



THE ROLE OF THE CORPORATE SECRETARY (101, 102, and Hot Topics)

Emily Wang Murphy
Partner
Thompson Coburn LLP

Eric D. Reicin
VP, General Counsel and
Corporate Secretary
MorganFranklin, Inc. and
MorganFranklin Consulting, LLC



Background



- Old view
 - Secretary limited to “note taker” or “recorder of minutes” in board meetings.



- Current view
 - Today’s Corporate Secretary works closely with a company’s Board, CEO, and executive officers; also assists Board in carrying out its fiduciary duties. Often serves as senior liaison between the Board and senior management. Roles differ depending upon additional hats (GC, public versus private, DGC)

CS Role Within Your Organization



- Several different CS/GC models – where is your company now; where do you want to go; what is an optimal model
 - What hat; what does the board need; making it real
 - GC is CS
 - CS is an attorney (DGC/AGC/outside counsel)
 - CS is an executive/non-lawyer
 - CS is a non-player/player in the room

Core Competencies



- Key personal and professional competencies:
 - Thorough understanding of the company's business
 - Basic knowledge of corporate and securities law
 - In tune with the CEO and directors' thoughts/feelings
 - Interprets signals that may suggest future risks
 - Overcomes bureaucratic thinking
 - Detail-oriented
 - Organized, respectful, diplomatic, and effectively communicates
 - Active listening skills
- Advises on issues, especially those relating to reputational risk
- Generates alternative solutions
- Respects confidences
- Appreciates all parties
- Disagrees constructively
- Emphasizes commercially-minded approaches

General Duties of the Corporate Secretary



- Highly organization specific
- Acts as a “bridge” for information, communication, advice, and arbitration between the company and its shareholders
- Manages the company’s corporate governance framework
- Ensures compliance with governance procedures, laws, and regulations
- Oversees/conducts induction training for newly-elected directors
- Agenda formation (with Board and CEO)
- Investor communication role (with investor relations)
- General Counsel role overlap
- Additional Board roles depending upon organization
- Keeping books and records and what that really means:
 - Rise in electronic data management
 - Confidential data rooms
 - Cap table management/compliance – Carta
 - Minute book management – BluePrint
 - May also mean corporate filings (licenses, good standing to do business, etc.)
- Other duties to discuss (may take on aspects of other roles depending upon the company – GC/Ethics Officer/Chief Risk Officer/D&O Insurance/Compliance/Investor Relations/C-Suite executive)



Meeting Preparation



- Sets time, place, and date and sends notices
- Ensures Board is properly constituted, directors were properly appointed, and quorum is present
- Meets with management to develop agenda
- Meets with Board members to “finalize” agenda
- Ensures Board members are briefed on discussion topics beforehand
- Organizes attendance of presenters and advisers
- Prepares formal resolutions
- Ensures availability of documents referenced
- Checks conflicts of directors - business considered in the meeting, advising the Chairman where appropriate
- Confirms whether the board requires independent professional advice on an agenda matter
- Oversees logistics
- Works with CFO to ensure director payments
- Electronic board books

Role During Board Meetings



- Ensures the proper person is the chair
- Ensures a quorum is present throughout
- Ensures compliance with policies, procedures, and relevant laws
- Prevents defamatory statements from being said and prevents them from being published in the minutes
- Keeps written record of proceedings
- More robust role in certain organizations; hot topics
- What discoverable documents are the Board members creating (in the room and outside the room)?

During the Board Meeting



Role After Board Meetings



- Removes all confidential material from the boardroom
- Drafts board minutes
- Communicates board decisions to management, ensuring they are acted upon
- Coordinates follow-up with Board members and management
- Files a copy of the agenda and supporting papers in the company archives
- Advanced discovery topics

Role with Directors



- Familiarizes directors with their duties and liabilities; regular communication with directors
- May have corporate insurance role
- Advises on issues regarding related party transactions (RPTs)
- Drafts, implements, and enforces a policy re RPTs
- Drafts and makes disclosures on RPTs
- Other duties



Role with Shareholders



- Ensures a new shareholder's interest is registered
- Organizes the transfer or transmission of shares from one shareholder to another
- Deals with shareholders who cease to be members
- Advises on and drafts shareholder agreements
- Ensures shareholder powers and rights are protected
- May have role relating to hostile shareholders and/or shareholder vote requests
- Protects shareholders from abuse, e.g., insider trading, dilution, related-party transactions
- Issues and cancels shares; cap table management
- Advises on and organizes capital actions: bonuses, rights issues, stock splits, redemptions, etc.

Role During Shareholder Meetings



- Sets and advises the board on date, time, and location
- Develops agenda
- Prepares and distributes materials
- Briefs the chairman for Q&A
- Organizes shareholder Qs
- Manages shareholder requests
- Files resolutions
- Prepares minutes
- Pays dividends, if any
- Announces voting results
- Other duties

