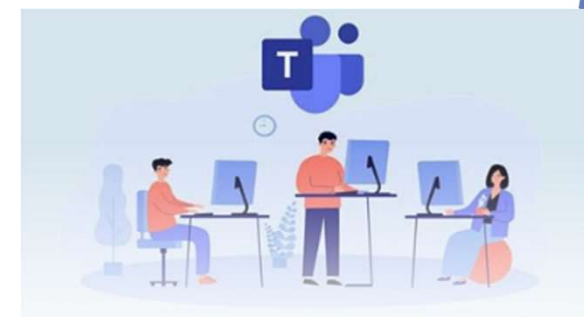


The Company Secretary as a custodian of good governance in a technological world

**Presented by: Lindelwa Mngomezulu
FCG, LLB,LLM**

Our current reality

In today's technological world, the role of a Company Secretary has become even more crucial in ensuring good governance within an organization. As a custodian of good governance, the Company Secretary plays a vital role in upholding ethical standards, compliance with regulations, and maintaining transparency



Our current reality

 The Star
<https://www.thestar.com.my/tech/tech-news/2020/04/...>

Thousands of private Zoom video recordings exposed ...



Web Apr 6, 2020 · The exposed **Zoom** videos can be found on unprotected swathes of Amazon storage space, known as buckets, and have even been uploaded onto sites like YouTube ...

 BBC
<https://www.bbc.com/news/technology-6407...>

Meta settles Cambridge Analytica scandal case for ...

Web Dec 23, 2022 · Technology reporter **Facebook** owner Meta has agreed to pay \$725m (£600m) to settle legal action over a data breach linked to political consultancy **Cambridge Analytica**. The long-running dispute...



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BANKING
Staff Writer
26 Mar 2022



Massive data hack: TransUnion says at least 3 million South Africans impacted – this is the information that was stolen



 Tech.co
<https://tech.co/news/data-breaches-updated...>

Data Breaches That Have Happened in 2023 So Far

Web Jan 30, 2023 · **SONY Data Breach**: multinational technology company SONY has reportedly been broken into by ransomware group Ransomware.vc, who say they will sell the **data** they've stolen because SONY is...



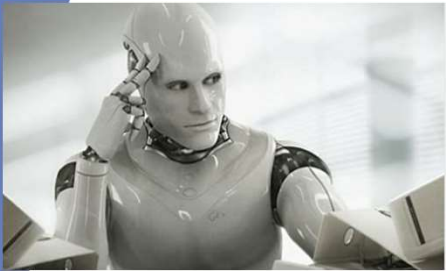
 NPR
<https://www.npr.org/2023/01/26/1151565489>

Boeing pleads not guilty to fraud charge related to 737 ...

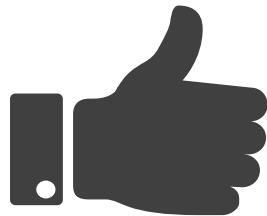
Web Jan 27, 2023 · Airplane maker **Boeing** will be arraigned in federal court in Texas Thursday on a criminal charge of conspiracy to commit fraud related to the **crashes** of two **737 Max** commercial jets in Indonesia in ...

Your View

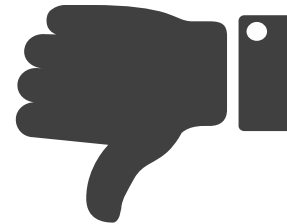
Are you concerned that the introduction of AI will affect your role as the Company Secretary and may replace your function?



Yes



No



**The Role of the
Company Secretary?**



The role of the Company Secretary

Our courts have held that the Company Secretary is an officer of the company with extensive duties and responsibilities. Far from being a mere scribe, the Company Secretary regularly makes representations and enters contracts on behalf of the company. Must be is an integral part of an organisation's management structure and play a pivotal role in the proper governance of the company. The Company Secretary in effect, acts as the company's Chief Governance Officer.

