

COMPANY SECRETARY:

**A PROFESSION THAT CONTRIBUTES TO
ORGANISATION'S FUTURE SUCCESS**

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CONTENTS

1. Vietnamese laws and regulations on company secretary;
2. Perspectives on roles of company secretary;
3. Company secretary: A profession that contributes to the organisation's future success.

1. Laws and regulations on company secretary

- Clause 5, Article 152 of Law on Enterprises 2014;
- Clause 5, Article 63 (new) of Law on Credit institutions 2010;
- Clause 2, Article 33 of Circular No. 121/2012/TT-BTC dated 26/7/2012 providing regulations on corporate governance applicable to public companies (invalid);
- Article 18 of Decree No. 71/2017/NĐ-CP dated 06/6/2017 providing guidelines on corporate governance applicable to public companies.

Law on Enterprises 2014

Law on Enterprises 2014: Under Chapter 5 regarding joint stock companies, Clause 5, Article 152 stipulates about Chairperson of the Board of Directors:

5. If considered necessary, the Chairperson of the Board of Directors shall employ a company secretary to **assist** the Board of Directors and its Chairperson in performing their obligations within their competence provided by law and the company's Charter. The company secretary has the following rights and obligations:

Law on Enterprises 2014

- a) **To assist** in convening meetings of the General Meetings of Shareholders and the Board of Directors; to record the meeting minutes;
- b) **To assist** members of the Board of Directors in exercising vested rights and performing assigned obligations;
- c) **To assist** the Board of Directors in applying and implementing the corporate governance principles;
- d) **To assist** the company in developing shareholder relations and protecting the lawful rights and interests of shareholders;
- e) **To assist** the company in complying with the obligations to provide information, disclose information and in administrative procedures;
- f) Other rights and obligations as stipulated in the charter of the company.

Law on Credit Institutions 2010

Clause 5, Article 63 (new) of Law on Credit institutions 2010

Amended Clause 5, Article 63 is as follows:

“5. To appoint, dismiss, discipline, suspend and make decisions on the amount of salaries and other benefits for the positions of General Director (Director), Deputy General Directors (Deputy Directors), Chief Accountant, Board Secretary and other managers and executives in accordance with internal rules of the Board of Directors.”

Circular no. 121/2012

Article 33.2. Roles and duties of the company secretary:

- Preparing meetings of the Board of Directors, the Supervisory Board and the General Meeting Of Shareholders at the request of the Board of Directors or the Supervisory Board;
 - Advising procedures for meetings;
 - Attending meetings;
 - Ensuring that resolutions of the Board of Directors are in line with laws;
 - Providing financial information, copies of meeting minutes of the Board of Directors and other information to members of the Board of Directors and the Supervisory Board.
3. The CS is responsible to keep information confidential in accordance with laws and the company's Charter.
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Decree no. 71/2017

Article 18. Person in charge of corporate governance

1. The Board of Directors of a listed company must appoint at least one person to perform the duties of the person in charge of corporate governance. Person in charge of corporate governance may concurrently hold the position of Company Secretary as regulated in Clause 5, Article 152 of Law on Enterprises.
2. [...]

Decree no. 71/2017

Article 18. Person in charge of corporate governance

3. Person in charge of corporate governance has the rights and obligations as follows:

- a) **To assist** the Board of Directors in convening meetings of the General Meetings of Shareholders according to laws and regulations and other tasks related to the company and its shareholders;
- b) To prepare meetings of the Board of Directors, Supervisory Board and General Meetings of Shareholders at the request of the Board of Directors or the Supervisory Board ;
- c) **To advise** procedures for meetings;
- d) To attend meetings;

Decree no. 71/2017

- d) To advise procedures of establishing resolutions of the Board of Directors in line with laws;
- e) To provide financial information, copies of meeting minutes of the Board of Directors and other information to members of the Board of Directors and members of the Supervisory Board;
- g) To monitor the information disclosure and make reports upon to the Board of Directors;
- h) To keep information confidential in accordance with laws and the company's Charter.
- i) Other rights and obligations in accordance with laws and the company's Charter.

