



# Chapter 6

## The **Role** of the **Corporate Secretary**



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## **The Chairman's Checklist**

- ✓ Does the company have a Corporate Secretary? Does the company need a Corporate Secretary? What contributions can a Corporate Secretary make to the company's governing bodies?
- ✓ Is the position of Corporate Secretary filled on a full-time basis, or does the Corporate Secretary combine his functions with other duties?
- ✓ Does the Corporate Secretary have an adequate mix of professional and personal skills and competencies?
- ✓ How does the company regulate the activities of the Corporate Secretary? Has the company mentioned the position of Corporate Secretary in its charter or by-laws, or even drafted a by-law for the Corporate Secretary?
- ✓ Does the Supervisory Board ensure that the Corporate Secretary has access to all information necessary to perform his duties? Are directors and managers obliged to provide the Corporate Secretary with all information requested or needed by the Secretary to properly fulfill his duties? Does the Corporate Secretary serve as an effective link between the Supervisory Board and executive bodies?
- ✓ What is the Corporate Secretary's role in ensuring timely and material disclosure to investors and the public? Does the Corporate Secretary work together with the company's legal and investor relations departments?
- ✓ What role does the Corporate Secretary play in planning and organizing the General Meeting of Shareholders?
- ✓ How does the Corporate Secretary assist the Supervisory Board in preparing for and conducting Board meetings? Does the Corporate Secretary play a meaningful role in Supervisory Board training and evaluation?

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The work of the Corporate Secretary is essential to the governance and administration of a company.<sup>285</sup> The Corporate Secretary helps the governing bodies perform their duties and execute their responsibilities. This chapter focuses on the functions, qualifications, and authorities of the Corporate Secretary, and the role that the Corporate Secretary plays in implementing good corporate governance practices.

### A. The Role of the Corporate Secretary

#### 1. The Need for and Importance of the Corporate Secretary

Many companies have Supervisory Board secretaries. The Corporate Secretary, on the other hand, is a position relatively new to most Russian companies. Though not mentioned in legislation, considerable time is devoted to the Corporate Secretary's responsibilities in the Federal Commission for the Securities Market's Code of Corporate Conduct (FCSM Code).

The Corporate Secretary ensures that the governing bodies follow existing internal corporate rules and policies, and changes them, or institutes new ones, when appropriate. The Corporate Secretary can also assist in establishing and maintaining clear communication between the various governing bodies of the company in compliance with the company's charter, by-laws, and other internal regulations. In addition, the Corporate Secretary helps to ensure that the governing bodies adhere to all relevant regulatory requirements, both domestic and possibly foreign. Accordingly, the Corporate Secretary, often acts as an adviser to directors and senior executives on regulatory requirements, listing rules, and legislation related to corporate governance. The Corporate Secretary may also identify gaps in corporate governance matters and propose ways to address such weaknesses.

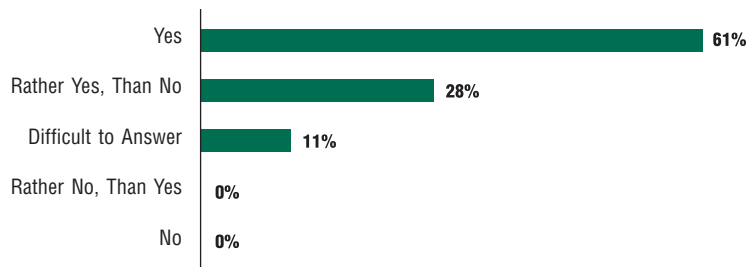
Figures 1 and 2 demonstrate the increasingly prevalent view that the Corporate Secretary can play an important role in Russian companies, and also indicates the types of companies that might benefit the most from the creation of such a position.

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<sup>285</sup> Because this chapter is largely based on recommendations of the Federal Commission for the Securities Market's Code of Corporate Conduct (FCSM Code) on the Corporate Secretary, as well as international best practices, such recommendations are not highlighted in the "Best practices" boxes as in other chapters of this Manual to ensure user-friendly reading.

**Company Practice in Russia:** An increasing number of companies in Russia are introducing the position of Corporate Secretary. 47% of surveyed companies stated that they have a Corporate Secretary whose main function is to provide legal support to the Supervisory Board.<sup>286</sup> An increasing number of companies also understand that Corporate Secretaries contribute to improved corporate governance.

