be required for non-executive directors who serve on key committees of the board, particularly the audit committee.

Figure 6.2: Slide 7 from IFC's *Corporate Secretary Toolkit, Part 2 Module 7/ Board Directors* presentation.



Appointment letters for directors should cover the following:

- Roles, duties, and responsibilities
- Duration and notice period
- Time commitment
- Remuneration and expenses
- Confidentiality
- Outside interests—potential conflicts of interest
- Induction and ongoing professional development
- Review process and any reasons for termination
- D&O insurance and indemnities
- Independent professional advice
- Committee membership

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PART 2 **MODULE 7** / BOARD DIRECTORS

7

Source: IFC *Corporate Secretary Toolkit*, 2013.

CHAPTER 7:

Role with Directors

In this chapter we will refer to board directors, but in many civil law countries it is the managers who have these duties. The corporate secretary typically would be responsible for performing the duties listed below.

1. Familiarizing directors with their duties and liabilities.

The corporate secretary should be familiar with all the local requirements for board directors' duties, whether these are set out in statute, regulations, case law, the articles of association, or corporate governance best practice.

In addition to corporate duties listed in the box, below, there are multiple laws under which board directors have statutory obligations. The corporate secretary should advise the board directors on these obligations, which include the following areas: anti-trust, employee rights, data protection and privacy, health and safety rights, customer rights, and the environment.

UK COMPANIES ACT 2006 - DIRECTORS DUTIES

- ▶ Duty to act within powers
- ▶ Duty to promote the success of the company
- ▶ Duty to exercise independent judgement
- ▶ Duty to exercise reasonable care, skill, and diligence
- ▶ Duty to avoid conflicts of interest
- ▶ Duty not to accept benefits from third parties
- ▶ Duty to declare an interest in a proposed transaction or arrangement

2. Advising the board, as matters come up, on how to apply its duties and liabilities.

3. Providing information on duties and liabilities as part of a director's induction and the directors' annual training program.

The corporate secretary should advise the board on how all duties apply in the organization's jurisdiction and ensure that policies, processes, and procedures are introduced to ensure that board directors do not breach their duties through, for example, conflicts of interest, related-party transactions, share dealings, and so on.

BOARD DIRECTORS DUTIES

Nigeria

In Nigeria, board directors of the nine troubled banks that emerged in the 2009 regulatory intervention were unprepared for the repercussions from the liability standpoint. A case in point was the heavily publicized situation of Intercontinental Bank, when visibly shocked non-executive board directors were taken into detention and imprisoned.

Also, in 2004, the board of First Bank fired its CEO and the executive director (risk) for not acting within their powers in proceeding with a huge investment in the telecommunications sector that subsequently failed. Seven years later, the courts decided that the CEO had been unfairly terminated. By implication, this CEO was still the substantive CEO, even though the bank had had three other CEOs since 2004.

Related-Party Transactions

A related-party transaction (RPT) is a transfer of resources, services, or obligations between a company and a related party, regardless of whether a price is charged, for example, a business transaction between a major shareholder and the company or a director and the company.

Parties are considered to be related if one party has the ability, directly or indirectly, to control the other party or exercise significant influence over the other party in making financial or operating decisions.

Different jurisdictions define related parties and RPTs differently, and the corporate secretary should be aware of the definitions applicable in his or her jurisdiction.

The board bears primary responsibility for related-party transactions. However, a corporate secretary typically would be involved in the actions described below.

1. Advising the board on issues related to RPTs, such as whether the transaction is problematic or can be classified as part of the ordinary course of business on market terms.

2. Drafting, implementing, and enforcing a policy on related-party transactions.

The policy should be approved by the board of directors and should address the company's approach to the following:

- Definition of related parties and related-party transactions for their organizations
- Communication and operation of the policy
- Board approval
- Shareholder approval (if required in the jurisdiction)
- Reporting
- Auditors' role (Internal and external)

3. Seeking approvals for RPTs, whether at the board or shareholder level.

4. Drafting and making disclosures on RPTs, whether in the financial statements or via press releases and regulatory announcements.

Corporate secretaries must be alert for RPTs, because failure to identify and appropriately disclose significant RPTs may result in:

- A material misstatement in the financial statements;
- Those inside the company adding to their incomes;
- The tunneling of resources from the company;
- Infringement of shareholder rights;
- Potential reputational risk for the company.

Not all related-party transactions are bad. When they occur, they should be, at a minimum, disclosed.

Many jurisdictions distinguish between benign RPTs, such as recurrent transactions in the ordinary course of business on market terms, and problematic RPTs. Problematic RPTs are often large transactions not on market terms.

Conflicts of Interest

The corporate secretary should put in place a policy and process for dealing with actual or potential conflicts of interests of board directors. Conflicts of interest may arise where an individual's personal or family interests and/or loyalties conflict with those of the company. **Not all conflicts of interest are bad.**

The corporate secretary should ensure that board directors declare their interests as well as contracts, gifts, or hospitality received in connection with their role as a member of the board of the organization. These declarations should be updated, and, at least annually, members of the board should reconfirm that their declarations are up to date and complete.

The corporate secretary should also ensure that there is a policy and procedures for what to do when a board director declares or is found to have a conflict of interest. For instance, most constitutions state that at a board meeting conflicted members are not allowed to be counted in a quorum or vote on an issue in which they have an interest. Others also require the individual to leave the room while the issue is being discussed, and they require the corporate secretary to remove from papers or minutes forwarded to that individual anything referring to the subject of the conflict of interest.

When an individual is excluded, the corporate secretary should ensure that a record is made in the minutes, recording:

- The nature and extent of the conflict,
- An outline of the discussion, and
- The actions taken to manage the conflict.

Some jurisdictions require companies to report annually where a member of the board benefits from a decision made by the board. Where this requirement exists, the corporate secretary should advise the board accordingly.

The corporate secretary should also advise board directors not to be involved in managing or monitoring a contract in which they have an interest. When they have to be involved, provision needs to be made for an independent review of the contract and for determining if the contract should be terminated, especially when performance is unsatisfactory.

Directors' Rights

The corporate secretary should ensure that board directors are aware of their rights. For example, a corporate secretary should ensure that board directors:

- Have access to all the information they need to carry out their duties, especially to make informed decisions.
- Are aware of any issues within the company that may cause them liability.
- Receive reimbursements for all pre-approved expenses they have incurred in carrying out their duties as board directors of the company.
- Can discharge their duties without interference from fellow board directors. If the corporate secretary becomes aware that interference, often through lobbying, is taking place, the issue should be raised with the chairman—or another senior director, if the chairman is causing the problem.
- Receive notice of meetings and are able to attend and participate in the meetings.
- Have access to advice. This may be professional advice at the expense of the company, or internal advice from the corporate secretary, a member of the management team, or a technical expert.
- Are able to delegate and, where the power to sub-delegate has been given to an individual director, able to use this power. Again, if there is a problem with this, the corporate secretary's first port of call should be the chairman.

Directors' Liabilities

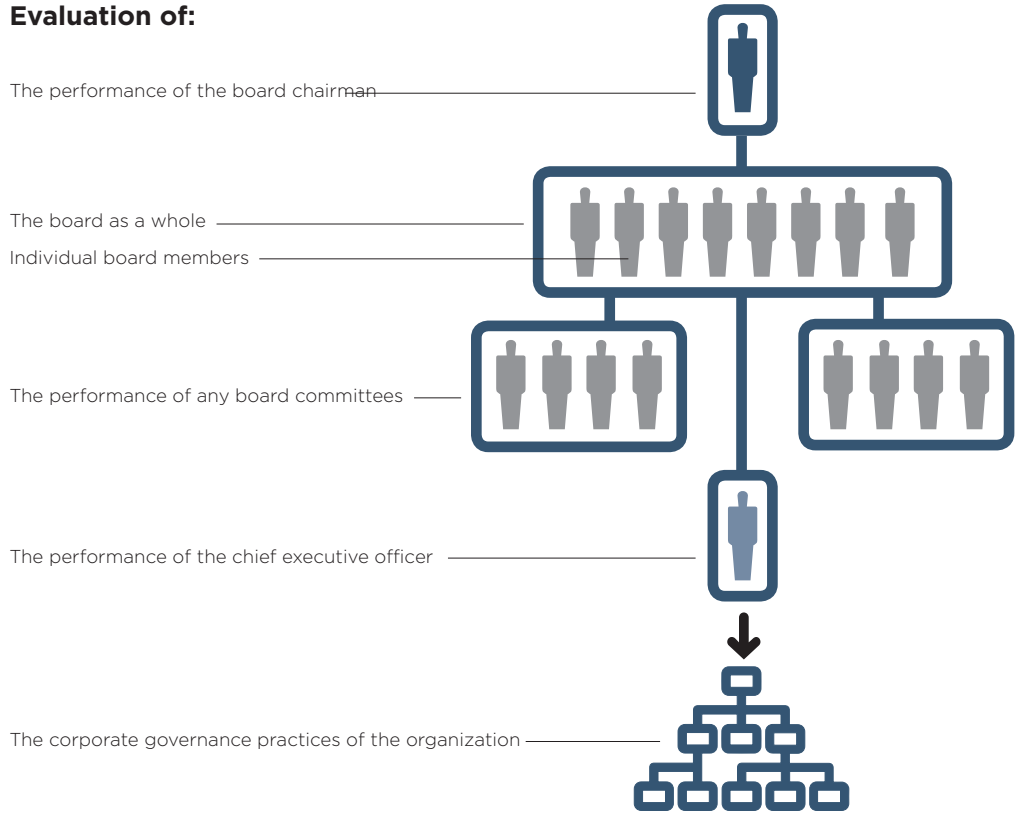
The corporate secretary should ensure that the board directors know what their liabilities are and advise them when they are taking actions that could lead to a particular liability. The corporate secretary should advise the board or individual board directors that they should take independent advice and should arrange such advice at the company's expense.

CHAPTER 8:

Role in Board Evaluation

Best practice states that the performance of boards should be evaluated on an annual basis. Organizations are also required in most jurisdictions to assess and report on their performance against corporate governance practices. A list of the types of evaluations that organizations may be required to perform is set out in Figure 8.1.

Figure 8.1: Types of Evaluation



The corporate secretary has a role to play as the primary facilitator for the board to carry out these evaluations effectively.

The corporate secretary typically would be responsible for the items listed below.

1. Identifying the requirements for evaluations in the organization's jurisdiction and advising the board chairman of them.

2. Informing the board chairman of the requirements and agreeing what evaluations should take place.

3. Assisting the board chairman in explaining to the other board members the reasons for the evaluations, the types of evaluations, and how the evaluations will be carried out.

The board chairman should get buy-in from other board members. The corporate secretary should ensure that the topic is included in the agenda for a board meeting.

Many members of boards may be reluctant to enter into the evaluation process, fearing that their performance may be found wanting. The corporate secretary has to practice the skills of diplomacy and empathy in persuading board members to participate. The corporate secretary should reassure members of boards that the process is confidential. It may be helpful to focus a board's attention to procedural issues in the first year, as this is less threatening than dealing with behavioral issues upfront.

It is very important for the corporate secretary to advise the board that the purpose of the evaluations is to make the board, its members, and its committees more effective. The outcome of the evaluations should be forward looking—how we can become more effective as a team—rather than a witch hunt focusing on the past.

Evaluation of the Performance of the Board and Board Committees

Once the board has agreed in principle to evaluations of the board and board committee, the corporate secretary typically would be responsible for the tasks listed below.

1. Advising the board in determining whether the evaluations should be carried out in-house (usually by the corporate secretary) or through engaging external consultants.

This decision will depend on the size of the company and the requirements in the jurisdiction. If external consultants are to be engaged, the board may ask the corporate secretary to carry out a tender to choose the firm. This will require the corporate secretary to develop terms of reference, which will be based on the core criteria agreed by the board.

2. Assisting the board in developing core criteria for the evaluation, including how to report the findings and actions resulting from the evaluation.

It is very important that these are agreed before the process begins.

3. Ensuring that the questionnaires and questions to be used for the interviews are tailored to deal with company-specific issues.

The corporate secretary should brief the board members so that they allocate sufficient time to filling in the questionnaires and attending interviews. If an external consultant is involved, the corporate secretary will be involved in organizing meetings between the board members and the consultant. If there is no external consultant, then the chairman may ask the corporate secretary to carry out the interviews. Interviews should also be held with management and possibly shareholders and advisers.

4. Analyzing the questionnaires and the interview responses.

Where there is no external consultant, the corporate secretary will usually be involved in the analysis of the questionnaires and the interview responses. This will require absolute trust by board members in the confidentiality of the corporate secretary so that they are fully transparent in their views.

