Journal of Administrative Science
Vol.16, Issue 1, 2019, pp. 118-126
Available online at *http:jas.uitm.edu.my*

# Comparative Analysis on the Requirement, Qualification and Responsibility of Company Secretaries in United Kingdom, Malaysia and India

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**Abstract**

*The study aims to compare the requirements, qualifications and responsibility of the company secretary in UK, Malaysia and India. The comparative analysis is made based on the provisions in the Companies Act and the Code of Corporate Governance in the three countries. The study found that every public company (whether listed or unlisted) must have at least one company secretary as required by the Companies Act. These requirements are similar in the UK, Malaysia and India, except that in UK only public company are required to have a company secretary. In general, all countries agreed being a member of a professional body is the basic qualification required to become the company secretary. In addition, the responsibilities of the company secretary were not clearly specify in the Companies Act of both UK and Malaysia. In contrast, the Companies Act 2013 of India provides brief explanation on the responsibility of company secretary.*

Keywords: *company secretary, corporate governance, appointments, qualifications, roles, responsibility*

## INTRODUCTION

Received: 11 February 2019
Accepted: 27 May 2019
Published: 28 June 2019

The importance of the company secretary's role in the governance of a company can be seen through the amendment, formulation and creation of laws and regulations that have been made on the Companies Act and the Code of Corporate Governance in most countries of the world. The company secretary is also known as corporate secretary, chartered secretary or board secretary. The term 'company secretary' is used in the United Kingdom and most of the Commonwealth countries. Meanwhile, the term 'corporate secretary' is always used in the United States and in China the term 'board secretary' is used (Filiz, 2013). Most countries agree that the role and duties of company secretary is becoming increasingly complex and demanding recently.

The existence of company secretary in a company is to meet the demand of institutional shareholders and investors who want the company to become more transparent to ensure better governance. Hence, this study makes comparisons to see the



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difference in terms of the requirements, criteria or qualifications and the role of company secretaries as specified in the Companies Act and the Code of Corporate Governance in the United Kingdom, India and Malaysia.

## CODE OF CORPORATE GOVERNANCE IN UNITED KINGDOM, INDIA, AND MALAYSIA

In the United Kingdom, the corporate governance approach is more on the principle-based rather than ruled-based. The principle-based approach can reduce the cost of doing business by not merely complying with the detailed regulations.In addition, the code uses the 'comply or explain' approach (UK Corporate Governance Code, 2016). This approach allows the companies to adopt the principles suggested by the Governance Code that are appropriate to them. The corporate governance in UK was first developed due to the corporate scandals, such as the Maxwell Case and because of economic declines in the early 1990s (Solomon, 2010). It started with the establishment of Cadbury Report in 1992 that addressed on the issues of relationship between chairman and CEO, roles of non-executive directors and reporting on internal control and on the company's position. Then, it was followed by the Greenbury Report (1995), Hampel Report (1998) and followed by the establishment of Combined Code which now known as UK Corporate Governance Code. The Combined Code readdressed the issues brought up inby previous reports (Tricker, 2015).

The economic downturn and social unrest in 1990-1991, led the Indian government to introduce a reformation programme that boost economy, provides greater market mechanism and reduce reliance on the government (Mallin, 2013). Thus, Confederation of Indian Industry (CII) has established the first report on corporate governance known as the Desirable Corporate Governance – A Code in the year 1996. The Code mentioned that corporate governance was dealt with laws, rules, procedures and implicit rules in which the company has to makes managerial decision related to its shareholders, creditors, customers, the State and employees. Besides, the code was established due to very limited protections given to the creditors and shareholders, and to ensure the business is sustainable. Later, in the year 2000, Committee on Crporate Governance formed by the Securities and Exchange Board of India (SEBI) published a Report of Kumar Mangalam Birla Committee on Corporate Governance.

Corporate governance in Malaysia was reformed due to the Asian Financial Crisis in the year 1997 to 1998. The areas of focus in the reformation were for the protection of shareholders right, transparency, accountability and independence of board directors, strengthening regulatory enforcement, and promote training and



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education at all levels (Rashidah Abdul Rahman, 2006). The High Level Finance Committee on Corporate Governance was established to come out with corporate governance code that is suitable for Malaysian context and to improve governance framework. The corporate governance approach in Malaysia adopts applies or explains alternative approach by requiring the board to apply the practices by considering the business environment (Malaysian Code on Corporate Governance, 2017).

