Does the company secretary share responsibility for board effectiveness?

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- Sharing responsibility for the quality of governance of the company and board effectiveness, presents company secretaries with several important challenges.
- These challenges relate to time pressure and work load, conflicting loyalties due to dual reporting lines, and company secretaries' dependence on other organisational actors to fulfil their tasks.
- This raises questions as to which skills company secretaries should ideally have to adequately fulfil their role as governance facilitators.

Company secretaries significantly influence an organisation's governance framework but they face a number of practical challenges with directors, employees and management in fulfilling their diverse roles and responsibilities — that's what is indicated by our study among about one hundred company secretaries, who operate in the Dutch two-tier board system.[1]

> *'The amount of governance, and the amount of challenge and advice that this new role [company secretary] has to give to the executive team and the chairman and the non-execs has gone through the roof.' — Company secretary.*[2]

The role of the company secretary is rapidly evolving, as secretaries are increasingly involved in strategic tasks that go beyond mere administrative support activities. For example, a large UK study concludes that 'the role of the company secretary is much more than just administrative; at its best, it delivers strategic leadership, acting as a vital bridge between the executive management and the board and facilitating the delivery of organisational objectives'.[3] Similarly, McNulty and Stewart state that 'the role and profile of the company secretary as a backstage administrator is moving into the public glare of good governance process [...]. A combination of their formal position as a legal officer of the company, and chief administrator to the board, their proximity to the board process, and the promotion of their role through regulation, invites attention to the role and contribution a company secretary can make to board effectiveness.'[4]

As the governance role of the company secretary becomes more significant, this development raises several important questions. For instance, what is the current organisational status of the company secretary? Does he or she contribute to board performance? If so, which activities make a difference in the effectiveness of boards? And, what challenges do company secretaries face in their day-to-day work and how do they manage these?

This study addresses these questions by exploring the role of company secretaries in the two-tier board model that is prominent in the Netherlands. In conclusion of this article, we apply the findings on Australian practitioners.

The company secretary in the Netherlands

The Netherlands has a coordinated market economy that is typical for most Continental European countries. Traditionally, Dutch public corporations have been legally defined as a community of interests, thereby emphasising the role of the company in balancing the interests of stakeholders, including those of shareholders of the company. The Dutch stakeholder-model is supported by relatively high

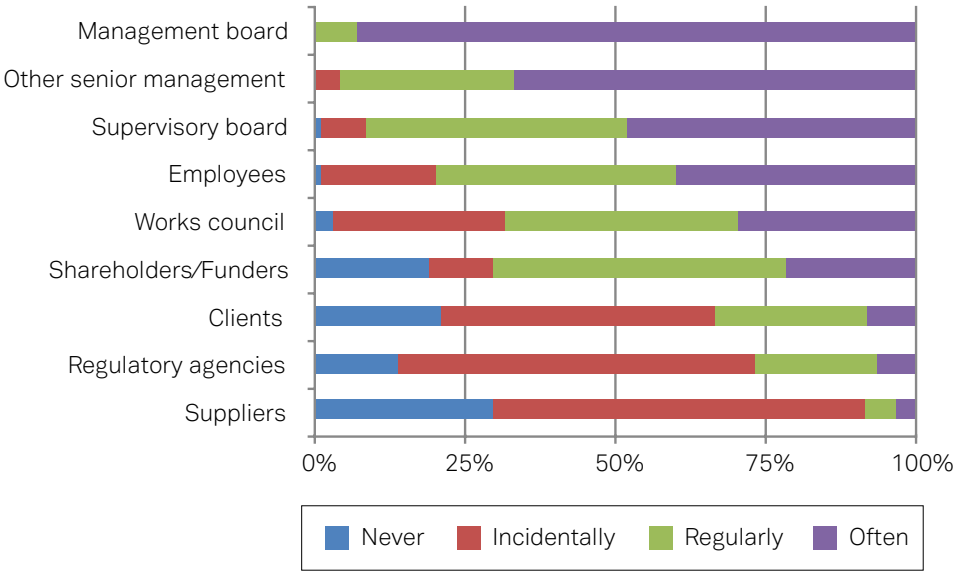
levels of concentrated ownership, employee representation through works councils and two-tier boards with a management board that is separate from the supervisory board. The management board is responsible for the day-to-day management of the organisation while the supervisory board monitors the management board. The Dutch governance system is still largely stakeholder and network-oriented. The two-tier board model is the most common: 43 in the top 50 listed corporations in the Netherlands.[5]

