



**Chartered  
Secretaries**

Southern Africa

# The Role of the Company Secretary

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## Overview of Presentation

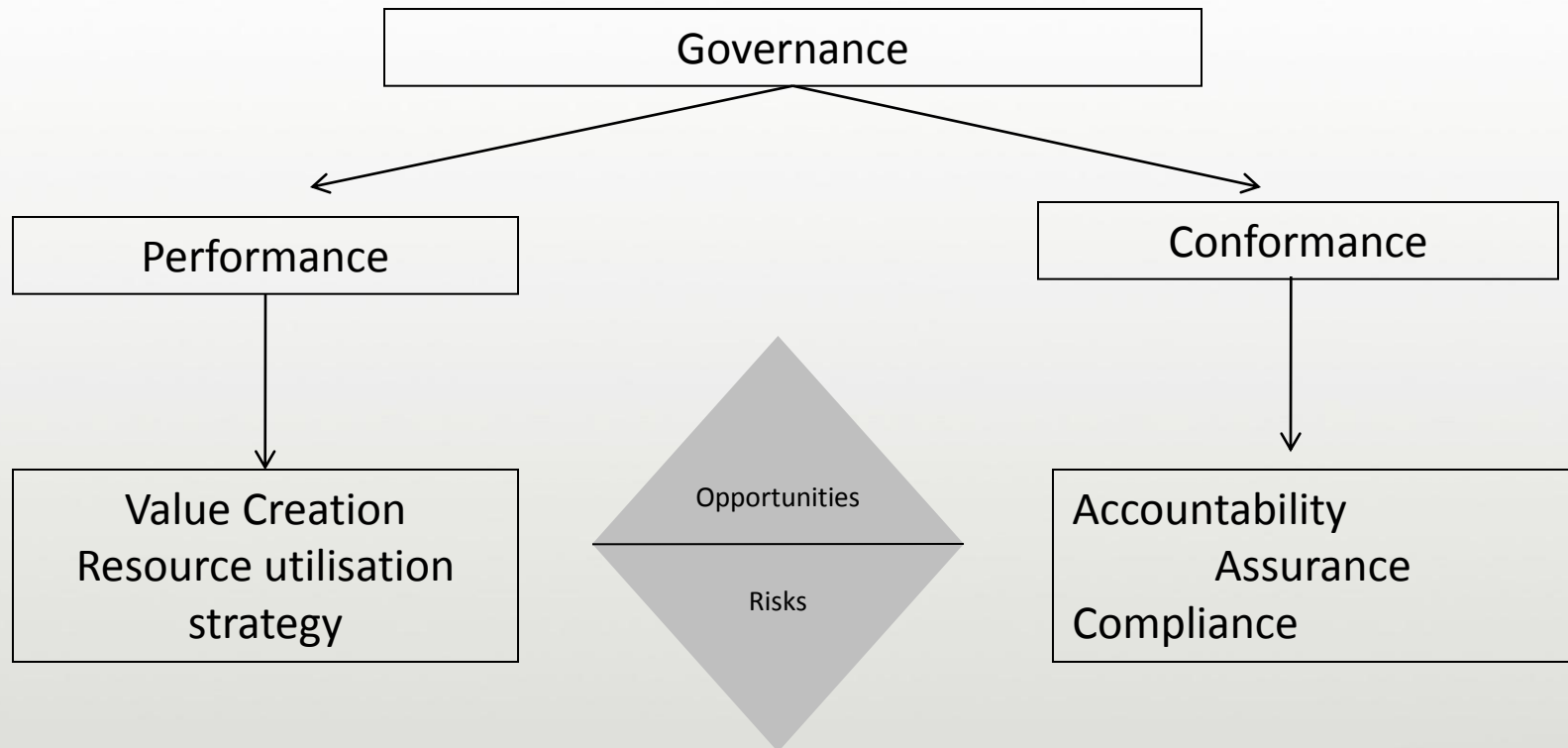
1. Statutory and regulatory environment
2. Assessing the role of the Company Secretary in relation to the following:
  - The Board of Directors
  - The Chairman
  - The Shareholders
  - Other Stakeholders
  - The Company
3. A practical approach to the organisation role of the Company Secretary – reporting framework, responsibility and accountability.
4. Reviewing the profile, qualifications and expectations of the Company Secretary to determine the level of recognition/job evaluation/grading/remuneration
5. Communication imperatives and the Company Secretary