5. Discussing the findings and recommendations with the chairman.

Once the analysis has been carried out, the findings and recommendations should be discussed with the chairman and presented to the board. Feedback should lead to a board discussion and a commitment to take certain actions.

6. Developing an action plan and monitoring progress against agreed actions/timelines.

The corporate secretary should record all of the commitments made by the board in an action plan with timelines and responsibilities. Progress against the action plan should be checked at regular intervals, and the corporate secretary should ensure that the issue is included on board agendas and time is made available to discuss progress. Failure to agree on and monitor a set of actions will probably lead to no changes in the board's performance.

7. Ensuring that a reference to the evaluations is included in the corporate governance statement in the organization's annual report.

The corporate secretary is usually responsible for reporting on the board evaluations in the annual report of the company. The annual reports should explain the methodology used in board evaluations in line with the relevant corporate governance codes/regulations. Reporting on outcomes varies from company to company. The corporate secretary should make sure that, in its annual reports, the company reports on the progress of key actions from board evaluations.

Individual Board Directors Evaluations

The corporate secretary typically would be involved in the actions listed below.

1. Assisting the chairman by organizing the evaluation of individual members of the board.

The choice of the evaluation process depends on the size and type of company. The different types are set out in the box on page 78.

2. Advising the board that the evaluation will be of the board members' performance as part of a team.

A board is a team, and it is the performance of the board members as part of that team that is to be assessed. The corporate secretary should ensure that this is the case and that board members are not making subjective assessments of their colleagues' performance based on personal grudges.

3. Reassuring individual board members.

Corporate secretaries should be aware that many boards are reluctant to face up to members' poor performance. The challenge will be for the corporate secretary to persuade the chairman that it will be impossible for the board to function as a high-performance team without demanding high performance from its members.

4. Advising the board that it is important to assess executive directors not just on their managerial roles but also as members of the board.

TYPES OF INDIVIDUAL DIRECTOR EVALUATIONS

Annual discussion between the chairman and each director

This can be guided by a questionnaire that the corporate secretary helps the chairman develop.

Self-evaluation

Directors evaluate their own performance and receive feedback from the other members of the board on their performance. Again, the corporate secretary can assist the chairman with this process and also in developing any questionnaires.

Peer reviews

Many chairmen turn to peer reviews, which entail board members providing the chairman with structured feedback on the performance of their fellow board members. Peer reviews can involve a questionnaire or an interview. Because these reviews are often sensitive, many chairmen prefer to have them carried out by an external consultant who can collect, tabulate, analyze, and provide the feedback. Again, it will depend on whether the board members feel that the corporate secretary has the qualities and skills required to carry out the peer reviews.

360-degree analysis

This process entails obtaining feedback from members of a director's immediate work circle. Most often, this will include direct feedback from management, peers, and the corporate secretary and from external sources, such as major shareholders, customers, suppliers, or other interested stakeholders.

Structured interview

The use of a questionnaire can leave recipients of the feedback unsure why they were rated highly on some aspects and not so highly on others. Many organizations adopt a hybrid approach of a structured interview, where the evaluator completes the questionnaire in discussions with the member.

Some executive directors view their attendance at board meetings solely as being supporters of the CEO, though this may not always be the case. Executive directors should make decisions in the best interests of the company, though this may not be easy if it results in the executive director going against the wishes of the CEO.

5. Assisting the chairman in deciding who should stand for reelection or retire from the board.

The outcome of the individual directors' evaluations is usually to decide on the nominations for reelection at an upcoming general meeting. The corporate secretary, if this is the case, should ensure that the information collected as part of the evaluation is incorporated into the decision-making process on which directors should stand for reelection or and which should retire.

6. Developing directors training programs.

Corporate secretaries should also use the outcome of individual evaluations as a method of developing individual and board development programs.

One of the key responsibilities of a corporate secretary is organizing training for the board. Good corporate secretaries have to come up with innovative ways of training their boards, and not just rely on classroom-type academic learning. Examples include the following:

- Building training into agenda items. For example, if the board is going to approve a policy, then include within the agenda item information on the issue which develops the skills and knowledge of the directors.
- Offering a variety of training so that directors can choose what suits them.
- Incorporating a training session into a board retreat.
- Ensuring that training is experiential rather than academic.
- Focusing on smart skills, team dynamics, and group behaviors and weaving more traditional needs into these workshops.

A corporate secretary who has the necessary skills and experience may be able to carry out some of the training. It is also important to have external facilitators, as they bring new ideas into the board.

The corporate secretary is also responsible for including a report on the training in the corporate governance statement in the annual report.

Board Chairman Evaluation Process

In supporting evaluation of the chairman, the corporate secretary typically would have the duties listed below.

1. Prompting the lead board member or senior independent director to begin the evaluation of the chairman.

If there is no lead board member or senior independent director, the corporate secretary should prompt the chairman to raise with the board the issue of who should be responsible for carrying out the evaluation. The board may decide to ask the corporate secretary, one of the independent directors, or an external consultant to carry out the evaluation.

2. Advising on how the evaluation will occur.

Often the other members of the board complete a questionnaire, anonymously reviewing the performance of the chairman. Follow-up interviews may then be held. The information collected is analyzed and feedback given to the chairman. If appropriate, a development plan is agreed on, and the corporate secretary usually would be responsible for working with the chairman to implement the plan.

3. Advising on the criteria to be used to assess the board chairman.

The corporate secretary should ensure that the performance of the chairman is assessed in the following areas:

- Chairing board meetings;
- Providing input into board agendas;
- Working with the CEO;
- Communicating with fellow directors; and
- Communicating with shareholders and other stakeholders.

The corporate secretary should ensure that, as with the evaluation of the board as a whole, the evaluation is tailored to the particular company and individual.

4. Agreeing with the board chairman as to what findings and recommendations should be fed back to the board as a whole.

A key issue is whether the whole board should receive any information on the feedback the board chairman has received on his or her performance. Many feel it is best not to share the full report with the entire board, to prevent any embarrassment or defensiveness on the part of the chairman, and that it should be left to the chairman to decide what should be shared with the board.

5. Assisting the board chairman with any actions resulting from the evaluation.

If the board chairman requires assistance with sourcing training courses, mentoring, coaching, and so on, the corporate secretary should be prepared to provide such assistance.

CEO Evaluation

Corporate secretaries are sometimes called on to help in the evaluation of the CEO. If this happens, the corporate secretary typically would provide the services listed below.

1. Being available to assist the CEO and/or the HR department in the development of the job description and key performance indicators (KPIs) for the CEO.

2. Ensuring that the CEO is clear on the expectations of the board.

The corporate secretary can also make certain that the line is not crossed between board oversight and interference.

3. Ensuring that information is provided to the board to enable it to monitor the performance of the CEO against the KPIs that have been set by the board.

If the corporate secretary reports to the CEO, it may be difficult to carry out this role effectively. Care should be taken by the board to ensure that a corporate secretary is not put in an impossible position.

Evaluation of Compliance with Corporate Governance Codes and Regulations

Most jurisdictions require organizations to report annually on how they are applying corporate governance best practices within their organizations. The corporate secretary would usually be responsible for the actions listed below.

1. Advising the board to carry out the assessment.

It is best practice for a company each year to assess itself against corporate governance best practices, usually reflected in the law, regulations, and/or a code of best practice. This is usually done by the corporate secretary as part of the annual accounts process.

2. Ensuring that an evaluation does not just become a box-ticking exercise.

The corporate secretary should ensure that the board is committed to good governance and seriously considers the company's performance in the spirit of the provisions it is assessing itself against rather than just doing the minimum required to be able to tick off the requirement. Real governance is about making sure that the structures, processes, and policies are working effectively and that strong cultures of governance are being built.

3. Analyzing the findings and making recommendations for improvements.

Corporate secretaries, when recommending corporate governance best practices to the board, should be commercial in their approach and ensure that what they are proposing will help the business and not just be a recommendation based on the letter of the law.

4. Developing an action plan and monitoring progress against actions/timelines.

PERSONAL ATTRIBUTES TO BE ASSESSED AS PART OF A DIRECTORS INDIVIDUAL ASSESSMENT

What attributes from the following list does the director see as strengths he or she brings to the board?

- Critical analysis
- Independent judgment
- Vision and imagination
- Strategic perspective
- Managerial experience
- Resource management
- Achieving results
- Risk management
- Others
- Engaging communicator
- Intuitiveness
- Interpersonal sensitivity
- Influence
- Motivation
- Conscientiousness
- Banking
- Financial analysis

CHAPTER 9:

Role with Shareholders

“Being the manager rather of other people’s money than of their own, it cannot be well expected that they would watch over it with the same anxious vigilance with which (shareholders) watch over their own.”

—Adam Smith, Wealth of Nations Book V (1827)

This separation of ownership and control has been the focus of companies and securities laws and regulations as well as corporate governance best practices, which have developed globally to ensure that the rights and assets of the investors/owners of companies are protected from unscrupulous managers.

The position of the corporate secretary is part of this framework of protection that has developed over the years. One of the fundamental roles of the corporate secretary is shareholder relations in its many forms, for example:

- Dialogue
- Accountability
- Ensuring rights (ownership, transfer and conveyance, to information, to participate in the affairs of the company, and so on)
- Enabling powers to be exercised
- Ensuring fairness in treatment of shareholders whatever, their size
- Protecting value through policies and processes
- Governance

The relationship the corporate secretary has with shareholders will depend on the type of shareholder.

- Registered shareholder—the person (or corporation) entered into the shareholder register of the company. This person or organization could be the beneficial owner (ultimately owns a share in a company) or a nominee/custodian (a person or organization that holds shares on behalf of another person or organization who may or may not be the ultimate owner of the shares).
- Retail shareholder—an individual investor who buys and sells securities for his or her personal account, and not for another company or organization. The individual usually registers the shares in the name of a nominee belonging to a stock-broking firm such as Barclays Nominees Limited.
- Institutional shareholder—an organization that trades securities in large enough share quantities or dollar amounts to qualify for preferential treatment and lower commissions. Institutional investors face fewer protective regulations, because it is assumed that they are more knowledgeable and better able to protect themselves. Typical institutional investors include banks, insurance companies, retirement or pension funds, hedge funds, investment advisers, and mutual funds.
- Some institutional shareholders, however, do actively engage with companies on their corporate governance. Examples include Hermes, CalPers, The Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF), APG (Dutch), and Norgist Fund, and others. This dialogue is usually with the larger companies and will usually be with the corporate secretary.

The role of the corporate secretary in protecting shareholder ownership typically would include providing the services listed below.

1. Ensuring that a new shareholder's interest is registered.

A person or entity can become a shareholder in many different ways and in doing so will usually interact with a corporate secretary. (See Figure 9.1.)

Incorporation: The corporate secretary is often involved in the incorporation of the company. In common law countries, an individual subscribes for shares in a company to be incorporated. Once the company is incorporated, the corporate secretary will enter the names of the subscribers into the register of members, and those subscribers then become the first shareholders of the company.

Subscription: If a company decides to go public, individuals subscribe for shares in the initial public offering. The corporate secretary will work with the brokers to decide who receives what shares and then will enter the names of individuals into the register of members.

Figure 9.1: Slide 7 from IFC's *Corporate Secretary Toolkit, Part 2 Module 8/Shareholders* presentation.

Becoming a Shareholder

- On incorporation
- Subscription
- Issue of shares
- Transfer of shares
- Transmission of shares on death, bankruptcy, or mental disorder
- Others

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Source: IFC *Corporate Secretary Toolkit*, 2013.

2. Organizing the transfer or transmission of shares from one shareholder to another.

The corporate secretary will often be responsible for organizing the transfer or transmission of shares from one shareholder to another.

When issuing or transferring shares to a shareholder, the corporate secretary must check that there are no restrictions on the individual or corporation becoming a shareholder. In most countries, an individual needs to be a person or a legally incorporated entity to own shares. Partnerships, clubs, and associations are therefore unable to own shares themselves; they have to own them through one or more of their members or through a nominee shareholder.

Where limited liability partnerships exist, these can usually own shares in their own right, as they have been legally incorporated.

In many countries, a company cannot be a member of its own holding company. There are exceptions to this rule, such as a group employee share plan or pension plan. Also, a company may not be a member of itself. Again, there are exceptions, including purchases of own shares, treasury shares, redemption of shares, forfeited or surrendered shares.

Minors are often able to become shareholders, but problems arise when the minor wants to sell the shares. In common law countries, minors are not able to enter into contracts, so this can cause issues for companies. For example, a minor will be able to avoid any allotment or transfer while he or she is a minor or within a reasonable time after becoming an adult. Also, where a member does transfer shares to a minor, even in ignorance, the member is liable for any future calls on those shares until the minor comes of age.

