KCB | 40 YEARS of Excellence in Governance Education

Corporate Governance

Session 3

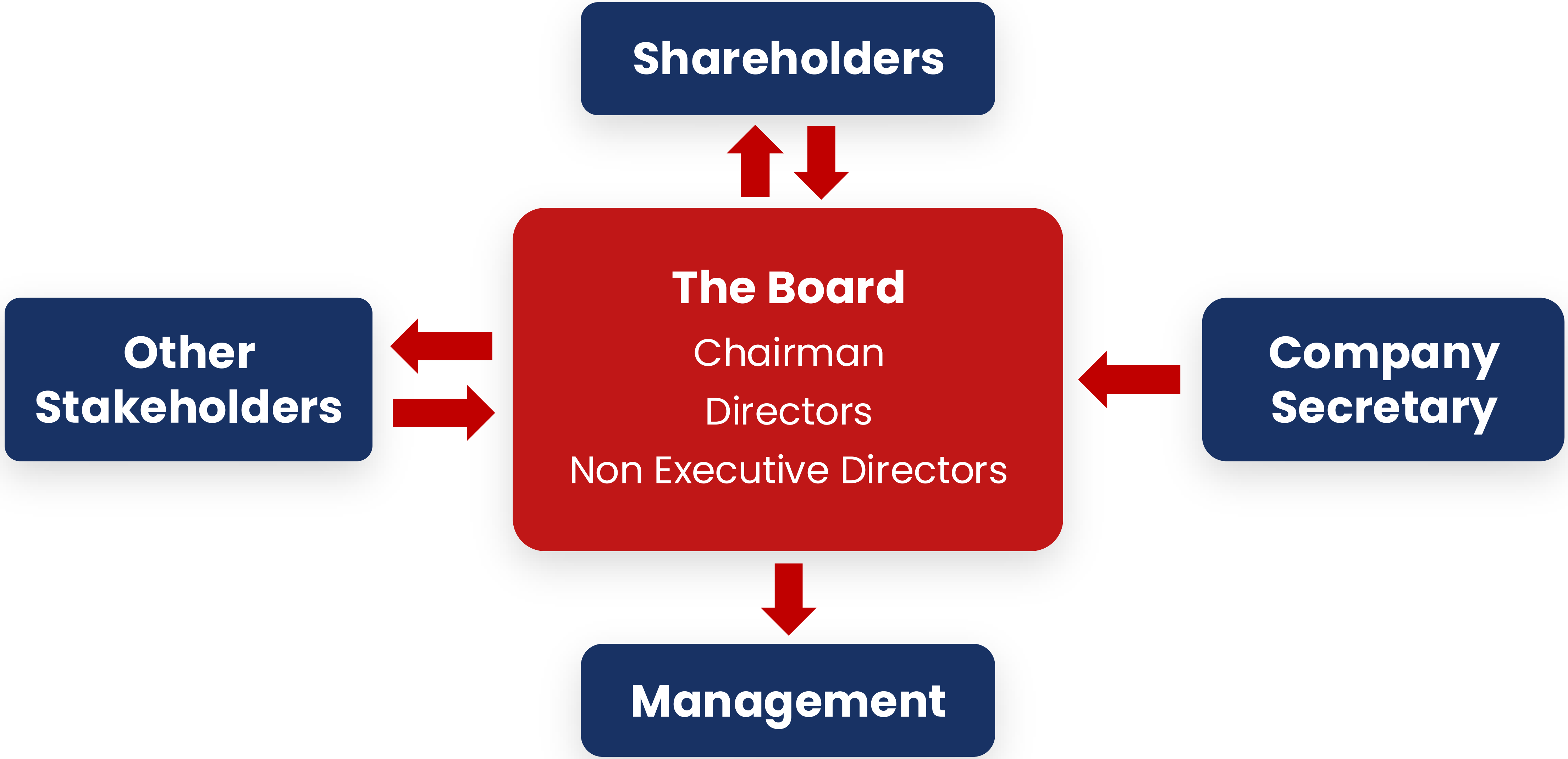
Role of the company secretary in governance

