



INSTITUTE OF DIRECTORS
SOUTHERN AFRICA

IoDSA FAQs

Company Secretary

Frequently Asked Questions

Company Secretary

1. What is the role and duties of the company secretary?

Paragraph 2.21 of the King Report on Governance for South Africa 2009 (King III) states that the board should be assisted by a competent, suitably qualified and experienced company secretary.

The appointment of a company secretary in public companies and state-owned companies is mandatory under the Companies Act, 2008 (the Act). Furthermore, the Act contains (in Chapter 3 Part B) various provisions regarding the appointment, removal and duties of the company secretary.

The company secretary must have the requisite knowledge of / experience in the relevant laws, be a permanent resident of the Republic, and remain so while serving in that capacity.

A company secretary may resign from office by giving the company at least one month's written notice, or less than one month's written notice, should this be approved by the board. Should there be a vacancy in the office of the company secretary, the board must fill the vacancy by appointing a person whom the directors consider to have the requisite knowledge and experience within 60 business days after the vacancy arises.

The company secretary has a pivotal role to play in the corporate governance of a company, and it is advisable that companies delegate or outsource this responsibility to an appropriate person, or organisation if a company secretary is not employed in-house. The appointment and removal of a company secretary is a matter for the board.

The board should be aware of the company secretary's duties and should empower the company secretary to properly fulfil those duties. As gatekeeper of good governance, it is important for the company secretary to maintain an arms-length relationship with the board and its directors, as far as reasonably possible. The company secretary should ideally not be a director of the company.

According to Section 88 of the Act, the statutory duties of company secretary are:

- To be accountable to the company's board;
- To provide the directors of the company with guidance as to their duties, responsibilities and powers;
- To make the directors aware of any law relevant to or affecting the company;
- To report 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 this Act;
- To ensure 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 Companies Act;
- To certify in the company's annual financial statements whether the company has filed required returns and notices in terms of this Act, and whether all such returns and notices appear to be true, correct and up to date;
- To ensure that a copy of the company's annual financial statements is sent to every person who is entitled to it in terms of the Companies Act; and
- To carry out the functions, where necessary, of a person who is responsible for the company's compliance with the filing of the annual returns in terms of the Companies Act.
- In terms of King III,
- The company secretary should assist the nomination committee and ensure that the procedure for the appointment of directors is properly carried out.
- The company secretary should assist in the proper induction, orientation, ongoing training and education of directors, including assessing the specific training needs of directors and executive management in their fiduciary and other governance responsibilities.
- The individual directors, and the board collectively, should look to the company secretary for guidance on their responsibilities and duties and how such responsibilities and duties should be properly discharged in the best interests of the company.
- The company secretary should provide a central source of guidance and advice to the board, and within the company, on matters of good governance and of changes in legislation.
- The company secretary should have a direct channel of communication to the chairman and should be available to provide comprehensive practical support and guidance to directors, with particular emphasis on supporting the non-executive directors, the chairman of the board and the chairman of committees and the audit committee.
- The company secretary should ensure that the board and board committee charters and terms of reference are kept up to date.
- The company secretary should be responsible for ensuring the proper compilation and timely circulation of board papers and for assisting the chairman of the board and committees with drafting of yearly work plans.

- The company secretary should have the duty to obtain appropriate responses and feedback to specific agenda items and matters arising from earlier meetings in board and board committee deliberations.
- The company secretary's role should also be to raise matters that may warrant the attention of the board.
- The company secretary should ensure that the proceedings of board and committee meetings are properly recorded and that minutes of meetings are circulated to the directors in a timely manner, after the approval of the chairman of the board or relevant board committee.
- The company secretary should assist the board with the yearly evaluation of the board, its individual directors and senior management.

As can be seen from the above lists, the company secretary plays a vital role in the corporate governance structure of a company. So much so, that the JSE has, earlier this year, issued changes to the listings requirements regarding company secretaries. One of these changes requires the board to assess the qualification, competence and expertise of the company secretary and report details thereof to the shareholders.

To assist with this assessment, the King Committee has issued a King III Practice Note – “Company Secretary Evaluation Questionnaire”, available on the IoDSA website on this link:

https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/24CB4885-33FA-4D34-BB84-E559E336FF4E/King_III_Ch_2_Company_Secretary_Evaluation_Questionnaire_Aug_2011.pdf

The Practice Note summarises key legislative and governance principles and practices that can be used in assessing the performance of the company secretary.