

**THE ROLE OF THE COMPANY SECRETARY IN
CORPORATE GOVERNANCE IN KENYAN LISTED
COMPANIES**

BY

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DECLARATION

This project is my original work and has not been presented for a degree in this or any other university.

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This project has been submitted for examination with my approval as the university supervisor.

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DEDICATION

This research study is dedicated to my husband Macharia, who was kind and willing to offer help even with the simplest task in making this research a success. It is also dedicated to my daughter Tasha, who I trust that through life will learn that even the largest task can be accomplished if it is done one step at a time.

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ABSTRACT

The role of company secretary has gained momentum in recent years more so in the responsibility it bears in promoting corporate governance especially in the recent rise in corporate scandals. This research study was aimed at examining the extent to which public companies in Kenya have taken up corporate governance guidelines and the role played by the Company Secretary in promoting corporate governance in these companies. Primary data was collected using a questionnaire, designed to be completed by Company Secretaries and the data was then analyzed using descriptive statistics. The findings revealed that most firms on the Nairobi Securities Exchange have indeed embraced corporate governance practices. In addition, a very large number of the respondents indicated that the Company Secretary plays a significant role in enhancing corporate governance practices. The study concludes by a confirmation that the various companies and their respective Company Secretaries were keen in ensuring compliance and adoption of corporate governance practices, as this is a key success factor for such companies which are subject to public scrutiny and are under strict observation by the regulatory bodies given the large interest/stake amongst the various stakeholders. It is recommended therefore that all companies secretaries need to ensure the adoption of corporate governance practices as this has a tremendous impact in improving the strategic direction of a company and plays a critical role in ensuring the success of the organization in the long term.

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ACRONYMS AND ABBREVIATIONS

AIMS	-	Alternative Investment Market Segment
CMA	-	Capital Markets Authority
CCG	-	Centre for Corporate Governance
FISMS	-	Fixed Income Security Market Segment
ICSA	-	Institute of Chartered Secretaries & Administrators
ICPSK	-	Institute of Certified Public Secretaries of Kenya
IDA	-	Institute of Directors –Administrators
KPC	-	Kenya Pipeline Company
MIMS	-	Main Investment Market Segment
NSE	-	Nairobi Securities Exchange
OECD	-	Organisation for Economic Co-operation and Development
PSCGT	-	Private Sector Corporate Governance Trust

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CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

According to (Cadbury, 1992) a country 's economy depends on the drive and efficiency of its companies. All organizations exist to realize certain objectives of their stakeholders. Good corporate governance requires that organizations deliver the desired results in the right way hence giving an organization a competitive edge. It is thus important that the effectiveness with which their boards operate yields a competitive advantage to the organisation. In order for corporations to gain and sustain competitive edge in a turbulent world, they must embrace innovation and adopt sound corporate governance practices so that they can meet new demands and grasp new opportunities. It is up to organizations to decide how to apply sound practices in developing their own frameworks for corporate governance, taking into account the costs and benefits of regulation (Organisation for Economic Co-operation and Development {OECD}, 2004).

Issues in corporate governance are not haphazard but rather they arise from a determinable path (Jones and Pollitt, 2003). The fall of global corporate giants has taught the world that no single organization is immune to fraud and mismanagement and the running of institutions should not be left to chance but they should be well governed and the necessary checks and balances should be put in place to ensure perpetuity and sustainability of the organization. In the last few decades, responsibility for developing and implementing processes to promote and sustain good corporate governance requires

the guidance of the Company Secretary (Institute of Chartered Secretaries & Administrators) {ICSA}, 2008). The Secretary to the Board plays a key role in guaranteeing that the Board's rules of procedure are complied with and are regularly reviewed. The Chairman of the Board and other Directors must seek counsel from the Company Secretary on the extent of their responsibility under prevailing laws and the Company's Articles of Association (Institute of Directors –Administrators {IDA}, 2005).