ACB's Charter

Article 51. The Board of Directors may appoint one or several persons as company secretary, and determine the role and duties of the secretary. The role and duties of the company secretary shall include:

1. Informing the convocation of and organizing meetings of the Board of Directors at the request of the Chairman of the Board of Directors or of the Supervisory Board;
2. Taking minutes of meetings;
3. Advising on procedure of meetings;
4. Providing information to members of the Board of Directors, members of the Supervisory Board and shareholders;
5. Other duties as stipulated by the Board of Directors.

Company Secretary is responsible for keeping information confidential in compliance with laws and this Charter.

Board secretary vs. Corporate secretary

Thư ký Hội đồng quản trị = Board secretary;

Thư ký công ty = Company secretary/Corporate secretary;

Company secretary: Commonly used in the United Kingdom and Commonwealth countries;

Corporate secretary: Commonly used in the United States, Canada, Eastern European countries, etc.

2. Perspectives on the role of company secretary

- Evolution in the company secretary's role (Lord Esher, Lord Denning);
- Cadbury Report;
- IFC;
- Leathwaite: Key challenges
- Grant Thornton: Changes in the company secretary's role;
- AICD: The importance of the company secretary's role

Evolution of the company secretary's role

In 1887, Lord Esher, Master of the Rolls, 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 authority to represent anything at all, nor can anyone assume that statements made by him are necessarily accepted as trustworthy without further enquiry.”

Source: Bob Tricker (2015), Corporate Governance: Principles, Policies, and Practices, p. 402.

Evolution of the company secretary's role

In 1971, Lord Denning, Master of the Rolls, said:

“Times have changed. A company secretary is a much more important person nowadays than he was in 1887. He is an officer of the company with extensive duties and responsibilities. This appears not only in modern Companies Acts but also by the role, which he plays in the day-to-day business of companies. He is no longer merely a clerk. He regularly makes representations on behalf of the company and enters into contracts on its behalf...so much so that he may be regarded as (doing) such things on behalf of the company ...”

Source: Bob Tricker (2015), Corporate Governance: Principles, Policies, and Practices, p. 402.

Cadbury Report

The Cadbury Report (1992) emphasizes the significance of the job: “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 should be discharged. All directors should have access to the advice and services of the company secretary and should recognize that the chairman is entitled to the strong support of the company secretary in ensuring the effective functioning of the board.”

Source: Bob Tricker (2015), Corporate Governance: Principles, Policies, and Practices, p. 100.

IFC

- Role as a governance professional;
- A list of 13 specific roles: (1) Role in preparing for meetings; (2) role during a board meeting; (3) role after a board meeting; (4) role in the delegation of authority; (5) role in board composition and succession planning; (6) role with directors; (7) role in board evaluation; (8) role with shareholders; (9) role in shareholder meetings; (10) role in strategy, risk, and good corporate citizenship; (11) role in financial oversight and reporting; (12) role in building ethical cultures; and (13) role in stakeholder management.

Source: IFC (2016) The Corporate Secretary: The Governance Professional, p. iii.

Leathwaite's executive summary

- “We recognize that Company Secretaries are now vital to delivering sustainable business performance and are finding themselves increasingly in the limelight needing to deal with more sophisticated corporate governance and regulatory issues. In our experience the role is, and has been for some time, emerging from the shadows.”
- “We are convinced that a strong Company Secretary is a critical part of an organization's executive team and that the Company Secretary has the potential to act as a key pivot point between the business and the Board.”

Leathwaite's executive summary

- “The Company Secretary profession as a whole needs to evolve and develop into a more strategic and commercial offering. We need to stop being seen as administrative cost centres but rather as commercial Board advisors and enablers, not barriers, to the business.”

Source: Leathwaite (2018), “Company Secretary Survey.”

