

UNIT 6: THE COMPANY SECRETARY

Who is a Company Secretary ?

- The company secretary is deemed to be an officer of the company. Remember that in a one-person company, a company secretary has to be nominated (if not appointed) since the very beginning.
- For the appointment of the company to be valid, the company secretary will have to sign a consent form and file same with the Registrar of Companies for approval (**Section 163 (2) of the Companies Act 2001**).
- Note that any change in secretary or in the particulars of the secretary must be registered with the Registrar of Companies within 28 days of the date on which the change occurs / on the date on which the company becomes aware of the change (depending on the circumstances of the change) **Section 142 of the Companies Act 2001**.

Appointment of a Company Secretary

- Every company must have a company secretary except for small private companies. Thus, a public company limited by shares must appoint a company secretary. Where the Companies Act 2001 requires a company to appoint a company secretary (except for nomination of the company secretary for the purposes of a one-person company), that company secretary must be qualified as per the requirements of the law.
- Small private companies may choose to have a company secretary despite it is not a mandatory requirement to have one under the Companies Act. In such circumstances, the company secretary needs not have the statutory qualifications to act as company secretary.
- Usually, subject to the constitution of the company it is the board of directors of the company who appoints the company secretary (**Section 163 (4) of the Companies Act 2001**).

Appointment of a Company Secretary

- A firm/company may be approved by the Registrar of Companies to act as qualified company secretary on the following conditions (**Section 164 of the Companies Act 2001**):
 - - at least one of its members or directors is ordinarily resident in Mauritius;
 - - the member or director is qualified to act as secretary as per the requirements of the law;
 - - the member or director accepts responsibility for the work of the firm/company; and
 - - the Registrar of Companies is satisfied that the firm/company is a fit and proper person to be appointed a company secretary.

Qualifications of a Company Secretary

- A company secretary must in general be a natural person of full age and capacity and must be ordinarily resident in Mauritius (**Section 163 (1) of the Companies Act 2001**).
- A company secretary must have the following qualifications (**Section 165 of the Companies Act 2001**):
 - - being a law practitioner, legal consultant, a law firm,
 - - being a member of one of the bodies (ACCA, etc.), a member of ICAEW (Institute of Chartered Secretaries and Administrators of the UK) or CIMA (Chartered Institute of Management Accountants of UK).

Duties of Company Secretary

- The duties of the Company Secretary are statutory in nature, that is, they are specified clearly in the Companies Act 2001 as follows:
- (a) By virtue of **Section 94 of the Companies Act 2001**, the company secretary must take reasonable steps to ensure that the share register is properly kept and that share transfers are promptly entered on it. Note that a failure on the part of the company secretary in this respect will result in criminal conviction and sentence of a fine not exceeding MUR 200,000;
- (b) By virtue of **Section 166 of the Companies Act 2001**, the company secretary must provide to the board of directors, guidance as to its duties, responsibilities and powers;
- (c) By virtue of **Section 166 of the Companies Act 2001**, the company secretary must inform the board of directors of all legislation relevant to and affecting meetings of shareholders and directors and reporting at any meetings and filing any documents required of the company and any failure to comply with such legislation;

Duties of Company Secretary

- (d) By virtue of **Section 166 of the Companies Act 2001**, the company secretary must ensure that minutes of all meetings of shareholders or directors are properly recorded and that all statutory registers are properly maintained;
- (e) By virtue of **Section 166 of the Companies Act 2001**, the company secretary must certify in the annual financial statements of the company that the company has filed with the Registrar all such returns as are required of the company under the law; and
- (f) By virtue of **Section 166 of the Companies Act 2001**, the company secretary must ensure that a copy of the company's annual financial statements and annual report are forwarded to every person entitled to such statements or report under the law.

The role of a Company Secretary

- **Compliance and Regulatory Matters:** One of the primary responsibilities of a Company Secretary is to ensure compliance with relevant laws, regulations, and corporate governance practices. They monitor changes in legislation and regulations that may impact the company's operations and ensure that the company adheres to them. They handle legal filings, maintain statutory records, and ensure that the company meets its obligations regarding reporting, disclosure, and corporate governance.
- **Board Support and Corporate Governance:** The Company Secretary provides support to the board of directors and facilitates good corporate governance practices within the company. They assist in the preparation and distribution of board meeting materials, ensure compliance with meeting procedures and protocols, and maintain accurate records of board meetings and resolutions. They also provide advice on corporate governance matters and ensure the company follows best practices.

The role of a Company Secretary

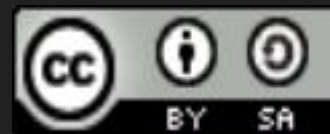
- **Shareholder Relations:** The Company Secretary plays a role in managing relationships with the company's shareholders. They oversee the organization of shareholder meetings, handle the distribution of meeting notices and proxy materials, and ensure compliance with shareholder voting procedures. They assist in managing communications with shareholders and facilitate the exercise of shareholders' rights.
- **Legal and Regulatory Compliance:** Company Secretaries are responsible for ensuring the company's compliance with legal and regulatory requirements. They monitor changes in legislation, maintain an understanding of legal obligations, and advise the company's management on compliance matters. They assist in the preparation and filing of required legal documents, such as annual reports, financial statements, and other regulatory filings.

Removal of the Company Secretary

- Usually, subject to the constitution of the company it is the board of directors of the company who removes the company secretary from office on justified grounds **(Section 163 (4) of the Companies Act 2001)**.
- Where the company secretary resigns or is removed from office, the company has a statutory duty to notify the ROC of same within 28 days of such resignation or removal **(Section 167 (1) of the Companies Act 2001)**.

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