According to (ICSA, 2008) the Company Secretary normally has a responsibility for a company's compliance with the Companies' Act and where the company is listed, carries much of the responsibility for compliance with the prevailing regulator's listing and disclosure requirements. For listed companies, there is also the need to make the board aware of the responsibility not to release misleading information about the company's financial performance or trading condition, or failure to disclose sensitive information. This research study was aimed at contributing to the corporate governance literature by examining the extent to which public companies in Kenya have taken up corporate governance guidelines as a best practice. In particular, it examined the role played by the Company Secretary in promoting sound corporate governance practices in listed companies in Kenya.

1.1.1 The Concept of Corporate Governance

Over a period of time the definition of corporate governance has widened and may vary in different contexts or different economies (Solomon, J and Solomon, A, 2004).

According to (Cadbury, 1992) corporate governance is the system by which companies are directed and controlled. Corporate governance is a field in economics that investigates how to secure/motivate efficient management of corporations by the use of incentive mechanisms, such as contracts, organizational designs and legislation in order to deliver a competitive rate of return (Mathiesen, 2002).

Corporate Governance thrives at ensuring that a balance is maintained between economic, social, individual and communal goals with the aim of streamlining the interests of all the key stakeholders (Cadbury, 2000). Good corporate governance is the glue that holds together responsible business practices, which ensures positive workplace management, marketplace responsibility, environmental stewardship, community engagement and sustained financial performance (Buchs, 2009). According to (Institute of Directors in Southern Africa, 2009) good corporate governance is essentially about effective and responsible leadership which is characterized by the ethical values of responsibility, accountability, fairness and transparency. Corporate governance thus refers to putting in place mechanisms that ensures that the interests of all key stakeholders in an organization are achieved in an optimal and harmonious manner and by ultimately giving the organization a cutting edge in the industry it operates in.

1.1.2 The Company Secretary

The Company Secretary normally plays an important role in ensuring compliance with the Companies Act and the Capital Markets licensing requirements and general

regulations for the listed companies. The Company Secretary comes to 'act as the 'grout' to fill knowledge cracks that might otherwise appear during a board meeting (Handicott, 2002). The Company Secretary's duties are an essential ingredient in the implementation of sound corporate governance procedures (Maltas, 2000). In the eyes of many directors the position represents a shield against non-compliance and breaches of the Company law. The Company Secretary is thus required to be fully conversant with the law and procedure of meetings which at times is least appreciated, but can be crucial in the good management of a company's affairs (Lang, 1998).

Companies need to have a qualified, competent, fit and proper Company Secretary who must have the requisite knowledge and experience necessary to undertake the statutory duties and responsibilities of the post and advise the Board accordingly. The Company Secretary should have the responsibility of ensuring that the Company adheres to the code of best practice for corporate governance (Private Sector Corporate Governance Trust {PSCGT}, 1999). The Secretary to the Board plays a key role in guaranteeing that the Board's rules of procedure are complied with and are regularly reviewed. The Chairman of the Board and other Directors must seek counsel from the Company Secretary to the Board and when the latter is not a lawyer, from the Legal Counsel, on the extent of their responsibility under current legislation, the Articles of Association and Board Regulations (IDA, 2005).

1.1.3 Publicly Quoted Companies in Kenya

The Nairobi Securities Exchange was constituted in 1954 as a voluntary association of stock brokers registered under the Societies Act. During independence, stock market activity went down, due to uncertainty about the future of independent Kenya. In 1988, Kenya saw the first privatization through the NSE, of the successful sale of a 20% government stake in Kenya Commercial Bank. Notably, on February 18, 1994 the NSE 20-Share Index recorded an all-record high of 5030 points. For the first time since the formation of the Nairobi Securities Exchange, the number of Securities brokers increased with the licensing of 8 new brokers. In 1996, the largest share issue in the history of NSE, the privatization of Kenya Airways, came to the market. On Monday 11 September 2006, live trading on the automated trading systems of the Nairobi Securities Exchange was implemented (www.nse.co.ke).

