

## The Evolving Role of a Company Secretary in Malaysia's Modern Business Landscape

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### Abstract

The role of the company secretary in Malaysia has undergone significant transformations over the years. This article delves into the dynamic character of the company secretary's function, historically viewed as a clerical position, today plays a critical part in maintaining legal compliance, transparent discourse, technological advancements alongside effective corporate governance within modern business landscape. It is the aim of this article to explore the changing responsibilities of a company secretary in the context of modern business practices. The methodology deployed in this study is known as a doctrinal study which is common among the legal fraternity. A thorough examination of relevant statutes, regulations, court decisions, and scholarly literature is carried out to explore the changing environment of the company secretary's profession and its consequences upon modern corporate governance in Malaysia. This study also analyses how these changes may affect Malaysia's corporate governance, accountability, and sustainable modern business landscape. It is found that the current company secretary plays multiple roles in ensuring compliance and adhering to corporate governance. The Companies Act 2016 imposes heavier legal penalty upon a company secretary who has breached his legal duties. Therefore, a company secretary must be a person of integrity having a strong character. In sum, this article highlights the significance of this evolution in promoting organisational transparency and accountability which is vital in modern business landscape.

Key words: Company Secretary, Corporate Governance, Companies Act 2016, Doctrinal Study, Compliance.

## Introduction

A company secretary is a senior officer who holds a very significant role in the sustainability of a company. A company secretary oversees that standard business procedures and legal requirements are adhered to, and that the company complies with local laws and regulations. Section 235 of the Companies Act 2016 (CA 2016) stipulates that every company in Malaysia must appoint at least one company secretary. Section 236 of the CA 2016 provides a company secretary shall be appointed by its Board of Directors within 30 days from the date of the incorporation of a company. The importance of a company secretary in Malaysia's business landscape is evidenced by the legal requirement that the office of a company secretary shall not be left vacant for more than 30 days at any one time, Section 240 of the CA 2016.

The term 'secretary' comes from the Latin word *sēcrētārius*, meaning "confidential employee. A *sēcrētārius* is person entrusted with secrets. An employer must be able to 'tell all' to his secretary, knowing what has been disclosed in strictest confidence will not become part of the daily office gossip; and the higher up corporate ladder, the more important it becomes (Snelling, 1994, p.2, as cited by Clark, 1997). The definition is still relevant to describe the role of a company secretary, albeit the multiples roles entrusted to a company secretary.

The role of a company secretary has had a long chronicle. Thus, it would be interesting to walk through a brief historical overview of the company secretary to understand its evolving role. Malaysia largely owes its corporate law from the United Kingdom due to the historical background. The origin of the company secretary in Malaysia can be tracked from the evolution of the cases and statutes in the United Kingdom. In the case of *Newlands v. National Employers' Accident Association* (1885)54 LJ QBD 428), a secretary is merely a servant whose duties were prima facie clerical and ministerial only. Over time, the role of a company secretary has changed significantly. It was historically viewed as a clerical position, yet today plays a critical part in maintaining legal compliance, transparent discourse, technological advancements alongside effective corporate governance within modern business landscape. Company secretaries have become much more important and well-respected throughout time. It is the aim of this article to explore the changing responsibilities of a company secretary in the context of modern business practices.

The paper is structured in the following manner. First, a brief historical overview of the company secretary is outlined. The next section reviews the literature concerning the role of the company secretary, then followed by an outline of the methodology employed. The remainder of this paper proceeds with the changes in the role of a company secretary in the modern business landscape. The final part wraps up a conclusion.

## Literature Review

This article explores the dynamic nature of the company secretary's role, which was once thought of as a clerical one. Clark (1997) has explained that prior to 1880, the role of secretary was dominated by male. With the introduction of typewriter, young ladies started to enter the profession of typewriter operators. It is interesting to note the United Kingdom's Companies Act 1855 did not include the company secretary despite the first introduction of the principle of limited liability. The lack of legal recognition of a company secretary is depicted in *Barnett, Hoares and Co v South London Tramways Co*, (1887) 18 QBD, Lord Esher M.R. said

“A secretary is a mere servant; his position is that he is to do what he is told, and no person can assume that he has any authority to represent anything at all; nor can anyone assume that statements made by him are necessarily to be accepted as trustworthy without further inquiry, any more than in the case of a merchant it can be assumed that one who is only a clerk has authority to make representations to induce persons to enter into contracts”.