3. Dealing with shareholders who cease to be members.

The corporate secretary should also be aware of how an individual or organization ceases to be a shareholder. The most common way a member ceases to be a shareholder is by transferring his or her shares. In a common law country, in an unlisted company, this can be done by lodging the appropriate forms with the corporate secretary. (See Figure 9.2.)

If a shareholder dies, becomes bankrupt, or is of unsound mind, his or her shares will be transferred to his or her legal representative or beneficiary. Again, the corporate secretary may be involved in receiving and processing the documents to accomplish the transfer.

In common law countries, articles of association of public companies often include provisions for the compulsory transfer of shares, such as in enforcement of a lien on those shares.

If shares have only been partly paid, and the holder is unable to pay the outstanding amount for the shares, then the shares will be forfeited. In this case, the corporate secretary will be involved in writing to the shareholder on behalf of the board, stating that if the outstanding balance is not paid within a specified time limit, then the shares will be forfeited. If there is no response,

Figure 9.2: Slide 9 from IFC's *Corporate Secretary Toolkit, Part 2 Module 8/Shareholders* presentation.

Ceasing to be a Shareholder

- Transfer of shares
- Transmission of shares on death, bankruptcy, or mental disorder
- Enforcement of a lien on the shares
- Forfeiture

CORPORATE SECRETARIES TOOLKIT
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Source: IFC *Corporate Secretary Toolkit*, 2013.

the board will pass a resolution following the process for forfeiture set out in the articles of association. The corporate secretary will then make the appropriate entries into the register of members.

4. Advising on and drafting shareholder agreements.

The shareholders of many non-listed companies will require shareholder agreements to enable them to deal with conflict and/or exit the organization. The corporate secretary will often be called on to advise on the content of these agreements and then to draft them.

5. Ensuring that shareholder powers and rights are protected.

Shareholders generally have a number of powers and rights, which the corporate secretary has a role in protecting. The corporate secretary fulfills this role by advising the board when these rights are being or could be infringed. Corporate secretaries also assist shareholders in exercising their powers and rights.

Shareholder powers include the following:

- Distributing profits via dividends, share buybacks, and so on
- Appointing and removing directors (although in two-tier systems shareholders only have indirect power over the appointment and removal of members of the management board)
- Appointing auditors
- Remunerating directors
- Amending the articles
- Amending the capital structure
- Making de facto changes, including mergers, acquisitions, and disposals, which affect the fundamental legal and de facto bases of the company

SHAREHOLDERS' AGREEMENTS IN BRAZIL

Shareholders' agreements are common in Brazil. Pursuant to article 118 of the Brazilian Corporations Act, shareholders' agreements need to be in writing and registered in order to be valid among the shareholders and third parties. The agreements may regulate only:

1. The purchase and sale of shares
2. The preference to acquire shares
3. The exercise of voting rights
4. The exercise of control

Other subjects, such as the company's policy on investments and the company's budget, may also be regulated by the agreement, but non-company issues cannot be regulated.

The most common types of clauses in shareholder agreements in Brazil are:

1. The right of first refusal
2. The tag-along and drag-along clauses
3. The preparatory meetings among the shareholders who executed the shareholders' agreement to decide how to vote in the general meetings of the company

Source: IBA Guide on Shareholders' Agreements, Brazil, Horacio Brenardes Neto and Bruno Oliveira Maggi Xavier, Bernades, Braganca Sociedade de Advogados.

Shareholders generally have the following rights:

- To accurate information presented in a timely manner
- To attend and participate in shareholder meetings
- To vote at shareholder meetings
- To exercise rights set out in legislation, the company's constitution, resolutions of shareholders, shareholder agreements, and so on

6. Protecting shareholders from abuse.

The corporate secretary plays a major role in ensuring that the abuses described below do not occur in their organizations. (See Figure 9.3.)

Insider Trading

Insider trading, or as it is known in some countries insider dealing, occurs when a person:

- Knowingly attempts to, or actually does, deal in shares of a company when in possession of unpublished price-sensitive information about that company.
- Communicates unpublished price-sensitive information to a third party with the purpose that that third party may use it to trade unfairly.

Figure 9.3: Slide 14 from IFC's *Corporate Secretary Toolkit, Part 2 Module 8/Shareholders* presentation.

Types of Shareholder Abuse

- Insider trading
- Dilution
- Tunneling
- Related-party transaction
- Others

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Source: IFC *Corporate Secretary Toolkit*, 2013.

Corporate secretaries are often responsible for introducing processes and procedures to help directors, managers, and other employees avoid infringing the laws and regulations on insider dealing. They do this by introducing share-dealing policies, which include provisions restricting dealing by the board and certain employees at certain times when there is unpublished price-sensitive information about the company. At other times the policies may require the board and certain employees to request permission to deal. Often the corporate secretary is the designated person for providing this permission or for organizing a director to approve the requests.

Corporate secretaries may also be required by laws, regulations, or best practice to keep lists of those aware of a particular transaction that is considered price sensitive. These lists, often known as “insider lists,” contain the names of internal and external people involved in, or aware of, a particular transaction that is considered price sensitive.

Dilution

Corporate secretaries are usually involved in the allotment of shares, so they are best placed to monitor dilution.

Dilution can occur in three ways:

- Ownership percentage of voting control is reduced.
- Per-share earnings may be cut when disbursed among a greater number of shareholders.
- Share values may fall depending on proceeds received from selling more shares to investors.

In countries where shareholders have the right of “preemption” in relation to the issue of new shares, that is to say that the shares must be offered first to the existing shareholders in proportion to their existing holdings before they can be offered to others, the corporate secretary is usually responsible for ensuring that this right is waived for certain share issuances, for example, all employee share plans. The corporate secretary should in these cases ensure that a resolution is included in the agenda for the annual shareholder meeting and that the amount of the waiver requested is in line with what shareholders expect. Many institutional shareholder representative bodies have rules about the level of dilution that is acceptable. In the United Kingdom, it is a maximum 5 percent each year.

Tunneling

Corporate secretaries should monitor the activities of directors and controlling shareholders to ensure that they do not infringe shareholder rights through what has become known as tunneling.

Tunnels occur when there are:

- Asset transfers at non-market prices;
- Value-destroying acquisitions and investments to help related companies;
- Off-balance-sheet loan guarantees; and
- Exploitation of corporate opportunities by related companies.

Related-Party Transactions

A corporate secretary is involved in drafting, implementing, and enforcing a policy on related-party transactions. Where a related-party transaction occurs, the corporate secretary will advise the director and the board about the consequences. These may range from disclosure in the annual accounts to obtaining shareholder approval.

If shareholder approval is required, then the corporate secretary will have to arrange for the general meeting and the appropriate documentation to be prepared.

7. Issuing/cancelling shares.

Directors are usually authorized to issue (allot) shares in the articles of association or by resolution of shareholders in the general meeting. The corporate secretary should plan and manage the process of allotting new shares in the company by:

- Checking that the directors are authorized to issue shares.
- Checking that the shares to be issued are in proportion to the existing holdings of the shareholders. If they are not, the corporate secretary should check that shareholders have waived their preemption rights for the shares to be issued.

- Sending application forms to those applying for the shares.
- Processing the application forms and the payments received for the shares.
- Arranging for the board to pass a resolution issuing the shares.
- Entering the names of the new shareholders in the register of members.
- Sending out share certificates to the new members.
- Filing any forms with the registrar for companies.

If the company is listed, the corporate secretary also applies to have the shares listed for trading with the local stock exchange.

8. Advising on and organizing capital actions.

There are various capital actions that a corporate secretary will play a part. Below are some examples.

Bonus Issues

A bonus issue, which is also referred to as capitalization issue, is when fully paid shares of the same class are issued free of charge to existing shareholders in proportion to their existing holding. For example, the company may have a bonus issue of 3:1, in which case shareholders receive one new share for each three shares they hold. Companies use bonus issues as a method of returning value to shareholders. It is often perceived by the market as a sign of confidence in the company's fortunes and strong financial position.

Rights Issue

A rights issue is an issue of rights to existing shareholders to buy at a specified price a new share in the company pro rata to their existing holdings, for example, the right to buy two new shares for each share the shareholder holds. Shareholders can take up the rights or waive the rights. The rights that have been waived are offered to other potential investors. Companies use rights issues as a method of obtaining additional funding from the company's shareholders, rather than borrowing from banks and other financial institutions.

Stock Splits/Consolidations

Most corporate secretaries will be involved at some time or another during their careers in a change to a company's share capital. The power to change a company's share capital is usually found in the company's articles of association and usually requires a resolution from shareholders in the general meeting. Stock can either be split into two or more shares or be consolidated by combining a number of shares.

Redemption of Shares

If a company issues redeemable shares, at some stage in the future the shares will have to be redeemed, and the corporate secretary arranges for the redemption.

Purchase of Own Shares

For shareholders, the company buying back its own shares constitutes a hybrid between a sale and a dividend. On the one hand, the shareholders sell their shares. On the other, this situation resembles a dividend, because surplus money is given out by the company to the shareholders. If a company decides to buy back its shares, the corporate secretary usually organizes the buyback through the company's brokers.

CHAPTER 10:

Role in Shareholder Meetings

BEFORE THE MEETING

A corporate secretary would usually prepare a timetable setting out what needs to be done when leading up to the annual general meeting. This timetable typically includes planning for the tasks described below.

1. Setting the date.

Most countries have requirements regarding the date of the AGM, and these should be taken into consideration. Within these requirements the corporate secretary usually proposes to the board a date that allows time for the preparation of all of the documents to be circulated to shareholders prior to the AGM, the most important of these being the annual report and accounts.

2. Advising the board on the timing and location for the AGM.

The corporate secretary in advising the board on the choice of timing and location of the AGM should consider what is convenient for shareholders generally. For instance, in the United Kingdom, AGMs are usually held at 11:00 am to give shareholders time to get to the meeting after peak times for travel. Some companies have moved the location of their AGM to enable shareholders from different parts of the country to attend. Companies should try to avoid holding their AGM on the same day as others in the same sector, to enable shareholders who own shares in several companies to attend all the AGMs personally.

3. Coordinating with the chairman on refreshments.

The corporate secretary should coordinate with the chairman of the board on the type of refreshments to be provided to shareholders. It is usual to provide for an 11:00 am meeting tea, coffee, and so on and then lunch after the meeting. Some companies provide alcoholic beverages, especially those who produce them, and care needs to be taken to ensure that shareholders do not over indulge.

4. Coordinating on gifts.

At the AGMs consumer goods companies often give out goody bags at the AGMs containing company products. The corporate secretary usually has to work with the marketing department to determine what should go into the bag or be the gift for that year's AGM. Care should be taken that the bag does not become too heavy, as many attending AGMs may be elderly.

5. Checking facilities for disabled shareholders.

The corporate secretary should ensure that the venue for the AGM is accessible for shareholders with disabilities, including those with poor hearing. Many companies put in hearing loops for the deaf, and some even provide an expert in sign language to give an instantaneous translation of proceedings to those with hearing difficulties. If the company provides these types of services, it is useful to say so in the notice to the meeting and to indicate in which section of the hall people with hearing disabilities should sit to take advantage of them.

6. Checking health and safety requirements.

The corporate secretary should ensure that a security briefing for shareholders is conducted prior to the AGM. This can be carried out by the

venue staff, the chairman, the head of security, or the corporate secretary. The briefing should advise shareholders what to do in the event of a fire or terrorist threat.

If companies are expecting many shareholders or a lot of elderly people at the meeting, they should be sure there is a nurse or paramedic on-site.

7. Planning for questions.

Many companies these days plan for questions at the AGM. This allows the chairman to be properly briefed. Also, if the company is expecting a lot of shareholders, such planning can help with managing time at the meeting.

The simplest way to plan for questions is to ask the shareholders to submit their questions to the corporate secretary in advance. Companies often send out with the AGM materials a sheet asking for shareholders to submit any questions they have and to indicate whether they are happy with a response in writing prior to the meeting or would want the chairman to answer the question at the meeting. The corporate secretary can then either answer them in writing before the meeting or prepare the chairman to answer them at the meeting, according to the shareholder's preference.

The second method is to ask shareholders to register their questions when they arrive at the AGM. This allows some time for organizing the questions for the chairman to answer.

8. Planning for voting.

Corporate secretaries should advise the board members on the best-practice method of voting at the AGM for their type of company in their jurisdiction. There are two main types of voting: by show of hands or in writing by way of a poll. If voting is by way of a poll, it can be carried out during the meeting or by mail.