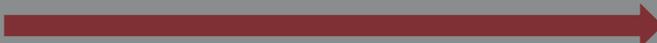
Role in Strategy



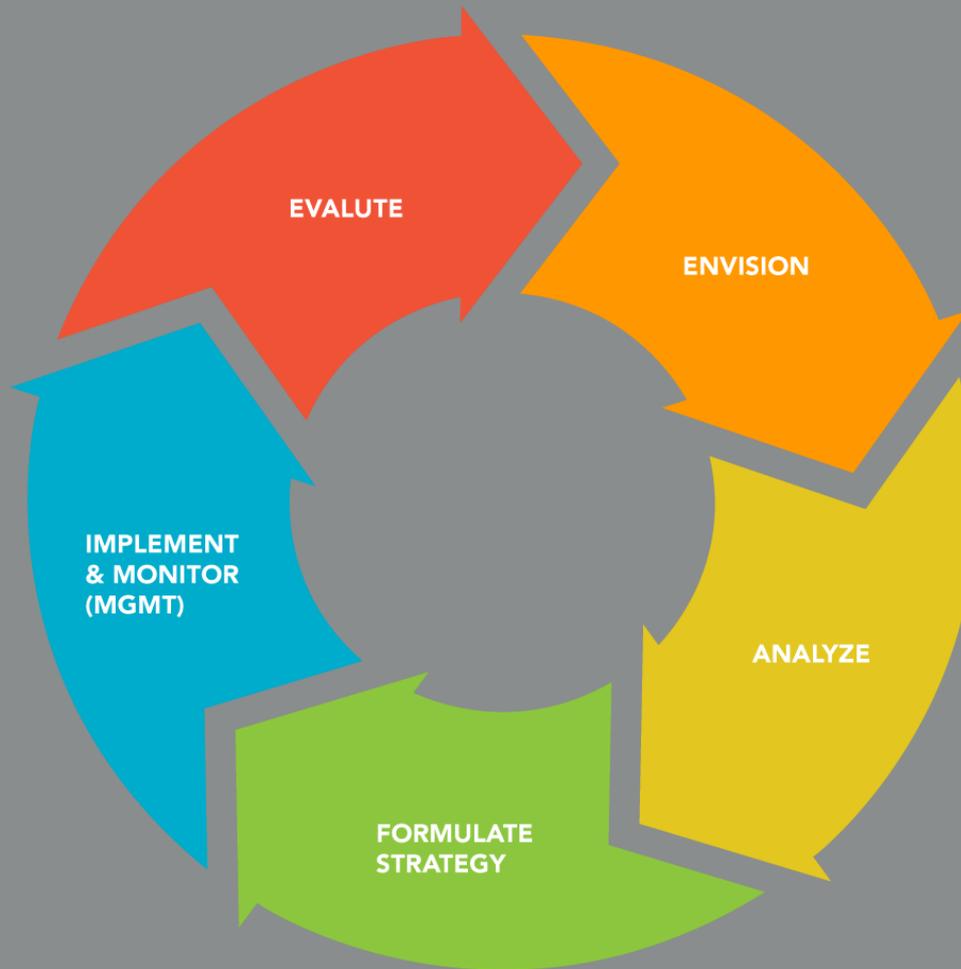
- Ensures strategic discussions happen at the **board level**
- Advises the board on **compliance** with the organization's objectives
- Ensures proposed strategies are consistent with good **governance**
- Shares **third-party reports** on the organization's performance
- Advises on **disclosure** requirements

Role in Strategy (cont'd)

- Advises during periods of transition (new CEO, new Board members, change in business)
- M&A
- Hires outside counsel and experts
- Board-led investigations
- Other hot topics

The difference between business advice and legal advice  A-C privilege

Strategic Planning Process



Role in Risk Management



- Ensures that risk analysis is on the board's agenda
- Assists in identifying risks related to particular agenda items
- Advises the Board on creating a risk committee
- Assists the Board in evaluating risk management systems and internal controls
- Develops Board guidelines for risk that reflect the risk appetite of the company; ERM role
- Identifies, assesses, mitigates, and monitors risks within areas of the Secretary's responsibility

Role in Corporate Citizenship

- Ensures compliance with all applicable laws, regulations, and standards
- Monitors corporate citizenship activities
- Communicates the board's views and actions re corporate citizenship to shareholders and the public



Role in Financial Oversight and Reporting



- Ensures compliance with legal, shareholding, and other requirements
- Interprets and explains financial performance in nonfinancial terms
- Advises the Board on implications regarding potential reputational risk of financial performance
- Assists the Board with its financial oversight role
- Advises the Board on whether it is appropriate to delegate financial oversight to the audit committee
- Coordinates with auditors
- Advises the Board on responsibilities regarding risk management and internal controls
- Provides advice and oversight regarding preparation of the annual report
- Advises the board on laws regarding reporting nonfinancial information

Public Company Considerations



- Securities filings and compliance
- Monitoring press and markets
- Earnings calls and reports
- Investor Relations
- Compliance with various regulations: SEC, Dodd-Frank, Sarbanes-Oxley

Role in Building Ethical Cultures



- Speaks out against bad governance and unethical behavior
- Ensures the Board sets standards of ethical business
- Develops a code of ethics with Chief Ethics Officer/CCO
- Communicates the expected standards of ethical behavior
- Ensures compliance with the code of ethics and reports breaches to the board
- Ensures the board approves and monitors implementation of whistleblowing policies and procedures

Top Ten Takeaways



10. Be a calming presence.
9. Figure out what the CS role is or should be for your corporate culture and the growth path of your company.
8. Work closely with the Chair, Committee Chairs, CEO and CFO.
7. Build relationships with Board Members; know the players and personalities.
6. Identify outside vendors; get advice from others.
5. What are the “add-on services” you intend to provide as CS or topics that will be brought to the Board (and what is your role – ethics, investors (debt and equity), compliance, regulators, etc.)
4. Preparation is critical. Stay ahead of the calendar. Be organized and concise in meetings.
3. Communications – who needs to know; who should know; what’s confidential?
2. Use in-house professionals (PR, IR, Finance, Legal) or outside counsel/experts when needed.
1. Be responsive (24 (or 2?) hour rule).

BE A CALMING PRESENCE.

Thank you



Emily Wang Murphy
Partner
Thompson Coburn LLP
202.585.6939
emurphy@thompsoncoburn.com



Eric D. Reicin
VP, General Counsel and Corporate Secretary
MorganFranklin, Inc. and MorganFranklin
Consulting, LLC
703.564.7525
eric.reicin@morganfranklin.com