

Johannesburg

23 May 2024

THE COMPANY SECRETARY CAN MAKE OR BREAK THE BOARD

By Terrance M. Booysen (CGF Research Institute: CEO)

While the position of Company Secretary has always been important within an organisation, especially from an administrative perspective, the Company Secretary's role and scope of responsibility has grown over the years from an 'efficient administrator' to a 'governance leader'. A modern-day Company Secretary's role essentially encompasses ensuring the smooth running of the board's functions, as well as ensuring -- from a good governance perspective -- that directors are adequately informed and protected in the heightened regulatory environment in which modern organisations operate.

The *de facto* duties of a Company Secretary include attending board, board committee, shareholder and trustee meetings, and preparing the relevant documentation before and after these meetings. In addition, Company Secretaries must have a full grasp of the legislative and regulatory environment in which the organisation operates, as they are required to provide directors with guidance pertaining to their statutory and organisational-based duties, responsibilities and powers and to make them aware of any law that is relevant to, or that affects them as directors, not least also the organisation.

The Company Secretary is also responsible for the organisation's compliance in respect of company legislation and governance codes, and for proactively ensuring that the organisation's legal and regulatory governance structures and operations are in place. To address these onerous requirements, it is imperative that the Company Secretary ensures a **robust governance framework** is implemented within the organisation. In this way, they demonstrate to the board the extent to which these duties are being effectively fulfilled and provide valuable information -- in addition to any additional board pack materials -- to the organisation's leadership such that they can make properly informed decisions pertaining to the **real state** of governance the organisation finds itself in. Indeed, the absence of a digitised governance framework and its relevant information translates into increased risk and liability (for all).

Given that the South African Companies Act, 71 of 2008 ('the Act') sets strict requirements for the appointment and registration of the Company Secretary, the board cannot underestimate the knowledge, skill and experience necessary to do the job. Company Secretaries are not simply minute-takers. In fact they are highly skilled professionals who are fundamental to the organisation's governance team. They play a pivotal role in the organisation's effective and timeous engagement with stakeholders which is of vital importance to modern, sustainable organisations. In addition to the Company Secretary's knowledge and experience of relevant legislation, regulation and other governance

instruments, structures and mechanisms, it is generally accepted that, in terms of the Act, they are “prescribed officers”. Regulation 38 of the Act states that a “**prescribed officer**” includes anyone who regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the organisation. As such, the Company Secretary is subject to the same fiduciary duties and liabilities as a director and must meet the same fit and proper tests -- in line with that of a director.

Regrettably, many boards still regard their Company Secretary as a purely administrative position, not realising their strategic (and legal) importance to the sustainability of the board and the organisation itself. Improper appointments of this critical function will inevitably lead to dysfunction within the boardroom, not least other forms of risk and damages to the organisation.

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For further information contact:

Terrance M. Booysen (CGF: Chief Executive Officer) - Cell: +27 (0)82 373 2249 / E-mail: tbooyesen@cgf.co.za

Jené Palmer (CGF: Director) - Cell: +27 (0)82 903 6757 / E-mail: jpalmer@cgf.co.za

CGF Research Institute (Pty) Ltd - Tel: +27 (0)11 476 8261 / Web: www.cgfresearch.co.za