Many large companies these days carry out voting at their AGMs electronically. To assist with this, they usually send barcoded voting cards out

Figure 10.1: Sample Agenda for Annual General Meeting

ABC LIMITED

AGENDA for the **Annual General Meeting**

to be held at _____ on the _____ day of _____ 20XX

1. To request that the Notice of the Meeting be taken as read.¹

2. THAT the report of the directors and the audited accounts for the year ended _____ 20XX be laid before the meeting.

To request that the report of the Auditors be taken as read.²

_____ to second the resolution.³

The Chairman to invite questions from shareholders and, having replied to those questions,⁴ put the resolution to the vote at the meeting and declare the result of the vote.

3. THAT a dividend of _____ per share be declared payable on _____ 20XX to holders of shares registered at the close of business on _____ 20XX.

_____ to second the resolution.

The Chairman to invite questions from shareholders and, having replied to those questions, to put the resolution to the vote at the meeting and declare the result of the vote.

4. THAT _____ be appointed a director of the company.

_____ to second the resolution.

The Chairman to invite questions from shareholders and, having replied to those questions, to put the resolution to the vote at the meeting and declare the result of the vote.

ABC LIMITED

5. THAT the director retiring by rotation be reelected a director of the company.

_____ to second the resolution.

The Chairman to invite questions from shareholders and, having replied to those questions, to put the resolution to the vote at the meeting and declare the result of the vote.

6. THAT _____ be reappointed auditors of the company to hold office until the conclusion of the next general meeting at which accounts are laid before the company and that their remuneration be determined by the directors.

_____ to second the resolution.

The Chairman to invite questions from shareholders and, having replied to those questions, to put the resolution to the vote at the meeting and declare the result of the vote.

7. Other business will be proposed by the Chairman and in some cases by shareholders.
8. The Chairman to close the meeting.

¹ In many countries it is possible, with the meeting's consent, for the notice of the meeting to be taken as read. This helps time management at AGMs especially when the Notice is lengthy. Where consent is obtained and the Notice is not read at the meeting, the Notice should still be made available to shareholders at the meeting, usually by putting a copy on the chairs at the meeting.

² In many countries it is possible, with the meeting's consent, for the report of the auditors to be taken as read. This again helps with time management at the AGM. The auditors, even where consent is obtained, should be available at the meeting to answer questions from shareholders on the audited accounts.

³ In most countries there is no legal requirement for resolutions at AGMs to be seconded. Some companies adopt the practice either out of custom or to make shareholders feel more involved in the process.

⁴ Although best practice is for questions from shareholders at an AGM to be answered, in many countries there is no legal requirement for the Chairman to do so. This enables Chairman to request Management or others to provide answers outside of the meeting.

to shareholders in advance of the meeting. The registrar can then swipe the card when the shareholder arrives and activate it for voting at the meeting.

Corporate secretaries can also prepare in advance documentation to allow for corporate representatives to be appointed so that they can attend the meeting. Most countries have requirements for proxy forms to be circulated with AGM materials so that if shareholders cannot attend in person they are able to appoint someone to attend in their place and vote on their behalf.

9. Developing the agenda for the meeting.

Most AGMs have a standard format agenda, which is circulated with the notice of the meeting. An example is shown in Figure 10.1 on pages 100 and 101.

Special items that may be considered include, for example, authorizing allotment of shares, waiving preemption rights to new shares, directors' remuneration, share and share option plans, changes to the articles of association, and so on.

When organizing the resolutions for the agenda, best practice says that separate items of business should not be bundled, that is, combined into one resolution. Corporate secretaries should ensure that there is a separate resolution for each item of business. This prevents companies from coupling unpopular or contentious issues with items that should pass easily.

In addition to the formal agenda on which shareholders will be asked to vote, the chairman and management often give presentations on performance and future plans for the company. Some companies go further and have videos, displays, and/or demonstrations at their AGMs. Corporate secretaries will be involved to varying degrees in these activities.

10. Preparing and distributing materials.

The corporate secretary is usually responsible for preparing (to varying degrees) and distributing the materials for the AGM. These would usually include:

- The notice of the AGM;
- Annual report and accounts;
- Letter from the chairman explaining the business of the meeting. In the United States this is called the proxy form;
- Proxy/voting forms;
- Other documents supporting the resolutions, such as amended articles, share option plan rules, and so on.

Most countries require companies to provide details of directors who are to be appointed at the meeting. Their names, relevant experience (including but not just limited to a list of their other directorships and positions), the date they were first appointed to the board, details of any board committees they served on, and a history of their attendance at board meetings, committee meetings, and so on, during their terms.

The corporate secretary has to decide, if it is not stipulated in law, how long before the meeting the AGM documents should be circulated. Normally for a listed company with multinational shareholders the materials are sent out six to eight weeks before the meeting (double the time usually required by law). to allow shareholders time to receive the materials and then vote.

11. Organizing associated events.

The corporate secretary may be required to organize board meetings or lunches either before or after the AGM. If they are after the event, time should be given for the directors to mingle with shareholders to discuss issues after the meeting.

12. Briefing the chairman for Q&A.

A corporate secretary usually works with management to prepare a briefing pack for the chairman. This would include both operational and governance issues. Companies may also do a Q&A rehearsal. Participants will be asked to hold a Q&A rehearsal during the workshop.

REHEARSING AGM QUESTIONS

A murder board is a committee of questioners set up to help someone prepare for a difficult oral examination.

The Q&A session at an annual shareholders' meeting is an important opportunity for a chairman to demonstrate his or her capacity to engage shareholders in a constructive exchange. The following example is a missed opportunity. How do you think the shareholder felt at the end of this exchange?

Shareholder: *"I've been a shareholder for 12 years. I remember standing in a phone box buying CCA shares over the phone....Just one question: I'd like to know if CCA has a policy on genetically modified foods....If you currently use them or if you have a policy of not using them, or if you're indifferent. There's a lot of movement nowadays for people to choose products that are GMO-free, and if our company could come to that position, if indeed that's possible, I believe that would be extra value to shareholders."*

Chairman: *"Thank you for the question...but I can't resist noting, have you seen any telephone boxes around lately? We are working on those figures and will get back to you. Any other questions? No one else wants to talk about telephone boxes or...?"*

As corporate secretary, you want the chairman to project an image of engaged and informed leadership. Ensure the chairman rehearses succinct responses to questions from shareholders to avoid antagonizing them at the meeting.

ON THE DAY OF THE MEETING

The corporate secretary during a meeting typically would perform the tasks below.

1. Ensuring that all directors are in attendance and seated appropriately.

Wherever possible, all directors should attend the AGM. The chairman of the remuneration committee for a listed company should also be prepared to answer questions from shareholders at the meeting.

It is usual practice for the directors to be seated on the stage with the chairman, facing the shareholders. Some companies with many directors have tried seating directors in the front row and having on the stage only the board members who may be giving presentations or need to be available to answer questions. Shareholders seem to prefer seeing all the directors.

2. Reading the notice of AGM.

In some parts of the world it is still common practice for the corporate secretary to read the notice of the meeting to shareholders before the business of the meeting commences. Best practice indicates that where the notice has been sent to all shareholders it is no longer necessary for it to be read at the meeting, the chairman taking it as read. However, a copy should be made available to shareholders at the meeting, often by placing a copy on the chairs at the meeting.

3. Reading the auditors report.

It is also common in some parts of the world for the auditors to read their audit opinion to shareholders at the annual shareholder meeting. Best practice indicates that as the audit opinion has been sent to all shareholders

with the financial statements it is no longer necessary for it to be read at the meeting, the chairman taking it as read or noted unless a shareholder has an issue with it or it is qualified.

4. Proposing and seconding of resolutions.

Unless provided for in the articles of the company, there is no requirement for resolutions proposed by the chairman to be seconded before they are voted on. Although a chairman could propose his or her own appointment, usually the chairman asks one of the other directors (often the chairman of the remuneration committee) to do so.

SHAREHOLDER DIALOGUE

In *The Forsyte Saga*, set in the late nineteenth century, John Galsworthy described an annual general meeting where Old Jolyon Forsyte was the chairman and his nephew, Soames, was in attendance:

And now Old Jolyon rose, to present the report and accounts.

Veiling under a Jove-like serenity that perpetual antagonism deep-seated in the bosom of a director towards his shareholders, he faced them calmly...

"If any shareholder has any question to put, I shall be glad to answer it." A soft thump. Old Jolyon had let the report and accounts fall, and stood twisting tortoise-shell glasses between thumb and forefinger.

The ghost of a smile appeared on Soames' face. They had better hurry up with their questions. He well knew his uncle's method (the ideal one) of at once saying "I propose, then, that the report and accounts be adopted." Never let them get their wind—shareholders were notoriously wasteful of time.

Although this meeting reflects its time, over one hundred years ago, it is often argued that not much has changed.

5. Organizing questions from shareholders.

This usually happens after the presentations of the chairman and management and before the voting on the resolutions. As mentioned earlier, some companies plan their Q&A session.

Shareholders in most countries only have the right to ask questions on the business of the meeting. Most companies, however, allow shareholders to ask questions that go beyond the matters to be voted on at the meeting.

Chairmen are not compelled to answer questions but usually do so unless the question is about something specific to the individual asking it, in which case they may direct the questioner to someone in management or the corporate secretary to answer the query outside of the meeting.

It is important for a chairman to manage the Q&A session or it can become a waste of time with trivial, uninformed, or repetitive questions. There is also the threat that a pressure group could try to use the Q&A session to disrupt the meeting. A good corporate secretary will assist the chairman in managing the Q&A session by organizing the questions and keeping the chairman on track.

6. Collating proxies.

It is now best practice for the proxy votes to be disclosed to those shareholders in the meeting when they vote on the resolutions. The corporate secretary should organize this. If voting is by a show of hands and the votes in the hall bring a different outcome from those represented by proxies, the chairman of the meeting is usually required to call a poll. The corporate secretary is responsible for advising the chairman of this and for organizing it. Many companies, especially listed companies, hold all of their voting by poll so this is not an issue.

7. Dealing with shareholder requests to change resolutions and other procedural issues.

These are dealt with in one of the activities in the workshop. The corporate secretary is responsible for ensuring that the chairman is briefed on what to do and say in these circumstances.

8. Keeping order at the AGM.

Minor activists often try to disrupt AGMs to attract publicity for their cause. Their protests usually take the form of continuous heckling, but in some cases they have been known to storm the directors table. The problem can be exacerbated if protestors manage to provoke shareholders or come into contact with company personnel, especially security personnel.

Corporate secretaries can take precautions, such as putting a barrier between the stage and the audience, usually by putting flowers in front of the stage, and filling the front two rows of seats with friendly attendees, employees, or former employee shareholders. The corporate secretary should also have briefed security and other staff attending as to what to do if a demonstration should occur—that is, leave it to the professionals and call the police if things start getting violent or property is being damaged. The corporate secretary should also brief the chairman and, if things are getting out of hand, advise the chairman to give a warning and, if the warning is unheeded, adjourn the meeting.

9. Organizing the media.

In the past, many representatives of the media bought one share to enable them to attend AGMs. As this is costly and a nuisance to companies, many companies these days invite the media to attend meetings.

10. Managing logistics.

The corporate secretary will also have to continue to manage the logistics at the meeting. For instance, if the room has become overcrowded, alternatives may have to be organized. Usually if this is a possibility the corporate secretary will have organized, prior to the meeting, overflow rooms that will be connected by audio-visual equipment to the main hall.

AFTER THE ANNUAL SHAREHOLDERS MEETING

After the AGM, the corporate secretary typically would be responsible for the tasks listed below.

1. Filing resolutions.

The corporate secretary is usually responsible for preparing copies of any resolutions passed at the AGM for filing with the companies registry or with regulators if the company is listed.

2. Preparing minutes.

These are usually fairly brief, focusing on the business of the meeting. Some companies organize a verbatim reporting of the Q&A session, which is a separate document from the minutes but kept with them.

3. Paying the dividend (if approved at the meeting).

4. Announcing the voting results.

There are sometimes requirements for voting results to be published in newspapers or on a company's website. If this is required, the corporate secretary usually would organize this.

Corporate Secretaries and other Shareholder Meetings

The corporate secretary would also typically be involved in the other types of shareholder meetings mentioned in Figure 10.2.

Figure 10.2: Slide 13 from IFC's *Corporate Secretary Toolkit, Part 3 Module 7/ Shareholders' Meetings* presentation.

Other Shareholders' Meetings

- Shareholders' meetings (other than the annual meeting)
- Requisitioned meetings
- Class meetings for shareholders holding different classes of shares
- Capital reduction meetings
- Meetings related to the winding up of the company
- Others

CORPORATE SECRETARIES TOOLKIT
PART 3 **MODULE 7** / SHAREHOLDERS' MEETINGS

19

Source: IFC *Corporate Secretary Toolkit*, 2013.