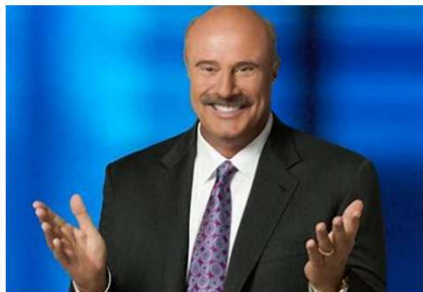
Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd (1971) 2 QB 711 (CA)

The Company Secretary is responsible for ensuring **sound** corporate governance practice, must be the **repository** of governance knowledge and advice, and to be the **source** of the company's conscience by ensuring corporate integrity takes precedence over short-term gain and personal benefit

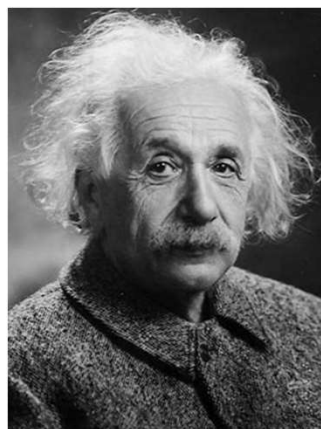
King IV

The Company Secretary provides the directors of the company collectively and individually, with guidance as to their duties, responsibilities, and powers, making the directors aware of any law relevant to or affecting the company and reporting to the board any failure on the part of the company or a director to comply with the memorandum of incorporation or the Companies Act

Companies Act 71 of 2008, as amended



Company Secretary?



Emerging technologies and their impact on the role of the Company Secretary

The emergence of new technologies has, and will, greatly impact the role and tasks of company secretaries. As mentioned above, the traditional roles of company secretaries were often seen as primarily administrative in nature. But with the advent of new technologies, their ability to provide strategic value to the organization has increased

Board Portal

As Boards go paperless with the adoption of board portals or board meeting software, the administrative weight and burden on company secretaries is significantly reduced. Board pack creation, minute-taking, and remote collaboration can be accomplished with enhanced security, minimal effort, and less time. The Company Secretary can focus on responsibilities that have greater impact on organisational strategy – including risk management, corporate governance advice, and regulatory compliance.

Artificial Intelligence (AI)

Deep Known Ventures / VITAL

As artificial intelligence finds its way into the boardroom, it places the Company Secretary in a unique and challenging position: he/she will need to set forth, clarify, and implement company laws and practices to ensure that this technology has appropriate oversight and that it will operate within the confines of ethical boundaries. The developments in the use of artificial intelligence can be complex, and ethics is a concern that's highly subjective and open to qualitative debate.

Blockchain

Blockchain technology will also reduce the burden on company secretaries as custodian of corporate records. The technology can be used as a corporate document depository accessible to shareholders and other parties. Corporate records, such as contracts and financial transactions, will be up-to-date – allowing individuals to place greater trust in the integrity of information.

Focus on Cases where the role of the Company Secretary was assessed

These cases illustrate the potential legal and regulatory consequences for company secretaries who fail to fulfil their duties, including inadequate oversight, failure to raise concerns, and non-compliance with regulatory requirements.

It is important for company secretaries to understand their roles and responsibilities, stay informed about relevant laws and regulations, and maintain a high standard of corporate governance to mitigate the risk of being held personally liable for governance failures.

Satyam Computers:

In 2009, Satyam Computers, an Indian IT services company, faced a major corporate scandal when its chairman admitted to inflating the company's financial statements and manipulating accounts. The case highlighted significant failures in corporate governance, including the role of the Company Secretary. The Company Secretary was **accused of failing to raise concerns about the fraudulent activities and not fulfilling their duty to ensure accurate financial reporting**. Legal action was taken against the Company Secretary and other executives involved in the scandal.

