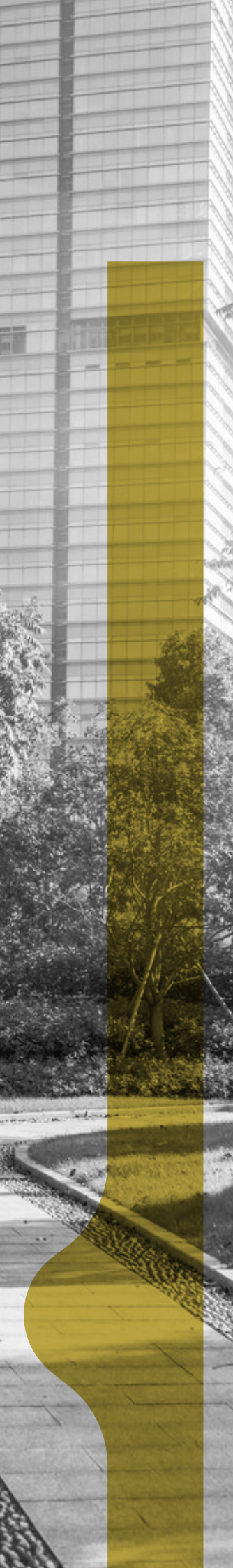


GOOD GOVERNANCE SERIES

**BUSINESS
SUSTAINABILITY -**
GOVERNANCE, BOARDS
AND THEIR SECRETARIES



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“History is full of larger-than-life leaders who inspire big changes. The danger comes when no one can penetrate the hype to discover if there is real substance and value underneath. An inspiring leader is a tremendous boon to any organization, but when leaders can't support their claims, values, or products with real substance, they're building a house of cards that will fall at the first light breeze”.

- *Kristin Derwinski*

INTRODUCTION

Case Study - The Silicon Valley Start-Up, Theranos

Founded by a 19-year-old Stanford drop-out in 2003, the story of Theranos, a Med-Tech Start-up in Silicon Valley is one to consider. The company touted a breakthrough in health technology through the use of small automated devices. In 2014, the company became a unicorn, valued at about \$10 billion. However, in the end, it was discovered that the technology was not what the founder Elizabeth Holmes claimed and she was charged with fraud in 2018.¹

One of the major issues considered is the unusual roster of names for the healthcare startup, with board members who have more experience in politics and government than in healthcare.



¹Elizabeth Holmes sentenced to more than 11 years for defrauding Theranos investors of hundreds of millions (2022) Northern District of California | Elizabeth Holmes Sentenced to More Than 11 Years For Defrauding Theranos Investors Of Hundreds Of Millions | United States Department of Justice. Available at: <https://www.justice.gov/usao-mdca/pr/elizabeth-holmes-sentenced-more-11-years-defrauding-theranos-investors-hundreds> (Accessed: 21 June 2024).

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CORPORATE GOVERNANCE, SUSTAINABILITY AND THE ROLE OF THE BOARD

The concept of corporate governance is one that ensures a company follows an established system of rules, practices, and processes. The end goal is achieving the company's set objectives. When a Company implements good governance principles, it wins in credibility, provides safety for investors' money, and generally satisfies the interest of stakeholders.

The primary responsibility for ensuring good corporate governance in companies lies with the Board. Thus, the composition of a company's Board should be one that can guide a company to become effective and also sustainable. The Board of Theranos was largely criticised for its composition, and lack in diversity of thought, backgrounds, skills, experiences and expertise² needed to drive the Company and perform its oversight function effectively. The Board was composed mainly of politicians and military heads.

Drivers of Sustainability – The Necessity of Company Culture

An effective board is pivotal in steering a company towards its goals by providing strategic direction, oversight, and support to its management team.³ However, creating a robust company culture is fundamental to achieving true board effectiveness.⁴ A culture

²Business Roundtable, (2016) Principles of corporate governance, The Harvard Law School Forum on Corporate Governance. Available at: <https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/> (Accessed: 21 June 2024).

³Tricker B, Corporate Governance: Principles, Policies, and Practices (4th edn, OUP 2019) 145-150. See also Principle 1 of the Nigerian Code of Corporate Governance (NCCG) 2018.