## DISCUSSION

### *Company Secretary and Corporate Governance*

The corporate governance code and the act specify that board plays a pivotal role in ensuring a company's compliance with all relevant acts, requirement and regulations. This cannot be done without support from a company secretary. Company secretary is one of the most important officers since they are in a position which is very close to the board of directors and also chairman of the company. One of the probable reasons would be, the company secretary is being regarded as 'behind the scenes' in which their office and work is away from the glare of the public and media scrutiny (McNulty & Stewart, 2015). In the new Malaysian Code on Corporate Governance 2017 (the code), the company secretary's role is very important as to support the board. The code also suggested a qualified and competent company secretary need to be appointed into the position as to ensure board effectiveness. According to the code, a qualified and competent company secretary will provide sound corporate governance advice, comply with the rules and procedures and advocates the adoption of the corporate governance practices. Not only serving the board, they also need to attend to the stakeholders of the company with regards to their expectation and managing the communication and engagement with them on corporate governance issues.

The new Malaysian code on corporate governance (revised 2017) is inline with the UK Corporate Governance Code 2016. The similarity can be seen whereby the UK Code also specifies that the company secretary is the one responsible for advising the board through chairman on all governance matters. On the other hand, the company secretary is also considered as someonewho has a very close relationship to the chairman and the other members of the board. McNulty and Stewart (2015) reiterated that the company secretary stands on position as legal officer of the company and chief administrator of the board. In addition, Hopkinson (2000) believes that the evolution of corporate governance standards will provide company secretaries with opportunities to earn themselves central roles as company officers with responsibilities for corporate governance compliance. He comments that company secretaries are well placed to take on responsibilities as corporate governance monitors, since they already fulfil



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compliance functions and their presence on company boards makes them privy to the highest levels of corporate strategy. In this context, company secretaries are also considered to be one of the guardians of corporate governance.

### *Statutory Requirement to Appoint a Company Secretary*

The statutory requirement in relation to the appointment of company secretarycan be found in the Companies Act of the three countries. Section 271 of the United Kingdom Companies Act 2006 provides that a public company shall have a company secretary. However, a private company is not required to have a company secretary, and all duties to be carried out by the secretary may be done by the directors or any person authorized to act on behalf of the directors. Although the Companies Act 2006 does not require private companies to employ a company secretary, most of them still hire someone to fill the role, as the company still needs to ensure that all duties related to company secretarial are complied with and fulfilled (Baker, 2015). This makes the private companies opt to be at par with the public company in terms of having a company secretary.

In India, the company secretary falls under the definition of key managerial personnel as provided under section 203 of the Companies Act 2013. The section made it mandatory for all companies regardless of it status listed or non-listed to have a company secretary. It further explain that where every listed company or other class of companies (i.e. public non-listed company or private company) have paid up capital of five crores of rupees or more shall have a full-time company secretary. A person appointed as the company secretary shall not later be appointed or re-appointed as chairman, chief executive officer or managing director of the company.

Meanwhile, in Malaysia, section 235 of the Companies Act provides that both private and public companies shall have at least one company secretary who shall be a natural person, eighteen years of age or above, and a citizen or permanent resident of Malaysia having a principal place of residence in Malaysia. In addition, the company secretary shall be a member of professional bodies prescribed by the Minister or a person who holds a valid licence issued by the Companies Commission of Malaysia (refer to section 235(2) of the Companies Act 2016). The board of directors has power to determine the terms and conditions in relation to the appointment of company secretary as prescribed in the Companies Act 2016.



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### *Qualification of Company Secretary*

Appointment of a company secretary who is qualified and fulfills the criteria is always considered as fundamental. They are being considered as someone who has only one agenda which is to do the best for the company and the board (Beyond compliance: monitoring and mentoring, 2014). In the United Kingdom, its Companies Act highlighted the specific qualification for a person to be appointed as the company secretary. Section 273 requires the person to have the requisite knowledge and experience and have held the office of secretary of a public company for at least three of the five years immediately preceding the appointment as secretary. The most probable reasons that these features have been made to be complied are that the company secretary will not only be doing the filing and administrative task but advising the board on governance aspects as well. Besides, the other qualifications needed is to be a member of prescribed professional bodies under the Act, barrister, advocate or solicitor in the UK, or satisfying the directors that he or she is capable to discharge the functions as company secretary of the company.

In line with the UK Companies Act, section 236 (2) of the Malaysia Companies Act 2016 reiterate that a person appointed as the secretary has the required qualification as stipulated in section 235(2) which is mentioned earlier in the above section. Further, a person who is an undischarged bankrupt, convicted either within or outside Malaysia of any offence specifiedunder section 198 of the Act and ceased to hold a valid licence is not qualified to be appointed as the company secretary. In addition, the person appointed shall give written consent that he or she ageed to the appointment.

