The Governance Code

THE
CODE'S
PRACTICES
CHART A JOURNEY
FROM THE BOARDROOM
TO THE REALISATION OF VISIONS

A Journey to Success

Guidance on the role of the Company Secretary

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A key stage of development for an organisation happens if it decides to move from being an unincorporated entity to becoming incorporated – usually as a company limited by guarantee. This brings the organisation into the jurisdiction of company law with significant statutory obligations arising for directors. It also requires the organisation to adopt more formal corporate governance practices and policies so as to provide assurances to stakeholders that it is a properly run entity deserving of their confidence.

A company limited by guarantee can fall into any of the three organisational types defined in the Governance Code: Type A, Type B or Type C. It is more usual to find them clustered around Type C and Type B, with most of the Type A organisations being structured as unincorporated associations.

Every incorporated entity, under company law is required to have a company secretary whose primary duty is to ensure the company fulfills its statutory obligations and fully complies with the law. Best practice requires the company secretary to also ensure the board conducts its duties in accordance with the highest standards of governance. In this regard, the company secretary acts as one of the 'custodians of governance' in the organisation, and is part of the checks-and-balances of the governance system within an organisation.

As one of the key responsibilities of a board is the effective oversight of management, this second, best practice element of the company secretary role, requires him/her to be an agent of the board and independent of management. If the company secretary role is filled by the CEO or Manager, then one of the most effective inbuilt internal controls available to the organisation to ensure good governance could potentially be undermined. The establishment of appropriate reporting lines for the company secretary will normally be a crucial factor in protecting the independence of the company secretary role. It should also be noted that the directors of an incorporated body have a legal duty to ensure that the person appointed as company secretary has the skills and resources necessary to discharge the statutory and other duties of the role.

This can be a sensitive topic for organisations in the voluntary sector where the CEO/Manager is often asked to be the company secretary. This note is intended to provide some guidance.

Recommended Practice

Type A Organisations: As these will be primarily unincorporated associations, it is advised that an honorary secretary is appointed. It is usual in the voluntary sector that the role is taken up by one of the volunteers on the management committee. But if the organisation has no paid staff and is also a company limited by guarantee, the Governance Code suggests that this organisation complies with the actions outlined for Type B organisations.

Type B Organisations: The Governance Code recommends that if the organisation is incorporated and, when resources allow, Type B entities give consideration to separating the role of company secretary and chief executive / manager and allocating the role to either of the following:

- *A member of the board* – such a person could be supported by staff (including the CEO/manager) to fulfill the administrative parts of the responsibilities of company secretary.
- *An external professional service provider* – who can work with a nominated board member and/or staff and management to ensure the responsibilities of company secretary are completed.

Some organisations (and many in the private sector) resolve this issue by appointing a member of staff who is not the CEO/Manager as company secretary. This person may have ordinary staff-member responsibilities for which they report to the Manager/CEO but they will report directly to the board on their company secretarial duties. This is also a legitimate way for community and voluntary organisations to resolve this issue, however, the following note of caution should be heeded if a decision is made to go this route:

> *Organisations in the voluntary sector tend to be fewer than 10 staff on average. If a staff member reporting to the CEO also reports to directly to the board on their company secretarial duties (which can involve that person advising the board on how to provide oversight to the CEO!), complications might arise which impact on the authority of the Manager or CEO. In small organisations, this could cause an unhelpful tension between the CEO and the staff member who is the company secretary.*

Type C Organisations: In Type C organisations the governance dimension of the company secretary's role takes on increasing importance as the organisation is likely to come under closer scrutiny from its key stakeholders as to how it is run, in particular, funders. The Governance Code advocates that because a Type C organisation will usually have several staff and enjoy the privileged protection of incorporation, it should provide all stakeholders with the assurance it is conducting corporate governance to the highest of standards. It should do this by demonstrating it has the required resources in place to enable the board not only meet its statutory obligations, but also to exercise the highest level of corporate governance and effective oversight – namely, a formalised company secretary function which is separate to the CEO/Manager.

The two options as outlined for 'Type B' organisations are suggested as the most suitable options for this i.e. either a board member supported by staff (including the manager/CEO) or else an external contracted company secretarial service provider. The same note of caution applies should a Type C organisation decide to appoint a staff member who is not the CEO/Manager as company secretary.

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