# Corporate Governance – Key Features

Corporate Governance in a business enterprise is primarily a function of three things:

1. **Direction and leadership** (the quality of the organisation's strategy, the calibre of executive management charged with developing and implementing the strategy, and the calibre of the board charged with supervision and overseeing).
2. **Risk management and control** (the processes in place to identify, evaluate, monitor and control risks associated with the successful delivery of strategic and operational objectives which ensure sustainability).
3. **Accountability and reporting** (the provision of a true, fair and accurate account of the stewardship of the enterprise, in a transparent manner, to relevant *stakeholders*).

## Key Focus Areas of Corporate Governance



# The Role of the Company Secretary

## Statutory and Regulatory Environment

- 1. Companies Act – S86**  
Mandatory appointment of Secretary in respect of Public and State owned companies.
- 2. JSE Listing Requirements** – Company Secretary is subject to same restrictions/obligations as directors regarding dealing in securities In addition any change in status needs to be communicated on SENS.
- 3. King III** and general corporate governance environment.

## King III/Cosec

1. Corporate Governance – Direction and control of organisation – processes, customs, laws, policies, institutions, people
2. King III – Apply or Explain Regime
  - Effective Date: Financial years commencing on/after, 1 March 2010
3. 3 Pillars of Corporate Governance
  - Leadership – Effective in meeting business goals
  - Sustainability – Moral/Economic imperative of 21<sup>st</sup> century
  - Corporate Citizenship – Inclusivity of stakeholders

# King III/Cosec

## 4. 4 Principles of King III

R.A.F.T. = Responsibility  
Accountability  
Fairness  
Transparency



## King III/Cosec

### 5. 5 Behaviours for Directors (per King III)

- Inclusivity – Society at large is silent partner in corporate governance
- Conscience – Intellectual honesty/ independence
- Commitment – Dedication/effort
- Courage – Take risks with integrity
- Competence – Knowledge and Skills (Development NB) \*  
[Behavioural, governance and technical]

\*Important contribution expected from company secretary here



## KING III

### **Board's Obligations**

Ensure company must be responsible corporate citizens.

Board responsible for:

1. ethical tone/culture;
2. strategy;
3. risk;
4. performance;
5. sustainability;
6. ADR;
7. business rescue procedures (Companies Act)

## KING III

### Board Structure

Executive, non-executive, independent - Balance of membership

Independence of Chair

Annual Appointment of Chair by Board

Other Committees/Chairman's Role

Other directorships – whether permitted

Rotation (one third)

Statutory Committees – Companies Act (Audit/SEC) – S94 and S72

## KING III

### Director Development

Ongoing process

Briefings – Company Secretary expectation

Experience, Knowledge, Competence/Contribution

JSE – Financial director – (Audit Committee)

# King III

## Performance Assessment

Annual evaluation of:

- Board
- Committees
- Individual Directors
- Chairman's Responsibility
- External consultant if desirable
- Company Secretary must "assist" - important

## King III – Cosec Role

1. Principle 2.21 – The Board should be assisted by a competent, suitably qualified and experienced company secretary
2. P95: Appointment mandatory in Public companies/State-owned companies
  - P96 – Appointment or removal is matter for whole board
  - P95 – Pivotal role in corporate governance
  - P97 – Board must empower company secretary
  - P97 – Arms' length relationship with Board – Cosec is Gatekeeper of Corporate Governance
  - P98 – Company Secretary should not ideally be director

