

**Institut Luxembourgeois des
Administrateurs
Company Secretary Committee**

**The (Ever) Developing Role
of the Company Secretary**

Simon Osborne FCIS, Solicitor

Joint Head of ICSA Board Evaluation

Institute of Chartered Secretaries and Administrators

16 Park Crescent, London W1B 1AH, United Kingdom

www.icsa.org.uk

Outline of Discussion

Historical perspectives

What does a company secretary do?

The impact of corporate governance codes

The developing role of the company secretary

The challenges

Historical Perspectives (I)

1887: “A Secretary is a mere servant; his position is that he is to do what he is told, and no person can assume that he has any authority to represent anything at all...”

[Lord Esher M.R. in Barnett, Hoares & Co v. South London Tramways Co.]

1902: The duties of a Secretary were described as “of a limited and of a somewhat humble character”

[Lord Macnaghten in George Whitechurch Limited v. Cavenagh]

Historical Perspectives (2)

1971: “A Company Secretary is a much more important person now than he was in 1887. He is the **chief administrative officer of the company with extensive duties and responsibilities...** He regularly makes representations on behalf of the company and enters into contracts on its behalf which come within the day to day running of its business” [*Lord Denning M.R. and Salmon L.J. in Panorama Developments (Guildford) Limited v. Fidelis Furnishing Fabrics Limited*]

Historical Perspectives (3)

1948: Company secretary expressly declared to come within the term “officer” by Companies Act 1948 - and could thus incur personal liability for breaches of any requirement of the Act affecting the company

1981: Companies Act introduced a qualification standard for public company secretaries – see now CA2006, section 273

Current Statutory Position

- CA2006, section 270 (1): A private company is not required to have a secretary
- CA2006, section 271: A public company must have a secretary

What Do They Do?

“The Board rises and goes to its dinner,
The Secretary stays and gets thinner and thinner,
Scratching his brains to record and report,
What he thinks that they think they ought to have
thought.”

Core Duties (I)

- Ensures effective planning of board and board committee meetings, prepares agenda and minutes, ensures timely distribution of papers
- Induction of new directors
- Implements and administers directors' and employees' share schemes and long term incentive plans
- Manages relationship between company and registrars
- Supervises arrangements for AGM; focal point for shareholder communications and first point of contact for shareholders; role in managing institutional shareholder relationships
- Facilitates compliance with legal and listing obligations, including liaison with UK Listing Authority usually via brokers

Core Duties (2)

- Ensures compliance with City Code on Takeovers and Mergers
- Liaison with Companies House regarding statutory returns and other filings
- Acts as project manager for preparation, printing and distribution of annual report and accounts, interim statements and circulars to shareholders
- Monitors legal, listing and best practice developments – making recommendations to the board
- Administration and governance of subsidiaries
- Monitors compliance with high level internal procedures

Cadbury Report (I)

“The company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how those responsibilities should be discharged.....”

Cadbury Report (2)

“All directors should have the access to the advice and services of the company secretary and should recognise that the chairman is entitled to the strong and positive support of the company secretary in ensuring the effective functioning of the board. It should be standard practice for the company secretary to administer, attend and prepare minutes of board meetings” – *[See Report of the Committee on the Financial Aspects of Corporate Governance (the Cadbury Report) Dec. 1992, par. 4.25]*

UK Corporate Governance Code (I)

- “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.”
- “The company secretary should be responsible for advising the board through the chairman on all governance matters.”
[See 2nd and 3rd Supporting Principles to Principle B.5]

UK Corporate Governance Code (2)

“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.” *[See Code Provision B.5.2 to Principle B.5]*

UK Corporate Governance Code (3)

“The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board.....”

“The chairman should regularly review and agree with each director their training and development needs.”

[See Code Provisions B.4.1 and B.4.2 to Principle B.4]

UK Corporate Governance Code (4)

“The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.” [*See Main Principle B.6*]

“Evaluation of the board of FTSE 350 companies should be externally facilitated at least every three years. A statement should be made available of whether an external facilitator has any other connection with the company.” [*See Code Provision B.6.2 to Principle B.6*]

However.....

- Currently, role is described somewhat passively in both Cadbury & the Combined Code
- NEDs are under-resourced compared to the executive – can the asymmetry be reduced and how may company secretaries help?
- Company secretaries may tend to align themselves in the day job (at least mentally) with the executive – how desirable is this?