It is important to note that there was no legal requirement in 1887 to have a company secretary which is why Lord Esher thought that this non-statutory role was only a clerk of having a master-servant relationship with the person hiring him. In the early 1900s, British stock exchanges became more global and began to offer shares of British firms overseas. Only then, the company secretary was legally recognised by virtue of the UK’s Companies Act 1908 which provides that each company is required to appoint a company secretary. Subsequently, the Companies Act 1929 prescribed the duties and responsibilities of the company secretary. In 1971, Lord Denning M.R. in the celebrated case *Panaroma Developments Ltd. Fidelis Furnishing Fabrics Ltd.* declared:

“But the times have changed. A Company Secretary is a much more important person now-a-days than he was in 1887. He is an officer of the company with extensive duties”.

By 1970s, the company secretary in the UK is recognised as an important senior officer of the company. The company secretary’s roles continue to evolve to keep abreast with the changing business needs. Kaul (2013) shows the company secretary is now expected not only as chief administrator in an organisation, but to be knowledgeable in corporate governance as well. Around 200 persons participated in a 2013 study team led by Professors Andrew and Nada Kakabadse to investigate the roles that company secretaries play in fostering trust in businesses through governance and the knowledge and abilities they require. The participants including company secretaries, chairmen, NEDs and CEOs from FTSE, SME and private, not-for-profit and public sector boards in the UK, the Republic of Ireland, and internationally based organisations (Kakabadse et al., 2014). It is thought-provoking to note that the team has derived at 12 main findings, *inter alia*, the role of a company secretary is much more than just administrative; the company secretary acts a nexus between executive and non-executive directors in ensuring the effectiveness of the board; and the additional roles such as officer of the company, chief of staff to the chairman and adviser to the board on governance. The findings of McNulty & Stewart (2015) are coherent with the findings of Kaul (2013) and Kakabadse et al. (2014) whereby the changes in the modern business landscape require a company secretary to play multiple roles in delivering his duties. The significance of a company secretary is portrayed by Kakabadse et al. (2017) who use the term the ‘calm amongst the storm’.

The current roles of a company secretary are discussed by Lee (2015) who proposes that there must a legal provision to clarify the rules to protect the current roles of a company secretary for example on the independence and the duty of confidentiality CS. It is submitted here that the Malaysia’s CA 2016 does not provide a specific provision concerning powers and duties of a company secretary, unlike the auditors (Section 266, CA 2016). It is not surprising as CA 2016 mirrors the UK’s Companies Act 2006 (Fuji, et al., 2019). Trubshaw (2018) concurs with Lee (2015) in his research to study whether and to what extent current legislation must be amended to make provision for the evolving role of the company secretary. Adam (2020)

acknowledges that the company secretary's role has changed over time and that doing so will help the company in enhancing its credibility, improving its performance, creating ethical culture, and effective control. In sum, a company secretary's responsibilities include maintaining information and reporting, conducting board and company meetings, providing legal advice, and making sure that legal requirements are met. (Kakabadse et al., 2016, Kakabadse et al., 2017; Lee, 2018;).

## Methodology

The methodology deployed in this study is known as a doctrinal study which is common among the legal fraternity. A thorough examination of relevant statutes, regulations, court decisions, and scholarly literature is carried out to explore the changing environment of the company secretary's profession and its consequences upon modern corporate governance in Malaysia.

## Discussion

The dehumanisation statement made by Lord Esher in the case of *Barnett, Hoares and Co v South London Tramways Co*, (1887) 18 QBD whereby the job of company secretary carried a lowly standing, surprisingly, was widely accepted in court cases that followed until the 1970s. The Company Secretary's standing with the courts somewhat improved as they saw them as the natural spokesperson for an incorporated legal body with broad jurisdiction over matters pertaining to the management and operations of the company. In 1971, Lord Denning M.R. in the celebrated case *Panaroma Developments (Guilford) Ltd. v Fidelis Furnishing Fabrics Ltd.*, [1971] 2 QB 711 (CA) denounced the earlier legal stance of Lord Esher and declared:

“But the times have changed. A company secretary is a much more important person now-a-days than he was in 1887. He is an officer of the company with extensive duties and responsibilities... He is no longer a clerk”.