Neill McWilliams MSc MBA FCG

KCB | Agenda

1. The Company Secretary and corporate governance
2. The requirements for a Company Secretary
3. The role of the Company Secretary
4. The Company Secretary as the ‘conscience of the company’
5. The Company Secretary: Building trust through governance
6. Qualifications and skills
7. Independence
8. Liability
9. In-house versus outsourced Company Secretary

Syllabus Area	Nov-25	Jun-25	Nov-24	Jun-24	Nov-23	Jun-23
Definition and issues	Q1. Weak governance practices (5 marks)	Q2. Shareholder Primacy (5 marks)	Q1. Difference between corporate governance and compliance (5 marks)	Q2. Difference between a rules-based and a principle-based approach to CG (5 marks)	Q3. Principles (5 marks)	Q1. 'Comply or Explain' (5 marks)
Corporate Governance in the UK						
Other governance issues					Q9a. Governance of family owned companies (10 marks)	Q8a. Governance of family owned companies (8 marks)
Role of the company secretary	Q6b. Role of CS (10 marks)	Q9b. Dual role of CS (10 marks)	Q4. Liability of the company secretary (5 marks) Q6a. Appointing a company secretary (13 marks)	Q6b. Dual role of CS (10 marks)	Q4. Appointment (5 marks)	Q4. Independence (5 marks)
Role and membership of the board of directors	Q2. Role of the SID (5 marks)		Q7a.Role and Appointment of the Chair (10 marks)		Q5. Matters Reserved for the board (5 marks) Q8a. Restructuring the board inc Chair v CEO (12 marks)	Q8b. Chair v CEO (8 marks)
Directors' duties and powers	Q8a. S175, s176 and s177 (13 marks)		Q5. D & O insurance (5 marks)	Q3. Explain s174 (5 marks)	Q7a. Conflict of interest (13 marks)	Q5. D&O Insurance (5 marks) Q8c. S172 (9 marks)
Board Composition and succession Planning	Q7a. Role of the Chair (12 marks)	Q7b. Benefits of a NED (13 marks) Q8a. Appointment of a new CFO (10 marks)	Q2. Re election of directors (5 marks)	Q6a. Board composition and reporting (15 marks) Q8a. Nomination Committee and appointments (15 marks)		Q7a. Recruitment of NEDs (12 marks)


Shareholders
The Board
Chairman
Directors
Non Executive Directors
Other Stakeholders
Company Secretary
Management

> All public companies in the UK must have a company secretary.
>
> *s271, CA2006*

> All directors should have access to the advice of the company secretary, who is responsible for advising the board on all governance matters. Both the appointment and removal of the company secretary should be a matter for the whole board.
>
> *Provision 16, UKCG Code*

The Role of the Company Secretary

Governance

Statutory and regulatory compliance

Communication

Advising the board and senior management

The Role of the Company Secretary

Governance

- Board composition and procedures
- Board Information, development Disclosure and Reporting
- Relationships

Statutory and regulatory compliance

- Supporting adherence to CA2006 and UKCG Code
- Share dealing
- Inside information

Advising the Board

- Good board practice
- Statutory duties
- Commitment to Corporate Responsibility
- Commitment to Corporate Governance

Communication

- Communicating board decisions
- Primary point of contact with NEDs
- Ensuring board communication with shareholders
- Supporting in preparation of the annual report

The 'Conscience of the Company'

Advising the board on the right thing to do in the long-term interests of the company

Based on

01
Independence

02
In depth knowledge of company

03
Strong governance and ethical understanding

04
Good relationship with the board

The Role of the Company Secretary

- **“much more than just administrative..’**
- **“Ideally placed to align the interests of different parties around a boardroom table,** facilitate dialogue, gather and assimilate relevant information, and enable effective decision making. They are often the only people to know first-hand how the decisions made have been reached.”
- **“The role is changing: it is increasingly outward-focused (incorporating investor engagement and corporate communications), and not just about internal administration.”**
- **“ICSA-qualified company secretaries deliver a more rounded governance and board member service than those who have come to the role via other professional routes.”**
- **“Board members often have a lack of awareness of the ways in which the company secretary supports an organisation in its decision-making.** Boards may miss out on making full use of the skills, knowledge and experience at their disposal.”
- “Company secretaries are often the longest-serving members present at board meetings, and so are a vital repository of company history and culture, and a guarantor of continuity.”