The Nairobi Securities Exchange (NSE) is the principal securities exchange of Kenya. There are 62 listed companies on the NSE out of which 59 are equities and 6 are corporate bonds-3 of which have listed equities (www.nse.co.ke) The instruments traded are Equities, Preference shares, Treasury Bonds and Corporate Bonds. NSE has three market segments namely the Main Investment Market Segment (MIMS), the Alternative Investment Market Segment (AIMS) and the Fixed Income Security Market Segment (FISMS) (NSE Fact book, 2008). The area of concern for the study will be the MIMS and the AIMS which trade in equities.

The Capital Markets Authority which regulates the companies listed in the NSE has developed guidelines for good corporate governance practices by public listed companies in Kenya in response to the growing importance of governance issues. Every public listed company is required to disclose, on an annual basis, in its annual report, a statement of the directors as to whether the company is complying with these guidelines on corporate governance as prescribed under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002. Where the company is not fully compliant with the set guidelines, it is required to identify the reasons for non-compliance and indicate the steps being taken to become compliant (CMA Guidelines, 2002).

The Capital Markets Authority has provided guidance on principles of good corporate governance practices with regard to the attributes and composition of board and board committees, directors' remuneration and disclosure of information, board balance as far as the appointments to the board, multiple directorships, re-election of directors, resignation of directors, the role of Chairman and Chief Executive. CMA also directs that approval of major decisions should be done by Shareholders in Annual/ Extraordinary General Meetings. There should be accountability through having internal and external audits and through the preparation of Annual Reports and Accounts. In addition, there should be public disclosure of general and sensitive information by public listed and these listed companies should have qualified Company Secretaries and auditors. The CMA in its governance guidelines goes further in outlining the attributes of Audit Committee members, duties of Audit Committees, internal audit functions and participation in the meetings of Audit Committees (CMA guidelines, 2002). There is

however, the need for the CMA to highlight issues of concerns in corporate governance practices as far as the role played by the Company Secretary, in promoting sound governance practices in listed companies is concerned. It is important to note that the most effective company secretary is one who is regarded by the Board as its trusted adviser and who ensures total compliance with the legislative, regulatory and governance developments that may impact the company and in ensuring that the board is appropriately briefed on them.

1.2 Research Problem

As a result of a series of high-profile corporate collapses worldwide, there has been an exponential increase in the amount of laws, rules and guidelines setting in place a heightened standard of corporate governance best practice (McConvill, 2005). The Company Secretary is expected to be conversant with these new and increasing regulations to be able to advise the Board of directors. In the recent rise of the dramatic series of corporate meltdowns, major global economies have not been spared. Corruption is clearly happening worldwide, and it involves not only the government institutions but also the private institutions and civil society. The need therefore to have an elaborate corporate governance structure especially in public organizations is now more of essence than ever. Many board of directors look up to the Company Secretary for guidance in the adoption of these governance structures in their organizations and more so on how the adoption of good governance can mitigate fraud and other malpractices.

Cases of corruption in Kenya have attracted lively debates in many legal and business sectors which have in result shaken both local and foreign investor confidence (Manyuru, 2005). In many instances, the Company Secretary role is seen as either silent in the corporate scandals whilst in other instances, the Company Secretary is held liable especially when it is evident that he/she had executed some critical documents that gave way to fraud. According to (Ogoye, 2002) the increasing numbers of corporate failures and financial scandals have been caused by incompetence, fraud and abuse of office by the agents running the corporations. Corporate scandals, like the collapse of Euro Bank in 2004, the placement of Uchumi Supermarkets under receivership in 2004 due to mismanagement, the 2009 Triton Oil scandal which involved the unauthorized releasing of oil by Kenya Pipeline Company (KPC) without informing financiers and more recently the Board room wrangles in CMC Motors and East African Portland Cement Company (EAPCC), have thrust corporate governance practices into the spotlight. Kenyan companies now need to integrate ethics into their corporate cultures and concentrate on putting appropriate corporate governance mechanisms in place. In addition, the Company Secretaries in these organizations need to be bold, alert and exercise duty of care in their operations so as to safeguard the various stakeholders interests. Kamau (2011) noted that it is unfortunate that the approach taken by listed companies in disclosing their compliance on corporate governance requirements is largely a tick box exercise. The Company Secretary thus needs to step in and make the compliance process more of a proactive approach rather than being reactive.

