



THE ROLE OF A COMPANY SECRETARY IN GHANA: RIGHTS, LIABILITIES, AND BEST PRACTICES

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Abstract: Company secretaries play a pivotal role in ensuring effective corporate governance, compliance, and administration within organisations. Despite their crucial responsibilities, the rights and liabilities of company secretaries remain poorly understood, especially in the context of the Companies Act, 2019 (Act 992). This paper examines the legal framework governing the position of company secretaries, highlighting their evolution from a mere servant to a chief administrative officer of the company, statutory and contractual obligations and the legal framework under Ghanaian law as against international best practices. It analyses the rights of company secretaries, liabilities arising from breach of duties and case studies and judicial precedents on the role of company secretaries under Ghanaian law. Using the Companies Act, 2019 (Act 992) as a reference point, this study investigates the implications of company secretaries' duties on their personal and professional liability.

Keywords: Ghana, Company Law, Company Secretary, Role, Rights, Liabilities.

1. INTRODUCTION

The Companies Act, 2019 (Act 992) mandates every public company and certain private companies to appoint a company secretary.² The company secretary, in modern times, plays a crucial role in ensuring compliance with regulatory requirements, maintaining corporate governance standards, and facilitating communication between the board, shareholders, and stakeholders.³ The traditional view that a company secretary was a mere clerk or typist has since changed.⁴ This is as a result of the increasing sophistication of company regulatory requirements and compliance procedures, and the duties that are attendant to the office of a company secretary.⁵

Considering this modern transition in the role of a company secretary, this paper seeks to undertake an exercise on the evolution of a company secretary from a mere clerk and servant to one that currently forms an integral part of the management of a company to enhance proper corporate governance. The paper is divided into five parts. The first part constitutes the introduction. The second part reviews the literature on the evolution of the role of a company secretary in corporate governance. The third part will evaluate the rights as well as the liabilities of a company secretary in corporate governance. While the fourth part will examine and analyse some case studies and judicial precedents on the rights and liabilities of company secretaries over the years. The fifth part concludes the paper with a summary of the discussions made in the paper and recommendations to strengthen the role, rights and professional development of company secretaries to enhance the proper performance of their functions.

2. EVOLUTION OF THE COMPANY SECRETARY ROLE

The role of the company secretary has evolved significantly from its origins in ancient Egypt, where scribes served as precursors, to its formal legal recognition in 1841.⁶ During the colonisation period, secretaries in trading giants like the English Levant and East India Companies held significant authority, overseeing parliamentary acts and exercising sovereign powers.⁷ Similarly, the Dutch East India Company gave secretaries dual roles as legal advisors and legislative authorities.⁸

The collapse of these monopolistic trading companies shifted the role of company secretaries, removing political powers and focusing it on commercial, economic and legal affairs. Over time, regulatory advancements and governance reforms, such as the Cadbury Report (1992), refined the company secretary's responsibilities to centre on corporate governance and compliance, shaping the modern role as a vital organisational figure.⁹

During the 18th and 19th centuries, the role of the company secretary was perceived as limited and administrative in nature. This perception was epitomised in the 1887 case of *Barnett, Hoares & Co v. South London Tramways Co*,¹⁰ where **Lord Esher MR** famously characterised the company secretary as “*a mere servant*” whose duty was simply to “*do what he is told.*” This narrow view positioned the secretary primarily as a subordinate, responsible for executing routine tasks as directed by the company's leadership. The view further circumscribed the role of a company secretary to exclude taking actions or decisions that could bind the company except where he was otherwise authorised to do so.¹¹ The secretary's role, it was said, was a humble and limited one that only depended on the conferment of actual authority to be able to act.¹² During this period, the company secretary's responsibilities were largely confined to administrative duties.¹³ These included attendance at meetings, taking and keeping records of those meetings, registers, and preparing agendas and minutes for board and general meetings.¹⁴

This narrow view of the role of a company secretary was also upheld in *Newlands v. National Employer's Accident Association*.¹⁵ In this case, the Plaintiff claimed that the defendant (company's secretary) induced him to take 500 shares in the company by promising him that he would be appointed solicitor, and so he wished to rescind the allotment contract. There was no evidence that the secretary had actual authority to make the representation complained of. The company, in its defence, contended that it was not aware of the promise made by the secretary to the plaintiff. The court, in its judgment, refused to set aside the allotment. The view of the court was that the secretary did not have any independent authority deriving from his office. It held that the secretary had no authority to bind his company by his representations. The court further observed that the function of a secretary is merely that of a servant and no case lays down the principle that a company is responsible for misrepresentations made by one who is merely a secretary.