Kingfisher Airlines:

Kingfisher Airlines, an Indian airline, faced financial difficulties and ultimately ceased operations in 2012. The Company Secretary was held responsible for not fulfilling their duties in **ensuring compliance with regulatory requirements**, including financial reporting and adherence to corporate governance practices. Legal actions were filed against the Company Secretary and other executives for their alleged role in the airline's collapse.

Carillion

Carillion, a British construction and facilities management company, collapsed in 2018 due to financial mismanagement and a significant debt burden. The Company Secretary was **criticized for not adequately addressing concerns raised by auditors and shareholders about the company's financial health**. The case highlighted the importance of an effective Company Secretary in raising red flags and ensuring proper governance and risk management.

African Bank Investments Limited (ABIL)

ABIL, experienced a financial crisis in 2014 that led to its collapse. The Company Secretary was responsible for ensuring compliance with regulatory requirements and maintaining proper corporate governance practices. The case raised questions about **the oversight and responsibilities of the Company Secretary in the face of significant governance and financial failures**.

Steinhoff International Holdings

Steinhoff, a multinational retail company headquartered in South Africa, faced a major scandal in 2017. The Company Secretary was closely involved in the corporate governance and disclosure practices of the company. The case highlighted the role of the Company Secretary in **ensuring proper governance and transparency, and their potential liability in cases of governance failures**.

The Company Secretary as custodian of Good Governance

While there may not be specific South African cases where company secretaries have been held individually accountable for governance failures, the role of a Company Secretary is crucial in ensuring good governance practices. Company secretaries are responsible for providing guidance on compliance with laws and regulations, maintaining proper records, and facilitating effective communication between the board of directors, shareholders, and other stakeholders.

In cases of governance failures, company secretaries may be held accountable in the following ways:

- 1. Breach of fiduciary duty:** Company secretaries have a duty to act in the best interests of the company and its stakeholders. If they fail to fulfil their responsibilities, such as providing accurate and timely information to the board, ensuring compliance with corporate governance guidelines, or maintaining proper records, they may be held accountable for breaching their fiduciary duty.
- 2. Negligence or incompetence:** If a governance failure occurs due to the Company Secretary's negligence or incompetence, they may be held liable for their actions or lack thereof. This could include failing to provide accurate and complete information to the board, not ensuring compliance with legal and regulatory requirements, or not maintaining proper records.
- 3. Regulatory penalties:** If governance failures lead to non-compliance with applicable laws and regulations, regulators may hold the Company Secretary accountable and impose penalties or sanctions. This could include fines or restrictions on their ability to serve as a Company Secretary in the future.
- 4. Professional misconduct:** If a Company Secretary is a member of a professional body, such as the Chartered Governance Institute of South Africa, they may be subject to disciplinary action if their conduct is found to be in breach of professional standards and ethics.

Skills and Competences of the Company Secretary

Body of Knowledge
[Governance Champion]

Intellectual rigour
[shrinking violet?]

Boardroom presence
[Scribe??]

Technical knowledge
and experience
[legal, commercial, business]

Understand
Boardroom dynamics
[Executive/ Non-
executive]

Knowledge of
current issues
[BEE/ESG/CSR]

Courage
[courageous
conversations]

Respect in the
community
[integrity/ trust]

Emotional
Intelligence

Conflict
Management

Diplomacy and
Tact

Trust

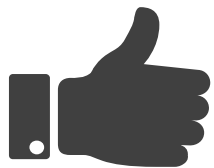
Poll

The Company Secretary is often considered as a scribe/minute taker and is often not given the same recognition as other senior members of management in the organisation.