## King III – Cosec Role

P99 – Assist Nominations Committee – ensure appointment procedures proper

P101 – Assist with:

- Induction
- Orientation
- Ongoing training and education
- Assessing specific training needs of directors and executive management regarding fiduciary/governance responsibilities

## King III – Cosec Role

P101 – Directors/Board look to Cosec for guidance on responsibilities/duties - how to be discharged in best interests of company

P102 – Cosec – Central source of guidance and advice to board and within company on matters of good governance and changes in legislation

P103 – Cosec – Direct channel of communication to chairman. Available for comprehensive practical support/guidance to directors (especially NED's), board chairs, committee chairs

P104 – Cosec – Responsible for Charters/Terms of Reference

P105 – Cosec – Proper compilation/timely circulation of board papers for board and committees



## King III – Cosec Role

P106 – Responses/feedback to specific agenda items/matters arising.  
Also raise matters that may warrant board attention

P107 – Minutes: Proper recording, approval and circulation

P108 – Assist board in evaluation process (board, directors, senior management)

## Cosec – Related Activities

P7 – Liaise with audit committee chair re timing/frequency of MEETINGS

P40.4 - Liaise with CEO/Chair – Yearly work plans for board meetings

P44 – Pre-meeting caucus/agenda review – Cosec/CEO/CFO/Chair

CEO functions include:

60.7 Ensure that company complies with all relevant laws and corporate governance principles

Company Secretary to provide support

# Companies Act (71/2008) – Effective from 1 May 2011

S85 - Company Secretary accountable to Board

S88 - Duties

- Guidance to directors (duties, responsibilities and powers)
- Making directors aware of any law relevant to/affecting company
- Reporting non-compliance with MOI/Act
- Minutes of meetings
- AFS Certificate
- AFS Distribution
- Annual Return

# The Role of the Company Secretary

## Reporting Lines

1. King Code: All directors should have access to **advice** and **services** of the Company Secretary, who **is responsible to the Board** for ensuring that –
  1. Board procedures are followed
  2. Applicable rules and regulations are complied with
2. **Board** acting in its capacity as such i.e. “Directing mind of the company” must **empower the company secretary**
3. Company Secretary is responsible to the **Board of Directors** collectively, rather than to any individual director
4. Board includes **executive and non-executive** directors
5. **Board** must protect integrity of Company Secretary’s position
6. Board must establish appropriate **reporting lines** for Company Secretary
7. **Not** practicable nor desirable **in terms of line management** for Company Secretary to report on day-to-day basis to **all** the directors
8. **King III** – any question of the **removal** of the Company Secretary should be a matter for the **Board as a whole**

# The Role of the Company Secretary

## Reporting Lines

### Guidelines

1. Manage role conflict:
  - Duties as **officer** – responsible to **Chairman**
  - Responsibilities as **administrative executive** – responsible to CEO/CFO
2. Company Secretary responsible to Board – should be accountable to Board **through the Chairman** on all matters relating to his duties as an **officer of the company** (i.e. core statutory duties – Section 88 of the Act)
3. Where Company Secretary has other executive/administrative duties, he/she should report to **CEO**, or **such other director** to whom responsibility for that matter has been delegated by the Board (normally CFO)
4. Company Secretary remuneration and benefits should be settled/noted by Board/Remuneration Committee **on recommendation of Chairman or CEO**

## COSEC – Organisational Aspects

1. Board resolution confirming that board has satisfied itself that experience knowledge and qualifications of company secretary are “fit for purpose”
2. Charters of all committees to stipulate that Cosec must act as secretary to all board committees.
3. Cosec terms of employment to demarcate reporting lines for
  - a. Statutory and governance responsibilities
  - b. Administrative functions

## COSEC – Organisational Aspects - continued

4. Board policies to include protocol for evaluating company secretary
5. Remuneration package of Cosec to be approved by Board/Remco
6. Board must ensure Cosec department has adequate/appropriate resources
7. Cosec to be appointed compliance officer of employee share schemes