Key challenges over the next 12 months

- Regulatory requirements (77% of the respondents working in Financial Services)
- Quality of board information (48% of the Company Secretaries polled)
- Team development (38%)
- Changes at board level (37%)
- Talent retention (32%)

Source: Leathwaite (2018), "Company Secretary Survey."

Grant Thornton: change in the role of a company secretary

- “When we speak to company secretaries, and from our survey, we find that there has been significant changes to the role over the years. Eighty percent said that their role had increased somewhat or significantly in the time they had been in it.”
(Increased significantly: 46%; Somewhat significantly: 34%.)
- “Many also stated that the role had increased due to greater pressure from the regulator.”

Source: Grant Thornton (2018), “Is the Role of Company Secretary Fit for the Future?”

AICD: The importance of the company secretary's role

- “The importance of the company secretary’s role has increased over the years. No longer the person who merely keeps the minutes of the board and handles board correspondence, the company secretary role can now include administering the affairs of the company and managing/supporting the business of the board.”
- The value of company secretaries is recognised in the ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations 3e (2014):
 - “The company secretary of a listed entity plays an important role in supporting the effectiveness of the board and its committees.”

AICD: The importance of the company secretary's role

- “Company secretaries fall under the definition of ‘officer’ of a corporation, so they have many of the same duties and obligations as directors.”
- “Because company secretaries are subject to many of the same duties and obligations as directors, they may be covered under the organisation’s D&O policies.”

Source: AICD, “Role of the Company Secretary.”

3. How to contribute to the organisation's future success?

- Transition from chief administrative officer (CAO) to chief governance officer (CGO);
- Checklists.

From CAO to CGO

- Chief administrative officer (CAO): A company secretary whose role is to meet the minimum legal requirement.
- Chief governance officer (CGO): A company secretary “whose role is one of governance significance in the organisation and whose skills, expertise and knowledge of the organisation are harnessed for the benefit of the board and the organisation.”

Source: Jennifer Robertson (2018), The Role of the Company Secretary.

Checklist

- Does your organization support the evolution of the profile of the company secretary?
- Is there sufficient investment, development and time to support change?
- Are the qualifications in the company secretary team the most relevant and useful to delivering good governance?
- Is the size of the team sufficient for the current responsibilities of the company secretary? Is it scalable?

Source: Grant Thornton (2018), "Is the Role of Company Secretary Fit for the Future?"

Checklist: Qualifications and Skills

- Understands corporate and securities law;
- Understands the company's business;
- Has “presence” and good communication skills;
- Is intuitive and sensitive to what the General Director and directors are thinking and feeling;
- Reads signals on the horizon and provides early warning to management;
- Knows how to overcome bureaucratic thinking in the company;
- Is detail-oriented, flexible, and creative;
- Mediates and achieves consensus.

Source: IFC (2010), Corporate Governance Manual, p. 209.

Ask yourself

Sir Harvey Jones, previously the CEO of the British company ICI, said:

“A company secretary should have considerable personal integrity and be seen to stand for probity and right within the company. The secretary should be seen to ‘side with the angels’ and be prepared to state when the occasion demands that ‘I fear that while what we are doing is within the letter of the law we are not within the spirit.’ They have to be trusted by everyone. It is a bloody tough job.”

Source: Bob Tricker (2015), Corporate Governance: Principles, Policies, and Practices, p. 402.

References

- Jennifer Robertson (2018), *The Role of the Company Secretary*, Sydney: AICD
- IFC (2016), *The Corporate Secretary: The Governance Professional*
- Bob Tricker (2015), *Corporate Governance: Principles, Policies, and Practices*, Oxford University Press
- IFC (2010), *The Corporate Governance Manual*, Hanoi: BACSON
- Leathwaite (2018), “Company Secretary Survey”; Grant Thornton (2018), “Is the Role of Company Secretary Fit for the Future?”; AICD, “Role of the Company Secretary”



Thank you!