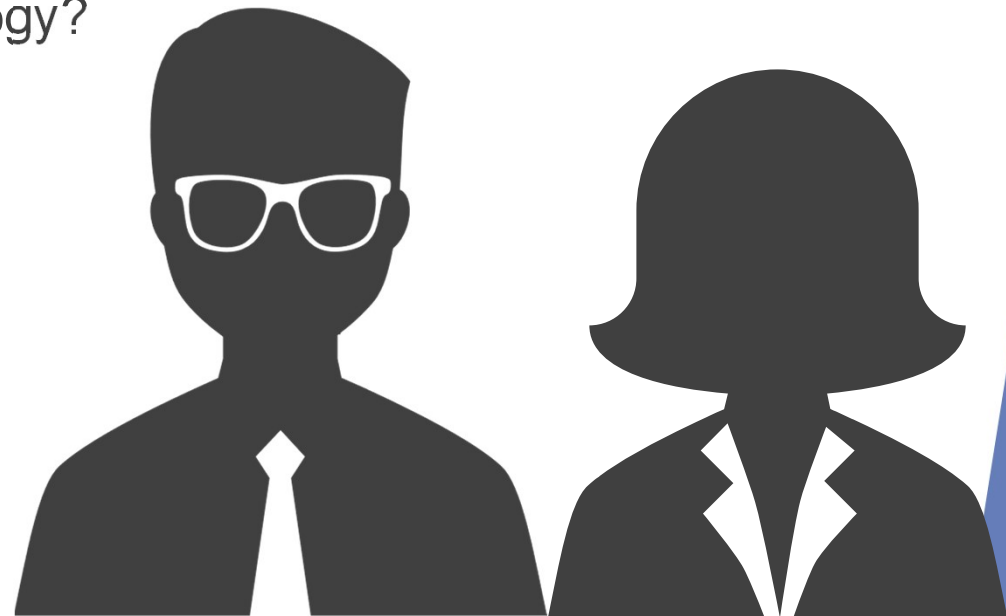
Given the above, the Company Secretary should not be held accountable for governance failures related to technology?

Do you agree?

YES



NO





Ensuring good governance in a technological world



Good governance in the technological world

The role of the Company Secretary is vital in ensuring good governance, particularly in a technological world where governance challenges and complexities are increasing.

The Company Secretary acts as a key advocate and custodian of good governance in a technological world by providing guidance, support, and oversight on various governance aspects, including:

- ❖ Compliance
- ❖ Board practices
- ❖ Risk management
- ❖ Communication
- ❖ Ethical conduct

Compliance with laws and regulations



The Company Secretary is responsible for keeping the company informed of relevant laws, regulations, and governance codes. In a technological world, where regulations around data privacy, cybersecurity, and technology usage are constantly evolving, the Company Secretary plays a crucial role in ensuring the company's compliance with these requirements.

Practical Implementation

1. Review and retain a universe of governance and company secretarial legislation, rules, codes and regulations
2. Stay abreast of trends and information on technology to ensure that you are capacitated to support the board on technological matters and how they impact the Company
3. Ensure that the Terms of Reference and workplans for your board and committees are updated to address privacy and cyber security concerns, usage of technology and that there is effective oversight and management in relation to technology
4. Ensure that your governance policies, induction programmes address and deal with privacy and the use of technology
5. Introduce innovative ways to keep your board informed of key trends such as a governance and or a compliance moment on your agenda

Examples

 [businesstech.co.za
https://businesstech.co.za/news/banking/616979/...](https://businesstech.co.za/news/banking/616979/...)

Nedbank hit with R35 million fine – BusinessTech

Web Aug 15, 2022 · Banking **Nedbank** hit with R35 million fine SA News · 15 Aug 2022 The South African Reserve Bank (SARB) has imposed a R35 million administrative sanction on ...



The screenshot shows a news article from 'THE SOUTH AFRICAN'. The article title is 'TransUnion could face a fine of up to R10m – Information Regulator'. The author is 'Reeshni Chaslyn Chetty' and the date is '21-03-2022 10:14'. The article is categorized under 'News'. The article text begins with 'The Information Regulator explained that TransUnion has to comply with eight conditions in terms of protecting personal information.'