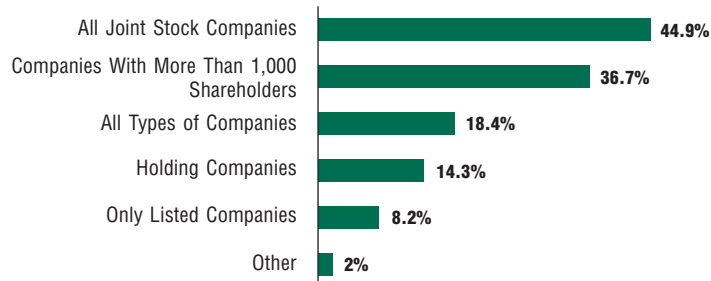
**Figure 1: Does the Corporate Secretary's Work Improve Corporate Governance?**



Source: IFC-RID Survey on the Work of Corporate Secretaries, April 2003

Most companies consider the position of Corporate Secretary of great importance for joint stock companies, especially for companies with more than 1,000 shareholders.

**Figure 2: Types of Companies that Require a Corporate Secretary**



Source: IFC-RID Survey on the Work of Corporate Secretaries, April 2003

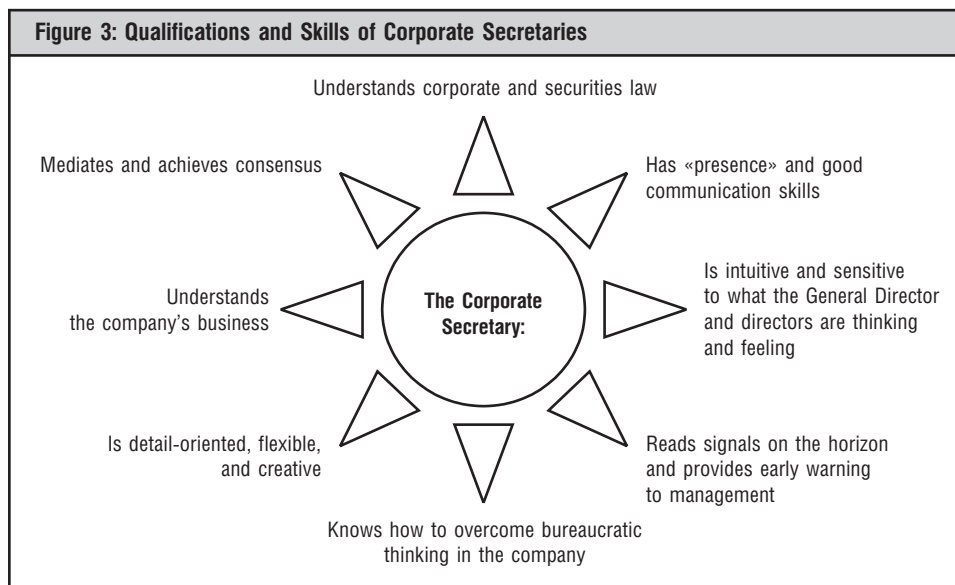
<sup>286</sup> IFC — Russian Institute of Directors Survey on the Work of Corporate Secretaries in Russian Companies, April 2003 (see also: [www.ifc.org/rcgp](http://www.ifc.org/rcgp)).

### 2. The Qualifications of a Corporate Secretary

A full-time staff member, exclusively dedicated to this task, can best fulfill the functions of the Corporate Secretary.<sup>287</sup>

When selecting a Corporate Secretary, the Supervisory Board should look for an individual with the highest qualifications and skills. The Supervisory Board will need to assess the candidate's education, work experience, professional qualities, and skills. The charter should outline the general requirements for candidates,<sup>288</sup> while the by-laws for the corporate secretary should contain more detailed and specific criteria for evaluating such candidates. A detailed job description is the responsibility of the Supervisory Board, and needs to be developed in conjunction with the contract.

The core qualifications for Corporate Secretaries are illustrated in Figure 3.



Source: IFC, March 2004

<sup>287</sup> FCSM Code, Introduction to Chapter 5.