⁴Medland, D. (2015) Corporate 'culture' is not about art, Forbes. Available at: <https://www.forbes.com/sites/dinamedland/2015/03/22/corporate-culture-is-not-about-art-no/> (Accessed: 01 July 2024)

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of trust and open communication is essential for fostering an environment where informed decision-making and effective challenge of management can occur. Corporate culture underpins how boards operate and interact. It shapes the behaviors, values, and practices within an organization, directly influencing the board's ability to function effectively. A strong culture promotes transparency, accountability, and collaborative problem-solving, which are critical for navigating complex business challenges and making strategic decisions.⁵

While there are legal guiding principles on the modalities of running a board and achieving effectiveness, experts have recognized the limits of these procedural rules. According to a review on board dynamics, "simply tightening procedural rules for boards while neglecting the importance of strong, high-functioning work groups undermines effective governance."⁶ This perspective emphasizes that merely adhering to procedural guidelines without fostering a culture of trust and open communication is insufficient.

The case of Theranos offers a vivid illustration of a dysfunctional board, the company's governance structure granted the founder Elizabeth Holmes, extraordinary control, with "99.7% of the voting rights, and the authority to consolidate decision-making power. This centralised authority stifled dissent and critical inquiry within the board,⁷ ultimately contributing to the company's collapse."⁸ In contrast, companies like Salesforce and Microsoft demonstrate the transformative power of fostering a collaborative and transparent board culture. Adam Spearing from Salesforce underscores the impact of culture on business transformation, stating that "building towards the future requires working together in an environment of mutual trust and transparency."⁹ Similarly, Satya Nadella of Microsoft emphasizes empathy and open communication as essential for fostering a culture where "innovation comes from understanding unmet, unarticulated needs."¹⁰

The importance of conducting board¹¹ and corporate governance evaluations cannot be over-emphasised,¹² a key factor

⁵Smith, P. (2021) Salesforce Values and Culture Driven Innovation, Technology Magazine. Available at: <https://technologymagazine.com/company-reports/salesforce-values-and-culture-driven-innovation> (Accessed: 25 June 2024).

⁶What makes Great Boards Great (2014) Harvard Business Review. Available at: <https://hbr.org/2002/09/what-makes-great-boards-great> (Accessed: 25 June 2024).

⁷Tevanian, a board member of Theranos noted that Holmes was very good at deflecting where important questions about the technology or the progress of the company were asked. ABC News. Available at: <https://abcnews.go.com/Business/theranos-ceo-elizabeth-holmes-600-times-broadcast-deposition/story?id=60576630> (Accessed: 25 June 2024).

⁸Derwinski, K. (2022) 3 things we can learn about transparency from Theranos, Stewart Leadership Insights Blog. Available at: <https://blog.stewartleadership.com/3-things-we-can-learn-about-transparency-from-theranos> (Accessed: 25 June 2024).

⁹Smith, P. (2021) Salesforce Values and Culture Driven Innovation, Technology Magazine. Available at: <https://technologymagazine.com/company-reports/salesforce-values-and-culture-driven-innovation> (Accessed: 25 June 2024).

¹⁰Microsoft's next act (2018) McKinsey & Company. Available at: <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/microsofts-next-act> (Accessed: 25 June 2024).

¹¹See Principle 14 of the NCCG 2018.

¹²See Principle 15 of the NCCG 2018.

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in board evaluations includes ensuring the reports are discussed with the board generally and individually with members.¹³ Boards should also ensure their members have diversified expertise, experience, and skill, including as it relates to gender and ethnicity.¹⁴ Furthermore, the culture of learning and development should be encouraged, board members should strive to attend industry-related conferences, and governance workshops and take advantage of opportunities for professional development.¹⁵ By implementing these strategies, boards can move beyond traditional structures and procedural rules, cultivating a culture that supports strategic oversight and drives sustainable success.

THE ROLE OF CORPORATE SECRETARIES IN BOARD EFFECTIVENESS AND COMPANY SUSTAINABILITY

The role of the corporate secretary is fundamental in ensuring the smooth

functioning of an organisation's board of directors and governance processes.

The Evolving Role of the Company Secretary:

The role of a Company Secretary (“CoSec”) has significantly evolved from being perceived merely as a glorified Personal Assistant. CoSecs contribute to the success of every Board. They are an integral part of the Board and play a vital role in coordinating and facilitating meetings of the Board and its Committees, ensuring compliance with statutory and regulatory laws, transparency, and effective communication with stakeholders.¹⁶ Principle 8 of the NCCG 2018 recognizes the important role the CoSec plays in enhancing the effectiveness of the Board. By assisting both the Board and Management in developing and implementing good corporate governance practices and culture in the company, CoSecs significantly influence the conditions and environment conducive to a healthy boardroom culture and overall board effectiveness. This creates a substantial opportunity for CoSecs to shape and improve board dynamics and governance standards.

