

CHAPTER 1

INTRODUCTION

The word "Secretary" indicates the idea of secrecy and it was derived from the Latin word "Secretarius" signifying a scribe or notary. In the olden days, a scribe refers to a person who keeps and writes up records of meeting.

When the Joint Stock Limited liability company was developed in United Kingdom in the mid nineteenth century, the directors needed someone to keep their records. This was the job of the secretary to the board. The function was largely clerical, with the directors holding the power. This master/servant relationship is well depicted in the case of **Barnet Hoares & Co. v South London Tramways Co. (1887)**. In this case, Lord Esher, Master of the Rolls, said that a secretary is a mere servant and his position is that he is to do what he is told. No person can assume that he has the authority to represent anything at all, nor can anyone assume that statements made by him are necessarily accepted as trustworthy without further enquiry.

A hundred years later, things have changed. Corporate activities have become complicated. Many companies run diverse enterprises through complex groups of subsidiary and associated companies. Legislation affecting companies has become substantial. The case of **Panorama Developments (Guilford) Ltd v Fidelis Furnishing Fabrics (1971)** shows how the courts have recognised the new situation. In this case, Lord Denning remarked that corporate secretary's ostensible authority should include the power of execution of contracts connected with the administrative side of a company. In Malaysia, a similar approach was supported by a decision of the Supreme Court of Malaysia on the scope of the secretary's power in the case of **Mohamed Bin Othman & Anor v Abdul Shattar Bin Abdul Rahim & Others (1987)**.

In Malaysia, to qualify to act as a company secretary, the Companies Act 1965 recognises the following prescribed bodies for the purposes of satisfying section 139(a), namely the Malaysian Association of the Institute of Chartered Secretaries and Administrators (MAICSA), the Malaysian Association of Certified Public Accountant (MACPA), the Malaysian Bar, the Sabah Law Association, the Advocates' Association of Sarawak and the Malaysian Association of Company Secretaries (MACS). Apart from the prescribed bodies, another category of individuals who fulfilled the requirements of the Registrar of Companies (ROC) may apply for licence to act as a company secretary. However, the concept of licensing of company secretaries should not be misunderstood as a "practice licence" generally applied to established professions like the advocates and solicitors, the approved auditors and other profession which has an Act of Parliament behind them. This licence is issued by the ROC to ensure that suitable persons can act as a company secretary. The Act does not provide any monitoring system such as disciplining a licensed defaulter, other than canceling the licence (Cheah 1996). The position of the company secretary is further legally formalised as an "Officer" of a company particularly in the Companies Act, 1965 (section 4); the Income Tax Act, 1967 (section 75(1)) and the Employees Provident Fund Act, 1991 (section 69). The promulgation of the Act in 1998 further enhanced the standing of the company secretary with the introduction of a new provision which enable them to vacate the office of secretary where none of the directors can be communicated with, at the last known residential address by lodging with the ROC a notice in a prescribed form.

The company secretary's role and responsibilities is not well defined in the company legislation. Traditionally, they performed various types of secretarial tasks ranging from handling board of directors affairs; matters which pertain to shareholders to corporate matters and keeper of companies statutory documents. However, over the years, the role and responsibilities of the company secretary have undergone tremendous changes from simple keeper of "secrets" or scribe and a mere servant to one who should be well versed with

accountancy, corporate law, tax law, personnel and employment law etc. Now, perhaps more relevant is the developing role of the company secretary in terms of advising the chairman and the board of directors and companies compliance obligations under the law. On this matter, the Report of the Finance Committee on Corporate Governance states that company secretary's role is no longer purely administrative. They play a crucial role in managing the transition from complacent and uninformed boards to ones that are clear about their responsibilities and to discharge them effectively. Thus, everything that concerns management and administrative compliance with the various legislation should be shouldered by the company secretary of the 1990's.

1.1 OBJECTIVES OF THE STUDY

The purpose of the research is to explore into the company secretarial function performed by the company secretary in Malaysia public listed companies on the main board and second board listed on Kuala Lumpur Stock Exchange (KLSE) in terms of their level of involvement in the primary and other types of duties and level of liaison with the external professional advisors of the company. This study undertake research into these questions which will provide a splendid opportunity to learn more about an area which previously was the preserve of anecdote and conventional wisdom.

In line with these, the specific objectives of this research are :

1. To establish the actual company secretarial functions of the company secretary in Malaysia public listed companies.
2. To compare that situation with established practice in five other countries, namely Australia, Canada, Hong Kong, New Zealand and United Kingdom as all these countries owe their genesis of the company law to United Kingdom.

3. And to draw some conclusions and make recommendations for improvement.

1.2 SIGNIFICANCE OF THE STUDY

It has been observed that there is generally very little recognition about the significance of the role of the company secretary despite the fact that he is an officer of the company and, in the same way as directors, personally liable for breaches of applicable rules and regulations. Despite the low recognition, the company secretary is usually required to carry out a wide spectrum of job duties in addition to his compliance function and he is expected to have a good grasp of the whole corporate picture and therefore, in many instances, is to be a source of advice to the board. However, the company secretary's role can sometimes be viewed as ambiguous as his work is not very well defined, unlike that of the accountant and lawyer.

Hence, the type of information generated in this study is likely to be significant as it will reveal the actual functions and responsibilities undertaken by the company secretary. It is also hope that this research would :

1. Encourage companies to understand and develop the company secretary's role appropriately.
2. Contribute to the professionalism of the company secretary's work.
3. And be able to support the MAICSA Professionalism development initiatives.