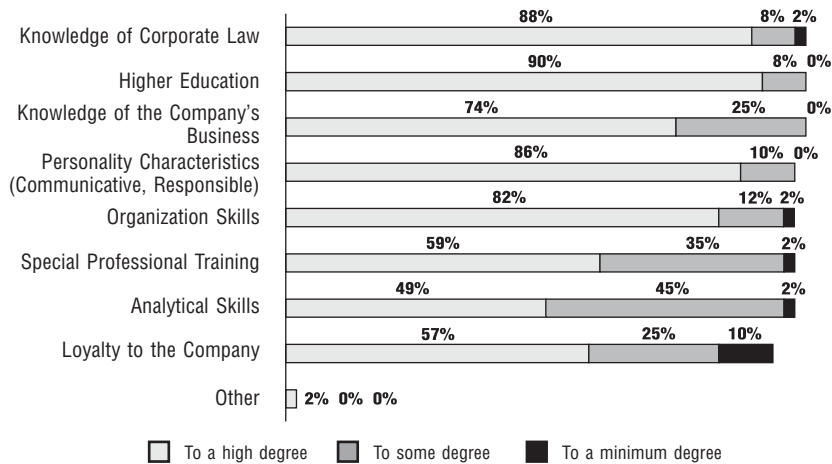
<sup>288</sup> FCSM Code, Chapter 5, Section 2.2.1.

## Chapter 6. The Role of the Corporate Secretary

The Corporate Secretary needs to be a person with an impeccable reputation.<sup>289</sup> While the FCSM Code suggests that a company should avoid appointing individuals with a record of criminal or significant administrative offenses,<sup>290</sup> it is better practice to exclude all such individuals from consideration for the position of Corporate Secretary.

**Company Practice in Russia:** Many Russian companies that have Corporate Secretaries appear to understand the required qualifications and mix-of-skills, as illustrated in Figure 4.<sup>291</sup>

**Figure 4: The Skills and Qualifications Required of a Corporate Secretary**



Source: IFC-RID Survey on the Work of Corporate Secretaries, April 2003

More than 93% of surveyed companies feel that the Corporate Secretary would benefit from specialized training to more effectively meet the requirements of the position. Over 79% of companies were confident that it was necessary to develop a professional set of standards for Corporate Secretaries to ensure the highest degree of professionalism.

<sup>289</sup> FCSM Code, Chapter 5, Section 2.2.2.

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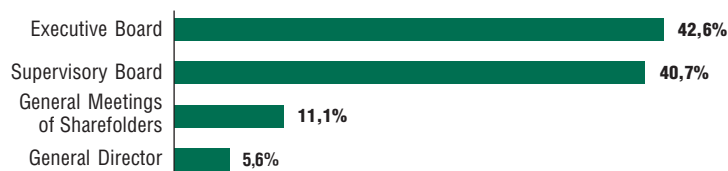
<sup>291</sup> IFC — RID Survey on the Work of Corporate Secretaries in Russian Companies, April 2003 (see also: [www.ifc.org/rcgp](http://www.ifc.org/rcgp)).

### 3. The Independence of the Corporate Secretary

To act in the interests of the company and its shareholders at all times, the Corporate Secretary must be shielded from undue influence from management and other parties. The Corporate Secretary should thus be accountable to and controlled by the Supervisory Board.<sup>292</sup> He should not be an affiliated person of the company or its officers, e.g. a family member of the General Director or business partner of the company.<sup>293</sup>

**Company Practice in Russia:** Figure 5 shows that, in practice, most Corporate Secretaries surveyed have been subject to some degree of influence by executives that could compromise their independence. Approximately 43% report directly to either the General Director or the Executive Board.<sup>294</sup>

**Figure 5: The Corporate Secretary Is Accountable to the:**



Source: IFC-RID Survey on the Work of Corporate Secretaries, April 2003

The Corporate Secretary should devote sufficient time to his responsibilities and duties. Therefore, companies with a large number of shareholders, a large Supervisory Board and/or numerous Supervisory Board committees should prohibit the Corporate Secretary from concurrently holding other positions within the company or other legal entities.<sup>295</sup> In smaller companies, the Legal Counsel or person holding a similar position, may carry out the duties of the Corporate Secretary.

<sup>292</sup> FCSM Code, Chapter 5, Section 2.1.

<sup>293</sup> FCSM Code, Chapter 5, Section 2.2.4.

<sup>294</sup> IFC — Russian Institute of Directors Survey on the Work of Corporate Secretaries in Russian Companies, April 2003 (see also: [www.ifc.org/rcgp](http://www.ifc.org/rcgp)).

<sup>295</sup> FCSM Code, Chapter 5, Section 2.2.3.



### 4. The Appointment of the Corporate Secretary

The procedure for selecting the Corporate Secretary should be set forth in the charter.<sup>296</sup> The company's by-laws may, however, be better suited to regulate this issue in detail. The Corporate Secretary is designated either by appointment.<sup>297</sup> Although the Company Law is silent about the authority to appoint a Corporate Secretary, the FCSM Code delegates this authority to the Supervisory Board. The Supervisory Board should define the terms and conditions of the employment contract, and specifically address the issues of remuneration, and termination.<sup>298</sup>

#### a) Information About Candidates

A nominee for the position of Corporate Secretary should provide the Supervisory Board with sufficient information to evaluate his candidacy. Candidates should, at a minimum, be required to provide information on:

- Educational background;
- Employment in other companies;
- Any relationship they may have with affiliated persons and/or major business partners of the company; and
- The number and type (class) of company shares they own, if any;
- Any other aspects and circumstances that may influence their performance as Corporate Secretary.