Board support and governance practices

The Company Secretary supports the board of directors by facilitating effective governance practices. This includes preparing board meeting agendas, organizing meetings, taking minutes, and ensuring compliance with governance procedures. In a technological world, the Company Secretary helps the board navigate technology-related issues, such as cybersecurity, data protection, and emerging technologies, by providing relevant information and guidance

Practical Implementation

1. Ensure that your meeting practices remain compliant with legislation even with the use of technology [quorum attendance/ leaving and joining meeting etc]
2. Ensuring that decisions taken through electronic means remain compliant with legislation and governance prescripts
3. Protection of the meeting platform utilise. Recordings and transcriptions security
4. Ensure that the platform used meets the required security standards



examples

Did Steinhoff's board structure contribute to the scandal?



Published 3 years ago
By Forbes Africa

The global retail group Steinhoff is reeling under allegations of accounting fraud. Since the allegations surfaced last year the CEO of the multi-billion-dollar business, Markus Jooste, has fallen on his sword and the company's stock has been hammered, at one point losing about 90% in market value in a few days.



BusinessLIVE

<https://www.businesslive.co.za/bd/companies/...>

Standard Bank directors reappointed despite conflict of ...



Web 26 June 2020 - 12:28. by Lisa Steyn. Five **Standard Bank** directors have been **reappointed** to the board of Africa's largest lender, **despite** activist **concerns** that they are conflicted...



The Mail & Guardian

<https://mg.co.za/article/2016-05-13-myburgh-report...>

Report: African Bank directors were reckless - Mail



Web May 13, 2016 · A damning report into the collapse of unsecured lender **African Bank** has found that the boards of both the **bank** and its holding company **African Bank** ...

Risk management and internal controls

The Company Secretary assists in developing and implementing robust risk management and internal control systems. In a technological world, where companies face various risks related to technology, such as cyber threats, data breaches, and technology disruptions, the Company Secretary helps ensure that appropriate risk mitigation measures and controls are in place.

Practical Implementation

1. Ensure that your ARC committee is functioning well and is well capacitated
2. Ensuring that the agenda for this committee is focused on the matters as per the mandate, TORS, Workplans and submissions
3. Ensuring that the Committee has sufficient time to consider and deliberate on the key matters
4. Capacitating the committee through training interventions and related



examples



Daily Maverick

<https://www.dailymaverick.co.za/article/2022-03-19...>

TransUnion data breach potentially leaves 54 million South ...

Web Mar 19, 2022 · **TransUnion data breach** potentially leaves 54 million South Africans exposed

(Photo: Chris Ratcliffe / Bloomberg) By Neesa Moodley Follow 19 Mar 2022 1 International credit bureau **TransUnion**...



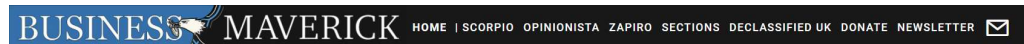
BBC

<https://www.bbc.com/news/technology-6407...>

Meta settles Cambridge Analytica scandal case for ...

Web Dec 23, 2022 · Technology reporter **Facebook** owner Meta has agreed to pay

\$725m (£600m) to settle legal action over a data breach linked to political consultancy **Cambridge Analytica**. The long-running dispute...



BUSINESS MAVERICK ANALYSIS

Tongaat Hulett scandal raises more red flags about governance in corporate South Africa

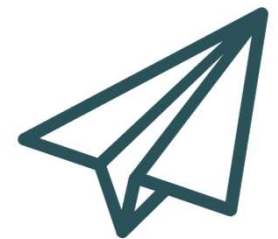
By Ed Stoddard • 4 June 2019

Communication and transparency

The Company Secretary promotes transparent communication within the company and with external stakeholders. This includes ensuring accurate and timely disclosure of information, such as financial reports, regulatory filings, and corporate governance disclosures. In a technological world, where information flows rapidly and across various digital platforms, the Company Secretary plays a crucial role in managing communication channels and ensuring transparency

Practical Implementation

1. Ensure that your annual returns are filed timeously
2. Integrated report disclosures are accurate on governance matters
3. Ensure that all regulatory filings are done timeously
4. Use of all digital platforms to ensure comms reaches all stakeholders
5. Adapt more agile communication means to ensure information is transmitted timeously and effectively



examples



Daily Investor

<https://dailyinvestor.com/south-africa/4660/...>

Steinhoff, EOH, and Tongaat Hulett crushed South ...