Some Current Trends (I)

- Greater shareholder focus on understanding what boards do and how governance systems really work
- Growing “commentariat” interest in what business does and role of companies in society
- Greater shareholder engagement (incl. derivative actions and shareholder resolutions) will require good documented audit trails

Some Current Trends (2)

- More public interest in board behaviour, risk, reward and performance e.g. bankers' bonuses
- Company secretary will need to support chairman as board decides how to operate in chosen governance framework
- Greater transparency in reporting will call for consistency and editorial supervision

FRC Guide on Board Effectiveness – Board Support and the Role of the Company Secretary (I)

2.1. The requirement for a company secretary of a public company is specified in section 271 of the Companies Act 2006. The obligations and responsibilities of the company secretary outlined in the Act, and also in the Code, necessitate him or her playing a leading role in the good governance of the company by supporting the chairman and helping the board and its committees to function efficiently.

FRC Guide on Board Effectiveness – Board Support and the Role of the Company Secretary (2)

2.2. The company secretary should report to the chairman on all board governance matters. This does not preclude the company secretary also reporting to the CEO in relation to his or her other executive management responsibilities. The appointment and removal of the company secretary should be a matter for the board as a whole, and the remuneration of the company secretary might be determined by the remuneration committee.

FRC Guide on Board Effectiveness – Board Support and the Role of the Company Secretary (3)

2.3. The company secretary should ensure the presentation of high-quality information to the board and its committees. The company secretary can also add value by fulfilling, or procuring the fulfilment of, other requirements of the Code on behalf of the chairman, in particular director induction and development. This should be in a manner that is appropriate to the particular director, and which has the objective of enhancing that director's effectiveness in the board or board committees, consistent with the results of the board's evaluation processes.....

FRC Guide on Board Effectiveness – Board Support and the Role of the Company Secretary (4)

2.3 (cont'd) The chairman and the company secretary should periodically review whether the board and the company's other governance processes, for example board and committee evaluation, are fit for purpose, and consider any improvements or initiatives that could strengthen the governance of the company.

FRC Guide on Board Effectiveness – Board Support and the Role of the Company Secretary (5)

2.4 The company secretary's effectiveness can be enhanced by his or her ability to build relationships of mutual trust with the chairman, the senior independent director and the non-executive directors, while maintaining the confidence of executive director colleagues.

So Company Secretaries.....

- have pivotal role to play – must add value, helping chairman run an effective board
- must move from being “techies” by offering value-added input as a ‘wise friend’ and counsellor
- should develop good relations with all directors, esp. those who show sound judgment (a defining characteristic of successful people)
- need to reclaim key role as chairman’s chief of staff or *chef de cabinet*, assuring delivery of a well functioning board

Challenges (I)

Balancing the interests of different groups –

Chairman versus other directors

Chairman / CEO relationship

CEO / board relationship

Executive directors “versus” NEDs

SID “versus” the chairman

Private investors “versus” institutional investors

Investors “versus” company management

Challenges (2)

The bearer of unwelcome advice (aka The Shot Messenger) –

Telling Chairman or CEO that he/she does not have the requisite authority

Reminding executive directors of undertakings/requests to provide board with data which they are not keen to disclose!

Challenges (3)

A “jack of all trades” –

May be expected to know what is going on in all areas of the business

But – breadth of role makes it difficult to be expert in anything

Temptation for Secretariat to become the “bucket department” into which all “trash” is thrown!

Challenges (4)

If company secretary gets it wrong, error likely to be picked up by -

The board or an individual director

The auditors

An external body or authority or pressure group

The Fourth Estate

Challenges (5)

Become a wise friend

Maintain key relationships – auditors, internal audit, lawyers

Operate a No Surprises approach to your task – P O W

Don't take sides – cherish your independence

Try to hold the ring if NEDs and EDs are polarised

Control the board /committee pack – NEDs will love you!

Speak up when necessary at meetings – never be a lemon!

If something's wrong, say so – but know thine enemy!

Use your chairman wisely - but don't be a creep!

Keep up to date – good CPD is not optional

Proposal

- Independence needs to be assured by company secretary reporting to chairman – perhaps also if role includes general counsel (the lawyer needs professional independence too!)
- Company secretary's compensation and benefits should be determined by the RemCo
- The board should be satisfied that there is an effective, properly resourced secretariat; and should give that assurance in the annual report

The Big Question

Will company secretaries seize this opportunity to play a greater and pivotal value-added role, focusing on attaining high standards of governance and enhancing board performance?

Further information

- www.icsa.org.uk
- <http://www.icsa.org.uk/join-us/study-to-be-a-chartered-secretary/working-as-a-chartered-secretary>