This information may be supplemented by personal references and interviews with directors and, in particular, with the Chairman, since a good personal rapport between the Chairman and other directors, and the Corporate Secretary will be important in maintaining effective working relationships. The Corporate Secretary should notify the Supervisory Board immediately of any changes in circumstances that may influence his ability to effectively serve as the company's Corporate Secretary.<sup>299</sup>

<sup>296</sup> FCSM Code, Introduction to Chapter 5.

<sup>297</sup> FCSM Code, Introduction to Chapter 5.

<sup>298</sup> FCSM Code, Chapter 5, Section 2.1.

<sup>299</sup> FCSM Code, Chapter 5, Section 2.2.5.

### b) The Contract with the Corporate Secretary

The Supervisory Board may offer an employment contract to the Corporate Secretary. An employment contract can be a fixed, short-term contract.<sup>300</sup> A fixed, short-term employment contract cannot be longer than five years.<sup>301</sup> As mentioned above, large companies are well advised to employ the Corporate Secretary on a full-time basis to allow them to properly execute their duties.

→ For a model employment contract with the Corporate Secretary, see Part VI, Annex 15.

### c) The Office of the Corporate Secretary

Large companies may even find it necessary to establish an Office of the Corporate Secretary, staffed by several assistants. Additional staffing may be useful for companies with a large number of shareholders, a large Supervisory Board and/or numerous Supervisory Board committees.

**Best Practice:** Many foreign companies, particularly publicly listed companies, have an Office of the Corporate Secretary with several staff members. Figure 6 shows the situation in U.K. companies.

**Figure 6: Correlation Between the Company's Size and the Number of Staff in the Corporate Secretary's Office**

	Company Turnover (in £m)						
	All	Under 10	10-49	50-99	100-499	500-1,000	Over 1,000
	%	%	%	%	%	%	%
Number of Staff in the Corporate Secretary's Office							
<b>1 Employee</b>	25	58	50	10	20	5	5
<b>2 Employees</b>	23	23	21	43	27	18	8
<b>3 Employees</b>	23	16	26	24	22	32	19
<b>4 Employees</b>	11	3		13	19	14	14
<b>5-10 Employees</b>	16		3	10	11	27	49
<b>Over 10 Employees</b>	2				1	4	5

Source: Company Secretaries Responsibility and Salary Survey 2000/2001, Institute of Chartered Secretaries and Administrators

<sup>300</sup> Labor Code, Article 58.

<sup>301</sup> Labor Code, Article 58; Article 59, Clause 16.

## Chapter 6. The Role of the Corporate Secretary

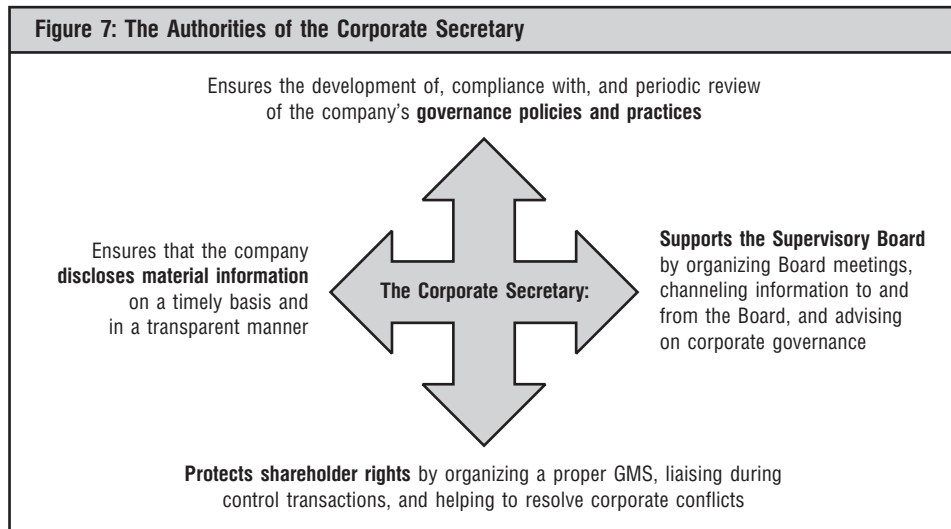
Should a company want to establish an Office of the Secretary, it may wish to specify the responsibilities of the Secretary's Office in the by-laws or other internal documents.<sup>302</sup>