In Kenya, various studies have been conducted on different aspects of corporate governance. Jebet (2001) conducted a study on Corporate Governance on the quoted companies in Kenya, According to Manyuru (2005) the study of Corporate Governance has attracted a great deal of public interest because of its apparent importance for the economic health of corporations and society in general. Gikunda (2008) established that a good number of companies listed in the NSE in Kenya had chosen to disclose information regarding various issues of corporate governance with a view to ensure compliance with regulatory requirement. Kibet (2008) conducted a survey on the role of Internal Audit in promoting good Corporate Governance in State Owned Enterprises. Muriithi (2008) noted that the Board had adopted good corporate governance practices that had yielded improved financial performance over time.

It is important to note that the Kenyan Companies' Act (Cap 486) and the CMA guidelines on corporate governance are silent on the role that the Company Secretary plays in corporate governance and just provide that a public company must have a qualified Company Secretary. While the above mentioned studies have adduced evidence on the various aspects of Corporate Governance, none of the studies has explored the role that the Company Secretary plays in corporate governance hence a knowledge gap exists that this study sought to narrow. What role does the Company Secretary play in the corporate governance of listed companies in Kenya?

1.3 Research Objectives

The objectives of this study were to:-

- i) Establish the extent to which public companies in Kenya have adopted corporate governance guidelines of the Capital Markets Authority and the Private Sector Corporate Governance Trust.
- ii) Determine the role of the Company Secretary in corporate governance of listed companies in Kenya.

1.4 Value of the Study

The study has created more awareness on the need for an elaborate corporate governance system in corporate institutions and specifically to the fact that the Company Secretary plays a critical role in enhancing adoption of sound governance practices. In line with the researchers' belief, the adoption of corporate governance guidelines as best practice seems to have taken root in Kenya based on the research findings. In addition, it was noted that in most of the listed companies the Company Secretary played a significant role in enhancing corporate governance practices as this is a key success factor in the long term success of these companies.

The study has contributed to the wider body of academic knowledge through publishing the results of its key findings, as well as opening up areas of further research. It is

recommended that a study designed to find the extent of the success of the CMA's Corporate Governance Practices be carried out whereby the challenges that the regulating body (CMA), the company Secretary and the institutions been regulated have faced in implementing Corporate Governance Practices can be explored. For the policy makers, the study has given guidelines on emerging issues in corporate governance and the role played by the Company Secretary requiring policy formulation and implementation. The researcher recommends that efforts be put in place to encourage the adoption of corporate governance practices across the various industries so as to ensure that the interests of the public at large are safe guarded as well as ensuring that an efficient capital market exists where the investors will have a high rate of return on their investments. The Government being one of the biggest regulatory body, needs to regulate the implementation of corporate governance practices both in the private, public and government entities to ensure that it is done in a uniform manner meeting high standards of quality that is deserved and desired.

In the long run the study has ignited a critical process and lays emphasizes that the various companies and their respective Company Secretaries need to be keen and proactive in ensuring compliance and adoption of corporate governance practices, as this is a key success factor for such companies, leading to the protection of stakeholders rights and sustainability of the long term value of institutions.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter presents a review of literature on corporate governance along theoretical and conceptual empirical dimensions. The chapter explores the concept of corporate governance, the theoretical foundation of corporate governance, the rationale for good corporate governance and the role of the company secretary in corporate governance.

2.2 The Concept of Corporate Governance

Corporate governance deals with the intertwining relationships between the corporation and its board of directors, management, shareholders, and other stakeholders. Boards must be free to drive their companies forward, but exercise that freedom within a framework of effective accountability which is the essence of any system of good corporate governance. Munene (2011) noted that the board plays the role of ensuring that appropriate standards of corporate governance and ethics are in place across the company. These standards include risk management systems, internal controls, reporting and disclosure systems and compliance processes. According to Mucuvi (2002, p.2), “the society is becoming increasingly concerned about how companies are run as a result of the realization of the effect of company decisions on the operating environment”. Society has also come to realize that it has certain rights as to how companies are run.

