

Company Secretary for a Share Company

Description

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In the Commercial Code of Ethiopia 1960, there was no requirement by law to have a company secretary even for share companies. As of April 2021, in the new Commercial Code of Ethiopia, Proclamation No 1243/2021, company secretary appointment became a legal requirement for share companies. The manner of hiring and firing, power and duties and liabilities of the secretary were included. We shall look into the appointment, powers and duties and liabilities of the secretary here below.

The New Commercial Code on Article 340 provides about the legal requirement of hiring a secretary for a share company. The article states in a mandatory manner, 'a share company shall have a secretary'. Such a legal requirement is non-existent or optional for private limited company or one member private limited company.

The position of secretary is under the general manager. Thus the secretary is accountable to the general manager. Consequently when hiring of secretary, the general manager will nominate the secretary and present his nomination for the approval of the board of directors. It is the board of directors who decide who will be the company secretary, and make the appointment. This has to be decided at a board meeting. Just as the directors can appoint the company secretary, the board can

also remove the secretary by way of a board resolution after receiving the recommendations of the general manager. Company secretaries can be individuals or companies, as some organizations provide company secretarial services.

A company's secretary has the general duty of organizing and keeping information and records of the company. The secretary shall provide reports and other necessary information promptly to the concerned body. Similarly the secretary is the one that provides information to shareholders and third parties. The most important role of the secretary is to organize meetings of shareholders and members of the board of directors. The secretary then shall prepare, organize and keep minutes. The secretary shall carry out other tasks assigned to him by the general manager and memorandum of association.

Despite the name, the role is not clerical or secretarial. A company secretary needs to be someone with a good knowledge of share companies and their legal obligations. As the capital markets start, for a public company, whose shares of stock are traded on a securities exchange or over-the-counter markets, then this needs to be someone with appropriate qualifications such as a lawyer, a chartered company secretary, an accountant or someone with previous experience in the role.

The secretary shall be liable to the company, shareholders or third parties for any breaches of his duties under the Commercial Code or the memorandum of association, notwithstanding an agreement to the contrary.

To sum up, Ethiopia has introduced the appointment of company secretary as a mandatory requirement for share companies in its legislation of the new Commercial Code. The power and duties of the secretary have also been included in non-exhaustive ways. Though the secretary is reporting to the manager, when firing and hiring occurs, with the recommendation of the manager, the approval of the board of directors is sought.

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