### B. The Authority of the Corporate Secretary

#### 1. General Provisions

The Company Law does not discuss the position and authority of the Corporate Secretary. The FCSM Code recommends that the charter, by-laws or other internal documents define the Corporate Secretary's authority, and the duty of all governing bodies to assist the Corporate Secretary in discharging his duties.<sup>303</sup>

Figure 7 provides an overview of the Corporate Secretary's authorities.



Source: IFC, March 2004

<sup>302</sup> FCSM Code, Chapter 5, Section 1.6.2.

<sup>303</sup> FCSM Code, Chapter 5, Section 1.6.1.

**Company Practice in Russia:** Figure 11, at the end of this Chapter, illustrates that the authority of Corporate Secretaries in Russian companies corresponds in practice to those recommended by the FCSM Code.

### 2. Developing Corporate Governance Policies and Practices

The Corporate Secretary is ideally suited to help the company and its Supervisory Board develop a system of corporate governance. More specifically, the Corporate Secretary can play an important role in the development of, compliance with, and periodic review of the company's governance policies and practices.

In developing an explicit and clearly stated plan to improve the company's corporate governance policies and practices, the Corporate Secretary lays the groundwork for reforms in this area. Perhaps more importantly, he can demonstrate the company's commitment to corporate governance by monitoring compliance with these policies, and informing the Supervisory Board of any breaches. Finally, by reviewing the company's policies on a regular basis (by keeping abreast of the latest developments in corporate governance, changes in the legal and regulatory framework, and international best practices) the Corporate Secretary ensures that the company's governance standards remain high and up-to-date.

### 3. Supporting the Supervisory Board

Most of the Corporate Secretary's time will be spent supporting the Supervisory Board as depicted in Figure 8.

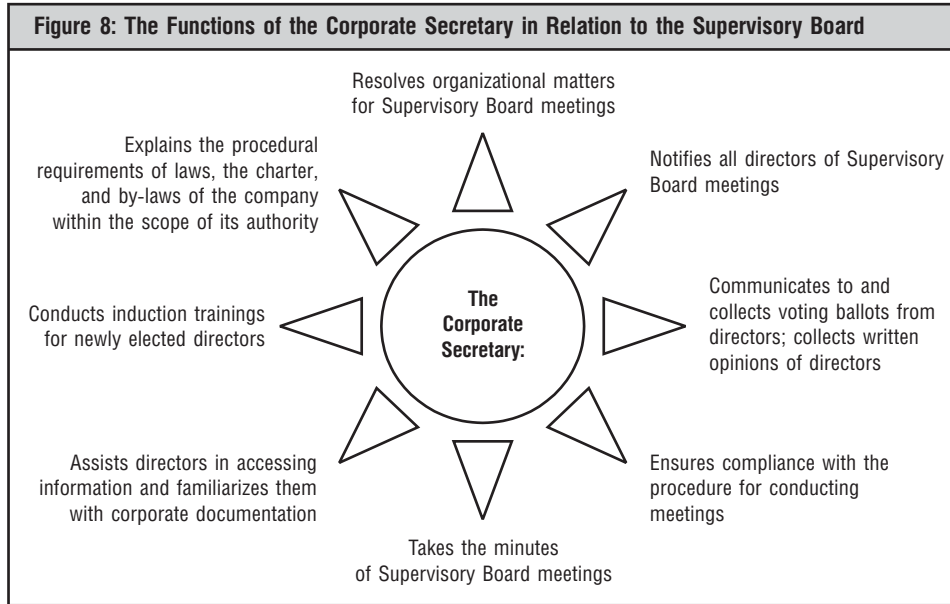
#### a) Organizing Supervisory Board Meetings

The Corporate Secretary is responsible for organizing Supervisory Board meetings.<sup>304</sup> Although Supervisory Board meetings are ultimately the responsibility of the Chairman, the Corporate Secretary handles all administrative and organizational matters such as:

- Helping the Chairman to prepare the agenda;
- Developing presentations on substantive and procedural issues under discussion; and
- Preparing model briefs for boardroom discussions.

<sup>304</sup> FCSM Code, Chapter 5, Section 1.2.1.