In contrast, in India, there is no specific qualification mentioned for the person to be appointed as the company secretary in its Companies Act 2013. However, the qualification of the company secretary is provided in the Company Secretaries Act 1980 (Amendment 2006). According to section 2(1)(a) of the Company Secretaries (Amendment) Act 2006, only members of the Institute of Company Secretaries of India (ICSI) may act as the company secretary in India. Thus, based on the above observation the minimum qualification of a company secretary is to be a member of professional bodies.

### *Roles and responsibilities of Company Secretary*

In most of the countries, the company secretary is responsible for the administrative affairs of the company. The significant role of the company secretary lies within its governance and compliance functions. Among the roles of the company secretary includes administration and management of business operations, organising



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shareholders and boards' meetings, compliance and governance matters. The secretary will ease the burden of the management in ensuring adherence to the law and avoidance of penalties due to non-compliance.

Kakabadse, Kakabadse, and Khan (2014) divided the roles of company secretary into three dimensions; which are technical, commercial and social. The technical dimension requires the secretary to understand company law, governance code and able to ensure compliance with the laws and procedures. On the other hand, commercial dimension requires the secretary to be involved in decision making, such as budget control, problem solving, and dissemination of information. Finally, social dimension focused more on the emotional intelligence, communication skills, conflict resolutions and etc. The International Finance Corporation (2016), claimed that the emerging roles of company secretary is as governance professional. Duties of the governance professional include dealings with boards' meetings, board composition and succession planning, delegation of authority, board evaluation, risk management, corporate strategy and corporate citizenship, ethical culture and stakeholder.

In UK, according to Cadbury Report (1992), the company secretary is responsible to ensure board procedures are being followed and reviewed regularly, prepare minutes of board proceedings, advise the board on how to discharge their roles and responsibilities in accordance to the rules and regulations and support the chairman in ensuring the effective function of the board. The responsibilities of the company secretary in relation to corporate governance is emphasised in the UK Code on Corporate Governance (2016). The responsibilities include ensuring good information flows within the board/committee/senior management/non-executive directors, assist in the professional development and advice the chairman on all governance matters. Unfortunately, the UK Companies Act 2006 did not lay down the roles and responsibilities of the company secretary.

Since Malaysia Companies Act 2016 mirror the UK Act, there is no specific provision in the Act that spell out clearly the roles of company secretary. However, the company secretary is considered as the officer of the company, under the interpretation of the Act. Hence, any obligations conferred to the officer, will also become the obligation of company secretary. The Malaysian Code on Corporate Governance (2017) has highlighted specific roles and responsibilities of company secretary, namely, to manage board and committee meetings, advise on board's roles and responsibilities, facilitate director training, advise the board on corporate disclosures, manage shareholder meeting, monitor and assist the board on corporate governance development and assist in stakeholder engagement.



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The roles and responsibilities of company secretary in India, was stated in section 205 of the Companies Act 2013, which are to report to the Board on the compliance matters and ensure the company complies with the applicable secretarial standard and discharge other duties as may be prescribed by the Act. The applicable secretarial standard was stated in the Company Secretaries Act, (1980). But, the Report of Kumar Mangalam Birla Committee on Corporate Governance did not specifically mention the roles and responsibilities of the company secretary in governance. The Report only mentioned that the matters of appointment and removal of company secretary should be subjected to board approval. The Institute of Company Secretaries of India (ICSI) describe in details the roles of company secretary, which includes corporate governance and business ethics, corporate compliance management, corporate and social sustainability, corporate affairs, strategic management, treasury functions, stakeholder relationship and others (ICSI, n.d).

## CONCLUSION

Based on the comparative analysis between UK, Malaysia and India, the study found similarities and differences in some extend in the Companies Act and Code of Corporate Governance of the three countries on the requirement, qualification and responsibility of the company secretary. The Companies Act of all the three countries require all companies to have a company secretary except for UK which made it mandatory for public company only. In general, the company secretary is expected to be qualified and competent in discharging his or her duties. All countries seem to adopt similar qualification for a company secretary. A member of a professional body is one of the basic qualification for a person to be appointed to the position company secretary. Moreover, the roles and responsibilities of the company secretary were specified in the Code of Corporate Governance in the UK and Malaysia. In India, the responsibilities of company secretary was provided in the Companies Act 2013.



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eISSN 2600-9374