Corporate governance has been an important part of the Company law for many decades even before the various governance codes were drawn up. The Company Act (Cap 486) and the Financial Reporting Standards require directors to provide certain minimum information quarterly, semi-annually and annually. The Company Act also requires a company and makes it mandatory for public and /or listed companies to hold Annual General Meetings, a platform where the shareholders can hold the directors to account for their actions (Muriithi, 2009). According to Monks and Minow (2008), the importance of corporate governance dramatically became clear in 2002 as a series of corporate meltdowns led to the destruction of billions of dollars of shareholders wealth, the loss of thousands of jobs, criminal investigations of dozens of executive and record breaking bankruptcy filings. Kibet (2008, pg.1) established that corporate governance has in the recent past moved up sharply on the global agenda following numerous corporate financial scandals and the ensuing business collapses that have cost investors billions of money and devastated the lives of millions of employees who rely on these companies for their livelihood. In Kenya, knowledge in Corporate Governance is gaining momentum but not merely as much as it ought to have. The Capital Markets Authority has provided guidelines for good corporate governance practices by public listed companies in response to the growing importance of governance issues (CMA guidelines, 2002). CCG (2006) demonstrated that good governance ensures that managers and directors are held accountable for their actions hence making them more proactive and responsible to stakeholders' needs.

2.3 Theories of Corporate Governance

The essential theories in corporate governance began with the agency theory, which was expanded into stewardship theory and stakeholder theory and then evolved to resource dependency theory, transaction cost theory, political theory and ethics related theories. These theories address the cause and effect of variables, such as the composition of board members, audit committee, independent directors and the role of top management and their social relationships rather than its regulatory frameworks Daily et al, (2003). Hence, it is important to review a combination of various theories so as to best describe an effective and good governance practice rather than basing the review on corporate governance on a single theory.

2.3.1 Agency Theory

Agency theory is defined as the relationship between the principals, such as shareholders and agents such as the company management. In this theory, shareholders who are the owners or principals of the company, hires the agents to perform work. Principals delegate the running of business to the directors or managers, who are the shareholder's agents (Clark, 2004). In agency theory, the agent may be driven by self-interest which may bring about a conflict of interest between the aspirations of the principal and the agent's pursuits.

Holmstrom and Milgrom (1994) argued that instead of providing fluctuating incentive payments, the agents will only focus on projects that have a high return and have a fixed

wage without any incentive component. Agency theory can thus be used to establish the relationship between the ownership and management structure.

2.3.2 The Stewardship Theory

Stewardship theory has its roots from psychology and sociology and is defined by Davis, Schoorman and Donaldson (1997) as the manner in which a steward protects and maximises shareholders wealth through firm performance, because by so doing, the steward's utility functions are maximised. In this perspective, stewards are company executives and managers working for the shareholders, protects and make profits for the shareholders. Unlike agency theory, stewardship theory stresses not on the perspective of individualism (Donaldson and Davis, 1991), but rather on the role of top management being as stewards, integrating their goals as part of the organization.

The stewardship perspective suggests that stewards are satisfied and motivated when organizational success is attained. Agyris (1973) argues agency theory looks at an employee or people as an economic being, which suppresses an individual's own aspirations. However, stewardship theory recognizes the importance of structures that empower the steward and offers maximum autonomy built on trust.

2.3.3 The Stakeholder Theory

Stakeholder theory is defined as a firm with a system of stake holders operating within the larger system of the host society that provides the necessary legal and market infrastructure for the firm's activities. The purpose of the firm is to create wealth or value for its stake holders by converting their stakes into goods and services Clarkson (1994).

Porter (1992) made a recommendation that firms should encourage long-term employee ownership and encourage board representation by significant customers, suppliers, financial advisers, employees, and community representatives. Hill and Jones (1992) noted that both the implicit and explicit contractual relationships in a firm in developing the Stakeholder Agency Theory which is an interdependence between a firm and its strategic stakeholders.