Despite the evolution of corporate governance in recent times, many of these traditional tasks remain central to the role of the company secretary today.¹⁶

In modern times, however, the scope of the mandate and authority of a company secretary has expanded significantly, reflecting the increasing complexity of corporate operations and the importance of governance and compliance in organisational success.¹⁷ This expansion is evident in the proximate role which company secretaries are now mandated, either by their company constitutions or statute, to perform in the governance and managerial affairs of the company. Modern legislation has now recognised that the role company secretaries play goes beyond mere clerical or ministerial work. They hold extensive duties and responsibilities that far transcend the 19th-century company secretaries. They are now recognised as chief pillars of responsible corporate governance in the management of company affairs.¹⁸ Accordingly, in the celebrated case of *Panorama Development (Guilford) Ltd v. Fidelis Furnishing Fabrics*,¹⁹ **Lord Denning** eruditely elucidated the pedigree of a modern company secretary thus:

“...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 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's secretary.”

In effect, the modern company secretary is regarded as the chief administrative officer of the company.²⁰ He oversees the day-to-day administrative aspect of the company. As the chief administrative officer of the company, he is empowered to hire employees or execute contracts connected with the administrative aspect of his work.²¹ According to the Society of Corporate Secretaries and Governance Professionals,²² since no single corporate governance model fits all companies, there is not one right answer to the question of what a company secretary or the office of the company secretary does.

2.1. Responsibilities and Duties of Company Secretary

It has thus been suggested that the variety of responsibilities and duties of a company secretary will depend on factors such as the size of the company, whether the company is listed and its line of business.²³ Some of these responsibilities are provided below.

First, company secretaries play a role in ensuring that the appointment of key officers of the company is compliant with the procedures laid down by law or the constitution of the company. In Ghana, for example, the Companies Act, 2019 (Act 992), lays down the procedure for the appointment of directors, auditors and other officers of the company.²⁴ It is the responsibility of the company secretary to ensure strict compliance with these procedures laid down by the law.²⁵ The registered constitution of the company may also empower some persons, such as creditors and debenture holders of the company, with the power to appoint or remove directors in the company.²⁶ This is normally done as a way to guarantee the stake of the creditors or debenture holders in the company. The company secretary must ensure that these persons do not, in the exercise of their power, breach the provisions of the constitution or the Companies Act.

The secretary is also responsible for supporting, informing and advising directors of the restrictions and responsibilities imposed on them by the company's constitution, the Companies Act, and any applicable codes of best practice, including relevant corporate governance guidelines.²⁷ He must offer practical guidance and advice to the board to ensure that, as one of the important organograms in the governance structure of the company, they act in compliance with the requirements of law. For instance, he must guide the directors on their duties, their powers and liabilities as required by law.²⁸ Regarding the company's constitution, the law regards it as a contract under seal between:²⁹

- (i) the company and its members;
- (ii) the company and its officers;
- (iii) the members and the officers of the company;
- (iv) the members of the company inter se; and
- (v) the officers of the company inter se.

Accordingly, it is extremely important for the directors and other officers of the company to be abreast of its provisions and act in accordance with them; otherwise, the company may be liable for breach of contract, and it is the duty of the secretary to avoid this.³⁰

Again, in today's fast-evolving and highly regulated marketplace, companies must ensure their governance programs adapt swiftly to keep pace with change. Corporate secretaries play a central role in this effort, spearheading the development, maintenance, and enhancement of governance frameworks to stay aligned with market dynamics, regulatory updates, and emerging best practices.³¹ Their leadership is especially critical during periods of turbulence, where responsive and robust governance becomes essential for navigating uncertainty and maintaining corporate integrity. Further, while board directors bring valuable expertise to their roles, they often require additional training and development in areas such as corporate governance, finance, cybersecurity, and more.³² Corporate secretaries serve as the primary facilitators of these efforts. They oversee board evaluations, conduct governance audits, address succession planning challenges, and manage education, training and orientation programs for directors.³³