CHAPTER 11:

Role in Strategy, Risk, and Good Corporate Citizenship

Best practice is for the board to have overall responsibility for strategy and risk management. The corporate secretary typically would have a role in both, as the primary facilitator for the board, to carry out these functions effectively. The size of the role will depend on the size of the organization and the sector in which it operates. It will also depend on the position of the corporate secretary in the organization.

The Corporate Secretary's Role in Strategy

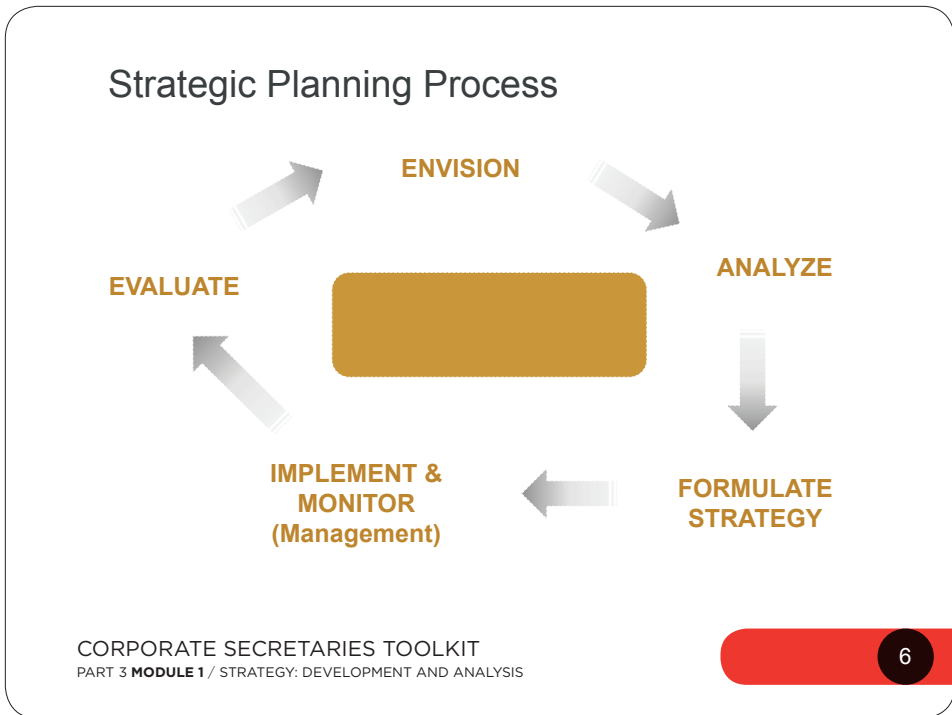
The corporate secretary typically would have the responsibilities outlined below.

1. Ensuring that strategic discussions take place at the board.

Best practice states that strategic discussions should make up two-thirds of the board's time. The corporate secretary typically would ensure that board agendas include the following (see also Figure 11.1):

- Development of the vision, mission, and values for the organization;
- An annual strategy review;
- Periodic reviews of the key performance indicators relating to the implementation of the strategy;
- Activities such as training, information sessions, and field visits, which should enable board members to familiarize themselves with the market environment in which their organization operates. The corporate secretary typically would play a role in organizing all of these.

Figure 11.1: Slide 6 from IFC's *Corporate Secretary Toolkit, Part 3 Module 1/Strategy: Development and Analysis* presentation.



Source: IFC Corporate Secretary Toolkit, 2013.

2. Advising the board on compliance with the organization's objectives.

When the board is discussing different strategic options, the corporate secretary can advise on compliance with the organization's objectives (purpose), which are usually set out in the organization's constitution (memorandum and articles of association, bylaws, and so on).

If the intended strategic direction does not fit within the objectives set out in the organization's constitution and the board believes that it is the best interests of the organization to still carry out the activities, then the

corporate secretary should advise the board how the objectives should be changed. This would normally require the corporate secretary to:

- Engage with shareholders on the proposed changes;
- Draft documents required to convene a shareholder meeting—agenda, resolutions, voting materials, and so on;
- Organize and attend the shareholder meeting;
- Oversee the voting;
- Develop a set of minutes for the shareholder meeting;
- Be responsible for regulatory filings resulting from decisions made at the shareholder meeting.

3. Advising the board on whether the proposed strategy is consistent with good governance.

4. Ensuring an effective and structured monitoring of progress against strategic objectives.

The corporate secretary typically would ensure that there is an effective and structured framework for the board to continuously monitor/oversee management's progress against the strategic objectives/targets. As part of the preparation for board meetings, the corporate secretary typically would be required to collect information and reports (from management) of the performance of the organization against the strategic targets/objectives.

5. Sharing third-party reports on the organization's performance.

The corporate secretary should consider reports from external stakeholders on the strategy and its implementation and determine whether they may also

help the board in future decision making. Such third-party reports include, press clippings, analyst reports, share representative body reports, and so on, which should also be shared with the board as appropriate.

6. Advising on disclosure requirements.

For listed companies, the corporate secretary may be required to advise the board on disclosure requirements relating to the strategy and its development and performance against targets.

Additional Responsibilities for corporate secretary.

In some organizations, the corporate secretary will play a larger role:

- At the request of the board, the corporate secretary could be involved in the development of the organization's vision, mission, and values. This will involve engagement with senior management.
- If the corporate secretary is in a senior position, the board may ask the corporate secretary to coordinate with senior management on the development of the strategic plan. The corporate secretary is often in a unique position, having an overview of the whole organization through engagement with senior management across all departments as part of the board meeting process. This will enable the corporate secretary to advise and coordinate with senior management during the formulation stage of the strategy and in some cases mediate between members of senior management.
- The corporate secretary may be called on to advise the board on whether the strategy is acceptable in relation to risk, especially reputational risk.
- The corporate secretary may be involved in the wider communication of the strategy both within the organization and to external stakeholders. This also includes reviewing disclosures to ensure that the right message gets out, balancing both the positive and negative information.

The Corporate Secretary's Role in Risk Management

Since the global financial crisis, the responsibility of the board for effective risk management has come under ever greater scrutiny. Many countries have strengthened their corporate governance practices to ensure that boards have a greater responsibility for risk. In the United Kingdom, for example, the UK Corporate Governance Code has been revised. (See Figure 11.2. on page 116.)

The board has overall responsibility for risk management. In practice this responsibility is delegated to executive management, but the board retains the following responsibilities:

- Deciding the risk appetite of the company;
- Developing board guidelines for risk, which reflect the board's decision on the risk appetite for the company;
- Ensuring that executive management manages risks within the board guidelines for risk;
- Monitoring the performance of executive management to ensure that the business is being managed within the risk guidelines set by the board;
- Evaluating the risk management system to ensure that it is effective and achieves its purpose.

The corporate secretary typically would have the responsibilities listed below to assist the board in meeting its responsibilities with regard to risk management.

1. Ensuring that risk is on the board's agenda.

An organization should have a risk management policy and framework approved by the board. The board should also be considering the organization's long-term continuity/sustainability.

Figure 11.2: Risk Management Example

UK CORPORATE GOVERNANCE CODE

SEPTEMBER 2014

C.2: Risk Management and Internal Control

Main Principle

The board is responsible for determining the nature and extent of the principal risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems.

Code Provisions

C.2.1 The directors should confirm in the annual report that they have carried out a robust assessment of the principal risks facing the company; including those that would threaten its business model, future performance, solvency or liquidity. The directors should describe those risks and explain how they are being managed or mitigated.

C.2.2 Taking account of the company's current position and principal risks, the directors should explain in the annual report how they have assessed the prospects of the company, over what period they have done so and why they consider that period to be appropriate. The directors should state whether they have a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary.

C.2.3 The board should monitor the company's risk management and internal control systems, and at least annually, carry out a review of their effectiveness, and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls.

2. Ensuring that management identifies risks associated with particular agenda items.

3. Advising the board on the setting up of a risk committee.

In certain regulated organizations, such as financial institutions, the corporate secretary advises on the setting up of a board committee with specific responsibility for risk. If a company does not have a risk committee, risk should be on the board agenda or the audit committee agenda if one exists.

4. Making the board aware of its responsibilities for risk.

At the board meeting, when the board is considering the annual report, the corporate secretary typically would make the board members aware of the statements they are agreeing to and any potential duties or liabilities they may have with regard to them, for example:

- Statement of directors responsibilities;
- Effectiveness of internal controls;
- Going concern;
- Board reports—remuneration, business, review, and so on.

5. Assisting the board with assessment of the effectiveness of the risk management system and internal controls.

The corporate secretary typically would ensure that there is an effective and structured framework for the board to evaluate the effectiveness of the risk management system. As part of the preparation for board meetings, the corporate secretary will be required to collect information and reports from management and internal audit on risk and the effectiveness of the risk management within the organization.

In some organizations, the corporate secretary may play a larger role, which could include one or both of the following additional activities:

- The drafting or reviewing of statements in company reports, such as the annual report, which set out the company's general attitude toward risk;
- At the request of the board, the collation of information supporting the board's assessment that the system of internal controls is effective. This can include internal audits and certifications by management and staff that they have complied with all policies that apply to them.

6. Developing board guidelines for risk that reflect the board's decision on the risk appetite for the company.

The corporate secretary should ensure that a discussion on risk appetite and risk tolerance is included on the board agenda annually.

RISK APPETITE AND TOLERANCE DEFINED

Risk appetite is the level of risk that an organization is willing to take in the pursuit of its objectives.

Risk tolerance is the amount of risk that an organization could accept without a serious threat to its financial stability. It is usually expressed as a quantitative measure.

Once the risk appetite and tolerance has been agreed, a set of guidelines should be developed that would also include a more detailed description of the steps shown in Figure 11.3. The corporate secretary could be involved in developing these guidelines depending on the his or her role in risk management in the organization.

Figure 11.3: Risk Management Process

- STEP** ① Risk identification (based on the company's or department's objectives)
- STEP** ② Risk assessment
- STEP** ③ Risk response – deciding on appropriate action
- STEP** ④ Risk monitoring and reporting by management
- STEP** ⑤ Evaluation of the risk management process and risk responses by the board
- STEP** ⑥ Report to stakeholders, including shareholders

Source: IFC Corporate Secretary Toolkit, Part 3/Module 2: Risk and Business Continuity Planning.

7. Managing (Identify, assess, mitigate, and monitor) risks within the areas of the corporate secretary's responsibilities.

The corporate secretary's department should have its own risk register, which will feed into the organization's risk register. The corporate secretary may be asked to assist the board in managing governance risks, especially reputational risk.

Additional responsibilities of the corporate secretary.

In some organizations, the corporate secretary is asked to be the organization's risk manager or to oversee the risk function:

- Developing best practice says that the company secretary should be responsible for protecting the reputation of the company and is therefore responsible for identifying the reputational risk associated with the decisions, actions taken, or inaction by the board.

- Advising the board on business continuity planning—the long-term sustainability of the organization. The corporate secretary may be called on by the board to coordinate the drafting of a business continuity plan, the communication of different aspects of the plan to different stakeholders (both internal and external), and the follow-up on actions within the plan, which should be approved by the board.

The Corporate Secretary's Role in Corporate Citizenship

In many jurisdictions the concepts of sustainability, corporate social responsibility, and good corporate citizenship are seen as an integral part of corporate governance. The board has responsibility for the formulation of policies and strategies addressing ethical behavior, employee welfare, stakeholder engagement, social and community issues, and environmental issues. Where countries adopt this approach, it is important that such issues be integrated into the organization's business model and hence its operations. (See Figure 11.4.)

CORPORATE CITIZENSHIP DEFINED

An organization, as well as being an economic entity, is a citizen of the countries in which it operates and has a moral and social standing within the society of those countries, with all the responsibilities attached to that status. Therefore, when making decisions an organization should consider the impact of those decisions on its stakeholders (both internal and external), the environment, and society as a whole.

In light of its citizenship responsibilities, an organization should:

- Develop an ethical approach to conducting business, usually reflected in a code of ethics, ethical business principles, and so on.
- Develop and implement policies and procedures that reflect concern for all the organization's stakeholders, both internal and external.

- Develop and implement policies and procedures that reflect concern for social and environmental issues

An organization’s board has to reach a balance between achieving the above objectives and its long-term sustainability. A corporate secretary should be able to help a board with this. The typical responsibilities of a corporate secretary in this area include those listed below.

1. Ensuring that the laws, regulations, standards, and codes applicable to the organization have been identified and are being complied with.