2.3.4 Resource Dependency Theory

Resource dependence theory is a theory of organizations that seeks to explain organizational and inter-organizational behavior in terms of those critical resources that an organization must have in order to survive and function. The theory focuses on resources, the exchange of resources between organizations, those dependencies and power differentials created as a result of unequal resource exchange. This theory also focuses on the constraining effects such dependence has on organizational action and the efforts by organizational leaders to manage dependence (Johnson, 1995).

Hillman, Canella and Paetzold (2000) suggested that resource dependency theory focuses on the role that directors play in providing or securing essential resources to an organization through their linkages to the external environment. Johnson, Daily and Ellstrand (1996) noted that resource dependency theorists provide focus on the appointment of representatives of independent organizations as a means for gaining

access in resources critical to firm success. It has been argued that the provision of resources enhances organizational functioning, firm's performance and its survival.

2.3.5 The Political Theory

Political theory brings the approach of developing voting support from shareholders by purchasing voting power. Hence having a political influence in corporate governance may direct corporate governance within the organization. Public interest is much reserved as the government participates in corporate decision making, taking into consideration cultural challenges (Pound, 1993). The political model highlights the allocation of corporate power, profits and privileges are determined via the governments' favor. The political model of corporate governance can have an immense influence on governance developments.

Over the last decades, the government of a country has been seen to have a strong political influence on firms. This leads to an entrance of politics into the governance structure of firms (Hawley and Williams, 1996). The ability of corporate stakeholders to influence allocations between themselves at the micro level is subject to the macro framework, which is interactively subjected to the influence of the corporate sector. According to Hawley and Williams (1996) the political model of corporate governance has had immense influence on corporate governance developments in the last few decades.

2.3.6 Transaction Cost Theory

Transaction cost theory was an interdisciplinary alliance of law, economics and organizations. This theory attempts to view the firm as an organization comprising people with different perspectives and objectives. The underlying assumption of transaction theory is that firms have become so large they in effect substitute for the market in determining the allocation of resources. In other words, the organization and structure of a firm can determine price and production. Therefore, the combination of people with transaction suggests that transaction cost theory managers are opportunists and arrange firms' transactions to their interests (Williamson, 1979).

The transaction cost theory further holds that transactions with particular characteristics are governed efficiently by certain types of organizational arrangements and not by others. In particular, firms are formed to govern transactions that are characterized by uncertainty combined with economic spillovers resulting from asset indivisibilities, asset specificity, and asset extensibility (Williamson, 1983). In the transaction cost theory of the firm, an individual transaction is the unit of analysis for predicting organizational form.

2.4 The Rationale for Good Corporate Governance

The urgency for reform of the governance structures to instill good governance globally cannot be underestimated because of the number of countries in conflict situations and those which have experienced violent changes of Management due to instability. At the

dawn of this millennium, the issue of good governance has now assumed center stage in the global arena (Ssekandi, 2012).

It is important to note that if the management of the economic and social resources for development is efficient, and there is adequate participation in the government, private sector investments inflow into the country will be high, as the business community will be assured of a level playing field. Corporate Governance has thus become an issue of worldwide importance. The Corporation, which is the principal organ through which business is transacted, has a vital role to play in promoting economic development and social progress. It is the engine of growth and increasingly responsible for providing employment, public and private services, goods and infrastructure. The efficiency and accountability of the corporation is now a matter of both private and public interest, and corporate governance has thereby come to the head of the international agenda (Chisanga, 2010). According to (Irungu, 2012) the rise of poor corporate governance in Kenya is as a result of companies failing to tap the services of company secretaries as required by law.

According to (Ssekandi, 2012) good corporate governance is necessary in order to attract investors and assure them that their investments will be secure and efficiently managed, and in a transparent and accountable manner. It also helps in creating competitive and efficient companies and business enterprises as well as in enhancing accountability and performance of those entrusted to manage corporations. Without efficient companies or business enterprises, the country will not create wealth or employment and consequently, companies will stagnate and collapse. If business enterprises do not prosper, there

will be no economic growth, no employment, no taxes paid and invariable the country will not develop. The country needs well governed and managed business enterprises that can attract investments, create jobs and wealth and remain viable, sustainable and competitive in the global market place. Good corporate governance, therefore, becomes a prerequisite to national economic development.

