



Company Secretarial Practice

The Company Secretary

Appointment

In the absence of contrary provisions in the company's Constitution, the Secretary is appointed by the Board of directors, and the Board sets the terms and conditions of service.¹

Before a Company Secretary assumes office, the person concerned must lodge with the Registrar, the written consent to serve as Company Secretary. See Section 211(8) of Act 992.

The Secretary may be a body corporate. However, where a body corporate is a secretary, it must compulsorily have as one of its promoters, subscribers, directors or operating officers, a person who is qualified to be a company secretary.²

Sometimes a director may also act as secretary of the company. This is however limited by the restriction imposed by section 213 of Act 992. That is, where an act is supposed to be done both by a director and secretary, one person acting in both capacities cannot do it. A person is therefore, for example, precluded from signing a document as director and then signing again as Company Secretary.

Qualification

The directors must not appoint a person as a Company Secretary unless that person has any of the following standing:

1. The person has obtained a professional qualification or a tertiary level qualification that enables that person to have the requisite knowledge and experience to perform the functions of a Company Secretary.³

¹ Section 211(5) of Act 992

² Section 211(2) of Act 992

³ Section 211(3)(a)



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2. The person has held office, before the appointment, as an apprentice or has been articled under the supervision of a qualified Company Secretary for a period of at least three years.⁴
3. Is a member in good standing of:
 - i. The Institute of Chartered Secretaries and Administrators, or
 - ii. The Institute of Chartered Accountants, Ghana, or
 - iii. Having been enrolled to practice, is in good standing as a barrister or solicitor in Ghana, or
 - iv. By virtue of an academic qualification, or as a member of a professional body, appears to the directors as capable of performing the functions of secretary of the company.⁵

Penalty

A company must compulsorily have a secretary. The Company and every officer of the Company is liable to a financial or an administrative penalty for each day that the company continues to carry on business without a Company Secretary after the expiration of 6 months.⁶

NB:

- If for any reason there is a vacancy in the office of secretary, the duties of a secretary may be performed by a deputy secretary or any officer appointed by the board to be acting secretary. See section 211(7) of Act 992.

Status

He is an officer of the company as defined in the first schedule of the Companies Act.⁷ The Company Secretary's status in the company has often been described as

⁴ Section 211(3)(b)

⁵ Section 211(3)(c), (d), (e)

⁶ Section 211(6)

⁷ See definition of "Officer" in the First Schedule to the Act.



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merely ministerial and administrative. In *Lugeterah v Northern Engineering [1978] GLR 477*, the court considered the role of the Company Secretary, in a matter where the secretary had issued a notice of a meeting without board authorization. The court held as follows:

*“In this particular case the meeting was convened by the secretary apparently on his own without any directive from the directors. It seems to me very essential that secretaries of companies should be alive to the nature of their duties and responsibilities. In *George Whitechurch Ltd. v. Cavanagh [1902] A.C. 117 at p. 124, H.L.*, Lord Machaghten described these duties as “of a limited and of a somewhat humble character” and the great common law judge Lord Esher M.R. in *Barnett, Hoares, & Co. v. South London Tramways Co. (1887) 18 Q.B.D. 815, C.A.* spelt out the status of a company secretary. He said at p. 817:*

“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 any authority to represent anything at all; nor can anyone assume that statements made by him are necessarily to be accepted as trustworthy without further inquiry . . .”

*Quite clearly by the provisions of section 271 of Act 179 the secretary of the N.E.C. has no legal power to summon an extraordinary general meeting on his own authority. This has in fact been the case under the English Companies Act, 1900 (63 & 64 Vict., c. 48), s. 13 as was held in *In re State of Wyoming**

Syndicate [1901] 2 Ch. 341 and our Companies Code merely codified the English position.”

In *Re Maidstone Building Provisions Ltd [1971] 3 All ER 363*, the court considered whether the Secretary of a company was liable for fraudulent trading - i.e., carrying on the business of the company whilst it was insolvent. The court held @ page 368 that:



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“So far as the position of the secretary is concerned, it is established beyond all question that a secretary, while performing the duties appropriate to the office of secretary, is not concerned in the management in the company.”

However, having recourse to the discussions below, one would see that such an assertion is untenable. Presently, Corporate practice does not recognise a company secretary as a mere servant of the company.

Duties (Section 212)

- Assisting the Board to comply with the Constitution of the company and with any relevant enactment.⁸
- Ensuring that the minutes of the meetings of the shareholders and the directors are properly recorded in the form required by the Act.⁹
- Preparing and issuing out notices in the name of the company.¹⁰
- Ensuring that the annual financial statements of the company are dispatched to every person entitled to the statements as required by this Act.¹¹
- Ensuring that all statutory forms and returns are duly filed with the Registrar.¹²
- Providing the Board with guidance as to their duties, responsibilities, and powers and on the changes and development in the laws affecting the operation of companies.¹³
- Informing the Board of legislation relevant to or affecting meetings of shareholders and directors and their failure to comply with the legislation and reporting accordingly at any meeting.¹⁴

⁸ Section 212(a)

⁹ Section 212(c)

¹⁰ Section 212(d)

¹¹ Section 212(e)

¹² Section 212(f)

¹³ Section 212(h), (j)

¹⁴ Section 212(i)



