Good Governance Guide

The company secretary: Separation of roles

Governance Institute of Australia

Not-for-profit sector

This guide highlights the importance of the role of the company secretary and sets out the conflicts which arise when undertaking dual roles.

Qualified company secretaries provide invaluable support to boards through governance advice, secretariat services, effective administration of board processes and output, facilitation of board and governance reviews, director inductions and ensuring effective information flows between the board and management.

Boards invariably gain substantial benefits from having an experienced, qualified professional appointed to the role of company secretary to service the board and statutory requirements of the organisation.

The *Corporations Act 2001* requires the appointment of at least one company secretary for public companies and allows the appointment for other companies[1]. The role is not merely an administrative one — the law imposes obligations directly on the company secretary. A company secretary will often hold other positions in a company, such as chief governance officer, privacy officer, public officer[2] or disclosure officer in accordance with whistlelower legislation.

It is important that all directors have direct access to the company secretary for independent advice on governance matters. Frequently, the company secretary performs an important function acting as a nexus between the interests of the board, management and stakeholders.

Given that boards have responsibility for the oversight of the governance processes of an organisation, it is also important that directors have a resource of a skilled professional company secretary dedicated to implementing and monitoring governance frameworks to assist an organisation in achieving its goals and effectively manage risks across the whole organisation.

The ASX *Corporate Governance Council's Corporate Governance Principles and Recommendations* notes that 'the company secretary should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board'. The decision to appoint or remove a company secretary should be made or approved by the board. It is good governance for the company secretary to report directly to the chair of the board to ensure the independence of the role.

Conflicts of role and responsibility

It is **good governance** for organisations to separate the roles of company secretary from executive roles such as the role of the chief executive officer (CEO).

The board of an organisation which appoints the CEO, or other executive, as the company secretary should recognise the following issues which arise from such an appointment:

- The CEO's strategic and operational role and relationship with the board is very different from that of the company secretary. The board of directors delegates to the CEO the power to manage the business of the company. The CEO in turn appoints members of the executive management team and delegates responsibility for particular aspects of decision-making to them. They in turn delegate operational responsibility to employees throughout the organisation. The CEO reports directly to the board on the operations of the company in relation to the fulfilment of the strategy approved by the board.

- A company secretary's role is now much broader and includes acting as 'board adviser' with responsibility for the organisation's corporate governance. It is important that this role is undertaken by a professional without business management responsibilities. This enables the company secretary to provide independent advice to the board. In doing so, the company secretary acts as a check and balance to executive officers, particularly as regards their control over the flow of information.

- The benefits of independence will be lost by the board of an organisation that has a CEO or other executive manager (particularly a manager who performs an operational role), who also acts as the company secretary.
- Practical conflicts will also arise when a CEO holds the role of company secretary. The company secretary will attend to the functions associated with a board meeting, including preparing the agenda in conjunction with the chair, taking the minutes and providing independent advice to the board on governance matters. The CEO will participate in board discussions in the context of the role's accountability for the management of the business of the organisation. It is impractical — and difficult — for the CEO to participate effectively in discussions and also take the minutes of that discussion.

It is often the case that another member of the management team may be appointed as the company secretary if it is not a dedicated role. For example, the chief financial officer or finance director could also act as the company secretary. While it may be preferable for the role of company secretary to be combined with a role that has less of an operational and strategic focus than the role of the CEO, there is still potential for conflict of interest unless the role of company secretary is an independent one. If the role of company secretary is to be combined with another member of management, it will be important that this member of management receive training on the role and responsibilities of a company secretary. It will also be necessary to recognise the potential for conflict of interest and to ensure that information received in one role is not improperly used in respect of another.

An alternative to appointing a member of the management team to the role of company secretary is to use an external company secretariat service or appoint a company secretary on a part-time basis to fulfil the functions of the role, where resources are available. An NFP organisation may consider appointing a company secretary who acts for the organisation in a voluntary capacity.

Notes

1. *See section 204A (2) Corporations Act 2001*
2. *See section 252 Income Tax Assessment Act 1936*