2.5 Role of the Company Secretary in Corporate Governance Practices

The Wikipedia defines a Company Secretary as a senior position in a private company or public organization, normally in the form of a managerial position or above. Despite the name, the role is not a clerical or secretarial one in the usual sense. The company secretary ensures that an organization complies with relevant legislation and regulation, and keeps board members informed of their legal responsibilities. Company secretaries are the company's named representative on legal documents, and it is their responsibility to ensure that the company and its directors operate within the law. It is also their responsibility to register and communicate with shareholders. In many countries, private companies have traditionally been required by law to appoint one person as a company secretary, and this person will also usually be a senior board member (www.wikipedia.org).

The roles and duties of the company secretary have evolved over the years and with the change secretaries named in the registers of companies find themselves now fitting the role of advisors to a company. They are constantly relied upon by the members of the board for guidance and advice on matters that may relate to the company or to their position as members of the Board. Company secretaries in guiding their members have to

be familiar with the many legislatures and regulations that govern a particular company Chartered Secretaries of Malaysia (CSM, 2012).

According to (PSCGT, 1999) a company must always have a qualified, competent, fit and proper Company Secretary who must have the requisite knowledge and experience necessary to undertake the statutory duties and responsibilities of the post and advise the Board accordingly. The Company Secretary should have the responsibility of ensuring that the Company adheres to the code of best practice for corporate governance. The Secretary to the Board usually reports to the Board and may normally be held liable before it through the Chairman in all matters of corporate governance. The company secretary should share responsibility with relevant specialist functions for ensuring that the board is aware of current guidelines in this area and that it identifies and takes account of the significance of corporate responsibility issues in its stewardship and oversight of the company (ICSA, 2008).

(PSCGT, 1999) has provided for Code of Best Practice for Corporate Governance that the Company Secretary needs to fulfill which are outlined in the below paragraphs. This entails facilitating the smooth operation of the company's decision making and reporting mechanism, convening board and committee meetings and taking proper account of such meetings. The Company Secretary must ensure that Annual General Meetings are held in accordance with the requirements of the Companies Act and the company's Articles of Association. It is the duty of the Company Secretary to ensure that the company complies with its Memorandum and Articles of Association and ensuring compliance with the

CMA and NSE requirements. In addition, the Company Secretary should keep up to date statutory registers.

Other codes of best practice for the Company Secretary entails notifying the Registrar of Companies on certain changes regarding the company such as timely filing annual returns, accounts, returns of allotments, notices of changes in directors and/or the Company Secretary, coordinating the publication and circulation of the company's annual report to all key stakeholders. The Company Secretary should also maintain the Company's register of members, effect share transfers and deal with correspondence from shareholders, communicate with the shareholders, arranging for payment of dividends, issuance of documentation regarding rights issues, capitalization issues, and maintaining good shareholder relations. It is also in the Secretary's portfolio to implement properly authorized changes in the structure of the company's share and loan capital. Further, the Company Secretary should participate as a key member during corporate acquisitions so as to ensure that due diligence disclosures enable proper commercial evaluation prior to completion of a transaction (PSCGT, 1999).

In promoting sound governance practices, the Company Secretary should continually review developments in corporate governance, facilitate the proper induction of directors into their role, advise and assist the directors with respect to their duties and responsibilities, in particular compliance with company law and, CMA and NSE requirements. In addition, the Company Secretary should act as a channel of communication for non-executive directors, should, ensure the safe custody and proper

use of any company seals, administer the registered office and ensure that all business letters, notices and other official publications of the company show the name of the company and any other information as required by the statutes and that the company's name is displayed conspicuously outside all places of business. Lastly, the Company Secretary should ensure that procedures are in place for the correct administration of subsidiary companies and that correct information is given to the holding company, monitor and put in place procedures which allow for compliance with relevant regulatory requirements on retention of the minimum set of records required for commercial reasons and ensure that procedures are in place to allow adequate historical archives to be maintained (PSCGT, 1999).