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- Maintenance of Statutory books and registers:
 - (a) Register of Members¹⁵;
 - (b) Minute Book for Minutes of General Meetings¹⁶;
 - (c) Register of Directors and Secretaries¹⁷;
 - (d) Minute Book for Minutes of Board Meetings¹⁸;
 - (e) Register of Directors' Interest and Disclosures¹⁹; and
 - (f) Register of Directors' Holdings²⁰

Capacity to bind the Company (Section 148 & 150)

As an officer of the company, the Secretary's acts are not binding on the company, unless:

- (i) the company through its members in general meeting, board of directors, or managing director, shall have expressly or impliedly authorised such officer or agent to act in the matter;
- (ii) the company through the above-mentioned organs have represented him as having authority to act in the matter; or
- (iii) his acts are within acts customarily performed by Secretaries.

The company shall be liable unless the person who relied on the acts of the Secretary had actual knowledge that the person did not have the authority or unless, having regard to his position with, or relationship to, the company, he ought to have known of such absence of authority.

¹⁵ Section 35

¹⁶ Section 166

¹⁷ Section 215

¹⁸ Section 188(3)

¹⁹ Section 196

²⁰ Section 210



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Any act of the Secretary beyond his authority may be ratified by the board of directors or the members either by subsequent approval or by knowledge and acquiescence. **Section 148(3) of Act 992.**

Where a Secretary issues a notice of a meeting without prior board approval, if all the directors become aware of the irregularity, they may expressly ratify the notice or acquiesce in its issuance.

In *Hooper v Kerr, Stuart & Co Ltd* [1900] TLR 162, upon a requisition to the directors for an EGM, the secretary sent out the notices of the meeting without the formal authority of the Board. At a subsequent meeting of the board a resolution had been passed ratifying the actions of the secretary. On a motion to restrain the holding of an extraordinary general meeting of shareholders on the ground that the same had not been lawfully summoned, the question before the court was whether the ratification was effective. The Court held that the subsequent ratification by the directors of the secretary's action rendered the notice effective.

The Secretary's capacity to bind the company in relation to transactions with third parties, will depend on the scope of his duties and what he is allowed to do in the ordinary course of business by the company.

So, having recourse to the copious duties of the Company Secretary outlined by Act 992, the secretary as an officer of the company cannot therefore be seen as a mere servant.

In the English case of *Panaroma Development (Guldford) Ltd v Fidelis Fabrics Ltd* [1971] 3 All ER 16, the Secretary of the defendant company hired cars in the name of the company without authorization for his personal use. The orders for the cars were written on the defendant company's letterheads, signed by the Secretary. When the bills were presented for payment, the company refused to pay them. Counsel cited the authorities indicating that the Secretary of a company was mere humble servant with no authority or power to make contracts or representations on behalf of the company. Lord Denning held as follows:

"... times have changed. A company secretary is a much more important than he was in 1887. He is an officer of the company with extensive duties and



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responsibilities. This appears not only in the modern Companies Acts, but also by the role, which he plays in the day-to-day business of companies. He is no longer a mere clerk. He regularly makes representations on behalf of the company and enters into contracts on its behalf, which come within the day to day running of the company's business. So much so that he may be regarded as held out as having authority to do such things on behalf of the company. He is certainly entitled to sign contracts connected with the administrative side of a company's affairs, such as employing staff, and ordering cars and so forth. All such matters now come within the ostensible authority of a company secretary." @18-19

Under section 150 of the Companies Act, a person described as a Secretary by the Company in particulars filed at the Companies Registry, is deemed to have been properly appointed and has all the powers customarily exercised by persons in that position in a company carrying business of the type carried on by the Company.

Further, it is presumed that the secretary of the company has authority to issue documents or certified copies of documents on behalf of the company and also has authority to warrant the genuineness of the documents or the accuracy of the copies so issued. See Section 150(1)(C) of Act 992.

Removal from office

The Secretary may be removed by the board unless the Companies Constitution otherwise provides.²¹ The removal of the Secretary by the Board is subject to right of the Company Secretary to claim damages from the company if removed in breach of contract.²²

The secretary may also resign his position. The issue of the effectiveness of a resignation of a Secretary of a company came to the fore in the case of ***Centre Properties v Obuom Goldfields Limited [High Court, October 13, 2004, Justice Baffoe Bonnie]*** the court held that the resignation of a Secretary takes effect from the date of the resignation and not from the date when the relevant notification of

²¹ Section 211(5) of Act 992

²² Section 211(5)



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the resignation was given to the Registrar of Companies under section 197 of the Companies Act.

The court relied on the case of *Lartey and Lartey v Beanie [1987-88] 1 GLR 590*, where the High Court held that it was not the filing of the required prescribed forms at the Registrar of Companies, which made the appointment of a director effective but the passing of the required resolution appointing him. In the view of the court in the *Obuom Case*, it was not the acceptance of the resignation of a Secretary by the Company or the filing under section 197 that makes the resignation effective but that it is effective from the date when it is made, except where there is a provision under a contract of service indicating otherwise.

The court however held that even though the resignation was effective, since the directors had allowed the secretary to continue in office and issue notices of meetings and sign documents in that capacity, they should be deemed to have acquiesced in his acting in that capacity.