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Source: IFC, March 2004

It is also advisable that the Corporate Secretary give notice of Supervisory Board meetings to all directors and:<sup>305</sup>

- Distribute voting ballots to directors;
- Collect completed ballots and the written opinions of directors who are not physically present at the meeting; and
- Forward the ballots and written opinions to the Chairman.

In addition, the Corporate Secretary should help ensure that procedures for Supervisory Board meetings are followed. Along with the Chairman, the Corporate Secretary is advised to draft the minutes of Supervisory Board meetings.<sup>306</sup>

The Corporate Secretary should brief newly elected directors on:<sup>307</sup>

- The corporate procedures that regulate the operations of the Supervisory Board and other governing bodies;

<sup>305</sup> FCSM Code, Chapter 5, Section 1.2.2.

<sup>306</sup> FCSM Code, Chapter 5, Section 1.2.3.

<sup>307</sup> FCSM Code, Chapter 5, Section 1.3.2.

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- The organizational structure and officers of the company;
- The company's internal documents;
- The decisions of the General Meeting of Shareholders (GMS) and the Supervisory Board that are in effect; and
- The availability of information required by directors for the proper discharge of their duties.

### **b) Providing the Supervisory Board with Access to Information**

The Corporate Secretary plays a key role in assisting directors in obtaining the information they need for sound decision-making. The Corporate Secretary provides directors with timely and full access to:<sup>308</sup>

- The minutes of Executive Board meetings;
- Decisions approved by the General Director and the Executive Board;
- Documents from the General Director and the Executive Board;
- The minutes of meetings and reports prepared by the Revision Commission and the External Auditor; and
- Financial documents.

The company may wish to describe this role in the by-laws for the Supervisory Board, for the Corporate Secretary and/or on Information Disclosure.

### **c) Providing Legal Assistance to Directors on Governance Issues**

The Corporate Secretary should assist directors with interpreting legal and regulatory acts related to corporate governance, including listing rules, corporate governance codes, and international regulations and developments. This also holds true for procedural issues regulated in the charter, by-laws, and/or other internal documents relating to preparing and conducting the GMS and Supervisory Board meetings, and on information disclosure.<sup>309</sup> The Corporate Secretary should not, however, render legal advice that falls outside the scope of his duties. The duties of the Corporate Secretary should be clearly defined in relation to those of the company's Legal Counsel.

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<sup>308</sup> FCSM Code, Chapter 5, Section 1.3.1.

<sup>309</sup> FCSM Code, Chapter 5, Section 1.3.3.

## Chapter 6. The Role of the Corporate Secretary

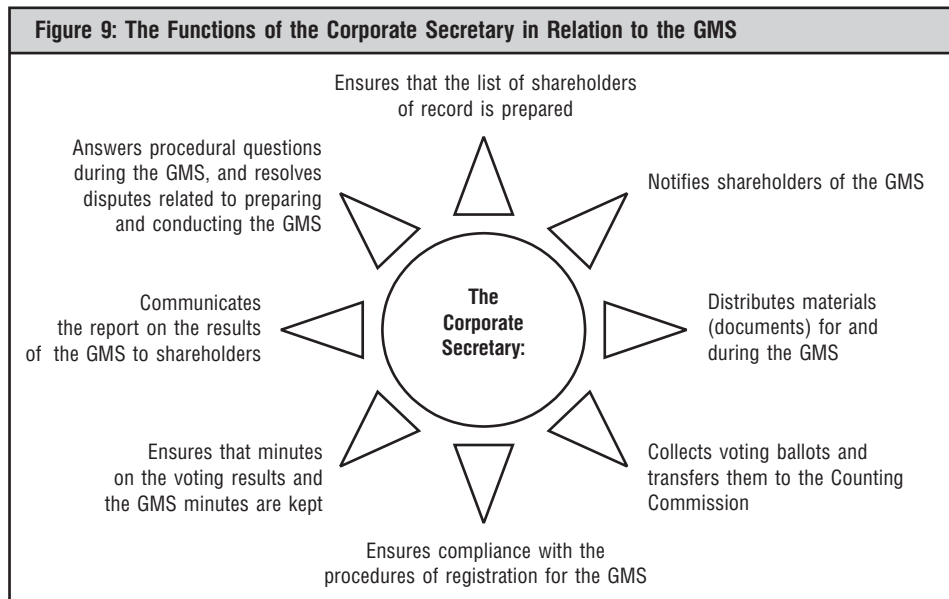
The Corporate Secretary should directly notify the Chairman of any possible violations of corporate procedures, if and when he becomes aware of such violations.<sup>310</sup> Such violations may include, among others:

- Alleged illegal acts or omissions of corporate officers or other corporate employees in fulfilling their legal duties and obligations; and
- Violations of procedures regulating the organization of the GMS, Supervisory Board meetings, the disclosure of information and protection of shareholder rights.