Also, the secretary is responsible for facilitating detailed and informative record-keeping, ensuring compliance with the Companies Act and required standards of good governance. A company secretary should be familiar with the company's corporate history, which will assist in the event that the company undertakes a corporate transaction. In this role, the secretary must ensure that all records, such as the register of members, directors, auditors, secretaries, charges, etc., are accurate and up-to-date.³⁴ The secretary must also ensure that all statutory returns and resolutions that are, by law, required to be submitted to the Office of the Registrar of Companies (ORC) are submitted within the stipulated time period.³⁵

The company secretary is also required to have the requisite corporate knowledge to be able to assist in the preparation and implementation of corporate transactions, including instructing professional advisers, assisting with the conduct of due diligence exercises and the preparation and execution of requisite documentation.³⁶ Following completion of the transaction, the company secretary should play an important role in post-completion formalities, including, for example, integrating a newly acquired business or entity into the organisation.³⁷

Furthermore, the secretary is responsible for maintaining good relationships among directors, shareholders and third parties dealing with the company.³⁸ This involves engaging with internal and external stakeholders, managing the asymmetry of critical information, and ensuring that the demands of multiple, often conflicting, cultures are reconciled. This must be done skillfully to avoid conflict and align diverse interests in the best interest of the company.

Again, the secretary is responsible for issuing notices for board meetings and general meetings of shareholders.³⁹ The secretary is further required to ensure that the agendas for these meetings are sent out within the statutory timeframe for which notice is to be given. The secretary is entitled to attend these meetings and take minutes of the meeting, and keep records of the same in accordance with the Companies Act.⁴⁰

Additionally, a company secretary is an officer of the company. As the chief administrative officer, he owes fiduciary duties to the company, just like the directors, to act in the best interest of the company. These fiduciary duties include the duty:⁴¹

- to act within one's powers;⁴²
- to promote the success of the company for the benefit of members (a term that is synonymous, in a company limited by shares, with its shareholders) as a whole;
- to exercise independent judgment;
- to avoid conflicts of interest;
- not to accept benefits from third parties; and
- to declare one's interests in proposed transactions or arrangements with the company.

2.2. Legal Framework Governing Company Secretaries in Ghana

The legal framework governing company secretaries in Ghana is outlined under the Companies Act, 2019 (Act 992), which establishes the requirements, qualifications, duties and appointment processes for company secretaries. This framework ensures that every company operating within Ghana maintains a competent and qualified individual or entity to fulfil the administrative and compliance functions critical to corporate governance.

According to Act 992, every company is required to have a company secretary, who must possess qualifications specified by the law.⁴³ The position may be held by an individual or a body corporate, provided that, in the case of a body corporate, one of its promoters, subscribers, directors, or operating officers is qualified to serve as a company secretary.⁴⁴ This provision underscores the importance of ensuring that the role is carried out by a person or entity with the requisite expertise and professional background to handle the responsibilities associated with the position.

The law establishes clear criteria for the appointment of a company secretary, prohibiting the directors from appointing anyone who does not meet these requirements. A prospective company secretary must possess either a professional qualification or a tertiary-level qualification in a discipline that includes company law practice and administration.⁴⁵ Furthermore, the individual must have sufficient knowledge and experience to effectively perform the functions of the office. In addition to academic qualifications, practical experience is emphasised. A candidate should have held office as a company secretary trainee or been articled under the supervision of a qualified company secretary for at least three years. Alternatively, eligibility can be derived from membership in professional bodies such as the Institute of Chartered Secretaries and Administrators or the Institute of Chartered Accountants, Ghana. Legal professionals in good standing as barristers and solicitors in Ghana also qualify to serve as secretaries of companies.⁴⁶ The directors may also consider an individual capable of serving as a company secretary based on other relevant academic qualifications or professional memberships, which, in the opinion of the directors, make the person competent to perform the duties of a secretary.⁴⁷