In the same case, Salmon L.J. added that:

“Today, not only has the status of a company secretary been enhanced, but the state of affairs has been recognized by statute.”

Lord Salmon described a company secretary as the chief administrative officer of the company but left open the question whether he would have any authority in relation to the commercial management of the company. Since then, the emphasis on the function of the company secretary has shifted to legal compliance.

Today's business procedures and practices have grown so complex and tough that company management needs a competent principal officer to handle a variety of administrative activities in line with corporate goals and legal requirements. In the modern business environment, the company secretary's role is crucial for preserving legal compliance, open communication, technological advancements, and effective corporate governance. Numerous forms must be submitted, and numerous statutory registries must be kept up to date. A company secretary is more than just filing paperwork or performing basic duties of a regular secretary. A company secretary acts more in the capacity of an advisor to the company than just a mere administrator. As a result, a company secretary is required to be highly versatile so that he can regularly review the board procedures and advises the board of corporate

governance matters. Hence, a company secretary is a professional with a wide range of professional skills gained by specialised education, training, and experience is needed for all these tasks. A company secretary serves as the governance gatekeeper function and independence which involves the technical talents and skills of emotional intelligence, diplomacy, and trust (Kakabadse et al., 2017; Trubshaw, 2018).

In Malaysia, as per section 235(2) (a) of the CA 2016, the company secretary must be a member of an approved body as set out in the Fourth Schedule designated by the Minister or possess a valid licence issued by the Companies Commission of Malaysia, section 235(2)(b) of the CA 2016. The Fourth Schedule lists the approved bodies such as Malaysian Institute of Chartered Secretaries and Administrators, Malaysian Institute of Accountants, Malaysian Bar (lawyers practicing in Peninsular Malaysia), Malaysian Association of Company Secretaries, Malaysian Institute of Certified Public Accountants, Sabah Law Association (now known as Sabah Law Society) and Advocates Association of Sarawak. A company secretary is appointed by the Board of Directors, thus, he owes duty of care to the Board. In the case of *Cheng Ah Ching & Ors v. Goh Kim Ewe & Anor* [2016]MLJU 940, the High Court held that the company secretaries have no fiduciary obligations to the company or any of its individual directors. This legal stance was reaffirmed by the High Court in *Tan Ban Uu & Anor v. Ong Ghin Leong* [2017] MLJU 244 whereby a company secretary only had a duty of care to the board of directors, not to individual directors and shareholders.

The CA 2016 is silent on the definition of the term “company secretary”. However, in the interpretation section (section 2) of the CA, officer in relation to a corporation, includes any director, secretary or employee of the corporation. As earlier stated, CA 2016 provides a specific provision with regards to the powers and duties of an auditor in section 266 of the CA 2016. However, the CA 2016 does not provide a similar provision for company secretary. According to Fuzi et al. (2019), it is a settled law that the company secretary’s duties are based largely on fiduciary duties that originated from the English common law. It comprises of a duty of utmost good faith at all times in the best interest of the company. Section 241 of the CA 2016 provides that a qualified person who desires to act as a company secretary shall be registered before he can act as a secretary.

Common law has shifted over time from emphasising the company secretary's role as chief administrative officer to one of legal compliance and advisory. According to Fuzi et al. (2019), the Malaysian Code on Corporate Governance (2017) outlines the specific duties and responsibilities of the company secretary. These duties include managing committee and board meetings, providing advice on the duties and responsibilities of the board, facilitating director training, advising the board on corporate disclosures, managing shareholder meetings, monitoring and supporting the board's development of corporate governance, and supporting stakeholder engagement. An updated edition of the Malaysian Code on Corporate Governance (MCCG) was released by Securities Commission Malaysia on April 28, 2021. The MCCG 2021 features best practices and other guidelines aimed at bolstering the corporate Malaysian governance culture. The MCCG reiterates that the company secretary's role has expanded to include advising boards on governance issues as opposed to merely administrative ones. Through the Chairman, the company secretary contributes significantly to corporate governance by ensuring that the Board and its committees operate efficiently, in compliance with their mandates, and in line with industry best practices. G1.5 of the MCCG 2021 list the roles and responsibilities of a company secretary, however, it has specifically mentioned that the list is not exhaustive.

