

# Company secretary



## MCCG Intended Outcome 1.0

Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

## MCCG Practice 1.4

The board is supported by a suitably qualified and competent Company Secretary to provide sound governance advice, ensure adherence to rules and procedures, and advocate adoption of corporate governance best practices.



The internalisation and application of the content "Why" and "How" should be read in tandem with the line of sight outlined by the Intended Outcome.

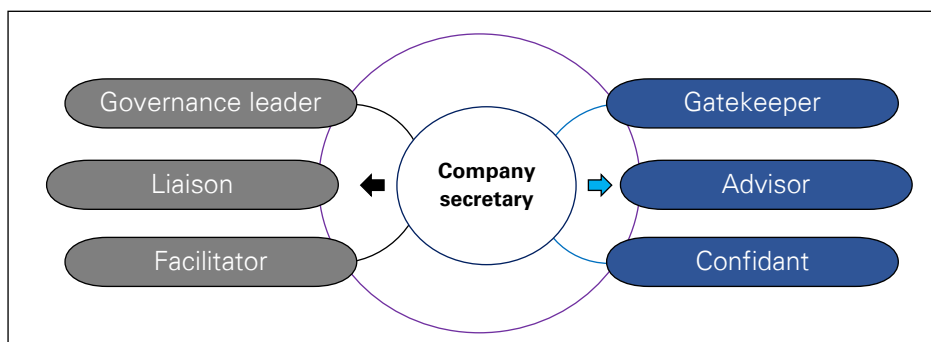
### Why

## The case for change

The responsibility of the modern day company secretary has evolved from merely advising on administrative matters to now advising boards on governance matters, board policies and procedures as well as pertinent regulatory requirements (e.g. company and securities regulations and listing requirements including disclosure obligations). In the oft-cited words of the learned judge, Lord Denning, "**a company secretary is no longer a clerk**"<sup>1</sup>.

As the focus on directors' accountability and performance increases, directors are increasingly demanding company secretaries to act as a key resource support so as to ensure that the board operates effectively and governance practices are upheld.

In this regard, the breadth of a company secretary's role has radically shifted from that of a "note taker" at board meetings or "administrative servant of the board"<sup>2</sup> to one which encompasses broader corporate governance functions as shown in the diagram below.



<sup>1</sup> Tricker, B 2012, *The significance of a company secretary*, Hong Kong Institute of Chartered Secretaries

<sup>2</sup> *The changing role of the company secretary* 2016, Deloitte

The undertakings of a company secretary are also becoming more outward-focused and not just confined to internal matters. Company secretaries are increasingly expected to be more involved outside the company's boundaries to interact with shareholders, public bodies and regulators.

The recognition of company secretaries as a **central point for governance matters** is driven in large part from the fact that company secretaries work closely with the board and the chairman, in particular, placing them in a position to influence the formulation of agenda and the direction of debates in the boardroom. They are well-placed to provide viewpoints, perspectives and challenges, thus, influencing the tone at the top. Company secretaries are also often the only people to know first-hand how the decisions made by the board have been reached as they are privy to board discussions.

Given that company secretaries are well-placed to shape the corporate governance culture of a company, regulators have recognised the need to elevate the position and function of company secretaries to allow them to assume a stronger role in promoting governance. Similarly, **Standard 15.1 of Bank Negara Malaysia's Policy Document on Corporate Governance** also encapsulates enumerations for financial institutions in this regard<sup>3</sup>.

## How

### The practice in substance

It is therefore important for the board to ensure that it is supported by a suitably qualified and competent company secretary. The company secretary should play an important role in advising the board on governance matters and in ensuring that there is an effective system of corporate governance in place.

Key considerations relating to the application of this Practice are outlined below:

#### Who can be a company secretary?

Requirements concerning the appointment of a company secretary are primarily outlined in the **Companies Act 2016** as shown on the following page.



#### What could go wrong:

- Board members are not kept apprised on developments and relevant matters on corporate governance.
- Decisions of the board are not well-captured for management to act upon in a timely manner.
- Lack of a structured approach to board or board committees' proceedings.
- Information flow between the board, board committees, individual directors and management is discontinuous.
- Failure of the company to comply with company or securities law, or listing requirements, particularly on provisions relating to corporate governance and disclosure obligations.

<sup>3</sup> **Standard 15.1 of Bank Negara Malaysia's Policy Document on Corporate Governance** states that "the company secretary is responsible for supporting the effective functioning of the board. In discharging this role, the company secretary provides counsel to the board on governance matters and facilitates effective information flows between the board, the board committees and senior management."

### Section 235(1), (2) and (3) of Companies Act 2016

- (1) A company shall have at least one secretary who shall be —
- (a) a natural person;
  - (b) eighteen years of age and above; and
  - (c) a citizen or permanent resident of Malaysia,
- who shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia.
- (2) A secretary shall be —
- (a) a member of a body as set out in the **Fourth Schedule**; or
  - (b) a person licensed by the Commission under **section 20G of the Companies Commission of Malaysia Act 2001**.
- (3) For the purposes of paragraph (2)(a), the Minister may prescribe any professional body or any other body by notification in the *Gazette* and may impose any terms and conditions as he thinks fit.

