

*The role of the
Company Secretary –
Current Perspectives*

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The role of the Company Secretary – Current Perspectives

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The role of the Company Secretary – Current Perspectives

1. **Companies Act**
S268A. Mandatory appointment of Secretary in respect of Public Company.
2. **JSE Listing Requirements – Company Secretary is subject to same restrictions / obligations as directors regarding dealing in securities.**

The role of the Company Secretary – Current Perspectives

Role – Summary

- The role of the Company Secretary concerns four main areas viz. the **Board**, the **Company**, the **Shareholders** and **other Stakeholders**.
- The Company Secretary is **Corporate Governance** “knowledge manager”.

The role of the Company Secretary – Current Perspectives

King 2

- The company secretary, through the board, has a pivotal role to play in the **corporate governance** of the company.
- The **board** shall be cognisant of the duties imposed upon the company secretary and should **empower** the **company secretary** accordingly.

The role of the Company Secretary – Current Perspectives

King 2

- In addition to extensive statutory duties, the **Company Secretary** must provide the **Board** as a whole and directors individually with detailed guidance as to how their responsibilities should be properly discharged in the best interests of the company.

The role of the Company Secretary – Current Perspectives

King 2

- The company secretary has an important role in the **induction of new or inexperienced directors**, and in assisting the chairperson and chief executive officer in determining the **annual board plan** and the administration of other issues of a strategic nature at **board level**.

The role of the Company Secretary – Current Perspectives

King 2

- The company secretary should **provide a central source of guidance and advice** to the board, and within the company, on matters of **ethics** and **good governance**.
- The company secretary should be subjected to a fit and proper test in the same manner as is recommended for new director appointments.

The role of the Company Secretary – Current Perspectives

Role of Company Secretary – Board

- To be “right-hand man” of Chairman.
- Add value – keep Chairman informed – follow up tasks delegated by Board.
- Design of Board agenda which is relevant to company’s business imperatives.

The role of the Company Secretary – Current Perspectives

Role of Company Secretary – Board (Contd.)

- Training and induction role – to teach directors and alert them to responsibilities and liabilities under Companies Act – especially NED's and inexperienced Executive Directors.
- To ensure proper and orderly conduct of Board meetings and Board committee meetings.

The role of the Company Secretary – Current Perspectives

Role of Company Secretary – Company

- **Duties as officer under Companies Act /
Company Law**
 - Due care, skill and diligence
 - Good faith, honesty, integrity, probity
 - No conflict of interest
 - Adequately informed decision making
 - Within parameters / scope of authority

The role of the Company Secretary – Current Perspectives

Role of Company Secretary – Company (Contd.)

- To **prove** that company is adopting best practices in **corporate governance** as well as effectively **running the business** (performance / conformance).
- Protect interests of company – conscience of company / probity of organisation.

The role of the Company Secretary – Current Perspectives

Role of Company Secretary – Company (Contd.)

- Front line warrior –
 - Heightened expectations / new corporate governance landscape.
 - “Gravitas” post-Enron, Worldcom, Regal, Leisurennet, Macmed, Parmalat.
 - **Eyes are on action of Board** / directors accountability / shareholder activism.

The role of the Company Secretary – Current Perspectives

Role of Company Secretary – Shareholders / Stakeholders

- Companies now “on notice” regarding compliance / accountability and increasing demands on Company Secretary because of –
 - SOX
 - IFRS
 - Institutional and stakeholder activism – Directors remuneration / rewards for failure / transformation

The role of the Company Secretary – Current Perspectives

Corporate Governance Role

- Liaison with Chairman of Board / committees agenda planning / meeting packs and procedures / advice.
- Review all legislative, regulatory developments and advise Board.
- Corporate social responsibility – liaise with **stakeholder** constituencies.

The role of the Company Secretary – Current Perspectives

Corporate Governance Role (Contd.)

- JSE liaison / compliance – annual report disclosure – assist with compilation of directors report.
- Managing governance issues pertaining to investor relations.
- Statutory functions (Companies Act) – compliance officer for share incentive schemes.
- Administration of General Meetings / Corporate Actions.

The role of the Company Secretary – Current Perspectives

Information and the Company Secretary (UK View – HIGGS / Combined Code)

- In order for a non-executive director to be effective, adequate **information** of the right kind is vital. Information must be provided sufficiently in advance of meetings to enable non-executive directors to give issues thorough consideration and must be relevant, significant and clear.

The role of the Company Secretary – Current Perspectives

Information and the Company Secretary (UK View – HIGGS / Combined Code) (Contd.)

- The emphasis in all **information flows** should be on clarity and transparency. The chairman, supported by the company secretary, should assess what information is required – to ensure compliance with business judgment rule i.e. **properly informed, conflict-free, rational and intellectually honest decision making.**

The role of the Company Secretary – Current Perspectives

Skills, competence, experience, qualifications, personal attributes

- G-BOK – “**G**overnance **B**ody of **K**nowledge” is extensive / demanding.
- Intellectual rigour – robust participation in board debates – “not a shrinking violet”.
- Boardroom suite presence – not merely a “scribe”.
- Technical knowledge and experience – legal, commercial and business best practices.
- Relevant academic / professional qualifications.
- Emotional intelligence.

