

GUIDANCE NOTE 1 OF 2017: THE ROLE OF THE COMPANY SECRETARY IN A MODERN COMPANY

Introduction

In the modern era it is recognized that the company secretary is the most senior administrative officer of the company. The Companies Act, No 71 of 2008 (the Act) prescribes that all public and state-owned companies are required to have a company secretary.

According to the Institute of Directors: *“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 these responsibilities should be discharged. All directors should have access to the advice and services of the company secretary and should recognise that the chairman is entitled to strong support from the company secretary in ensuring the effective functioning of the board”*¹

What is a Company Secretary?

A company secretary is defined in the Act simply as “an officer of the company”. Company secretaries oversee the efficient administration and compliance of a company. Company secretaries are the primary source of advice on the conduct of the business.

The role of the company secretary

The role and responsibility of the company secretary is outlined in Section 88(1) - (2) of the Act and can be summarised as follows - noting that this is not an exhaustive list.

- Providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers
- Making the directors aware of any law relevant to or affecting the company
- Reporting to the company’s board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or the Act

¹ <http://www.iod.com/mainwebsite/resources/document/companysecretary.pdf>



- Ensuring that minutes of all shareholders' meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with the Act.
- Certifying in the company's annual financial statements whether the company has filed required returns and notice in terms of the Act, and whether all such returns and notices appear to be true, correct and up to date
- Ensuring that a copy of the company's annual financial statements is sent, in accordance with the Act, to every person which is entitled to it
- Carrying out the functions of a person designated in terms of Section 33(3) of the Act.

Are company secretaries prescribed officers?

Regulation 38(1) of the Act states:

“Despite not being a director of a particular company, a person is a „prescribed officer” of the company for all purposes of the Act if that person –

- a. Exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or*
- b. 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 company.”*

According to regulation 38, a prescribed officer exercises” or regularly participates to a material degree in” general executive control. Consider the example of a company secretary that attends board meetings. Their attendance does not automatically make them prescribed officers. They may be in attendance in a consultative capacity and may play a part in enabling board members in exercising their executive control, but don't participate in this executive control themselves.

This CIPC Guidance note is issued to create awareness and education amongst industry and concerned parties.

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