



# Company Secretarial

(Under Construction - Updates Published Regularly)

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Guide  
2014

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# Company Secretary

## Summary

### Appointment

Every public company and every state-owned company must appoint a company secretary. Private companies are not usually required to appoint a company secretary unless their MOI includes this requirement. The short form MOI has no requirement for the appointment of a company secretary.

### Duties

The minimum duties are set out in S 88. - [Duties](#)

### Skills / Requirements

- (a) have the requisite knowledge of, or experience in, relevant laws; and
- (b) be a permanent resident of the Republic, and remain so while serving in that capacity.

### Juristic person or partnership

Juristic person or partnership may be appointed if partners / employees who provide services have the required skills.

### Resignation / Removal

May resign or be removed by giving notice.

### Notice to CIPC

Must give notice of appointment / change within 10 business days.

### Forms

- Consent form
- Director's Resolution - Appointment
- Notice to CIPC - [CoR 44](#)

### Registration

Record in Register

Details	
Name:	<input type="text" value="ABC Secretarial Services CC"/>
Registration No:	<input type="text" value="1234566789023"/>
Reg. Office Address:	<input type="text" value="P O B ox 123&lt;br/&gt;Cape Town&lt;br/&gt;7000"/>
Appointment Date:	<input type="text" value="1/11/2014"/>
Nature of Change:	<input type="button" value="Appointment"/> <input type="button" value="Resignation"/> <input checked="" type="button" value="Name Change"/> <input type="button" value="Address Change"/>
Former Name:	<input type="text"/>

If firm or juristic person

If firm or juristic person

dd/mm/yyyy

If firm or juristic person

# Appointment

## Public and State-owned

### **84. Application of Chapter.—**

*(4) Every company contemplated in subsection (1) (a) or (b) must appoint—*

*(a) a person to serve as company secretary, in the manner and for the purposes set out in Part B;*

This requirement is repeated in section 86

### **86. Mandatory appointment of company secretary.**

*(1) A public company or state-owned company must appoint a company secretary.*

... and the appointment must be made in accordance with S 84 (3) :

*(3) The first company secretary of a public company or state-owned company may be appointed by—*

*(a) the incorporators of the company; or*

*(b) within 40 business days after the incorporation of the company, by either—*

*(i) the directors of the company; or*

*(ii) an ordinary resolution of the holders of the company's securities.*

... when a vacancy arises, this must be filled within 60 business days:

*(4) Within 60 business days after a vacancy arises in the office of company secretary, the board must fill the vacancy by appointing a person whom the directors consider to have the requisite knowledgeexperience.*

## Private company

Private companies are not usually required to appoint a company secretary unless their MOI includes this requirement.

The short form MOI has no requirement for the appointment of a company secretary.

In this case section 34 (2) is applicable which makes S 85 applicable - [Registration](#)

# Duties

The minimum duties are set out in S 88.

## **88. Duties of company secretary.—**

*(1) A company's secretary is accountable to the company's board.*

*(2) A company secretary's duties include, but are not restricted to—*

*(a) providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;*

*(b) making the directors aware of any law relevant to or affecting the company;*

*(c) reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or this Act;*

*(d) ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with this Act;*

*(e) certifying in the company's annual financial statements whether the company has filed required returns and notices in terms of this Act, and whether all such returns and notices appear to be true, correct and up to date;*

*(f) ensuring that a copy of the company's annual financial statements is sent, in accordance with this Act, to every person who is entitled to it; and*

*(g) carrying out the functions of a person designated in terms of section 33 (3). [filing of annual return]*

## Skills / Requirements

### **86. Mandatory appointment of company secretary.—**

*(1) A public company or state-owned company must appoint a company secretary.*

*(2) Every company secretary, irrespective of whether the appointment is made as required by subsection (1) or in terms of a requirement in a company's Memorandum of Incorporation, as contemplated in section 34 (2) and 84 (1) (c) (ii), must—*

*(a) have the requisite knowledge of, or experience in, relevant laws; and*

*(b) be a permanent resident of the Republic, and remain so while serving in that capacity.*

Every company secretary should sign a consent form before appointment. This example may be useful: consent form