The appointment of the company secretary is carried out by the directors, who determine the term, remuneration and conditions of service.⁴⁸ This arrangement, however, is subject to the provisions of the company's constitution, which may stipulate different processes or criteria upon which a company secretary may be appointed.⁴⁹ Normally, the contract of appointment highlights the terms upon which the person is appointed as the company secretary. Therefore, in accordance with those terms, the directors may remove a company secretary, but such removal must not breach the terms of the contract. If the removal is carried out in breach of the terms of appointment, the secretary retains the right to claim damages against the company.⁵⁰ Again, the remuneration of the secretary is to be determined by the terms of employment. However, a company is prohibited from paying a company secretary a remuneration amount that is exempt from income tax or based on the varying levels of income tax they owe.⁵¹ Accordingly, any provision in a company's constitution, a resolution by the company or its directors, or a contract that specifies remuneration must be interpreted as requiring payment of a gross amount (inclusive of income tax) equivalent to the specified net amount after tax deductions.⁵²

To ensure compliance with the requirement of appointing a secretary, Act 992 also prescribes penalties for non-compliance.⁵³ A company that operates for more than six months without appointing a company secretary is liable to an administrative penalty of twenty-five penalty units for each day the default continues.⁵⁴ This provision emphasises the importance of maintaining compliance and the centrality of the company secretary's role in the functioning of corporate entities in Ghana.

In situations where the office of the company secretary is vacant, or there is no individual capable of fulfilling the role, the directors may appoint an assistant, deputy or another officer to act in that capacity temporarily.⁵⁵ This ensures that the duties and responsibilities of the company secretary are not neglected during transitional periods.

When the secretary is appointed, before assuming office, he is required to lodge a written consent with the company, which must then be transmitted to the Registrar.⁵⁶ This procedural requirement formalises the appointment and provides a record with the Registrar, underscoring the transparency and accountability expected in corporate governance. It must be emphasised that failure to submit a consent letter in response to the appointment renders the appointment invalid.⁵⁷ The framework highlights the role's significance in ensuring effective corporate governance and compliance with legal and administrative obligations. Through these measures, the Companies Act, 2019 seeks to enhance accountability, efficiency, and professionalism in the management of corporate affairs in Ghana.

2.2.1 Duties of a Company Secretary Under Act 992

Unlike the erstwhile Companies Act, 1963 (Act 179), which failed to prescribe or otherwise outline the duties of the company secretary, Act 992 has prescribed and delineated the functions of a company secretary and thus has given statutory backing to these duties.

Under the Act, a company secretary is under a duty to assist the board of directors to comply with the constitution of the company and relevant enactments. The constitution of the company sets out the relationship between the company and its members, the officers and all other persons having dealings with the company.⁵⁸ Also, the constitution of the company specifies the rights, duties, and privileges of the members of the company and the board of directors. In effect, the constitution of the company is the basic document used in the regulation and administration of the company.⁵⁹ Act 992 mandates the directors, in the discharge of their duties towards the company, not to exceed the powers conferred on them, even if they believe that the exercise of such powers shall be in the best interest of the company.⁶⁰ It is the duty of the company secretary to secure compliance with this duty. The secretary is also responsible for advising the board about their duties and responsibilities towards the company.⁶¹ He must inform them of any relevant changes in the law that pertain to their duties to ensure that the board is well informed to secure compliance.⁶² Thus, the company secretary must necessarily know all these complex duties of directors as well as keep abreast with changes in the law if he is to be able to perform his functions satisfactorily.