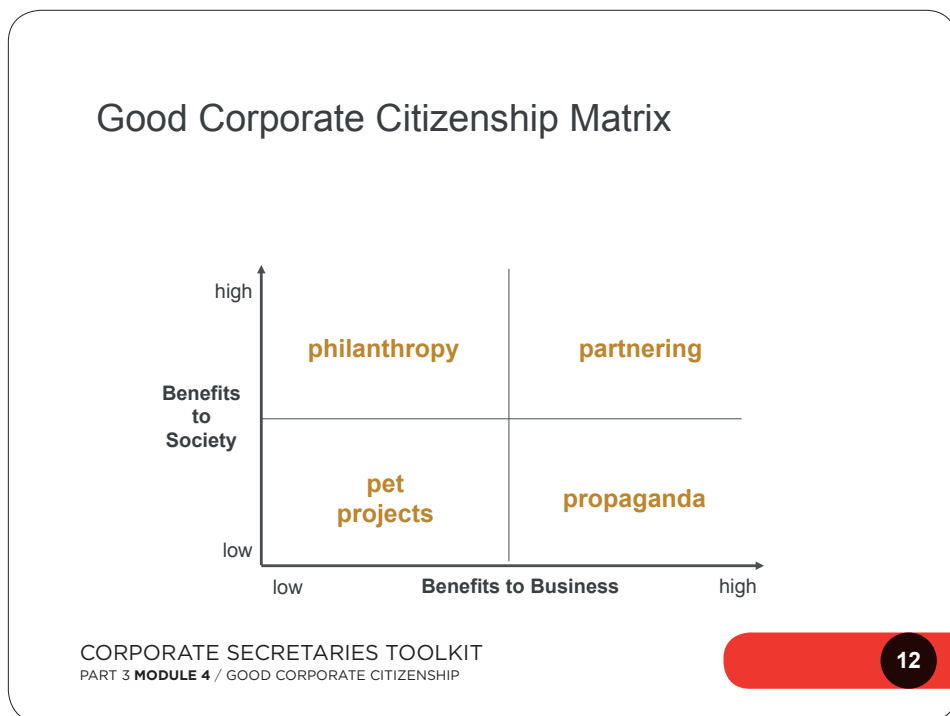
Figure 11.4: Slide 10 from IFC’s *Corporate Secretary Toolkit, Part 3 Module 4/Good Corporate Citizenship* presentation.



Source: IFC Corporate Secretary Toolkit, 2013.

The corporate secretary should advise the board on compliance with all laws, regulations, codes, and standards applicable to the organization. He or she should also advise, where appropriate, to go beyond the minimum standard set by the laws, regulations, codes, and standards to meet current stakeholder expectations. (See Figure 11.5.)

Figure 11.5: Slide 12 from IFC's *Corporate Secretary Toolkit, Part 3 Module 4/Good Corporate Citizenship* presentation.



Source: IFC *Corporate Secretary Toolkit*, 2013.

2. Advising the board and, where possible, providing inspiration for the inclusion of good corporate citizenship activities in the organization's strategic and business continuity planning.

The corporate secretary typically would advise the board on the drivers for good corporate citizenship. These are set out in Figure 11.6.

Figure 11.6: Slide 17 from IFC's *Corporate Secretary Toolkit, Part 3 Module 4/Good Corporate Citizenship* presentation.



Source: IFC *Corporate Secretary Toolkit, 2013*.

3. Monitoring corporate citizenship activities.

This may include developing and implementing policies and monitoring compliance with such policies as well as reporting breaches in the policies to the board.

4. Communicating the board's views and actions in this area to stakeholders, both internally and externally.

5. Drafting integrated or stand-alone sustainability report.

The corporate secretary typically would agree with the board whether to have CSR reporting as part of the annual report or as a separate report. The next chapter discusses the benefits of an integrated report. KPMG's Survey on Corporate Responsibility reporting 2013, offers the view that the debate about whether companies should or should not report on their corporate responsibility activities is over.

KPMG VIEW

To Report or not to report? The debate is over

Companies should no longer ask whether or not they should publish a CR Report. We believe that debate is over. The high rates of CR reporting in all regions suggest it is now standard business practices worldwide. The leaders of N100 or G250 companies that still do not publish CR Reports should ask themselves whether it benefits them to continue swimming against the tide or whether it puts them at risk.

Source: The KPMG Survey of Corporate Responsibility Reporting 2013: Executive Summary.

6. Advising on setting up a board committee.

Once the committee has been established, the corporate secretary typically would be required to support the committee.

CHAPTER 12:

Role in Financial Oversight and Reporting

The area of financial oversight and reporting is part of good governance, involving the concepts of accountability and transparency. The corporate secretary as the governance professional is responsible for ensuring that the organization, the board, and management are accountable and transparent in their financial systems and reporting. To carry out this role the corporate secretary has to be competent in financial accounting and reporting. It also is becoming common practice for organizations to report on nonfinancial information. Corporate secretaries have a growing role in this area and need to be aware of developments and requirements in their jurisdictions.

The corporate secretary's responsibilities in this area typically would include those listed below.

1. Ensuring compliance with legal, shareholding, and other stakeholder requirements.

For example, those relating to the content and timing for disclosures of the financial and nonfinancial statements and other disclosures.

2. Interpreting in nonfinancial terms the financial performance and results of the organization.

The corporate secretary should be able to provide narrative reporting to explain the figures in the financial statement produced by the organization. In some cases, the corporate secretary will be expected to advise the board on the implications of accounting policies and disclosures, especially under International Financial Reporting Standards. The corporate secretary may also be required to write some of them, such as those relating to related-party transactions, directors remuneration, and so on.

3. Advising the board on the implications and the potential reputational risk of the financial performance and results for the organization, the shareholders, and other stakeholders.

4. Advising and assisting the board with its financial oversight role.

The board's role in financial oversight is set out in Figure 12.1. In addition to assisting with the board's financial oversight role, the corporate secretary typically would advise the board (or the audit committee, if one exists) on:

- The appointment and remuneration of the external auditor.
- External auditor independence.
- Non-audit fees. Many jurisdictions have rules concerning auditors carrying out non-audit work.
- The evaluation of the external auditor. This should be included as an agenda item each year.
- Attendance at annual shareholder meetings of the external auditor. In some jurisdictions it is still the practice for the external auditors to present their audit report and answer questions on it at the annual shareholder meeting. In other jurisdictions external auditors attend the meeting but only speak if asked a specific question by a shareholder.
- Auditor rotation. Again, this differs between jurisdictions. Best practice seems to be that at least the audit partner should change every five years for larger companies, and that smaller ones should consider changing audit firms every five years.
- External auditors annual management letter. The corporate secretary should ensure that an action plan is developed by management and that updates on progress to resolve the issues raised in the letter are presented to the board regularly.

Figure 12.1: Slide 6 from IFC's *Corporate Secretary Toolkit, Part 3 Module 10/Financial Oversight and Analysis* presentation.

Board: Role in Financial Oversight

- To fulfill their duties to shareholders (act honestly, in good faith, and for a proper purpose)
- To maintain proper accounting records
- To establish an accounting reference date
- To disclose the company's financial position and performance
- To establish and evaluate the effectiveness of internal controls
- To ensure proper external controls and audit
- To ensure that directors have the required skills, experience, and knowledge to fulfil these roles

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Source: IFC *Corporate Secretary Toolkit*, 2013.

5. Advising the board on whether it is appropriate to delegate the financial oversight role to an audit committee.

If an audit committee is to be set up, the corporate secretary should:

- Develop terms of reference for the audit committee with well-defined responsibilities.
- Advise on the appropriate composition of the committee. Many jurisdictions require members to be independent and to have financial experience.
- Ensure that members with appropriate skills and experience are included in the board's succession planning.

- Develop an annual calendar of activities for the committee to ensure that the committee gives sufficient time to all of its responsibilities.
- Ensuring that the committee has sufficient resources to carry out its role. This may include advising the board on when it is appropriate to set up an internal audit and risk functions.
- Assist the committee members in their understanding of current and emerging issues, especially those from shareholders, regulators, and other stakeholders.
- Assist the committee in sourcing the advice of experts on issues under the Committee's responsibility.
- Organizing professional development for the committee members in those areas under the committee's responsibility, such as audit, risk, and financial oversight.
- Acting as secretary to the committee, providing governance, procedural, and logistical support to the committee and its chairman.
- Organizing the annual evaluation of the performance of the committee and its chairman.

6. Coordinating with internal and external auditors.

In organizations without audit committees, the corporate secretary, on behalf of the board, should coordinate with the internal and external auditors to ensure that the board is aware of audit findings and that management actions emanating from them are tracked and updates reported to the board.

In organizations with audit committees, the corporate secretary should be available to assist the chairman of the committee, often as secretary of the committee.

7. Advising the board on its responsibilities with regard to risk management and internal controls.

To fulfill this role effectively, the corporate secretary requires a basic understanding of the risk management process and the system of internal

controls as well as of the role of internal audit. More information on this area can be found in Chapter 11.

8. Providing advice and oversight, on behalf of the board, for the preparation of the annual report and accounts.

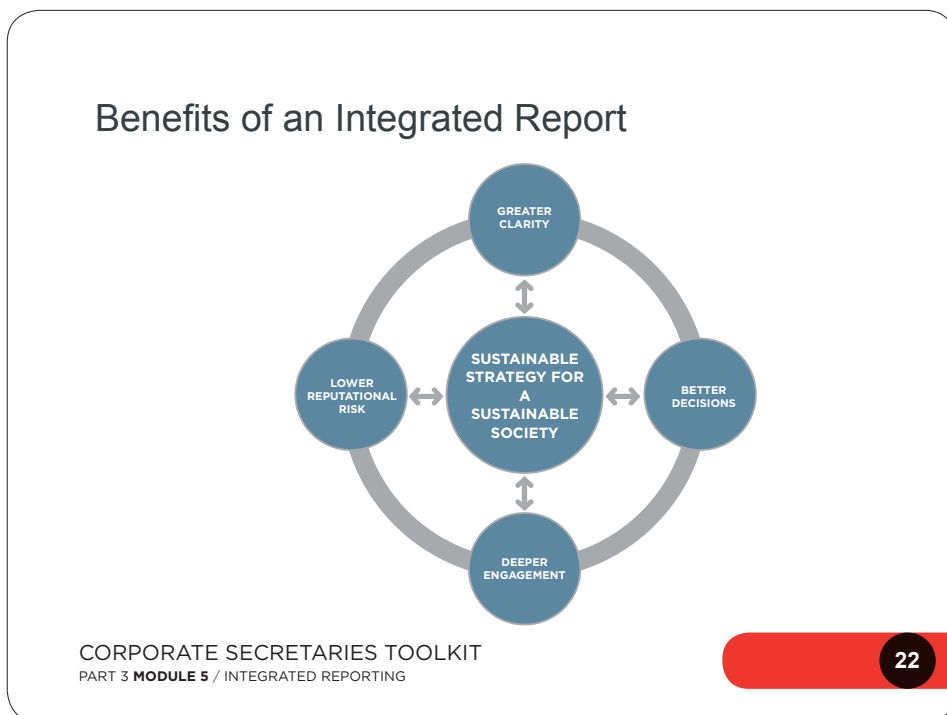
The corporate secretary's role may include:

- Being a member of or leading the production team for the annual report and accounts.
- Ensuring that the annual report and accounts meets all the requirements of applicable laws, regulations, standards, and codes.
- Conducting quality control/verification of the facts, views, and opinions contained within the annual report and accounts.
- Ensuring that the information within the annual report and accounts:
 - Is transparent,
 - Is balanced between the positive and negative information, properly reporting everything of relevance,
 - Is presented in a fashion that nonfinancial people can understand,
 - Is not “window dressed”—that is, that the true financial position of the organization is not hidden.
- Distributing the annual report and accounts to shareholders.

9. Advising the board on the applicable laws, regulations, standards, and codes relating to reporting of nonfinancial information.

The corporate secretary should advise the board on the applicable laws, regulations, standards, and codes relating to the reporting of nonfinancial information within its jurisdictions. This includes whether the organization should consider producing an integrated report. The benefits of an integrated report are set out in Figure 12.2. An integrated report should enable an organization to understand better the relationships between its

Figure 12.2: Slide 22 from IFC,s *Corporate Secretary Toolkit, Part 3 Module 5/Integrated Reporting* presentation.



Source: IFC *Corporate Secretary Toolkit*, 2013.

various operating and functional units and the resources the organization uses and needs to achieve its strategic goals. An organization will also be able to understand:

- The external context within which it operates.
- The opportunities and risks it faces and how to tailor strategies to manage them.
- The nature and quality of its relationships with key stakeholders.

A good corporate secretary develops relationships across all departments within an organization and uses those relationships to coordinate the departments to ensure that they do not operate as “silos” but rather as an integrated team. The corporate secretary should also be able to advise both the board and management on the company’s external relationships with stakeholders.

CHAPTER 13:

Role in Building Ethical Cultures

Corporate secretaries are often known as the “conscience of the company” due to their governance role. There will be situations where it may be in the best short-term interests of the organization to ignore best governance practices or even act in an unethical way. For example, if the board is trying to “window dress” bad news, or maybe management is considering bribing a government official to win a lucrative contract.