## Juristic person / Partnership

### **87. Juristic person or partnership may be appointed company secretary.—**

- (1) A juristic person or partnership may be appointed to hold the office of company secretary, provided that—
- (a) every employee of that juristic person who provides company secretary services, or partner and employee of that partnership, as the case may be, satisfies the requirements contemplated in section 84 (5); and
  - (b) at least one employee of that juristic person, or one partner or employee of that partnership, as the case may be, satisfies the requirements contemplated in section 86. [[Skills Requirements](#)]
- (2) A change in the membership of a juristic person or partnership that holds office as company secretary does not constitute a casual vacancy in the office of company secretary, if the juristic person or partnership continues to satisfy the requirements of subsection (1).
- (3) If at any time a juristic person or partnership holds office as company secretary of a particular company—
- (a) the juristic person or partnership must immediately notify the directors of the company if the juristic person or partnership no longer satisfies the requirements of subsection (1), and is regarded to have resigned as company secretary upon giving that notice to the company;
  - (b) the company is entitled to assume that the juristic person or partnership satisfies the requirements of subsection (1), until the company has received a notice contemplated in paragraph (a); and
  - (c) any action taken by the juristic person or partnership in performance of its functions as company secretary is not invalidated merely because the juristic person or partnership had ceased to satisfy the requirements of subsection (1) at the time of that action.

### **84. Application of Chapter.**

- (5) A person who is disqualified in terms of section 69 (8) to serve as a director of any particular company may not be appointed or continue to serve that company in any capacity mentioned in subsection (4), irrespective of whether that appointment is made—
- (a) as required by this Chapter; or
  - (b) voluntarily, as contemplated in section 34 (2).

### **69. Ineligibility and disqualification of persons to be director or prescribed officer.**

- (8) A person is disqualified to be a director of a company if—
- (a) a court has prohibited that person to be a director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
  - (b) subject to subsections (9) to (12), the person—
    - (i) is an unrehabilitated insolvent;

*(ii) is prohibited in terms of any public regulation to be a director of the company;*

*(iii) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or*

*(iv) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence—*

*(aa) involving fraud, misrepresentation or dishonesty;*

*(bb) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or*

*(cc) under this Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).*

## Resignation / Removal

### **89. Resignation or removal of company secretary.—**

*(1) A company secretary may resign from office by giving the company—*

*(a) one month written notice; or*

*(b) less than one month written notice, with the approval of the board.*

*(2) If the company secretary is removed from office by the board, the company secretary may require the company to include a statement in its annual financial statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal.*

*(3) If the company secretary wishes to exercise the power referred to in subsection (2), the company secretary must give written notice to that effect to the company by not later than the end of the year in which the removal took place and that notice must include the statement referred to in subsection (2).*

*(4) The statement of the company secretary referred to in subsection (2) must be included in the directors' report in the company's annual financial statements.*

## Notice to CIPC

### **85. Registration of company secretary and auditor.—**

*(3) Within 10 business days after making an appointment contemplated in subsection (1), or after the termination of service of such an appointment, a company must file a notice of the appointment or termination, as the case may be, subject to subsection (4).*

*(4) The incorporators of a company may file a notice of the appointment of the company's first company secretary, auditor or audit committee as part of the company's Notice of Incorporation.*

A notice to CIPC will be on form [CoR 44](#) - No fee is payable

## Forms

Each person to be appointed must consent to their appointment and confirm that they meet the [requirements](#).

Consent form

Director's Resolution - Appointment

Notice to CIPC - [CoR 44](#)

# Registration

## 85. Registration of company secretary and auditor.—

(1) Every company that makes an appointment contemplated in section 84 (4), irrespective of whether the company does so as required by that section or voluntarily as contemplated in section 34 (2), must—

(a) maintain a record of its company secretaries and auditors, including, in respect of each person appointed as company secretary or auditor of the company—

(i) the name, including any former name, of each such person; and

(ii) the date of every such appointment; and

(b) if a firm or juristic person is appointed—

(i) the name, registration number and registered office address of that firm or juristic; and

(ii) the name of any individual contemplated in section 90 (3) [individual designated auditor in a firm], if that section is applicable; and

(c) any changes in the particulars referred to in paragraphs (a) and (b), as they occur, with the date and nature of each such change.

Record in Register

Details	
Name:	<input type="text" value="ABC Secretarial Services CC"/>
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Reg. Office Address:	<input type="text" value="P O B ox 123&lt;br/&gt;Cape Town&lt;br/&gt;7000"/>
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Former Name:	<input type="text"/>

If firm or juristic person

If firm or juristic person

dd/mm/yyyy

If firm or juristic person

# Securities Register

<TODO>: Insert description text here... And don't forget to add keyword for this topic

# Prescribed Form / Standards

Every company must maintain a Securities register as prescribed

## **50. Securities register and numbering.—**

*(1) Every company must—*

- (a) establish or cause to be established a register of its issued securities in the prescribed form; and*
- (b) maintain its securities register in accordance with the prescribed standards.*

## **Regulations**

### **32. Company securities registers**

*See s. 50 (1)(b)*

*(1) The securities register of a profit company required in terms of section 24 (4)(a), read with section 50 (1)(b), must be kept in one of the official languages of the Republic, and must comprise—*