Building Trust Through Governance, Kakabadse et al., 2014

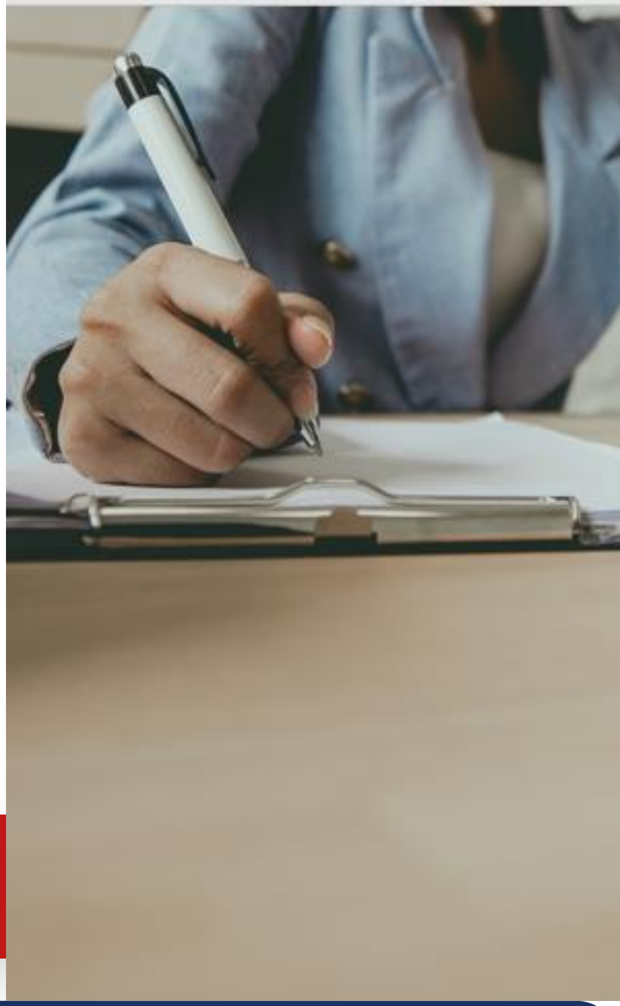
Qualifications of the Company Secretary

- Have one or more of the following qualifications:
  - have been a secretary of a public company for at least three years of the five years immediately preceding his or her appointment;
  - is a member of one of **seven** professional bodies:,
    - the Institute of Chartered Accountants in England and Wales;
    - the Association of Chartered Certified Accountants;
    - the Institute of Chartered Secretaries and Administrators;
    - the Chartered Institute of Management Accountants;
    - is a qualified barrister or solicitor.

(Accountant, Lawyer or Chartered Governance Professional)

- Be a person who appears to them to have the requisite knowledge and experience to discharge the functions of the secretary.

s273 CA2006



The term "requisite knowledge and experience" is not defined precisely, so the company bears the responsibility to show the appointee meets a reasonable standard.

Interpersonal skills

- Empathy and relationship management
- Be respectful
- Diplomacy, Active listening
- Respecting confidence
- Disagreeing constructively
- Strength of personality

