

THE ROLE OF THE COMPANY SECRETARY UNDER THE COMPANIES ACT, 2019 (ACT 992)

Over the years, ALA has been approached by various groups of people wishing to incorporate their new entities with wide ranging objectives and activities. Very often, the request for these services, have come with an additional request for our company secretarial services.

It is observed that while a number of companies routinely engage the services of Company Secretary in satisfaction of the requirements for the incorporation of a company, a vast majority of these companies do not seem to appreciate the nature and role of the Company Secretary in the governance structure of a company. Indeed, this paucity of knowledge regarding the role of the Company Secretary in the day-to-day operation of a company also holds true as far as the nature and role of the Board of Directors (“Board”) of a company is concerned. It is envisaged that the role and legal remit of the Board will be the subject of another publication in the future.

The aim of this article is to outline the role of the Company Secretary as enshrined in the Companies Act, 2019 (Act 992) (“the Act”), which is the current legislation relating to companies. The Act was immediately preceded by the Companies Act, 1963 (Act 179) (“the previous Act”).

The Appointment of the Company Secretary

Usually, Company Secretaries are appointed by the first directors at incorporation. The appointment is done by letter, which would indicate the conditions of service, including remuneration. The candidate would then have to consent to the role in writing and the written consent must be filed at the Registrar Generals Department (“RGD”). The requirement to consent in writing is a requirement imposed by Act 992; which is perhaps a reflection of the gravity of the task the Secretary is required to perform under the Act.

The Company Secretary can be changed subsequently by the passing of a resolution by the Board.

Who qualifies to become a Company Secretary?

In terms of qualification, it can be observed that Act 992 departs radically from the repealed Act 179. The repealed Act 179 provided that all companies must have a Company Secretary (above the age of majority) without spelling out what qualifications the proposed Company Secretary should have. In contrast, Act 992 outlines various stringent requirements that a person ought to satisfy to qualify for appointment as Company Secretary.

The enhanced role of the Company Secretary under the current arrangements is a reflection of the centrality accorded to the Company Secretary in keeping the corporate

governance machinery in motion. It also stems, in part, from lessons drawn from the recent corporate governance failures arising from lack of control and supervision of several financial institutions, lack of governance policies and programmes, inefficient Boards and Board Action which culminated in the collapse of several financial institutions in Ghana.

Under Act 992, the Company Secretary for any Company must have:

- i. obtained a professional qualification or a Tertiary level qualification as that equips the Company Secretary to have the requisite knowledge and experience to efficiently perform the functions of a Company Secretary; or
- ii. must have previously been appointed as a Company Secretary; or
- iii. been practicing under the supervision of a qualified Company Secretary for a period of at least three years; or
- iv. is a member in good standing of the Institute of Chartered Secretaries and Administrators; or the Institute of Chartered Accountants; or a barrister or Solicitor in good standing, or
- v. by virtue of an academic qualification, or as a member of a professional body, appears to the directors as capable of performing the functions as the secretary of the company.

It is observed from the foregoing, that the qualifications for the Company Secretary are enhanced under Act 992, with the expectation that a person who occupies that position has a sufficient level of education, skill and experience to perform the now broadened functions under Act 992.

It is further explained in the Act that “a professional or tertiary level qualification is a discipline with an offering in company law practice and administration”.

The new requirements suggest that at the minimum, the Company Secretary should have a good knowledge of company law and legislation. This is critical because of the advisory role they play to the Board of Directors. In practice, the Company Secretary must also be conversant with relevant regulations governing the sector or industry to which the company belongs, in particular where they relate to corporate governance.

It must be noted that these restrictions on the appointment to the role of Company Secretary applies to both public and private companies.

What does the Company Secretary do?

Compared to the previous legislation, the Act broadens the duties of the Company Secretary and elevates the role. In addition to the traditional duties of issuing notices, recording minutes, drafting resolutions and filing statutory documents, company secretaries now play an advisory role to the shareholders and the directors of the

company. The company secretary per the Act steers the affairs of the Board for the effective governance of the company.

The duties of the Company Secretary as provided for by Section 212 of the Act include the following: -

- a) assisting the Board to comply with the constitution of the company and with any relevant enactment;
- b) keeping the books and records of the company;
- c) ensuring that the minutes of the meetings of the shareholders and the directors are properly recorded in the form required by the Act;
- d) preparing and issuing out notices in the name of the company;
- e) ensuring that the annual financial statements of the company are despatched to every person entitled to the statements as required by the Act;
- f) ensuring that all statutory forms and returns are duly filed with the Registrar;
- g) maintaining the statutory registers of the company;
- h) providing the Board with guidance as to the duties, responsibilities and powers of the Board and on the changes and development in the laws affecting the operation of companies;
- i) informing the Board of legislation relevant to or affecting meetings of shareholders and directors, and their failure to comply with the legislation and reporting accordingly at any meeting; and
- j) advising the directors on their responsibilities as directors.

How important is the role of the Company Secretary?

The importance of the company secretary's role has thus far merely been seen to be akin to the role of an office secretary, which is a very flawed perception of who a company secretary is.

The current as well as the previous Act makes it mandatory for every company to have a company secretary – which may be either an individual or a corporate body. Section 211(6) of the Act provides that “where a company carries on business for more than six months without a Company Secretary, the company and every officer of the company that is in default is liable to pay to the Registrar an administrative penalty of twenty-five penalty units (GHC300.00) for each day that the company continues to carry on business without a Company Secretary after the expiration of the period of six months”.

Where the position of the Company Secretary becomes vacant, the Act provides that “an act required or authorised to be done by or to the Company Secretary may, if the office is vacant or there is not for any other reason, a person capable of acting as Company Secretary, be done by or to an assistant or a deputy Company Secretary or any other officer of the company appointed by the directors to be acting Company Secretary”.

The foregoing is a depiction of the importance of the role of the Company Secretary. The role is indispensable and is the fulcrum that underpins the effective management of any corporate entity.

Although there is still the traditional “secretary” aspect of the role of a Company Secretary, this aspect is no longer the most relevant. The role of the Company Secretary has evolved from merely being an administrative assistant to the Board, to one which embodies a wider role of guiding and advising the Board and being at the helm of affairs where corporate governance is concerned. As stated above, the Board depends on the Company Secretary to guide and advise them not only on their statutory duties but also on corporate requirements and changes to the law.

Conclusion

In Ghana, we have in recent years come to learn the importance of maintaining governance structures that work for the effective running of our companies. The recent banking sector clean up clearly highlights the lapses in our governance structures and/or the flagrant disregard for corporate governance. Act 992 strengthens our corporate governance systems in many ways that would go a long way to ensuring the right checks and balances are in place for our companies to succeed. The role of the Company Secretary has no doubt grown in importance.

This specialised role of the Company Secretary in the Act requires the services of a qualified and competent individual or organisation to ensure compliance with the laid down requirements. The effective functioning of the Board, no doubt depends on the competence of the Company Secretary. The Company Secretary can be seen as the guardian of the company’s proper compliance with the law and best practice.

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