*Note: The above only represents an extract.*

### Section 236(3) of Companies Act 2016

No person shall be appointed as a secretary unless –

- (a) he has consented in writing to be appointed as a secretary;
- (b) he is qualified under **subsection 235(2)**; and
- (c) he is not disqualified under **section 238**<sup>4</sup>.

### Fourth Schedule of Companies Act 2016

Approved bodies [in relation to **Section 235(2)(a)**]

1. Malaysian Institute of Chartered Secretaries and Administrators
2. Malaysian Institute of Accountants
3. Malaysian Bar
4. Malaysian Association of Company Secretaries
5. Malaysian Institute of Certified Public Accountants
6. Sabah Law Association
7. Advocates Association of Sarawak



#### Dos

- ✓ Providing support for company secretaries to undertake continuous professional development and up-skill themselves.
- ✓ Performing an annual assessment of the company secretary (conducted by the board and board committees).
- ✓ According the company secretary with sufficient standing and authority to discharge his or her duties effectively.
- ✓ Putting in place a manual to guide the workflow of the secretarial function.



#### Don'ts

The following would render the application of this practice ineffective:

- × Confining the role of the company secretary to be that of administrative or procedural in nature.
- × Combining the role of a company secretary with that of another position to the extent that it hinders the objectivity and impairs the time commitment of the company secretary.

<sup>4</sup> **Section 238 of the Companies Act 2016** states that the company secretary will be disqualified if he is an undischarged bankrupt; convicted of any offence referred to under **Section 198** (i.e. offences relating to the disqualification of a director); or has ceased to be a holder of a practicing certificate issued by the Registrar under **Section 241** (i.e. registration with Registrar).

### **What are some of the key attributes of an effective company secretary?**

Company secretaries would need more than technical skills to appreciate what corporate governance practices are needed in a company and why. Technical skills must be complemented by emotional intelligence, interpersonal skills, and experience to ensure that they know how the practices would typically be implemented to work effectively.

Some of the attributes (non-exhaustive) that are commonly observed in a high-performing company secretary are outlined below<sup>5</sup>:

- Possesses sound knowledge in company and securities law, finance, governance, company secretaryship and other areas of compliance such as the listing requirements;
- Diligently undertakes continuous professional development to keep abreast of relevant corporate governance and regulatory requirements;
- Is respectful, diplomatic, and effective in communicating;
- Is an active listener;
- Brings issues to the surface, especially those relating to reputational risk;
- Describes common concerns and interests;
- Generates alternative solutions;
- Respects confidences;
- Demonstrates appreciation for all parties;
- Disagrees constructively; and
- Emphasises commercially-minded approaches.

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<sup>5</sup> *The Corporate Secretary: The Governance Professional* 2016, International Finance Corporation

## What are the primary responsibilities of a company secretary?

The key responsibilities of company secretaries are outlined below:

<p><b>Corporate governance advisory</b></p> <ul style="list-style-type: none"> <li>• Advise the board on its roles and responsibilities;</li> <li>• Monitor corporate governance developments and assist the board in applying governance practices to meet the board's needs and stakeholders' expectations (e.g. advising directors to abstain from decision making in conflict of interest situations);</li> <li>• Ensure adherence to the board's and board committees' policies and procedures; and</li> <li>• Facilitate the orientation of new directors and assist in directors' training and development.</li> </ul>	<p><b>Compliance advisory</b></p> <ul style="list-style-type: none"> <li>• Provide updates and assist the board with interpreting regulatory requirements related to company and securities regulations as well as listing requirements;</li> <li>• Advise the board on its obligatory requirements to disclose material information to shareholders and financial markets in a timely manner; and</li> <li>• Notify the chairman of any possible violations of regulatory requirements.</li> </ul>
<p><b>Information flows and meetings</b></p> <ul style="list-style-type: none"> <li>• Manage board and board committee meeting logistics, attend and record minutes of board and board committee meetings as well as facilitate board communications; and</li> <li>• Ensure that the decisions of the board and board committees are relayed to management to act upon.</li> </ul>	<p><b>Stakeholder communication</b></p> <ul style="list-style-type: none"> <li>• Manage processes pertaining to the general meetings; and</li> <li>• Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.</li> </ul>

### **Can the role of a company secretary be combined with that of another position?**

As observed in many countries including Malaysia, it is not uncommon for the role of the company secretary to be combined with another position<sup>6</sup>. For example, due to the compliance aspect present in the company secretary's role, some companies have opted to combine the position of a company secretary with that of head of legal or compliance.

Notwithstanding the above, it should be noted that if the company secretary function is combined with another position, **care should be taken to ensure that the effectiveness of the company secretary including its governance role is not compromised**. The company secretary's governance role requires impartiality when providing advice on governance issues. In this regard, both the board and the company secretary should ensure that there is no conflict between the functions performed in both positions.