Essentially, the secretary, being the chief administrative officer of the company, ensures responsible corporate governance in the company. Corporate governance connotes the set of rules and incentives by which the management of a company is directed and controlled.⁶³ It refers to the way rights and responsibilities are distributed among the board, company management, shareholders and other stakeholders.⁶⁴ The Organisation for Economic Co-operation and Development (OECD) has defined corporate

governance as a system by which business corporations are directed and controlled.⁶⁵ In effect therefore, it is reasonably deducible from the above definitions that the concept of corporate governance is concerned with how rules, regulations, laws and ethics are combined efficiently to maximize long-term value for the key participants.⁶⁶ The secretary is an indispensable figure in influencing board decisions as he is required to advise the board on the extent of their powers.⁶⁷

The company secretary is further responsible, under Act 992, for keeping the books and records of the company. Act 992 requires a company to keep and maintain several books, including but not limited to:

1. Register of Members;⁶⁸
2. Register of Directors;⁶⁹
3. Register of the shareholding and debenture holding of directors in the company;⁷⁰
4. Register of Secretaries;⁷¹
6. Register of Debentures;⁷²
7. Register of Charges;
9. Register of Debenture holders;⁷³
11. Minute's Book;⁷⁴ and
12. Accounting Records.⁷⁵

The secretary must ensure that members are allowed to inspect the register during business hours without charge.⁷⁶ Other individuals, who are not members of the company, may be allowed to inspect it by paying a prescribed fee, subject to any reasonable restrictions outlined in the company's constitution.⁷⁷ For this purpose, at least two hours on every working day (excluding Saturdays, Sundays, and public holidays), the register must be available for such inspections.⁷⁸ Accordingly, if the company refuses an inspection or fails to comply with any related legal requirements, both the company and its defaulting officers will face an administrative penalty of 500 penalty units.⁷⁹ Additionally, the Court is empowered to issue an order to grant immediate access to the register where there has been a refusal to allow access.

The secretary is further required to ensure that all books of returns that are required to be filed with the Registrar are duly filed. Some of the documents that are required to be filed by the company include: the statement of financial position, statement of comprehensive income, statement of changes in equity, and statement of cash flows. The directors' report and the auditors' report are also required to be filed with the Registrar.⁸⁰ These documents must be certified as true copies by both a director and the Company Secretary and should match those sent to members and debenture holders under Section 128 for the relevant period.⁸¹ The secretary is also responsible for the issuance of the required notices for board and general meetings. The notice for general meetings must be served on the members, directors and auditors of the company, as well as persons on whom ownership of the company devolves by reason of that person being a legal personal representative or trustee in bankruptcy of a member.⁸² The contents of the notice must contain sufficient detail to enable a member who desires to attend the meeting to decide whether to attend.⁸³ The secretary must attend the meetings and ensure that minutes of the meeting are recorded.⁸⁴ The secretary must also ensure that all special resolutions passed at the meeting are registered with the Office of the Registrar of Companies within 28 days of the passage of the same.⁸⁵

2.3. International Best Practices and Standards with Respect to the Role of a Company Secretary

In modern times, the role of the company secretary is integral to the effective governance and operation of a company. This position requires a blend of organisational acumen, governance expertise and interpersonal skills to ensure that the board operates efficiently, complies with established procedures and upholds the principles of good corporate governance. Indeed, it has been suggested that the mere possession of technical skills alone is not sufficient to make one a company secretary; instead, one must possess the emotional intelligence necessary for effective decision making.⁸⁶ Accordingly, the International Finance Corporation, World Bank Group, posits that, whatever the qualifications of the person chosen for the position, it is important that, in addition to technical skills, the individual has strong emotional intelligence skills.⁸⁷ This is because of the increasing recognition that the role

of the corporate professional in corporate governance is no longer confined to only ensuring compliance, but also strategic decision making in alignment with the goals of the organisation or the company.⁸⁸

It has also been recognised that a key responsibility of the corporate secretary, in modern times, is identifying and advising on the adoption of corporate governance best practices. These practices may be driven by legal or regulatory compliance, adherence to standards and codes, or their operational benefits for the organisation.⁸⁹ In this respect, a recent study in the United Kingdom highlighted the critical importance of commercial awareness for corporate secretaries to effectively fulfil their roles.⁹⁰ This competency enables them to provide governance advice that aligns with the strategic and operational priorities of the business, ultimately supporting the board in making informed and effective decisions.⁹¹ Being commercially minded requires a deep understanding of the business context in which the organisation operates. For corporate secretaries, this entails recognising how their organisation generates revenue and creates value.⁹² This knowledge allows them to tailor governance recommendations that reinforce the organisation's financial health and strategic objectives.⁹³

International best practices also dictate that company secretaries need to be increasingly strategic, placing their businesses in the wider economic and political context.⁹⁴ The company secretary acts as a primary contact for board members, offers appropriate knowledge and possesses highly valued judgement.