Web Nov 5, 2022 · **Steinhoff**, EOH, and Tongaat Hulett exposed the myth that JSE-listed companies had strong governance and were immune to widespread corruption. This is the view of Financial Mail editor and ...



icba.org.za

<https://www.icba.org.za/cipc-compliance-notice-10...>

CIPC Compliance Notice: 10% Penalty for late annual financial

Web May 31, 2018 · CIPC has won a High Court order empowering them to penalise **companies** that fail to prepare annual financial statements within 6 months of year end. The penalty is 10% of annual revenue.

Ethics and integrity:

The Company Secretary helps foster an ethical culture within the organization by promoting good governance practices, ethical behaviour, and adherence to corporate values. In a technological world, where ethical considerations around data usage, AI algorithms, and technology ethics are prominent, the Company Secretary helps ensure that the company upholds high ethical standards in its technological initiatives.

Practical Implementation

- ✓ This includes implementing and monitoring a Code of conduct and Ethics and incorporating technology changes [use of virtual platforms]
- ✓ Providing training on ethical practices, and whistleblowing mechanisms relevant to the current technological world
- ✓ Ensure the committees of forums address ethical concerns related to data privacy, cybersecurity, and the responsible use of emerging technologies



examples



Financial News London

<https://www.fnlondon.com/articles/kpmgs-auditors...>

KPMG's auditors created fake meeting minutes and spreadsheets ...

Web Jan 10, 2022 · Auditors at KPMG fabricated meeting minutes and Excel spreadsheets to mislead inspectors asking questions on missing documents regarding its audit of ...

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BANKING BUSINESS FINANCE MOTORING INDUSTRY NEWS MOBILE

New KPMG report details major post-scandal changes – and how much its partners get paid

Staff Writer 7 March 2019



CNN Business

<https://money.cnn.com/2012/05/13/technolo...>

Yahoo CEO Scott Thompson out after resume scandal

Web May 14, 2012 · NEW YORK (CNNMoney) – Yahoo CEO Scott Thompson is out after it was found he padded his resume with an embellished college degree, ending his term at the company after just four months....



Daily Maverick

<https://www.dailymaverick.co.za/article/202...>

The private sector's big ethics problem unravels after ...

Web Jan 18, 2022 · The first report from the Zondo Commission has implicated big private sector firms in State Capture, and busts myths that the private sector is more ethical than the public sector.

KEY TAKE AWAYS



Key takeouts



Ensure that the organization complies with relevant laws and regulations.



Protection of stakeholders interests.



Promote a culture of ethics and integrity within the organization



Must stay updated with emerging technologies and their impact on corporate governance

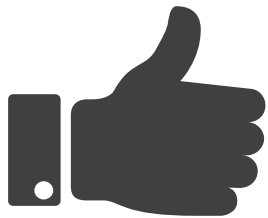


Promote transparency and accountability within the organization.

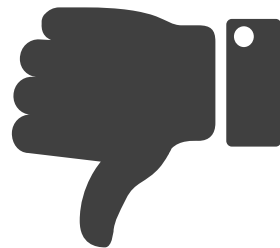
Poll

Has technology compromised governance?

YES



NO



A purple rectangular tag with a hole on the left side, through which a light-colored string is threaded. The tag is placed on a textured, brownish surface. To the right of the tag is a white daisy flower with a yellow center. The background is slightly blurred, showing more of the textured surface and some white flowers.

Thank
you!