In establishing reporting lines, it is important to ensure that company secretaries have direct access to the chairman and other directors to act as a conduit to the board. As company secretaries are officers of the company with legal responsibilities to assist in the proceedings of the company, it is essential for this position to be taken in a serious light by the company<sup>7</sup>. Accordingly, company secretaries with appropriate standing and authority will be able to position issues sufficiently, and drive the board to ultimately discharge their functions with stature and credibility.

At all times, the appointment and removal of the company secretary should be determined by the board<sup>8</sup>. A job description for the company secretary should be established with an annual performance evaluation conducted by the board, taking into account the responsibilities assigned to the company secretary.

### **Can the role of a company secretary be outsourced?**

As in the case of many countries including Malaysia, there are no legal prescriptions which restrict the role of a company secretary from being outsourced. In this regard, some companies may decide to outsource the role of a company secretary to an external person. This would usually be the case in instances where the company deems an external person to be better able to render the service as a result of his or her specialist knowledge or ability to function more productively.

In the event that the company decides to outsource the role of a company secretary, it is imperative for the board to ensure that the relevant criteria, such as qualification, skills, experience and time commitment have been considered and assessed. The board should exercise oversight on how the external person fulfils his or her role as a company secretary.

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<sup>6</sup> It should be noted that **Section 242 of Companies Act 2016** prohibits a person to act in a dual capacity as both a director and a secretary in a situation that requires or authorizes anything to be done by a director and a secretary.

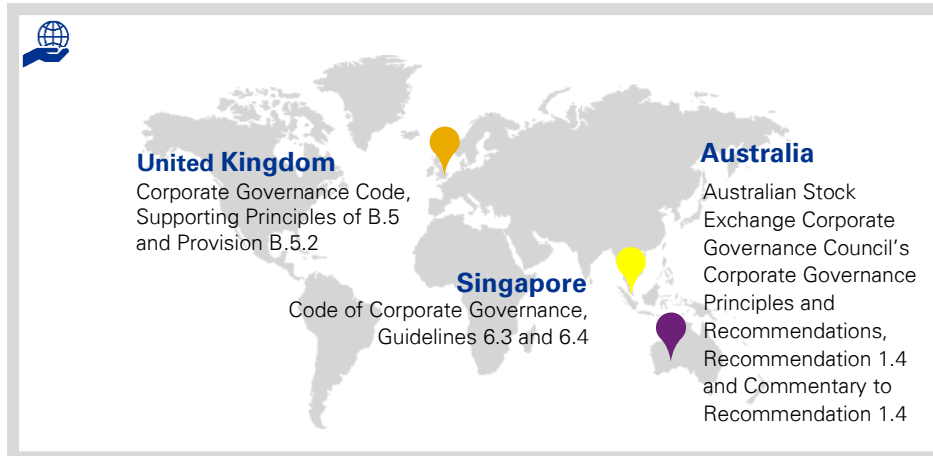
<sup>7</sup> *The Company Secretary as Polymath* 2016, International Finance Corporation

<sup>8</sup> **Section 236(1) of Companies Act 2016** states that "the board shall appoint a secretary and determine the terms and conditions of such appointment" whilst **Section 239 of Companies Act 2016** states "the board may remove a secretary from his office in accordance with the terms of appointment or the constitution".

Where

## Regional/international perspectives

Alongside Malaysia, selected jurisdictions such as United Kingdom, Singapore and Australia have enumerated provisions on the advisory role of the company secretary, particularly in relation to corporate governance.



Country	Provision(s)
Singapore	<p>Directors should have separate and independent access to the company secretary. The role of the company secretary should be clearly defined and should include responsibility for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Under the direction of the Chairman, the company secretary's responsibilities include ensuring good information flows within the Board and its board committees and between Management and non-executive directors, advising the Board on all governance matters, as well as facilitating orientation and assisting with professional development as required. The company secretary should attend all board meetings (<b>Guideline 6.3</b>).</p> <p>The appointment and the removal of the company secretary should be a matter for the Board as a whole (<b>Guideline 6.4</b>).</p>
United Kingdom	<p>Under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required.</p> <p>The company secretary should be responsible for advising the board through the chairman on all governance matters (<b>Supporting Principles of B.5</b>).</p> <p>All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. Both the appointment and removal of the company secretary should be a matter for the board as a whole (<b>Provision B.5.2</b>).</p>

Country	Provision(s)
Australia	<p>The company secretary of a listed entity should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board <b>(Recommendation 1.4)</b>.</p> <p>The company secretary of a listed entity plays an important role in supporting the effectiveness of the board and its committees. The role of the company secretary should include:</p> <ul style="list-style-type: none"> <li>• advising the board and its committees on governance matters;</li> <li>• monitoring that board and committee policy and procedures are followed;</li> <li>• coordinating the timely completion and despatch of board and committee papers;</li> <li>• ensuring that the business at board and committee meetings is accurately captured in the minutes; and</li> <li>• helping to organise and facilitate the induction and professional development of directors.</li> </ul> <p>Each director should be able to communicate directly with the company secretary and vice versa.</p> <p>The decision to appoint or remove a company secretary should be made or approved by the board <b>(Commentary to Recommendation 1.4)</b>.</p>