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Private Directors Association Newsletter May 2017  
*Part III The Corporate Secretary Role in Private Companies*  
*The Outsourcing Option for Staffing the Office of the Corporate Secretary*

Upcoming Events

*Independence and Diversity on Family Boards*

May 24, 2017  
 Starts 5:00 PM

Perkins Coie LLP  
 131 S. Dearborn Street  
 Suite 1600  
 Chicago, IL 60603

**Private Company Governance Summit 2017**

May 10-12, 2017  
 Swissotel  
 Chicago, IL

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**The Private Company Governance Summit 2017**  
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**Contributing Editor:** Paul Marcela served as General Counsel and Secretary of two Cerberus Capital Management portfolio companies. Previously, he performed as Associate General Counsel and Assistant Secretary of Dow Corning Corporation. Paul has developed a professional services firm exclusively devoted to providing outsource support to companies seeking assistance with the Corporate Secretary function.

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To increase shareholder value, many private company boards are adopting public company governance practices to strengthen their own governance practices. This trend dramatically increases the workload of the Corporate Secretary whose job it is to work with the board and executive management to implement and continuously manage those practices. Many companies don't have sufficient internal staff resources in terms of background, experience, or time to adequately perform this enhanced Corporate Secretary role in a thorough manner. This can prove problematic in small to mid-size companies where the Corporate Secretary role is typically assigned to other corporate officers whose time is consumed by performing their own substantial day-to-day executive responsibilities and who may not have the bandwidth to effectively perform the additional Corporate Secretary function.

**The Outsourcing Solution:** A cost-effective and value-added solution is to outsource all or a part of the Corporate Secretary's responsibilities to a managed corporate governance services firm. For many years, Corporate Secretariat Firms have provided corporate governance support services for many companies in the U.K. and many former British Commonwealth countries. Similar firms are emerging in the U.S., and companies are recognizing the value of externally staffing the Corporate Secretary role by retaining managed corporate governance services firms that have the resources and relationships necessary to fully deliver the services of an expert Corporate Secretary. These firms assign experienced corporate governance professionals to their clients to fortify the Corporate Secretary role and to allow company executives to perform their primary duties without distraction and without increasing staff. Their services can be retained on a full-time, part-time, or special project basis.

**Outsourced Corporate Secretary Services:** Managed corporate governance services firms typically serve mid-market private companies, private equity portfolio companies, venture capital backed emerging growth companies, pre-IPO private companies, subsidiaries of other companies, and nonprofit corporations. Their professionals collaborate with a company's elected Corporate Secretary to provide the following services:

- **Board and Committee Support**
  - Manage and attend shareholder, board, and committee meetings
  - Prepare meeting minutes
  - Present resolutions to the board for approval
  - Implement board and committee charters and foundational documents
  - Identify and implement best corporate governance practices
  - Maintain key corporate governance documents and records
- **Executive Management Collaboration**
  - Assist management to plan board and committee meetings
  - Help to determine meeting objectives
  - Identify matters for board discussion and decision-making
  - Develop, distribute and present board and committee materials

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**Chicago Board of Directors**

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Director	Claudia Allen
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Director	Venita Fields
Director	Bruce Goldstein
Director	Bill Hass
Director	M. Jay Heilbrunn
Director	Dan McHugh
Director	Morris Saunders
Director	Rebecca Wing

**Outsourced Corporate Secretary Services: ... (Continued)**

- **Subsidiary Governance Management**
  - Serve as Corporate Secretary for subsidiaries
  - Ensure global legal entity management
  - Facilitate periodic subsidiary board meetings
  - Maintain subsidiary corporate minute books
- **Governance Program Support**
  - Perform audits of existing corporate governance processes
  - Develop recommendations for improvement
  - Facilitate corporate governance process development and improvement
  - Manage implementation of board and committee evaluations
  - Develop and implement delegation of authority and resolution approval processes

They also provide additional value by proactively coordinating the retention and management of best-in-class third party corporate governance service vendors, including board portal and board manager software providers, registered agents, transfer agents and subsidiary management firms, to dramatically improve a company's corporate governance.

**Importance of a Robust Office of the Corporate Secretary:** Strong governance practices help prepare corporations for successful transactions while protecting them from legal action. Private company boards have developed an appreciation for the importance of sound governance practices in connection with corporate transactions such as public or private debt transactions, initial public offerings and divestiture and other exit strategy transactions. The outcome of governance due diligence review processes can affect a company's value for purposes of these transactions, and transaction closings require current, accurate corporate governance documentation. Managed corporate governance services firms can help companies have that documentation available when needed.

Also, documenting corporate formalities and board discussions and decisions helps a company to defend itself against lawsuits designed to "pierce the corporate veil" to gain access to shareholder assets and shareholder derivative lawsuits claiming breach of fiduciary duties by directors and officers. Managed corporate governance services firms help companies to ensure that there is adequate and appropriate documentation of board decision-making so that it can be available when needed to defend against these types of lawsuits.

**Summary:** Outsourcing Corporate Secretary responsibilities allows private companies to:

- Improve the robustness of corporate governance capabilities without increasing staff
- Allow company officers to focus on their primary executive responsibilities while ensuring that the Corporate Secretary function is fully performed by a seasoned professional
- Access additional resources and relationships to complete a myriad of corporate governance related projects and initiatives
- Ensure that corporate formalities are maintained and board discussions and decisions are appropriately documented
- Prepare for successful corporate transactions

**Conclusion:** Whether a company chooses internal or external resources, it is critical that the company's Corporate Secretary performs his or her obligations to the board and its committees in a thorough manner to ensure proper corporate governance in the best interests of the company and its shareholders.

**For further information on the Role of the Corporate Secretary on Private Company Boards Contact:**

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**Body of Knowledge Category: Board Operations and Law**