Practical skills

- Establish rapport
- Stay calm

Commercial and business acumen

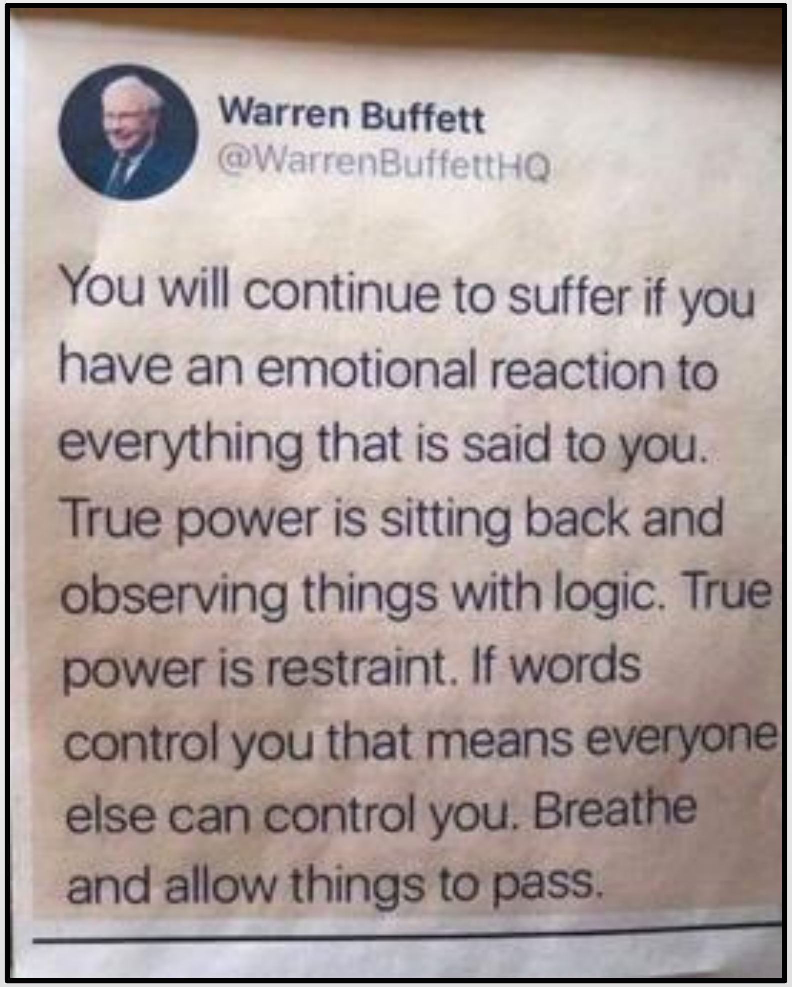
Interpersonal skills

- Relationship (ability to develop trust)
- Emotional Intelligence (EQ)
- Communication
- Strength of personality

Practical skills

- Organisational
- IT

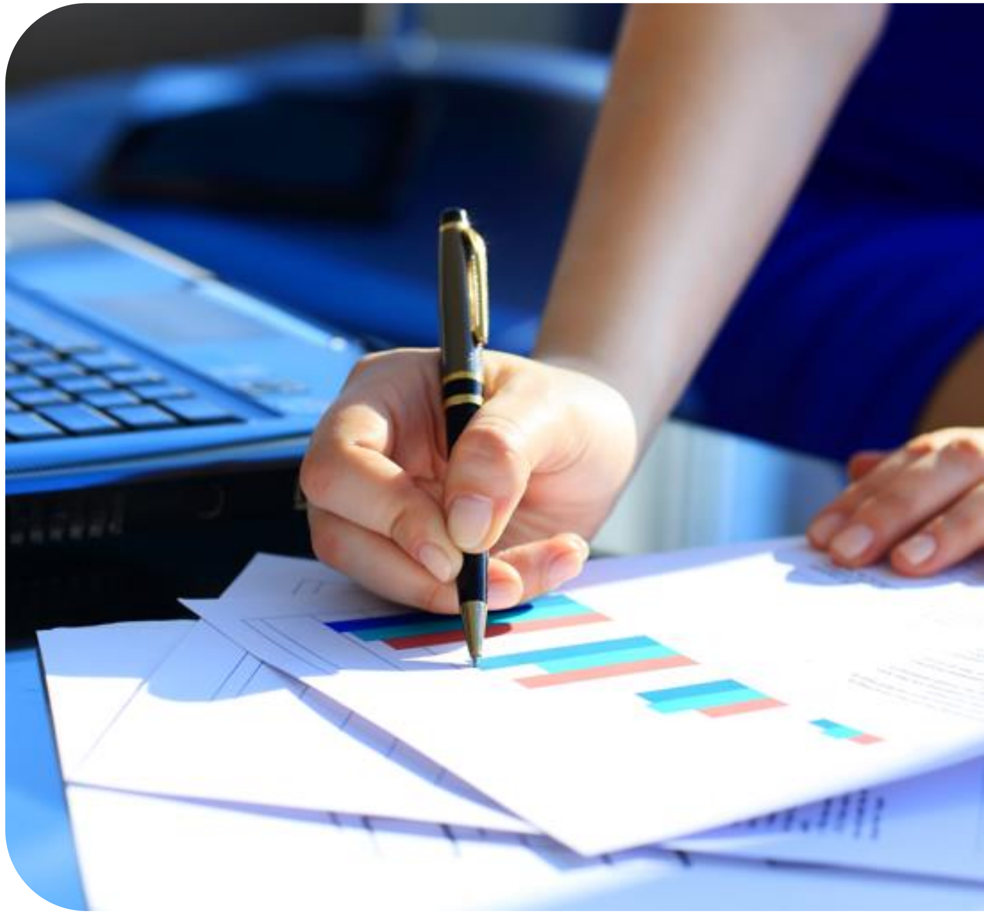
SCORE IT



> Boards have a right to expect the company secretary to give independent, impartial advice and support to all the directors, both individually and collectively as a board.
>
> *CGI Guidance note, 2014*