WHAT ARE BUSINESS ETHICS?

Business ethics underlie the basic principles of corporate governance. This is why it is so important for an organization to set out clearly what its ethical standards are. Also as the governance professional it is important for the corporate secretary to be able to articulate what the expected ethical behaviors are and to ensure that they are applied when decisions are made. As stated above, this often means advising the board and/or senior managers to take actions that may be above the law, regulations, standards, and codes of the countries in which the organization is operating.

Being the conscience of the company is not an easy role and may often lead to corporate secretaries either leaving or being asked to leave a job because of the statement of these views. For the corporate secretary to be protected and able to properly fulfill this role, it is important for the corporate secretary not to be under the influence of any one individual, such as the chairman or the CEO. This is why many countries require the appointment of the corporate secretary to be a matter for the whole board.

The corporate secretary, to be able to fulfill the role of the conscience of the company, must be independent minded. He or she also needs to be commercially aware and to recognize the longer-term threats to the reputation of the organization that a proposed course of action may present. The corporate secretary also needs to have the respect of the executive managers and the board, including the chairman, to be able to speak out on these often quite sensitive matters. Many argue that this is one of the reasons the corporate secretary should occupy a senior position in the organization. The corporate secretary's responsibilities in this area typically would include those listed below.

1. Speaking out against bad governance and unethical behavior.

The corporate secretary should speak out against bad governance and unethical practices, and remind the board and senior executives of the appropriate course of conduct and principles of good governance that they should apply to protect the reputation of the organization and ensure that the organization is sustainable in the long-term. Corporate secretaries have a responsibility to ensure that the organizations they work for “do the right thing.” Often this may be going beyond what is required in law.

Traditionally, ethics was often described as the gray area between the law and the realities of acceptable behavior. Today, many ethicists prefer to see ethics as legal activities that are interpreted according to the values of the company or individual.

The gray-area question was showcased in the tax evasion accusations levied against Starbucks, Google, and Amazon in the United Kingdom. Though legal, the licensing and supply agreements and the steps taken by these companies to minimize tax and customs duties created a political storm at a time of national austerity, prompting Starbucks to make a voluntary tax payment of £10 million after five years of zero liability. This tax issue and Starbucks's voluntary actions go beyond legal considerations to a more fundamental question of the ethics and values that govern how a company wishes to portray its way of doing business. In the United States, the same ethical debate has surfaced over Apple's tax status with offshore structures that, though legal, have seen the company paying little or no corporate taxes on over \$70 billion.

Corporate secretaries have to develop skills, policies, and procedures to ensure that they are able to test the acceptability of a certain course of action to

Figure 13.1: Slide 10 from IFC's *Corporate Secretary Toolkit, Part 3 Module 3/Building Ethical Cultures* presentation.

What does an organization need to do to create an ethical culture?

- Lead from the top
- Develop policies
- Consult and benchmark the policies that have been developed
- Set up a monitoring system
- Set up a whistleblowing policy and process
- Organize training
- Ensure that reward systems reward ethical behavior and are aligned with the company's risk appetite

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Source: IFC *Corporate Secretary Toolkit, 2013*.

external stakeholders and advise the board and management accordingly of the impact on the organization of implementing the decision they are about to make. Again, this is not always easy, as corporate secretaries do not have crystal balls, but by engaging with stakeholders, listening to their opinions and views, and enlightening the board and senior management to legitimate concerns and interests of key stakeholder groups a corporate secretary should be able to carry out this role.

2. Ensuring that the board sets standards of ethical business.

One of the key roles of the board is to set standards of ethical behavior that it and the owners of the organization expect the board and all the

organization's employees to follow. This entails creating a vision, mission, and ethical values for the organization. How the organization expects the ethical values to be practiced by the board and those employed by the organization will be reflected in a code of ethics approved by the board.

The standards of ethical behavior and the attitudes associated with them, "the corporate culture," should also be consistent with the way the company is governed, so the corporate secretary is often asked by the board to work with senior management to develop the ethical values of the organization.

The corporate secretary should advise the board and senior management to select ethical values for the organization that are appropriate to that organization. To achieve this best practice is to develop ethical values and standards of behavior from the bottom up. Employees should be asked for their opinions, and the values and standards of behavior should be developed including their input.

Corporate secretaries should be wary of plucking values from the Internet with little thought and plastering them on the walls of the organization. Employees, and often the board, struggle to associate with them and in many cases even remember them. As we will see later in the chapter, being able to embed an organization's ethical values is very important to the success of the organization.

Corporate secretaries should be careful when choosing "integrity" as a value, which many organizations do. In itself, integrity does not have a meaning; it needs to be combined with other values. It is an assurance that the values will be lived up to, as integrity means we will do what we say we will do. When choosing integrity as a value, many associate their own values with it and so assume that it means being honest, truthful, and so on. In reality people who are dishonest can be so with integrity if they make it clear it is their intention to be so.



3. Developing a code of ethics.

The corporate secretary is often asked by the board to develop a the code of ethics. (See Figure 13.2.)

Figure 13.2: Developing a Code of Ethics

THE ROLE OF THE CORPORATE SECRETARY IN DEVELOPING A CODE OF ETHICS

DRAFT THE CODE

Avoid recommending the adoption of someone else's code. Rather, take time to develop a code specifically for the organization.

CONSULT WITH EMPLOYEES ON THE CODE AND SHARE FEEDBACK WITH THE BOARD

Work with HR/internal audit function to pilot the code, collect input from employees, give feedback to the board on the success of the pilot, and suggest amendments that arise from the pilot. This is to ensure buy-in by employees.

ROLL OUT THE CODE

Work with HR to roll out the code throughout the organization. This will include posters, workshops, and information on the company's intranet site.

MONITOR THE CODE

Work with the internal audit function to monitor compliance with the code. Establish a whistleblowing policy and procedure. Any breaches of the code should be reported to the board via the audit committee (if one exists).

EVALUATE THE CODE

Recommend any needed amendments to the code and submit them to the board for approval. With the help of HR, communicate the changes to employees.

Amendments to the code should only be made when absolutely necessary, as constant changes will confuse employees.

Source: See the Global Corporate Governance Forum's publication, Focus 7: The Moral Compass of Companies: Business Ethics and Corporate Governance as Anti-Corruption Tools, for a detailed discussion on different types of codes of ethics, including their advantages and disadvantages and step-by-step guidance on how to implement them across a wide range of companies with varying levels of resources.

4. Communicating the expected standards of ethical behavior.

It is important for organizations to indicate to the board and its employees the standards of behavior expected, because, as with individuals, each organization will have its own ethical values and standards of behavior. To honor these values, those connected with the company need to know what the values are and how the organization expects them to act in certain circumstances. Sometimes the approach to governance adopted by the organization can influence the expected action. For example, if the organization has a shareholder approach to corporate governance, its values may indicate that it puts the interests of shareholders ahead of the interests of anyone else. If the organization adopts a stakeholder approach, its values may indicate that the board and its employees should take into consideration the needs and concerns of a wider stakeholder group than just shareholders. These indications will result in different behaviors.

When disseminating the values, the corporate secretary should ensure that the reason why the value is so important for the organization is also communicated. This will help employees identify with the importance of living up to the value.

5. Advising the board and management on building an ethical culture.

In *The Moral Compass of Companies: Business Ethics and Corporate Governance as Anti-Corruption Tools*,¹ John D. Sullivan suggests that it is never too late to start building an ethical organization. He suggests that there are three levels of progression in building an ethical organization:

1. Starting from mere compliance,
2. Continuing to the systematic implementation of an integrated ethics program,
3. Culminating with organizational leadership and innovations that set new standards and benchmarks of business ethics.

¹ IFC Global Corporate Governance Forum, Focus 7: *The Moral Compass of Companies: Business Ethics and Corporate Governance as Anti-Corruption Tools*, by John D. Sullivan.

He claims that level 1 is a defensive position, while levels 2 and 3 are more proactive and offensive in nature, going beyond the requirements established by law or the benchmarks set by national best practices. (See Figure 13.3 on page 138.)

6. Alerting the board and management to the professional ethical standards of advisers and others.

Corporate secretaries should also be aware of any professional ethical standards of people within the organization or those dealing with it, and they should ensure that the board and management are alerted to them when developing the organization's standards. This is to ensure that the organization does not develop standards that are contradictory to the professional standards. For example, auditors are required to comply with certain professional standards when carrying out an audit.

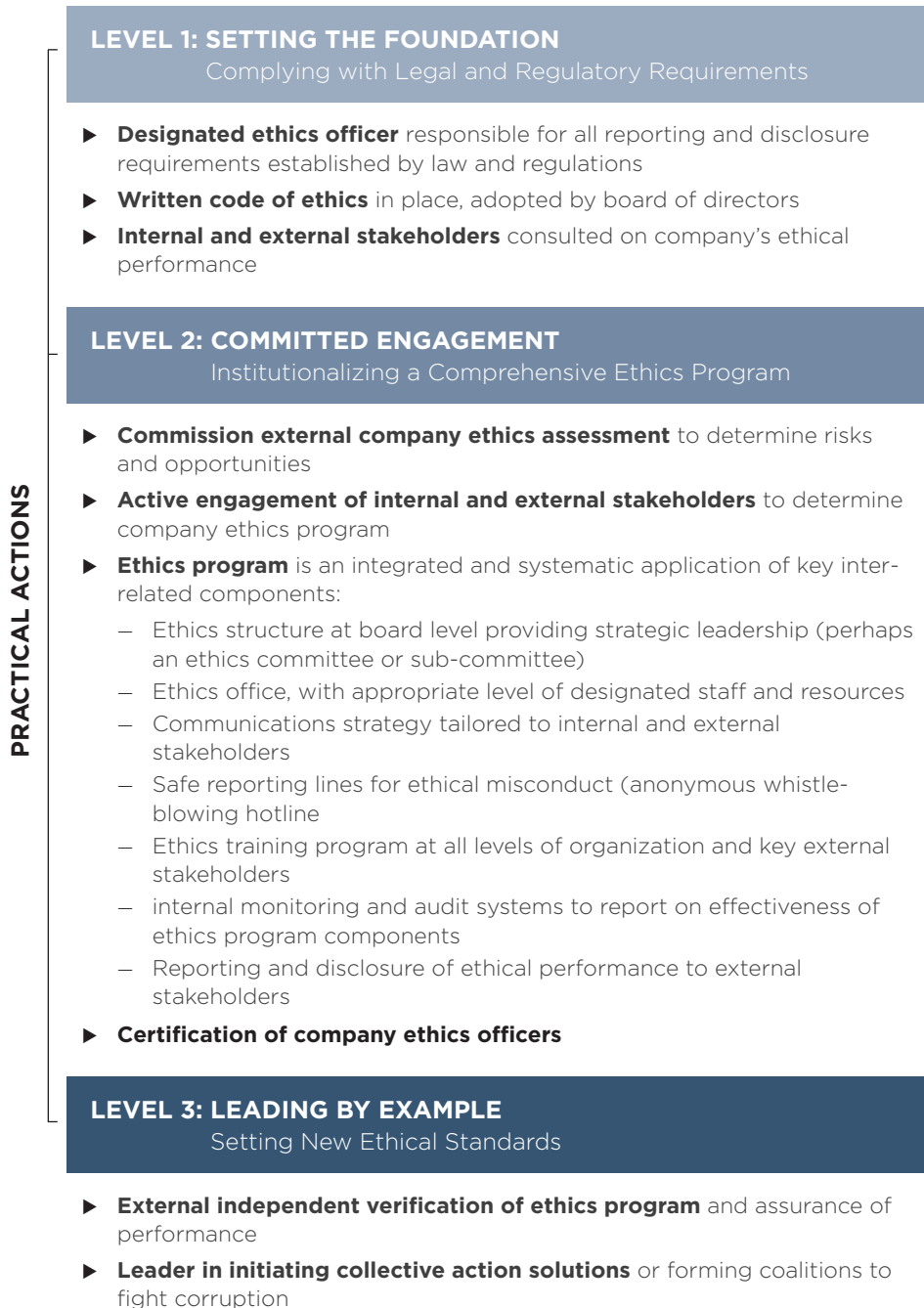
7. Ensuring that compliance with the values and the code of ethics is monitored and breaches are reported to the board.

The corporate secretary should ensure that management and internal audit are monitoring compliance with the values and code of ethics. Any breaches should be reported to the board via the audit committee (if one exists). The corporate secretary should review the breaches and advise the board on whether changes are needed to the values and/or code of ethics.

