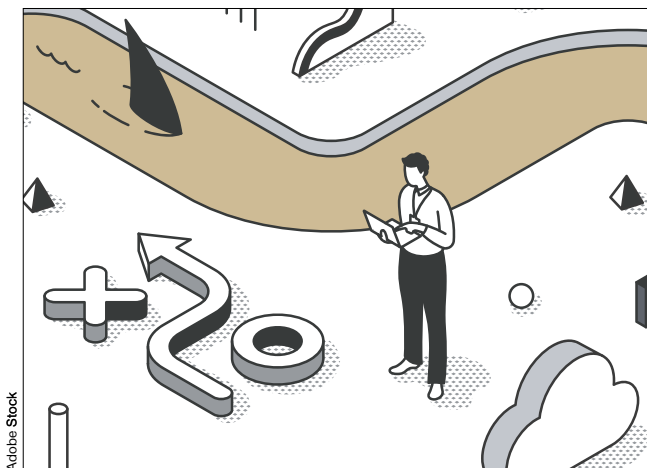


BOARD MANAGEMENT

Corporate Secretary: Keeper of the minutes or «Chief Corporate Governance Officer»?



Anyone looking to find the duties, responsibilities and competencies of the Secretary of the Board in Swiss company law will be disappointed. With the latest revision of the company law, the role of the secretary of the Board of Directors (BoD) has completely disappeared. There is now only talk of the „keeper of the minutes“. Today, it is generally understood that good corporate governance requires professional management of the board secretariat.¹ In this article, we discuss the duties of a Secretary of the Board („Corporate Secretary“) and what to look out for in this role.

When considering how the BoD should organize itself and its collaboration with management, the role of the Corporate Secretary is often forgotten. In practice, there are various models - from a simple keeper of the minutes to a full-time Secretary to the BoD to a Chief Corporate Governance Officer. How do you apply the freedom of design given by Swiss company law and what works best in practice?

What is the task of a Corporate Secretary?

The Corporate Secretary supports the Chairman of the BoD in the WHAT and HOW of BoD management. WHAT: The Corporate Secretary monitors that the BoD fulfills its duties, in particular its „non-transferable and inalienable duties“ according to OR 716a. HOW: The Corporate Secretary is the guardian of the „Business Judgement Rule“ and thus protects the BoD from liability

exposure. The Corporate Secretary monitors and documents that the BoD takes its decisions on the basis of sufficient information (e.g. with the help of expert opinions and with careful consideration of risks), in an appropriate procedure and free of conflicts of interest.

The Corporate Secretary plays various roles in the performance of his / her duties:

- **Planner and Administrator:** The Corporate Secretary assists the BoD Chair in the „agenda setting.“ The agenda of a BoD meeting is the distillation of annually recurring tasks, the BoD agenda and ad hoc topics. The Corporate Secretary keeps the BoD files and always has an overview of past resolutions from meetings and written decisions as well as pending matters. S/he has an overview of all the directives and regulations adopted by the BoD.

- **Keeper of the minutes:** The Corporate Secretary has a very good, at least passive, understanding of all matters discussed by the BoD. This enables him / her to write meaningful minutes. S/he follows the BoD discussion closely and, if necessary, points out to the BoD when resolutions are unclear, incomplete or contradictory. The Corporate Secretary dares to ask the „stupid“ question that the BoD members are afraid to ask.

- **Compliance Officer:** In listed companies, the Corporate Secretary monitors compliance with rules that are particularly relevant to the BoD's work. The Corporate Secretary is the „legal conscience“ of the BoD and has a special eye on the compliance culture in the company. S/he monitors carefully that the BoD members „walk the talk“. In regulated companies, the Corporate Secretary often acts as an interface with the external regulator.

- **Coach:** The Corporate Secretary ensures the onboarding of new BoD members and keeps the BoD up to date on governance and regulatory developments. In the annual self-assessment, s/he enables the BoD to assess its own performance. S/he supports the BoD Chair in BoD succession planning and the search for new members.

• **Secretary General:** The Corporate Secretary of directors usually has a central function with respect to the shareholders, e.g. by administering the share register, preparing the Annual General Meeting and in general being the point of contact for shareholder issues. S/he is the secretary of the General Meeting and responsible for taking the minutes.

• **Factotum:** The Corporate Secretary is also responsible for some very mundane aspects of the BoD meeting, such as organizing and equipping the meeting room or looking after the culinary well-being of the Board members, both during the meeting and any subsequent lunch or dinner. The Corporate Secretary becomes the „tour operator“ at external BoD meetings with organizing visits to subsidiaries abroad.

• **Dual role:** The Corporate Secretary can, but should not, be a member of the BoD and Corporate Secretary at the same time. Only for very large or particularly regulated companies does a full-time Corporate Secretary position make sense. Therefore, the management of the BoD secretariat is often combined with the management of the legal services, the CFO role or senior executive assistance functions. It very much depends on the company and the specific constellation of people which determines which solution is best for each individual case.

What makes for a good Corporate Secretary?

The Corporate Secretary should have a background with a legal education or additional training, especially in the case of listed companies. In addition, business acumen

is essential. The personality of the Corporate Secretary is particularly important. If combined with an operational role in the company, the Corporate Secretary finds him/herself in conflicts of loyalty and interest quite frequently. Therefore, the Corporate Secretary follows a consistent approach, has a strong backbone, is predictable and does not pursue his / her own agenda. Diligence, a sense of responsibility, active listening, quick comprehension and a strong service orientation round out the self-competencies. The Corporate Secretary communicates skillfully and is able to deal with a wide variety of personalities on the BoD. S/he is objective and abstains from participating in the general discussion, but is not afraid to intervene in a clarifying manner in BoD discussions when necessary and, for example, to point out conflicts of interest of individual BoD members.

The role of the Corporate Secretary is generally undervalued in Switzerland. There is certainly no need for a Chief Corporate Governance Officer. But there is real need for more than a simple keeper of the minutes. A good Corporate Secretary can be enormously valuable, especially in delicate situations when experience, prudence and reliability are essential. *People make the difference!*

Do you need to staff the role of Corporate Secretary or do you want to (re)organize the activities of the BoD secretariat? Get in touch with us. We will be happy to assist you with our expertise and experience.



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¹ Cf. Roland Müller, Der Verwaltungsrat – Ein Handbuch für Theorie und Praxis, Band I, 5. Auflage, Schulthess 2021, Ziff. 1.324 ff.

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