In the Netherlands, the role of the company secretary is not legally defined and therefore the appointment and responsibilities of the company secretary depend entirely on the organisation's internal regulations. This weakly defined position might be a challenge to the company secretary in the Dutch two-tier board model as company secretaries often work for both the management board and the supervisory board.[6] This dual function can lead to role conflicts and ambiguity. Cras and Van Berkel[7] note that the challenge of the company secretary is to avoid potential conflicts of interest, and that the secretary's independence and the personal chemistry with the chair are important preconditions for success in cases where potential issues may arise.

Role perceptions by company secretaries

The company secretaries surveyed fell into the following sectors — non-profit organisation (65.6 per cent and of these 47.5 per cent were in the health sector); the remainder of the respondents work for either a listed corporation (9.1 per cent) or a non-listed for-profit company (25.3 per cent). When asked to rate the importance of various aspects of their tasks, company secretaries stated the importance of administrative and reporting activities. The duties related to an organisation's reporting, assuring that shareholders and funders are appropriately informed and contributing to the production of the governance section and board section of the annual report were seen as essential. Supporting meetings

Figure 1: Key contacts of company secretaries



of the supervisory and management boards were often rated as important administrative tasks. In contrast, the more strategic tasks relating to the content of governance were seen as less important by secretaries.

Company secretaries report to mostly interact with the management board, other senior managers and the supervisory board (see Figure 1).

This highlights the pivotal role secretaries play in connecting the higher levels in the organisations. The secretaries also regularly have contact with the employees, the works council and shareholders/funders, indicating the diversity of actors with which company secretaries interact and collaborate. Noteworthy is the fact that most company secretaries have limited contact with regulatory bodies, confirming their relatively unregulated role in the Netherlands.

Company secretaries indicate that managing the administrative aspects of an organisation's governance system, managing the information flow from the management board to the supervisory board and contributing to the governance content are the most significant ways to have an impact on an organisation (see Figure 2).

Interestingly, the company secretaries assess their contributions to the management and supervisory boards' decision-making as relatively moderate. In summary, this suggests that company secretaries see themselves as having the most impact on an organisation in a supporting role, leaving decision-making to the boards of directors.

Core challenges company secretaries face

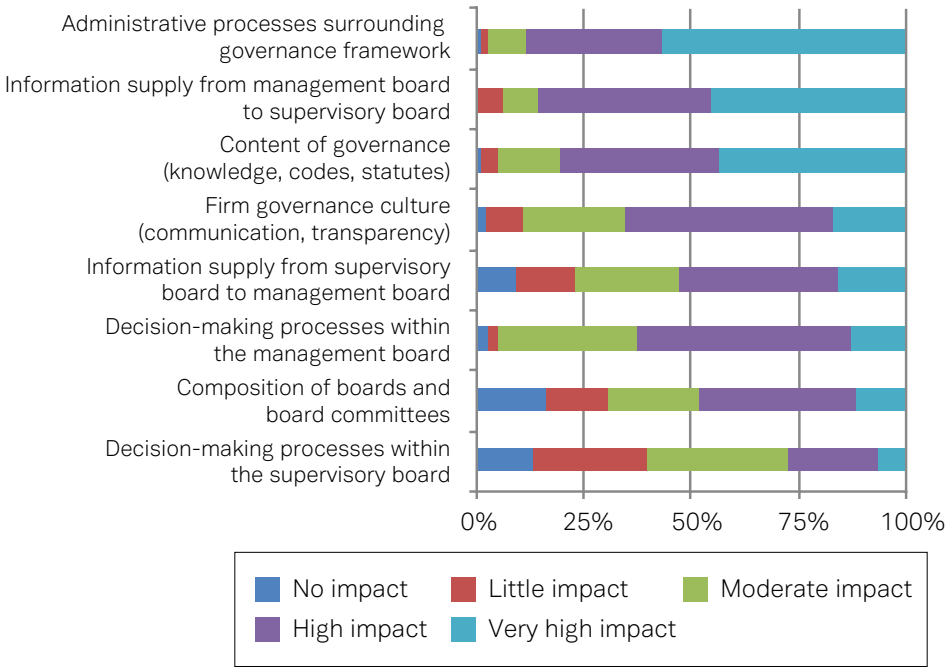
Dutch company secretaries see the following top five challenges in their daily work.