Therefore, the role of a company secretary is now better referred to as that of a governance professional, encompassing a broad and ever-growing array of responsibilities, duties and skills. The International Organisation for Economic Cooperation, the Chartered Governance Institute and the International Corporate Governance Network have recognised that the company secretary is a critical influence in promoting compliance, transparency and effective board dynamics.⁹⁵ These bodies recognise that the company secretary upholds the organization's integrity and accountability. They play a pivotal role in fostering transparency by facilitating clear and open communication between the board, management, shareholders and stakeholders.⁹⁶

3. RIGHTS AND LIABILITIES OF COMPANY SECRETARIES

3.1 Rights of the Company Secretary

Under Act 992, a company secretary has been defined as, among others, an officer of the company.⁹⁷ The Act further states that the rights, duties and liabilities of officers and agents of companies shall continue to be governed by the rules of common law and equity unless those rules are found to be otherwise inconsistent with the provisions of Act 992.⁹⁸ The rights of the company secretary as an officer of the company can be gathered collectively from Act 992, the contract of employment, the Labour Act, 2003 (Act 651) and the general principles of common law and equity.

A company secretary, as the chief administrative officer of the company, has the right to access information and documents.⁹⁹ This right to access all the information related to the company is so fundamental to ensuring that the company secretary effectively executes its statutory functions as provided by Act 992. Accordingly, all records, transactions, and resolutions executed by the board and management must be provided to the company secretary. In the case of resolutions, for instance, it is the company secretary that is mandated to prepare these resolutions, and in the case of the financial statements of the company, the board must ensure that the secretary has access to these documents to enable him to file them with the Office of the Registrar of Companies at the appropriate time. This is necessary because the secretary has a duty to advise the board of any impending insolvency proceedings that could be taken against the company. The secretary may, however, not be able to render this advice timely, in the event he is not given access to the financial records of the company.

The company secretary has the right to attend board meetings. This enables them to stay informed about decisions and actions taken by the board and provide immediate advice on governance and compliance matters. Their presence ensures that board procedures are properly followed and recorded. The company secretary is also there because he is mandated by law to record the minutes of the meeting and keep a book of minutes to which members could request to inspect. The secretary's presence cannot be dispensed with, as he is statutorily mandated to take minutes at the meeting. His presence at the meetings also ensures that the board of directors does not exceed the powers conferred on it. For example, under section 145 of Act 992, the board cannot carry out a major transaction without a special resolution by the members of the company. The presence of the secretary at the board meeting would enable the secretary to advise the board of the limits of its powers.

As an advisor to the board, the company secretary has the right to speak at meetings. This allows them to provide guidance on governance issues, offer advice on compliance with legal and regulatory frameworks, and address any concerns that may arise during discussions.

In the discharge of their duties, the company secretary has the right to seek independent legal advice when necessary. This is particularly important when dealing with complex governance or compliance issues, ensuring that their actions and recommendations align with legal requirements and protect the company's interests.

The secretary is entitled to indemnity when acting for and on behalf of the company, especially where the acts so done are authorised by the company or are within his usual authority as an agent for the company.¹⁰⁰ In general, the indemnity only covers expenses and liabilities incurred whilst the agent is acting within the scope of his actual authority; but an unauthorised agent is entitled to an indemnity if his actions are ratified by the company.

The contract employing the secretary may extend or restrict his right to indemnity. The right to indemnity covers all expenses and liabilities necessarily incurred by the secretary as agent of the company whilst acting within his actual authority, including contractual and tortious liabilities.¹⁰¹ However, the indemnity does not cover any liabilities incurred due to the agent's own fault, or any liabilities in respect of acts which the agent knew to be unlawful or illegal.¹⁰²

The company secretary, when an employee of the company, is entitled not to have his employment unfairly terminated by the company.¹⁰³ If the contract of employment is terminated in breach of the terms of the contract, the secretary may sue for damages for breach of contract, maintaining an action for unfair termination in accordance with section 62 of the Labour Act. The secretary has the right to paid leave during the term of his employment.¹⁰⁴ He is also entitled to equal and satisfactory remuneration for the work done.¹⁰⁵

3.2 Liabilities of a Company Secretary

The position of a company secretary comes with significant responsibilities, and failure to fulfil these duties can lead to various liabilities. In Ghana, the liabilities of a company secretary are governed by Act 992, supplemented by common law principles and other relevant legal frameworks.