### 4. Protecting Shareholder Rights

#### a) Organizing the General Meeting of Shareholders

The Corporate Secretary plays an important role in organizing the GMS. Figure 9, shows the functions of the Corporate Secretary in this regard:<sup>311</sup>



Source: IFC, March 2004

<sup>310</sup> FCSM Code, Chapter 5, Section 1.7.

<sup>311</sup> FCSM Code, Chapter 5, Section 1.1.

### **b) Liaising Between Shareholders During Control Transactions**

The Corporate Secretary acts as a liaison between the controlling shareholder(s) in a buyout of common shares (and securities convertible into common shares) and the other shareholders of the company during a control transaction.<sup>312</sup> The Corporate Secretary does this by ensuring that the mandatory offer is distributed to all shareholders. The Corporate Secretary should follow the procedures for the distribution of the mandatory offer to non-controlling shareholders as established in the Company Law.

### **c) Assisting in Enforcing Shareholder Rights**

The Corporate Secretary:

- Ensures that the company takes proper notice of all duly submitted shareholder petitions; and
- Channels all duly submitted shareholder inquiries to the appropriate governing bodies and departments of the company.<sup>313</sup>

The Corporate Secretary should try to resolve any conflicts, especially those concerning the maintenance of the shareholder register, promptly and fairly. If an External Registrar maintains the shareholder register, the Corporate Secretary should have the full authority to demand adequate and timely explanations regarding shareholder complaints directly from the Registrar. The terms and conditions of the agreement between the company and the Registrar should include the duty of the Registrar to give adequate and timely written explanations to the Corporate Secretary.<sup>314</sup>

### **d) Assisting in Resolving Corporate Conflicts**

The Corporate Secretary is responsible for recording corporate conflicts.<sup>315</sup> The Corporate Secretary registers inquiries, letters, or demands filed by shareholders, reviews these, and duly transmits them to the governing bodies that have the authority to resolve the conflict. The effectiveness of the company in preventing

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<sup>312</sup> FCSM Code, Chapter 6, Section 2.4.

<sup>313</sup> FCSM Code, Chapter 5, Section 1.5.

<sup>314</sup> FCSM Code, Chapter 5, Section 1.5.

<sup>315</sup> FCSM Code, Chapter 10, Section 1.1.2. The FCSM Code, Introduction to Chapter 10, defines corporate conflicts as conflicts between the governing bodies and shareholders, as well as conflicts among shareholders if such conflicts can substantially affect the company.



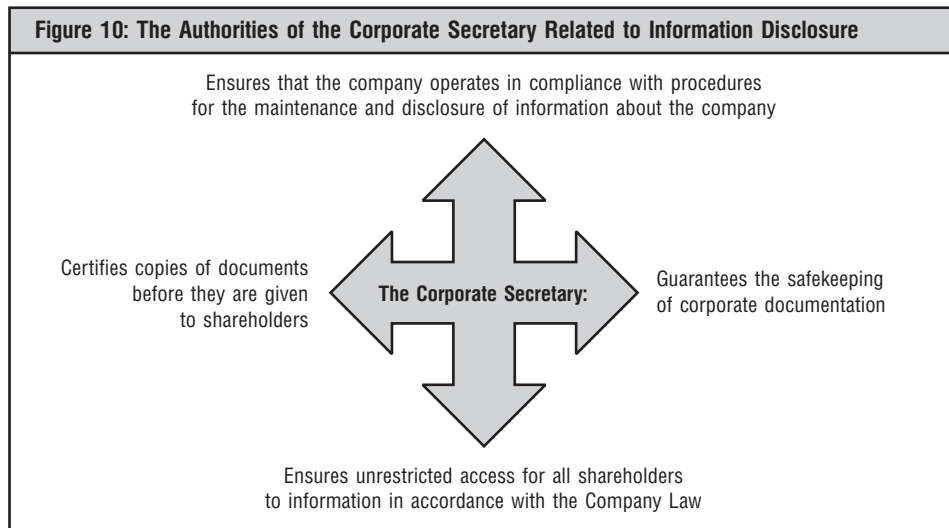
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and resolving conflicts depends on its responsiveness to all legitimate complaints. The Corporate Secretary also needs to periodically follow up on the status of complaints in order to make sure that they have been properly and fully addressed, and either resolved or rejected.