1. The most frequently mentioned challenge is time pressure and (unrealistic) deadlines. One company secretary remarked: 'I am managing a wide variety of tasks; as a result some of them are being marginalised.' Another secretary stated to be 'continuously setting (new) priorities due to the amount of work.' This is particularly challenging for the company secretaries who also fulfil other roles in the organisation: 'My main issue is a lack of time, as I am also responsible for communications and quality management.' Study participants also mentioned the need to be trading off speed and quality: 'My main challenge is balancing the speed and accuracy

of the decision-making process.'

2. Some of the respondents referred to resistance within the organisation towards their advisory role as a main challenge. Several secretaries indicated that their professional advice is largely being ignored: 'I face directors that have difficulties with my input as company secretary', 'the supervisory board members have strong views on the application of governance codes, the election of new board members and board evaluations', and 'decisions are not being followed up by directors.' Company secretaries also point to director turnover, a lack of skills in the boardroom and disagreements among directors as key factors challenging their role. For example, one company secretary describes that 'unresolved disagreements (about strategic issues) within the management board continuously lead to conflicting policies and instructions.' Several company secretaries highlight the importance of 'being aware of all the sensitivities'.
3. Third, company secretaries struggled with conflicting loyalties due to dual reporting lines. One secretary states in this context: 'Who am I loyal to: the organisation or the management board?' Some company secretaries also refer to difficulties of working for both the supervisory board and management board, particularly at times of conflict. In that context, secretaries highlight the importance of 'building bridges between both boards', acting as 'intermediary and mediator' and maintaining 'an independent position between both boards.' As an unintended consequence, several company secretaries describe their position in the organisation to be 'lonely' and 'solitary'.
4. The respondents see information sharing as a main challenge. Some of the secretaries highlight issues around the timing and quality of information: 'My main challenge is the quality of management proposals; it requires a lot of work to correct and improve them' and 'I am always struggling to obtain information on time that is complete'. Several respondents also mention that they are not sufficiently informed about what is being discussed in and between the supervisory and management boards. One secretary expresses this as follows: 'I don't have any insights in the activities and ways of decision-making of the supervisory and management boards'.
5. Company secretaries are not clear about their profile in their organisation. One company secretary states to be confronted with 'ignorance; as employees don't know what you do and the knowledge that you possess, and think that you have nothing to do'. Others mention the lack of definition of the function: 'it is seen as a secondary function with an unclear profile within my organisation' and 'there is no clear job description; my tasks and responsibilities are not documented'. In addition, company secretaries mention that they lack real decision-making power: 'It is challenging as I don't have any real power, while changes and results are expected.' As a result, company secretaries highlight that it is sometimes 'hard to obtain a mandate to get things done'.

Figure 2: Impact of the company secretary



In conclusion, the challenges depict a demanding working environment for the company secretary in the Dutch two-tier board system. With rapidly changing regulatory expectations, a relatively undefined role within the organisation and being the 'linking pin' among organisational layers, the role of the company secretary appears to be a solitary one that requires tact, superior knowledge and strong diplomatic skills.

The company secretary in Australia: Sharing responsibility for board effectiveness?

Emerging research suggests that the role of the company secretary in the governance of organisations has become more prominent as a result of ongoing regulatory developments and changing societal expectations.[8] In Australia as well as the rest of the globe, there is still little structured knowledge about how company secretaries contribute to an organisation's governance framework and the functioning of boards. Our study sets out to fill this void by exploring how company secretaries perceive their role and the challenges they face in the Dutch two-tier board system. Our findings

indicate that company secretaries believe they have a significant impact on the governance of organisations beyond their mere administrative tasks. They move in the direction of sharing responsibility for the quality of governance of the company and board effectiveness (for example, the process of decision-making), but face several important challenges. These challenges mainly relating to time pressure and work load, conflicting loyalties due to dual reporting lines, and company secretaries' dependence on other organisational actors to fulfil their tasks.