As an officer of the company, the company secretary owes fiduciary duties to the company. These duties include acting in good faith, avoiding conflicts of interest, and exercising loyalty and care in their role.¹⁰⁶ A breach of fiduciary duty, such as using confidential company information for personal gain or acting against the company's best interests, can result in legal consequences, including personal liability for damages.¹⁰⁷ Proceedings can be instituted against a secretary as against a director. It is likely that a secretary who makes a profit by virtue of the office will be accountable to the company for that profit.¹⁰⁸ It is submitted that the same liability attached to breach of directors' duties is equally applicable to breach of secretaries' duties under Act 992. Thus, if a secretary breaches any of his fiduciary duties under the Act or at common law, he may be liable to compensate the company for loss suffered by the company because of the breach.¹⁰⁹ The company may also sue him to account for any secret profit he has made arising out of the breach of his duties.¹¹⁰ Finally, the company may rescind any transaction entered into in breach of the duties of the secretary.¹¹¹

The company secretary is expected to perform his duties with a reasonable standard of care and diligence. Negligence, such as failing to file critical documents on time, can lead to penalties for the company and personal liability for the secretary. Gross negligence, which implies a willful disregard for responsibilities, may attract even harsher penalties and damage the company's reputation. Where due to the negligence of the company secretary, the company suffers any loss, the secretary as a professional may be held liable for his negligence either under the law of contract or even torts.¹¹² He may be liable to have his contract terminated by virtue of gross negligence in the performance of his duties.

Act 992 requires the company secretary to maintain accurate and up-to-date statutory registers, including registers of members, directors, and charges. Failure to maintain or update these registers as required by law can lead to administrative penalties, regulatory sanctions, or legal actions against the company and its secretary.¹¹³

A key duty of the company secretary is ensuring compliance with all regulatory requirements, such as filing annual returns and financial statements with the Office of the Registrar of Companies. Non-compliance, whether intentional or accidental, can

attract significant fines or penalties for the company. The company secretary may also be held personally liable if the non-compliance results from their actions or inaction.¹¹⁴

The company secretary is responsible for the accuracy of documents submitted to regulatory authorities and other stakeholders. Providing false or misleading statements, whether in financial reports, resolutions, or other official filings, can result in criminal or civil liability. This includes potential penalties for fraud or misrepresentation.¹¹⁵

4. CASE STUDIES AND JUDICIAL PRECEDENTS

This section examines case studies and judicial precedents that highlight key issues related to the rights, duties and liabilities of company secretaries, alongside insights into regulatory enforcement actions and best practices.

In *the matter of Northern Engineering Co. Ltd and In the matter of the Companies Code, 1963 (Act 179), section 217 and Luguterah v. Northern Engineering Co. Ltd*, Northern Engineering Co., Ltd.¹¹⁶ was incorporated under the Companies Code, 1963 (Act 179), in 1972 with 10,000 subscribed shares all of which were allotted to its four subscribers each holding 25 per centum of shares. On 15 June 1977, the applicant, a director and one of the four shareholders, received by post a letter dated 7 June and signed by the secretary of the company summoning him to attend an extraordinary general meeting of the company scheduled to take place at the company's premises on 11 June. The only member of the four members of the company who attended the meeting was the sixth respondent, the acting managing director of the company, a holder of only 25 per centum of the shares. The meeting was also attended by all the eight other respondents except the seventh respondent. However, all eight respondents had, before that meeting, paid the company various sums of money totalling €6,000 as consideration for shares in the company, but none of them had their name entered as a member in the company's register of members. At the meeting, a resolution was passed replacing the old board of directors with a new seven-member board of directors. The applicant, therefore, filed the instant originating motion on notice, challenging the validity of the notice summoning him to attend the extraordinary general meeting and the proceedings of that meeting and also for a declaration, inter alia, that the eight respondents were not members of the company. In his defence, the sixth respondent, the acting managing director, said that the company had in 1975 increased (by special resolution of the board of directors) the shares of the company from 10,000 to 100,000 shares. He, however, admitted that no prior notice of the alleged increase was served on the applicant.