8. Ensuring that ethical values and the code of ethics are reviewed from time to time.

A good corporate secretary will also be aware that ethical values change over time. This can often be detected from the types of issues that are raised through the whistleblowing procedure, reported in the press, and received in information from professional bodies and advisers. At least annually, the corporate secretary should review the organization's values and standards of behavior and propose amendments to the values and code of ethics, when necessary, to the board.

Figure 13.3: Building an Ethical Culture—Every Step Counts



9. Ensuring that the board approves and monitors implementation of whistleblowing policies and procedures.

To assist boards in monitoring adherence to codes of ethics, many organizations adopt whistleblowing policies. Corporate secretaries often get involved in drafting these policies and working with either internal audit or the Human Resources function to implement them. (See Figure 13.4.)

The term “whistleblower” has different meanings in different jurisdictions, but it is mostly associated with a definition derived from the renowned U.S. statute, the Civil Service Reform Act of 1978. The Act defines a whistleblower as an employee “[W]ho discloses information he reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, a gross waste of public funds, an abuse of authority, or a substantial or specific danger to public health or safety.”

Figure 13.4: Slide 24 from IFC’s *Corporate Secretary Toolkit, Part 3 Module 3/Building Ethical Cultures* presentation.

Whistleblowing – Policies and Procedures

- Are employees aware of the *whistleblowing* procedures?
- Can employees raise concerns without risk of censure?
- Does the company act promptly on concerns?
- Are genuine whistleblowers protected?
- Is there a senior manager responsible?
- Do all managers understand the policy and accept the principle of whistleblowing?
- Are all reports generated by the whistleblowing procedure submitted to the board (audit committee)?
- Are all whistleblowing procedures known and available to all stakeholders, including the public?

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Source: IFC *Corporate Secretary Toolkit, 2013*.

Often, a whistleblower is a current or past employee, or someone connected to the organization, who makes an accusation against the organization.

Best practices indicate that boards/audit committees should provide a secure legal environment in which the internal audit function, employees, and others are able to report fraud and other unethical practices that may come to their attention. Employees are a good source of information concerning possible issues that may arise. These issues may be considered and dealt with through internal controls prior to any damage to company brand or reputation.

A secure legal environment must ensure that proper policies and procedures are in place to consider:

- The interests of the person(s) who is the subject of the complaint
- The interests of the whistleblower
- Responses and investigatory procedures that are complete, thorough, and nonthreatening

The audit committee's role should include a review and assessment of the policies and procedures applying to whistleblowers. The committee should assure itself that procedures take account of and do not contravene local applicable laws, especially those relating to privacy and labor protection.

When issues are reported to the audit committee through whistleblowing mechanisms, the actions it may take include:

- Investigating and documenting the issues and findings
- Accessing and checking with legal advisers regarding appropriate action
- Reporting on its findings to the board and to relevant senior members of management
- Ensuring that management has taken appropriate action

Given its wider responsibilities of duties of care and diligence, action by the board/audit committee is most important if it is notified of wrongdoing and has established that wrongdoing has taken place.

CHAPTER 14:

Role in Stakeholder Management

“No surprises” is one of the most important principles of good corporate governance. Frequently, reputable companies find themselves caught in what appears to them to be a surprise controversy, despite professional public relations work and elaborate mechanisms of internal control. Business leaders are starting to recognize that their traditional approaches to running their companies are insufficient to handle changing societal expectations around the globe. They are starting to realize that stakeholder engagement is important to business success and society’s trust.

In many companies, the board looks to the corporate secretary to assist with stakeholder engagement. The corporate secretary typically would do this in the ways described below.

1. Engaging with his or her own stakeholder group.

A corporate secretary’s own stakeholder group could include:

- Shareholders
- Regulators
- Social and environmental groups (if the corporate secretary has responsibility for CSR)
- Suppliers (including share registrars/transfer agents, if this function is outsourced).

2. Explaining to the board the business case for stakeholder engagement.

The business case for stakeholder engagement is:

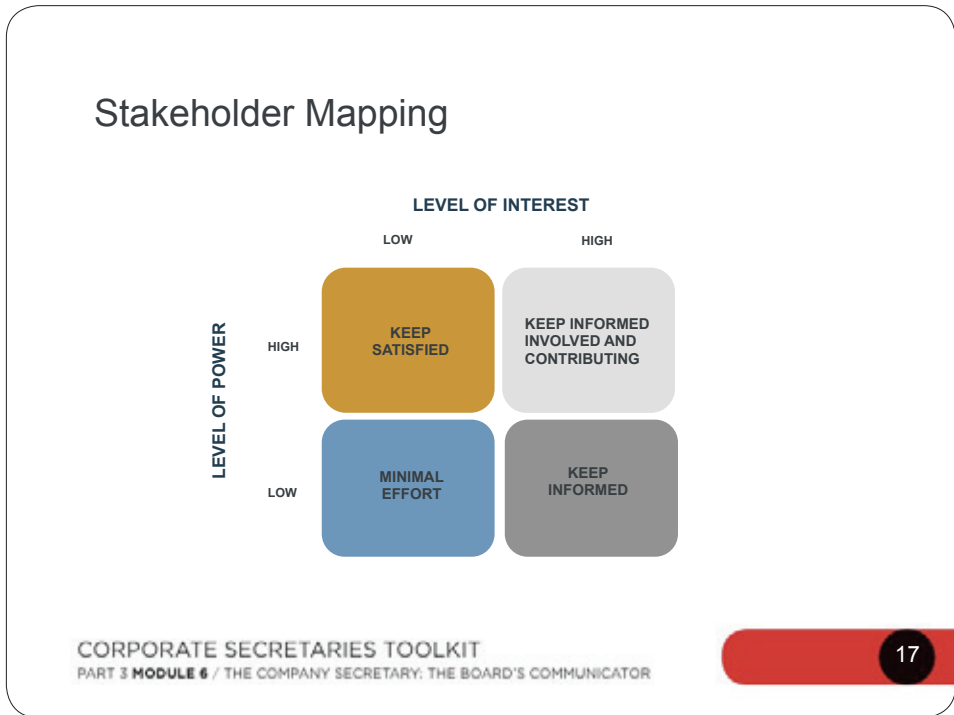
- Build and strengthen a good reputation and brand recognition.
- Create value and wealth.
- Gain and retain loyal customers while avoiding boycotts or other undesirable consumer actions.
- Create the perception that the company is a desirable place to work and increase ability to recruit and retain talented staff members.
- Identify ways to increase efficiency and reduce costs in their operations.
- Show a more responsible approach to risk taking, which reduces risk.
- Become better able to leverage opportunities, giving the company competitive advantage as they are able to identify new ideas for products or services that address stakeholder needs. Effective stakeholder engagement promotes corporate learning and innovation.
- Be more readily welcomed into new markets, as companies embedded in those markets perceive them as less hostile to local values and ways of operating.

3. Assisting the board with stakeholder engagement.

The corporate secretary should be ready to assist the board with stakeholder engagement as a core corporate value and to coordinate with management to ensure that policies and plans are implemented to make sure that the company leverages its stakeholder engagement. Once the board has adopted stakeholder engagement as a core value, the corporate secretary may be called upon to assist and advise the board in the following areas:

- Identifying which stakeholders have legitimate expectations and interests.
- Mapping the power and interest of stakeholders or stakeholder groups, so that they can develop a strategy for engaging with them. (Figure 14.1 on page 144)
- Identifying, discussing, and prioritizing the key risks associated with changing societal expectations.
- Determining the board's financial and nonfinancial needs for decision making, management oversight, and monitoring with regard to key stakeholder relationships associated with creating value and long-term sustainability.
- Discussing and approving key performance indicators for social, environmental, and financial performance.
- Approving a policy for external, financial, nonfinancial (sustainability), or integrated reporting.
- Looking to integrate stakeholder issues into annual shareholder meetings. This can be done through resolutions, presentations at meetings, and/or displays at the entrance or in the meeting room.
- Discussing the risks and impacts (positive and negative) of projects and operations and providing transparent disclosure information to stakeholders (including shareholders).
- Convening stakeholder forums and inviting key stakeholder representatives to address board meetings, so members of boards hear from stakeholders directly about their concerns and issues.
- Documenting the concerns and issues of stakeholders and lessons learned and feeding this into the risk management, strategic planning, and business continuity processes, so that the company is able to leverage opportunities and lessen negative impacts.
- Recognizing that different stakeholder groups may have different interests and ideas. Tailoring engagement and dialogue to better represent stakeholders' disparate interests to help them understand the reasons for board decisions.
- Developing policies on who within the organization should be the prime communicator for each stakeholder group.

Figure 14.1: Slide 17 from IFC's *Corporate Secretary Toolkit, Part 3 Module 6/ The Company Secretary: The Board's Communicator* presentation.



Source: IFC Corporate Secretary Toolkit, 2013.

4. Advising the board on any reputational-risk aspects to stakeholder engagement.

5. Coordinating with management to ensure that the board is advised on how to engage with different stakeholder groups.

WAYS TO ENGAGE WITH STAKEHOLDERS

REACTIVELY

The organization engages defensively, when forced to in response to a crisis and usually in an attempt to rebuild its reputation.

PROACTIVELY

The organization tries to understand its stakeholders' concerns and issues. The corporate secretary could advise the board and management to:

Carry out customer surveys, focus groups, shareholder surveys, competitor research, and so on. This information can then feed into the decision-making process.

Engage directly with stakeholders to get their input before making decisions.

This is often the case with shareholders and their representative bodies.

Organizations will run a proposal or idea past some of their larger shareholders before making a final decision on an issue, such as remuneration packages for directors or senior executives.

Involve stakeholders in the decision-making process. For example, an organization could bring together groups of stakeholders (employees, the community, and so on.) and ask them to vote on an action. For example, LaFarge Cement involved people in the community in Morocco in the process of finding a new location for a cement plant.

INTERACTIVELY

The organization has ongoing relationships of mutual respect, openness, and trust with stakeholders. The organization can do this through many of the channels mentioned under “proactively,” above.

Most engagements have fixed timetables to ensure that results are achieved. The corporate secretary may be asked to develop a timetable, which should be based on input from all parties. It is important to establish ground rules for public disclosure and for managing expenses related to the engagement. Organizations should avoid giving money to stakeholder groups as part of the engagement as

this could be misconstrued as a bribe. Any money that is paid over should be documented and reported, giving the reason for the payment.

Communication to employees about the purpose of the engagement, and what the organization seeks to achieve from it is also important and ensures that the organization communicates a consistent message.

Where issues and concerns raised through a stakeholder engagement cannot be addressed, an organization should be honest and transparent about why this is the case. For example, many pharmaceutical companies are asked by stakeholders to eliminate testing on animals, but many governments require such tests for product approval. Novo Nordisk, the world's largest maker of insulin products for diabetics, acknowledges that reducing its reliance on testing on animals is desirable, but notes that it cannot do so until governments change the approvals process. The company publicly reports on the number of animals used in testing and its progress in changing or influencing government policies on product testing.

6. Advising the board on reporting on stakeholder engagement.

The corporate secretary advises the board on reporting—and ensuring that management make recommendations for reporting—to specific stakeholder groups, and where appropriate, develops reports to specific stakeholder groups. The Global Reporting Initiative Sustainability Reporting Framework (GRI) is one of the most popular reporting frameworks.

7. Alerting the board and/or management to opportunities and risks associated with stakeholders engagements.

The corporate secretary may be asked to work with management, compliance officers, and investor relations officers to ensure that the correct strategies, policies, and procedures are in place to manage risks, especially reputational risk, and to take advantage of the opportunities presented by

particular stakeholders, particularly partnership opportunities that support the organization's strategic objectives.

In relation to partnerships, the corporate secretary should advise the board of the following elements of a successful partnership, which were identified as part of a McKinsey survey:¹

- Identify clear reasons to collaborate.
- Find a “fairy godmother”—a group of people totally committed to and knowledgeable about what the organization is trying to achieve.
- Set simple, credible goals.
- Get professional help; it is important to have an honest broker to facilitate the conclusion of partnership.
- Dedicate good people to the cause.
- Be flexible in defining the success of the partnership.
- Prepare to let go; plan for either the wind-down of the partnership or to spin it off into an independent entity. No collaboration should be kept alive beyond its useful lifetime.

8. Advising the board on the setting up of a committee responsible for stakeholder issues.

The corporate secretary should advise the board on whether a separate committee should be established to deal with stakeholder issues. These committees are often called the corporate responsibility committee, the ethics committee, or the reputation committee, as they are often responsible for ethical and/or reputational issues. These committees often have members of management on them as well as the board members. The chairman should be a board member, and the quorum should be a majority of board members. The corporate secretary typically would be the secretary of the committee.

¹ Sheila Bonini and Stephen Gerner, “The business of sustainability: McKinsey Global Survey Results” (McKinsey & Company, October 2011), mckinsey.com.

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