These findings have three important implications for — Dutch as well as Australian — practitioners.

1. By exploring the role of the company secretary in the Dutch two-tier board model across industries, the study revealed that the separation of the management board from the supervisory board creates challenges, as company secretaries often have dual reporting lines and face potential conflicts in loyalty. The company secretary often acts as a key linking pin between both boards, which makes the two-tier board model appear to be a challenging working environment for company secretaries. Australian practitioners work mostly in the one-tier board structure, but are expected to face roughly the same challenges between part-time (non-executive) directors on the one hand, and full-time (executive) directors or executive teams on the other.
2. The study indicates that the role of the company secretary is often not sufficiently and explicitly defined in the Netherlands, which is seen as a challenge by company secretaries. In particular, company secretaries refer to the limited external regulatory framework and their rather undefined position in their organisation as contributing to their challenges. For regulators, this raises the question whether the company secretary's formal role needs further clarification in law. Similarly, for organisations this raises the question whether it would be beneficial to further clarify the role and position of the company secretary. Both questions appear important, also for Australian practitioners, given the rapid corporate governance changes over the past decade. In Australian companies, it is equally important to be crystal clear about role and position of the company secretary, thereby enabling company secretaries to more optimally contribute to an organisation's governance practices and the functioning of the board.
3. Most important to company secretaries in Australia and elsewhere, the study highlights and confirms the significant role that company secretaries play in an organisation's overall governance framework and, more specific, board effectiveness. By moving beyond their traditional administrative and regulatory tasks, the potential to add value to the governance of an organisation is significant and, potentially, even opens the way towards becoming a 'chief governance officer'. This ambition also raises certain questions, such as which skills company secretaries should ideally have to adequately fulfil their role as governance facilitators, what kind of internal support systems they need to contribute effectively, and which of their tasks may have the biggest corporate impact given the particularities of the industry sector they operate in.

Our findings indicate that company secretaries believe they have a significant impact on the governance of organisations beyond their mere administrative tasks.

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Notes

1 A comprehensive report has been published in Peij SC, Bezemer P and Maassen GF, 2015, 'Role Ambiguity and Conflicts, A Study of Company Secretaries and Two Tier Boards in The Netherlands', *Journal of Company Ownership and Control*, Volume 12, Issue 3, pp. 113-122, Virtus Interpress.

2 ICSA, 2014, *The Company Secretary: Building trust through governance*, Institute of Chartered Secretaries and Administrators, London, p 18.

3 ICSA, 2014, *The Company Secretary: Building trust through governance*, Institute of Chartered Secretaries and Administrators, London, p 7.

4 McNulty T and Stewart A, 2014, 'Developing the Governance Space: A Study of the Role and Potential of the Company Secretary in and around the Board of Directors', *Organization Studies*, p 7.

5 Spencer Stuart, 2016, the Netherlands Board Index, Spencer Stuart, Amsterdam.

6 PwC-Nive, (2009), *Invloed en visie van de bestuurssecretaris op effectieve governance*, www.pwc.nl/nl_NL/nl/assets/documents/boardroom-insider.pdf.

7 Cras J and Van Berkel J, 2007, 'Sturen achter de schermen. Over het belang van een professionele bestuurssecretaris', *Goed Bestuur*, Vol. 3-2007, pp 33–39.

8 ICSA, 2014, The Company Secretary: Building trust through governance, Institute of Chartered Secretaries and Administrators, London, p 7); McNulty T and Stewart A, 2014, 'Developing the Governance Space: A Study of the Role and Potential of the Company Secretary in and around the Board of Directors', Organization Studies, (forthcoming) and Peij SC, Bezemer P and Maassen GF, 2015, 'Role Ambiguity and Conflicts, A Study of Company Secretaries and Two Tier Boards in The Netherlands', *Journal of Company Ownership and Control*, Volume 12, Issue 3, pp 113–122, Virtus Interpress.