A motion was filed challenging the meeting that was called. The Court speaking through Taylor J on the power of a secretary to call a meeting, posited as follows:

“It is I think clear from this provision that only the directors of the company are entitled to convene an extraordinary general meeting. A shareholder qua shareholder without any prior requisitioning of the directors in terms of section 271 of the Code, has no statutory right to convene an extraordinary general meeting. All that a shareholder as a member can do is to prevail on the directors by requisition to convene one and it is only after failure to secure one that the member may then convene one in accordance with the provisions of section 271 (3) of the Code. 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.”

At the time of the decision, the common law perception of company secretaries as "mere servants" had begun to evolve. The traditional view characterised secretaries as administrative officers acting solely on the instructions of the board. However, modern interpretations, as established in cases like *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd*,¹¹⁷ recognised the secretary as more than a mere servant, emphasising their authority and responsibilities in corporate governance.

Despite this shift, the court in the **Luguterah** case adhered to the traditional common law view that a company secretary is a mere servant.

It is submitted that Act 992, the Companies Act, 2019, expands the role of the company secretary, recognising them as officers of the company with significant duties and responsibilities. These include ensuring compliance with statutory obligations, maintaining records, and advising the board on governance matters. While Act 992 does not explicitly define the company secretary as more than a servant, the scope of their duties implicitly elevates their role to that of a governance professional and administrative officer rather than a mere subordinate.¹¹⁸

Also, in *Sachin Nambear v. Ashok Kumar Sivaram and Jai –Mai Communications Ltd*,¹¹⁹ a single director requested the company secretary to call an extraordinary meeting, which the secretary declined on the grounds that the meeting was unlawful. The director proceeded to call the meeting. When the meeting was challenged in Court, the Court noted that the decision to call an extraordinary general meeting is within the discretion of the directors and not the secretary. The secretary, therefore, erred in failing to call the meeting. The Court, however, held that the resolutions that were passed at the meeting were unlawful because the requisite quorum was not met.

The case reinforces the principle that the company secretary's role is primarily administrative and procedural. They are obligated to act on lawful instructions from the directors, provided those instructions comply with the company's constitution and relevant statutory provisions. While secretaries may advise on governance and compliance, the ultimate authority to make decisions about convening meetings rests with the directors. A secretary should inform the directors of any potential procedural or legal issues with a proposed meeting, allowing the board to make an informed decision. However, the secretary must ultimately comply with lawful directives unless there are clear legal grounds not to do so.

5. CONCLUSION AND RECOMMENDATIONS

This paper examined the historical evolution of company secretaries from mere servants to chief administrative officers, the essential role of the company secretary, their rights, the liabilities they bear and the judicial precedents that define their responsibilities. It is evident that company secretaries are not mere administrative officers but essential governance professionals whose actions influence the integrity of corporate operations. They play a very critical role in ensuring effective corporate governance and promoting responsible decision-making in the boardroom. As such, their role must be supported by clear regulatory frameworks, professional training, and best practices to enable them to navigate their multifaceted responsibilities.

Accordingly, it is recommended that regulatory bodies such as the Registrar of Companies should enhance oversight to ensure that company secretaries comply with their statutory obligations. There must also be regular audits and enforcement of penalties for non-compliance that can act as deterrents to governance failures. Further, it is recommended that continuous professional education and certification programs should be made mandatory to keep company secretaries updated on legal, regulatory, and governance developments.

Finally, regular training programs should be organized to enhance the skills of secretaries to meet up with the demands of the industry. These training programs should focus on both technical skills (e.g., compliance and legal frameworks) and soft skills (e.g., communication and emotional intelligence).

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