

The Role of the Company Secretary in Listed Companies in China and England

by Editorial staff writers

- 13.1** Under the English Companies Act 2006, all incorporated public companies incorporated in the United Kingdom are required to have a company secretary.¹ Under Chinese law, it is only required for listed joint stock limited companies to have a company secretary.
- 13.2** It is a legal requirement for listed companies to have a company secretary. Art 123 of the PRC Company Law 2013 provides that, “‘a listed company shall have a company secretary of the board of directors, who shall be responsible for the preparation of the sessions of shareholders’ assembly and meetings of the board of directors, the preservation of documents, the management of the company’s stock rights, and the information of disclosure, etc.’ The company secretary is employed by and responsible to the board of directors. It is entitled to the status of senior executive of a company, which is the same under English law. This is provided in Art 216(1) of the PRC Company Law 2013.
- 13.3** Similar to the situation in England, a company secretary under Chinese law is also required of certain qualifications. What makes the difference is that, a company secretary in China only has to satisfy the requirements with requisite professional skills under the regulations and rules with relatively low binding effects. Under English law, the requirements for a company secretary of a listed company are stricter and there are specific requirements.
- 13.4** For example, the academic and professional qualifications of company secretary are specifically stipulated in the *Regulating Measures on Company Secretary of Listed Company*, promulgated by the Shanghai Stock Exchange, and the *Stock Listing Rules*, promulgated by Shenzhen Stock Exchange, aspects of requirements including professional knowledge and experience in finance, business administration, equity management, law and other areas. Hence, the professional and academic qualifications of a company secretary in a public listed company in China are not much different from his counterpart in England.
- 13.5** In China, a company secretary has to be a natural person. The English position is different. Under s 278 of the Companies Act 2006, legal entities can be company secretaries.
- 13.6** Art 124 of the PRC Company Law 2005 generally stipulates the responsibilities of company secretary *inter alia*: responsible for convening meetings of the

¹ Part 12 of the 2006 Act, s 271 in particular.

shareholders' assembly and meetings of the board of director, for storage and custody of documents and management of the company's stock rights, for information disclosure.

13.7 Specific responsibilities of the company secretary are also prescribed in other relevant regulations and rules in China. They include the Stock Listing Rules of both Shanghai and Shenzhen stock exchanges and their duties include the following²:

(I) Responsibility for communications between the company and related parties, stock exchanges and securities regulatory institutions.

(II) Responsibility for information disclosure issues. Under this heading, he has to be responsible for all issues in relation to information disclosure compliance. He has to supervise and help the company to devise an information disclosure administrative system and internal reporting system on important information; ensure that the company and other officers of the company discharge their obligations on information disclosure in full compliance with the law and the stock exchange. In addition to the above provisions, there are other specific responsibilities on information disclosure provided by some other legal documents issued by China Securities Regulatory Commission, Shanghai Stock Exchange, and Shenzhen Stock Exchange.

(III) Responsibility for coordination with investors. He is answerable to all consultative calls and visits of investors. He has to organize regular and casual meetings for investors; manage good relationships with both the mass media and the public and has to manage public relations on unusual happenings and crises.

(IV) Responsibility for preparation of meetings. He is responsible for preparatory work of the shareholders' general assembly and meetings of board of directors, submission of relevant documents and materials in accordance with the statutory procedures and participation in the meetings of the board of directors, drafting of resolutions and production and execution of minutes of the meetings.

(V) Responsibility for document preservation. The company secretary is responsible for the custody of the stock ledger of the company, directors' ledger, stock data of the company held by the controlling shareholders, directors, supervisors and senior executives, documents and minutes of shareholders' general assemblies and meetings of board of directors.

(VI) Responsibility for supervising the operations of the board of directors. The company secretary has to assist the board of directors with timely advice on

² See 3.2.2 Shanghai Stock Exchange Stock Listing Rules (as revised in 2014); 3.2.2, Shenzhen Stock Exchange Stock Listing Rules (as revised in 2014).

resolutions of board of directors, assist the board in the exercise of authority in compliance with national laws and regulations, the company's constitution and the relevant rules and regulations of stock exchange; make timely objection and demand the board of supervisors to declare themselves on any resolutions that are in violation of relevant provisions. However, if the board of directors persist in upholding such resolutions, the views of the relevant supervisor and company secretary must be recorded in the meeting minutes. It is the duty of the company secretary to bring to the attention of the related regulatory bodies of such issues.

(VII) Other responsibilities required under the Company law and the stock exchange

13.8 The company secretary, in discharging his duties, has the right to know about the financial and operating conditions of the company, participation in relevant meetings concerning information disclosure, sources to all documents of information disclosure, and request for timely provisions of relevant data and information from related departments and personnel of the company.

13.9 Regardless of the specific provisions, the basic responsibilities of a Chinese company secretary are similar to that of a company secretary in England. It is to be submitted that the company secretary's scope of duties under English law is more extensive. Also, a company secretary in England has more powers and rights as he takes part in corporate management which has the legal power of representing the company. The current Chinese law has not entitled company secretaries the right of entering into contracts on behalf of the company. According to Art 13 of PRC Company Law 2013, only the chairman of the board of directors, executive director and managers can be the legal representatives of the company. Legal representative of the company has the right to conclude contracts on behalf of the company.