Conflicts can arise among Supervisory Board members, executives, and shareholders. The Corporate Secretary should notify the Chairman of any potential or existing conflict so that they can be dealt with appropriately.<sup>316</sup> Best practice suggests that the Corporate Secretary act as a liaison in case of conflicts among Supervisory Board members.<sup>317</sup>

### 5. Providing for Information Disclosure and Transparency

The Corporate Secretary plays an important role in helping the Supervisory Board and General Director fulfill their respective obligations to disclose material information on a timely basis to the company's shareholders and financial markets. The Corporate Secretary's authority related to information disclosure is shown in Figure 10.<sup>318</sup>



Source: IFC, March 2004

<sup>316</sup> FCSM Code, Chapter 4, Section 3.1.4.

<sup>317</sup> FCSM Code, Chapter 3, Section 3.1.4.

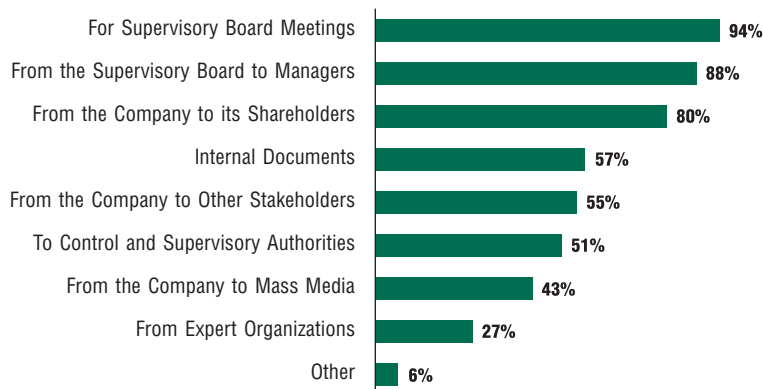
<sup>318</sup> FCSM Code, Chapter 5, Section 1.4; Chapter 7, Section 3.1.1.

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The Corporate Secretary also helps to ensure for transparent control procedures. More specifically, he acts as a liaison between the Revision Commission and the Supervisory Board and its Audit Committee, if established, when the Revision Commission conducts an inspection of the financial and economic activities of the company.<sup>319</sup> The results of the Revision Commission's inspection should be presented to the Supervisory Board's Audit Committee, and the initiator of the inspection together with the Corporate Secretary, within three days after the inspection of the Revision Commission has been completed.

**Company Practice in Russia:** Figure 11 illustrates the views of some Russian companies on the role that the Corporate Secretary plays in providing information about the company.<sup>320</sup> Most companies agree that the Corporate Secretary should provide information in support of Supervisory Board meetings, and to management and shareholders. There is, however, considerably less agreement with respect to the Corporate Secretary's role in providing other types of information to outsiders, for example, control and supervisory authorities.

**Figure 11: Percentage of Companies Where the Corporate Secretary Coordinates Information Flows**



<sup>319</sup> FCSM Code, Chapter 8, Section 3.1.5.

<sup>320</sup> IFC — Russian Institute of Directors Survey on the Work of Corporate Secretaries in Russian Companies, April 2003 (see also: [www.ifc.org/rcgp](http://www.ifc.org/rcgp)).

### C. Professional Associations of Corporate Secretaries

The position of Corporate Secretary is fairly new in the Russian market, although an increasing number of companies are establishing this position. This position requires a unique skills-set, as shown in Figure 3 above. Ad-hoc efforts are currently being implemented to promote the benefits of having a Corporate Secretary; training efforts are also being organized to train the nascent profession. In foreign markets, professional associations or institutes of corporate secretaries often perform this role.<sup>321</sup> Typically, such organizations unite corporate secretaries and have several functions, such as to:

- Promote good governance, management, and efficient administration of companies;
- Support and protect the character, status, and interests of member Corporate Secretaries;
- Promote the efficiency and usefulness of the service and standard of professional conduct provided by Corporate Secretaries;
- Train Corporate Secretaries;
- Comment on proposed and existing laws, rules, and regulations in areas of particular interest to member Corporate Secretaries; and
- Promote and assist in the voluntary exchange of information and experience relating to the duties, problems, and practices of Corporate Secretaries and their companies.

Establishing such a professional association in Russia would be an important step towards effectively promoting the introduction of Corporate Secretaries in Russian companies.

<sup>321</sup> For more information, see [www.icsa.org.uk/news/guidance\\_intro.php](http://www.icsa.org.uk/news/guidance_intro.php).