The role of the Company Secretary – Current Perspectives

Skills, competence, experience, qualifications, personal attributes (Contd.)

- Understand board dynamics – NED's vs. Execs / CEO vs. Chairman
- Courage – may be subpoenaed to appear in court
- Respect in corporate community (integrity and trust)
- Exposure to corporate specialists
 - External auditors
 - Legal advisers
 - Merchant bankers
 - Sponsors

The role of the Company Secretary – Current Perspectives

Skills, competence, experience, qualifications, personal attributes (Contd.)

- Aware of current issues – BEE / CSR / IFRS
- Manage role conflict –
 - Duties as officer – responsible to NED chairman
 - Responsibilities as administrative executive - responsible to CEO / CFO

The role of the Company Secretary – Current Perspectives

Reporting Lines

- King Code: All directors should have access to **advice** and **services** of the Company Secretary, who **is responsible to the Board** for ensuring that –
 - Board procedures are followed
 - Applicable rules and regulations are complied with
- **Board** acting in its capacity as such i.e. “Directing mind of the company” must **empower the company secretary**
- Board includes **executive and non-executive** directors
- **Board** must protect integrity of Company Secretary’s position
- Board must establish appropriate reporting lines for Company Secretary

The role of the Company Secretary – Current Perspectives

Reporting Lines (contd.)

- **Not** practicable nor desirable **in terms of line management** for Company Secretary to report on day-to-day basis to **all** the directors.
- Company Secretary is responsible to the **Board of Directors** collectively, rather than to any individual director.
- King – any question of the removal of the Company Secretary should be a matter for the Board as a whole.

The role of the Company Secretary – Current Perspectives

Reporting Lines (contd.)

Guidelines

- Company Secretary responsible to Board – should be accountable to Board **through the Chairman** on all matters relating to his duties as an **officer of the company** (i.e. core statutory duties – Section 268A-I of the Act).
- Where Company Secretary has other executive / administrative duties, he / she should report to **CEO**, or **such other director** to whom responsibility for that matter has been delegated by the Board (normally CFO).
- Company Secretary remuneration and benefits should be settled / noted by Board / Remuneration Committee **on recommendation of Chairman or CEO.**

The role of the Company Secretary – Current Perspectives

Status - Responsibility without power? Accountability without authority?

- Add Value – espouse and practise 7 habits of effective Corporate Governance
 - Fairness
 - Accountability
 - Responsibility
 - Transparency
 - Discipline
 - Independence
 - Social responsibility

The role of the Company Secretary – Current Perspectives

Status - Responsibility without power? Accountability without authority? (contd.)

- “Body to be kicked, and soul to be damned” – Company Secretary is official receiver of notices regarding Companies Act and JSE Listings Division
- “The most underestimated people are the company secretaries. I agree!”

*Sir Adrian Cadbury: Corporate Governance and Chairmanship –
A personal view*

The role of the Company Secretary – Current Perspectives

Remuneration Matters

- “He is well paid that is well satisfied.” - *The Merchant of Venice, Act iv. Sc. 1. (W Shakespeare)*
- Remuneration of Company Secretary as disclosed in Impala Platinum Limited Annual Report for the year ended 30 June 2006 (Impala Platinum is #12 on the JSE ALSI 40) –

	<u>R'000</u>
Fixed Remuneration Package (including benefits)	1 229
Variable Remuneration (including bonus)	549
Share option expense gains	<u>1 760</u>
	R <u>3 538</u>

- Also participant in share options and share appreciation bonus option scheme.

N.B. : Share option transactions disclosed in Annual Report (together with Directors and Senior Management)

NOTE: No picture, no CV, no qualifications listed (as was the case with directors!).

The role of the Company Secretary – Current Perspectives

Conclusion

1. The role of the company secretary is important in the **provision of information** and more widely in supporting the **effective performance of non-executive directors**. As a provider of independent, impartial guidance and advice, a good company secretary is uniquely well placed to assist a non-executive director and to **support the chairman** in ensuring good use is made of the non-executive directors.

The role of the Company Secretary – Current Perspectives

Conclusion (Contd.)

2. The effectiveness of the company secretary will hinge on the nature of their working relationship with the **Chairman. The company secretary should be accountable to the board through the chairman on all governance matters.**

3. It is crucial to safeguard the integrity of the position of Company Secretary, so that their impartiality is not compromised. **All the board need a clear understanding of the role of the Company Secretary.**

The role of the Company Secretary – Current Perspectives

Quote – If the cap fits

‘Not as priest or soldier or judge does youth seek honour today, but as a man of offices. The business subaltern, charming and gallant as the jungle-gallopers of Kipling, drills files, not of troops, but of correspondence.’

Sinclair Lewis (1885 - 1951) US writer and social critic.
The Job (1916)