# The Role of the Company Secretary

## Skills, competence, experience, qualifications, personal attributes

1. G-BOK – “**G**overnance **B**ody of **K**nowledge” is extensive/demanding
2. Intellectual rigour – robust participation in board debates – “not a shrinking violet”
3. Boardroom suite presence – not merely a “scribe”
4. Technical knowledge and experience – legal, commercial and business environment
5. Relevant academic / professional qualifications
6. Emotional intelligence
7. Understand board dynamics – NED’s vs. Execs/CEO vs. Chairman
8. Courage – may be subpoenaed to appear in court
9. Respect in corporate community (integrity and trust) – Knowledge of current issues (BEE/CSR/IFRS)
10. Exposure to corporate specialists
  - External auditors
  - Legal advisers
  - Merchant bankers
  - Sponsors

# The Role of the Company Secretary

## Key behavioural expectations of Company Secretary

1. To be “right-hand man” of Chairman
2. Add value – keep chairman informed – follow up tasks delegated by board.
3. Design the Board agenda to be relevant and pertinent to company’s business imperatives.
4. To ensure proper and orderly conduct of meetings and board committees –
  1. Audit
  2. Risk
  3. Remuneration
  4. Nominations
  5. SEC
5. Comprehensive custodial role – Investments, securities, officer role
6. Training and induction role – to teach directors and alert them to responsibilities and liabilities under Companies Act – especially NED’s

# The Role of the Company Secretary

## Key behavioural expectations of Company Secretary (Contd.)

7. Protect interests of company (conscience of company) / probity of organisation
8. Front line warrior –
  7. new rules/heightened expectations/new corporate governance landscape
  8. “gravitas” post-Enron, Worldcom, Regal, Leisurennet, Macmed, Parmalat
  9. **eyes are on action of board**/directors accountability/shareholder activism
9. Companies now “on notice” regarding compliance/accountability because of –
  7. SOX
  8. IFRS
  9. Institutional activism – increasing demands on Company Secretary (Investor Relations)
  10. Stakeholder capitalism
  11. Governance metrics used in valuation of companies
  12. Downturn – Focus on conformance (survival)
  13. New Companies Act (71/2008) Increased Director Responsibilities

## COMPANIES ACT 71 OF 2008 – Business judgment rule (S76)

- Director will be deemed to have complied with the duty of good faith and the duty of care, skill and diligence if:
  - He took all reasonable steps to be informed
  - He made a decision / supported a decision of a committee / board and had acted rationally in believing / had believed that the decision was in the company's best interests
  - He had no conflict of interests and had no reasonable basis to know that any related party had an interest or it was appropriately declared
  - This is very similar to the approach of our courts, but is a good safe harbour
- Proper, detailed minuting is critical in this respect – company secretary's competence critical

# The Role of the Company Secretary

## Company Secretary's Corporate Governance Role

1. Focus on Board Effectiveness/Independence (Nominations Committee)
2. Social Productivity: Ethical culture/compliance culture
3. Executive Remuneration – integrate with risk management and long-term KPI's – Social Attitudes/ Shareholders "Say on Pay"
4. Ensure Board / Committees are evaluated – Ensure succession planning
5. Maintain/Strengthen Ethics/Values – culture audit: Board's working style, handling **recession/downturn**
6. Improve Shareholder communications – **communicate governance practices in integrated report**
7. Manage conflicts of interest
8. Watching brief on whether board is acting in best interests of company

# Board Communication

## 4 Tenets of Corporate Governance

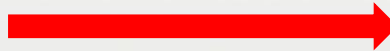


# Corporate Governance

## The Role of Communication

Communication is key in the four pillars of Corporate Governance

➤ Transparency means Communication



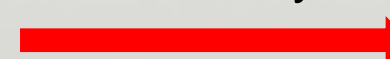
➤ Accountability requires Communication



➤ Fairness is built through Communication



➤ Responsibility enhanced by Communication





## Other Communications

### JSE (LR 3.59 – 3.62) Notification to JSE/SENS

- Appointment, resignation, removal, death of director (or company secretary)
- Changes to functions/executive responsibilities of director
- Schedule 21 declaration by director within 14 days of appointment