*(a) for every class of authorised securities, a record of—*

- (i) the number of securities authorised, and the date of authorisation;*
- (ii) the total number of securities of that class that have been issued, re-acquired or surrendered to the company; and*
- (iii) the number of issued securities of that class that are held in uncertificated form;*

*(b) in respect of every issuance, re-acquisition or surrender of securities of any particular class, entries showing—*

- (i) the date on which the securities were issued, re-acquired or surrendered to the company;*
- (ii) the distinguishing number or numbers of any certificated securities issued, reacquired or surrendered to the company;*
- (iii) the consideration for which the securities were issued or re-acquired by, or surrendered to the company; and*
- (iv) the name of the person to, from or by whom the securities were issued, reacquired or surrendered, as the case may be; and*
- (v) in the case of uncertificated securities, a unique identifying number of the person to, from or by whom the securities were issued, re-acquired or surrendered, as the case may be;*

*(c) for every class of authorised securities, at any time—*

- (i) the number of securities of that class that are available to be issued; and*
- (ii) the number of securities of that class that are the subject of options or conversion rights which, if exercised, would require securities of that class to be issued.*

*(2) In addition to the information otherwise required, the company's securities register must also include in respect of each person to whom the company has issued securities, or to whom securities of the company have been transferred—*

*(a) the person's—*

- (i) name and business, residential or postal address, as required by section 50 (2)*
- (b) (i); and*
- (ii) the person's email address if available, unless the person has declined to provide an email address;*

*(b) an identifying number that is unique to that person;*

- (c) in respect of each issue of securities to that person, the consideration for which the securities were issued, as determined by the company's board in terms of section 40; and*
- (d) in respect of each issue or transfer of securities to that person--*
  - (i) the date on which the securities were issued or transferred to the person;*
  - (ii) the number and class of securities issued or transferred to the person;*
  - (iii) the distinguishing number or numbers of the securities issued or transferred to the person, if the securities are held in certificated form;*
- (e) the date on which any securities that had been issued or transferred to the person were subsequently--*
  - (i) transferred by that person, or by operation of law, to another person; or*
  - (ii) re-acquired by, or surrendered to, the company in terms of any provision of the Act or the Memorandum of Incorporation; and*
- (f) at any time, the total number of securities of that class held by the person.*
- (3) If a company contemplated in section 56 (7) has received any disclosure of a beneficial interest referred to in that section, the securities register of that company, despite any additional requirements that may be imposed by a central securities depository, must also include--*
  - (a) a record of all such disclosures, including the following information for any securities in respect of which a disclosure was made--*
    - (i) the name and unique identifying number of the registered holder of the securities;*
    - (ii) the number, class and in the case of certificated securities, the distinguishing numbers of the securities; and*
    - (iii) for each person who holds a beneficial interest in the securities, the extent of the person's interest in the securities, together with that person's--*
      - (aa) name and unique identifying number;*
      - (bb) business, residential or postal address;*
      - (cc) email address if available, unless the person has declined to provide an email address.*
  - (4) The securities register required to be kept by the Act and this regulation must be kept in such a manner as--*
    - (a) to provide indexed access to all relevant entries for any one person;*
    - (b) to provide adequate precautions against--*
      - (i) theft, loss or intentional or accidental damage or destruction; and*
      - (ii) falsification; and*
      - (c) to facilitate the discovery of any falsification.*
  - (5) If a company's securities register is kept in electronic form, the company and, in the case of an uncertificated securities register, the relevant Participant or Central Securities Depository, as the case may be, must--*
    - (a) provide adequate precautions against loss of the records as a result of damage to, or failure of, the media on which the records are kept; and*
    - (b) ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later systems, storage media, or software, to the extent necessary from time to time.*
  - (6) Any entry in a securities register pertaining to a person who has ceased to hold securities of the company may be disposed of seven years after that person last held any securities of the company.*

## Definitions / Descriptions

## Business days

**“business days”** has the meaning determined in accordance with section 5 (3) below;

### *5. General interpretation of Act.—*

*(3) When, in this Act, a particular number of “business days” is provided for between the happening of one event and another, the number of days must be calculated by—*

*(a) excluding the day on which the first such event occurs;*

*(b) including the day on or by which the second event is to occur; and*

*(c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b), respectively.*

# Company Secretary

The company secretary is an officer of the company who is accountable to the company's board. They are responsible for the duties imposed in terms of S 88(2) - [Duties](#)

# Securities Register

*“securities register” means the register required to be established by a profit company in terms of section 50 (1);*

*50. Securities register and numbering.—*

*(1) Every company must—*

- (a) establish or cause to be established a register of its issued securities in the prescribed form; and*
- (b) maintain its securities register in accordance with the prescribed standards.*