¹³See Principle 14.4 of the NCCG 2018.

¹⁴See Principle 2 of the NCCG 2018.

¹⁵See principle 13.2 of the NCCG 2018.

¹⁶Sarwar, M. (2018) Changing role of the Board secretary by Alison Dillon Kibirige, GCC Board Directors Institute (BDI). Available at: <https://newsletter.gccbdi.org/article/changing-role-of-the-board-secretary-by-alison-dillon-kibirige/> (Accessed: 28 June 2024).

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Key Responsibilities and Skills of an Effective Company Secretary:

The evolving role of the Company Secretary (CoSec) not only highlights their importance in governance and board effectiveness but also underscores the necessity for a diverse skill set and a clear understanding of their key responsibilities.¹⁷ The increased need for versatility and business knowledge, evolving regulatory demands for corporate governance, corporate failures and the need for enhanced business and legal advisories and improved responsibility to the Board and its committees have contributed to the reasons for the evolution of the role of a company secretary. In fact, to align with this reality, some jurisdictions have changed the term 'company secretary' to some of the following terms 'Chief Governance Officer', 'Governance Professional', and 'Governance Director'.¹⁸

An effective CoSec must navigate a complex landscape of regulatory compliance, corporate governance, and strategic advisory. To effectively navigate the complex regulatory landscape, a CoSec is required to communicate fluently, and possess interpersonal skills, legal and compliance knowledge, organizational

and administrative abilities, and strategic thinking and problem-solving. The NCCG¹⁹ provides for the duties of the Secretary to include:

- i. Provision of detailed guidance to the Board and Directors individually, as to how their responsibilities should be properly discharged in the best interest of the Company.
- ii. Coordination of the induction and training of new Directors.
- iii. Assisting the Chairman and MD/CEO in coordinating activities regarding the annual Board plan and with the administration of other strategic issues at the Board level.
- iv. Notification of Board members of upcoming meetings of the Board and its committees as well as other matters that warrant their attention.
- v. Compilation of Board papers and ensuring that the board's discussions and decisions are clearly and properly recorded and communicated to relevant persons in a timely manner.
- vi. Ensuring good information flow within the Board and its commit-

¹⁷Amicus, P. byLex (2021) The evolving role of a company secretary in the 21st Century, Lex Amicus. Available at: <https://lexamicuszw.wordpress.com/2021/06/17/the-evolving-role-of-a-company-secretary-in-the-21st-century/> (Accessed: 01 July 2024).

¹⁸Ibid

¹⁹Principle 8



tees and between senior management and NEDs.

- vii. Provision of guidance and advice to the Board and Company on matters of ethics, conflict of interest and good corporate governance.

Other duties of a Company Secretary include:

- i. Legal Duties - Attending meetings, (rendering company secretarial duties pre-, during and post-meeting) advising on compliance, and maintaining the registrars (if any).
- ii. Administrative functions and record keeping - rendering returns to the Commission.
- iii. Support for Board Governance Processes.

The role of a Company Secretary is integral to the smooth functioning and effectiveness of the board. By ensuring compliance, facilitating communication, and providing strategic advice, CoSecs play a vital role in the governance and overall success of a company.

CONCLUSION

Sustainability is the hallmark of every corporate organisation. The NCCG provides guiding rules on different matters as they pertain to good governance for companies, however, the key issue is how a board can be effective. The article depicts that effective governance goes beyond procedural rules, it requires a culture of trust and open communication to facilitate informed decision-making and effective challenges to management. Additionally, we must consider the role of the company secretary, this sometimes-hidden figure within the board plays an amazing role in aiding the board and management to be effective. For the company secretary to be effective, a diverse skill set is required, including strong communication, legal knowledge, and strategic thinking. This integrated approach of strong board culture and the strategic role of the CoSec ensures long-term company success and effective governance.

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MEET THE AUTHOR



OLUCHI NWAIZIM
SENIOR ASSOCIATE

Brought to you by TALP's Corporate and Commercial Department
For further enquiries, log onto www.topeadabayolp.com

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Please contact us using any of the details provided below:

TOPE ADEBAYO LP

25C Ladoke Akintola Street, G.R.A. Ikeja Lagos, Nigeria
p: +234 2016284627
e: info@topeadabayolp.com
w: www.topeadabayolp.com