## Other Communications

### JSE (LR 3.59 – 3.62) Notification to JSE/SENS

Directors dealings in securities (LR 3.03 – 3.74)

- Disclosure of all dealings on SENS
- Advance clearance to deal must be obtained from Chairman (or other designated director)
- No trading in closed periods

Note:

Disclosure of any transaction that will provide direct or indirect exposure to share price

# Communication Aspects

## Corporate Reporting: COSEC Specific Input

JSE Listings requirements

King III – Apply/Explain checklist

Remuneration Report/Say on pay vote

Audit Committee Report (S94)

Directors report and AFS (S30)

- Share capital movements
- Dividends/Distributions
- Share options/Share incentive schemes
- Post Balance Sheet Events
- Related-Party Details (IAS 24)
- Contingent Liabilities re legal matters

## Corporate Reporting: COSEC Specific Input - continued

- Guarantees/Suretyships
- BEE Transaction details/Ratings
- Treasury Transactions (Funding/Financial Risks)
- Subsidiaries/Associates/Investments
- Director Details
- Corporate Actions/Summary of SENS Announcements
- Notice of AGM/Shareholder information/Proxy

# Board Communication

## Company Secretary – Board Papers

### Action: The company secretary must:

- Know, understand and be capable of interpreting board procedures;
- Ensure this provision interrelates with the requirement that there should be a schedule of matters reserved for the directors' decision, all of which will require supporting documentation: the means by which this is presented will be crucial to the ease with which the information is understood;
- Ensure that when the agenda and its supporting papers are issued, the directors have sufficient time in which to read and digest them;
- Anticipate whether there is likely to be a call for clarification and/or further/more information and, if so, he should put in hand the necessary arrangements to meet that demand
- Be mindful of the need to strike a balance between swamping the directors with papers and providing enough information for them to make a balanced judgment;
- Ensure that all of the directors are advised of board procedures on their appointment

# The Company Secretary and Board Communication

## Main Considerations re Board Papers

### Preparation of Agenda

Settled for whole (ensuing) year by Company Secretary, Chairman, CEO (also CFO and other business unit managers)

### Organisation of Papers

All papers must be clearly organised and identified

NB: Board papers are integral part of minutes

# The Company Secretary and Board Communication

- Board papers – Attributes (conflicting needs)
  - Easily comprehended but comprehensive
  - Timely but not out of time
  - Simple but detailed
- Management (including prescribed officers) have a duty to ensure that board is properly informed
- Format/content of board papers is usually domain of Company Secretary



# Company Secretary and Board Communication Checklist for Writing Minutes

Minutes must be:

- Objective
- Clear
- Concise
- Complete

Minutes should be written:

- Impersonally
- In the past tense

Minutes should contain:

- Name of the company (company number)
- Type of meeting
- Day and place of meeting
- Those present or in attendance and apologies received
- Details of relevant discussion
- Full terms of resolutions adopted
- Resolutions to be sequentially numbered (S73)

## The Company Secretary and Board Communication Board papers to provide comprehensive relevant information

1. Enable directors to rely on business judgment rule
2. Section 73 requires a company to keep minutes of board and committee meetings
3. Minutes must include every resolution adopted and any declarations made in terms of Section 75
4. Round robin resolutions – every director must receive notice of matter to be decided but only needs signature of majority