Meanwhile in the United Kingdom (UK) Companies Act 2006 (CA 2006) stipulates that only public company shall have a company secretary (section 271). On the other hand, a private company is exempt from the requirement for a company secretary, and the directors or any representative designated by them may perform all the secretary's responsibilities. The revised 2018 UK Corporate Governance Code reinforces the important role of the company secretary in board processes as stated in Principle I: *“The board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently.”* (FRC, The UK Corporate Governance Code, 2018).

Common law has shifted the focus of the company secretary's role over time from chief administrative officer to legal compliance and advisory officer (Trubshaw, 2018). Apart from continuing the traditional role as administrator of the organisation, a company secretary is also a compliance officer who has to adhere with various requirements for filing, reporting of law and policy compliance, and timely announcement, Kakabadse et al. (2017). Both the UK and Malaysia's Corporate Governance Code specifies that a company secretary shall render support to the Board in ensuring that the corporate governance is upheld. Kakabadse et al. (2017) terms the company secretary as the eyes, ears and conscience of an organisation. As an organisation's eyes and ears, the company secretary must make sure that vital information is securely shared with the appropriate parties, that board meetings are productive, and that accurate documentation is maintained. Thus, a company secretary is regarded the conscience of the company (McNulty & Stewart, 2015). A company secretary works closely with the Board especially the chairperson. Therefore, it is possible that a company secretary lends his ears to the Board and becomes their confidant as points out by Trubshaw (2018). The current role of a company secretary is also known as the company's gatekeeper. A gatekeeper could be a person whose responsibility is to make sure companies follow all applicable ethical and legal requirements. Adams (2020) highlights the need for a company secretary to maintain the independence. Independence will allow the company secretary to report any instances in which the company or any of the directors fail to adhere to the rules set forth by the company. Trubshaw (2018) views that a company secretary can become a whistleblower as well. However, Adams (2020) has expressed his concerns when the role of a company secretary is intertwined between a confidant and gatekeeper/whistleblower. Lee (2018) opines that the independence of a company secretary should not be regulated because doing so would hinder the development of the company secretary's evolving position. Adams (2020) on the contrary refutes Lee's contention. According to Adams, the independence of a company secretary plays a crucial part in ensuring effective board governance and high-quality corporate governance. Adams therefore suggests that independence be regulated in a way that is comparable to that of auditors.



Figure 1: The Company Secretary's Multiple Roles

This study also analyses how these changes may affect Malaysia's corporate governance, accountability, and sustainable modern business landscape. It is found that the current company secretary plays multiple roles in ensuring compliance and adhering to corporate governance.

## Conclusions

The role of a company secretary has evolved from being primarily administrative to one that now involves knowledge management, proper induction facilitation, relationship-building through trust-building, enabling an ethical and governance culture, and supporting the board's chairman to enhance corporate governance and board effectiveness. The role of a company secretary has evolved significantly from its origins as a clerical position to become a vital component of modern corporate governance. A company secretary now serves as the principal officer of the business, not just a clerk or record keeper. The evolution has been made necessary by the convergence of corporate scandals, regulatory developments, and technological advancements. The duties of the company secretary have expanded to encompass strategic decision-making, risk management, compliance assurance, and stakeholder engagement as organisations attempt to negotiate an increasingly complicated environment.

It is worthy to note that it is compulsory for every company in Malaysia to have at least one company secretary. However, in the UK, company secretary is only required for public company (UK CA 2006). Nevertheless, there is similarity in the Corporate Governance Code for both the UK and Malaysia relating to the company secretary's role in supporting the Board to uphold the principles of corporate governance. It is hereby submitted that the legislators in Malaysia must legislate the powers and duties; and the independence of the company secretary akin to those of an auditor. For an organisation to prosper, stay credible, and meet its

obligations to stakeholders, it is essential to acknowledge the changing role of the company secretary in modern business landscape.

### Future research

This paper is based on cases and rules and regulations which is known as doctrinal research among the legal fraternity. It is suggested that future research is done based on the socio-legal perspective so that the readers would be able to relate the convergence between the legal provisions concerning the company secretaries and their actual experience in delivering their duties. For example, many scholars observe that a company secretary is the Board's confidant. It would be fascinating to determine how the company secretary draws the line between the need to keep the information disclosed by the Board as confidential and the need to be a whistleblower if the information amounts to any breach of law. Socio-legal research is also meaningful to determine the challenges faced by the present day company secretary who has multiplicity roles.

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