Dual Role of Company Secretary

- If combined with another role such as that of the in-house lawyer or accountant
- Care should be taken to see that the governance role is not compromised.
- A general counsel who is also given the role of the company secretary will often have to take sides in fulfilling their legal role to represent the particular interests of the company.



Independence of the Company Secretary

Reporting lines

- The company secretary is responsible to the board and should be accountable to the board through the chair on all matters relating to corporate governance and their duties as an officer of the company. Best practice is that the company secretary should be appointed and dismissed by the board as a whole.

Remuneration

- decisions on the remuneration and benefits of the company secretary should be taken by the board or by the remuneration committee.

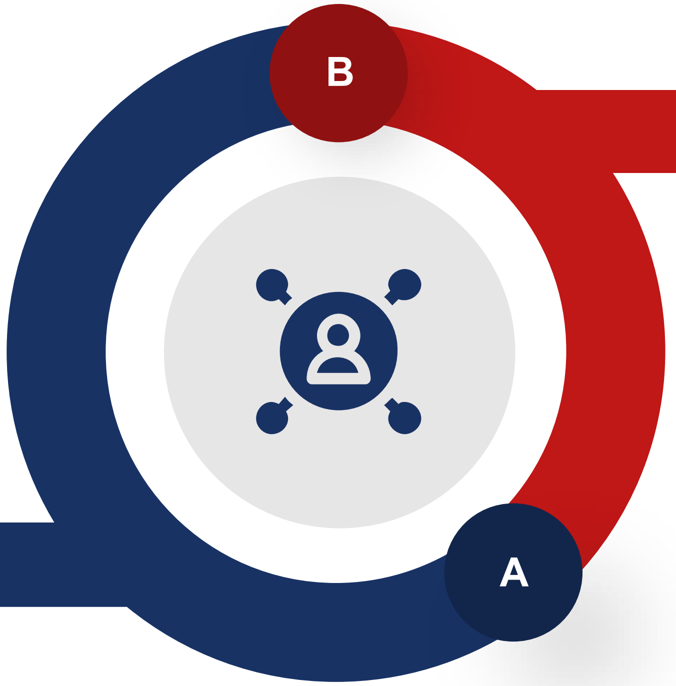
Evaluation

- carried out as part of the annual board evaluation

CGI Guidance Note, 2013

Liability of the Company Secretary

As an officer of the company, the company secretary may be liable, with the directors, to default fines and other penalties for officers under the Companies Act 2006.



Company secretaries may also be held liable, under the Insolvency Act 1986, for damages awarded by the court in the course of a winding-up of a company if there has been a misfeasance or breach of trust in relation to the company.

In-house versus Outsourced

Reasons to outsource

- To ensure that all of the statutory and regulatory requirements are met
- To reduce costs

Reasons not to outsource

- Acquires **an in-depth knowledge** and understanding of the company and its history Develops relationships
- Develops relationships
- **Available at all times**
- **Offers a wide range of services** and is able to take on other responsibilities
- **May provide informal support**
- Acting as the **'conscience of the company'**

KCB | 40 YEARS of Excellence in Governance Education

Summary

Session 3

- All public companies in the UK must have a company secretary (s271, CA2006) who is suitably qualified (s273, CA2006)
- All directors should have access to the advice of the company secretary, who is responsible for advising the board on all governance matters.
- The role of the company secretary involves important matters across Governance, Statutory and Regulatory Compliance, advising the Board and communication.
- They can be referred to as ‘the Conscience of the Company’
- They require a combination of interpersonal and practical skills (SCORE IT)
- They should be independent abnd provide impartial advice. Their independence can be managed through their appointment, reporting line, remuneration and evaluation.
- The role is generally an in-house role but it can be outsourced