# Company Secretary and Board Communication

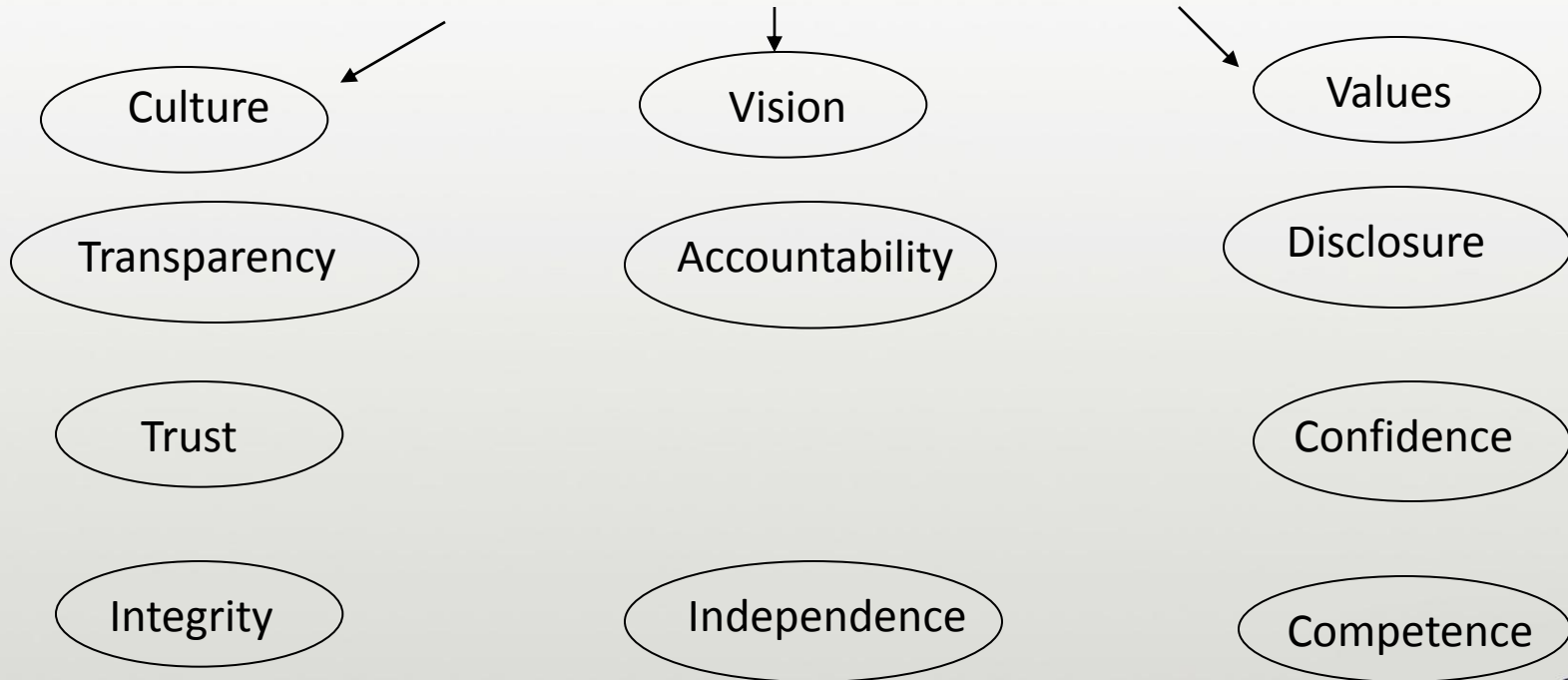
## Key Considerations for Board Minutes

1. Minutes can provide proof of corporate authority to conduct certain transactions
2. Minutes can serve as reminders or direction for action
3. Minutes can provide basis for “business judgment” defence
4. Minutes are not legally privileged
5. Minutes should record that a decision was made, and the nature of that decision; they should provide whatever directions and authorities are required to implement the decision
6. Generally unhelpful to record all comments with attribution. Specific comments can be included at directors’ insistence. Formal dissent must be recorded.
7. Minutes should be drafted promptly after a meeting
8. Any notes must be destroyed once minutes are approved

# Conclusion

Features of Fit for Purpose Governance:

## GOVERNANCE SOCCER TEAM



Coach: Ethics