There are no elaborate provisions in the Companies' Act and the Capital Markets Act on the role/expectations of the Company Secretary in promoting sound corporate governance practices and compliance which is a key governance practices. According to (Jebet, 2001) there is need for the Companies Act (Cap 486) to be reviewed so as to incorporate key principles of good governance. There is also the need for the Act to be more elaborate on the role of the Company Secretary. To the best of the researcher's knowledge, no study has been done on the role of the Company Secretary in corporate governance in Kenyan listed companies. This study thus seeks to explore the extent of practice of corporate governance practices in listed companies and the role played by the Company Secretary on the same.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

This chapter is a blueprint of the methodology that the researcher used to answer the research questions. This included the research design, population, research sample, data collection and data analysis of the research study.

3.2 The Research Design

Dooley (2007) defines a research design as the scheme, outline or plan that is used to generate answers to research problems. Surveys allow the collection of large amount of data from a sizable population in a cost effective way which can be analyzed quantitatively using descriptive and inferential statistics (Saunders et al., 2007). The main objective of the study was to seek answers to specific questions from a large number of respondents as to the extent of the practice of sound corporate governance and the role played by the Company Secretary in enhancing the same. A census is the procedure of systematically acquiring and recording information about the members of a given population. It is a regularly occurring and official count of a particular population.

3.3 The Population

A survey approach was adopted in carrying out this study where the units that were studied are companies listed in the Nairobi Securities Exchange. There are 62 listed companies on the NSE out of which 59 are equities and 6 are corporate bonds-3 of which have listed equities (www.nse.co.ke). A census collects information from every unit in a

population. As a result, data is truly representative of the whole population and detailed accurate data can be made available right down to small areas. A cross sectional census survey approach was found to be more appropriate as there were only 59 listed companies at the time of the study which was found to be a manageable population size. The target population for this study was therefore a census survey on the listed companies on the Nairobi Securities Exchange which trade in equities as at 31 May 2012 as outlined in Appendix 2.

The companies listed in the NSE are expected to adhere to the Companies Act, the CMA Act, the NSE listing guideline and the CDSC Act. In addition, the listed companies are required to adopt the relevant regulations depending on the industry that they operate in. Companies where the government is a majority shareholder must abide by the State Corporation Act while those in the banking and insurance industries must adhere to the Banking Act and Insurance Act respectively. This thus requires a delicate balance for the listed companies in ensuring that they comply with all these regulations and legislations which aim to enhance good corporate governance.

3.4 Data Collection

The census survey mainly focused on primary data collection techniques. A structured questionnaire was used to collect quantitative information from the companies listed in the NSE. “Questionnaires are commonly used to obtain important information about the population. Each item in the questionnaire is developed to address a specific objective, research question or hypothesis of the study” (Mugenda, O. and Mugenda, A. 2003, p.71). Questionnaires were found to be more convenient as most Company Secretaries of public

companies are busy persons and it was predicted that they would not have time to give oral interviews. Questionnaires were used so as to ease completion by the respondents and facilitate accurate data capture and analysis.

The questionnaire had three sections each. Part A of the questionnaire sought information concerning the respondents' Company Profile while Part B and C collected information about the extent of practice of sound corporate governance and the role that the Company Secretary plays in promoting sound corporate governance practices respectively. The questionnaire was completed by the Company Secretaries from the listed companies.

3.5 Data Analysis

Once the completed questionnaires were received from the respondents, numerical codes were assigned to the various close ended responses. The data was then analyzed using descriptive statistics. This involved the use of frequency tables and percentages. Frequency tables were used in arranging data obtained to facilitate working out percentages in order to address the objective of the study namely the extent to which public companies in Kenya have taken up corporate governance guidelines. Percentages revealed the proportions of different corporate governance practices that were being studied for relative comparison. The data collected was also analyzed using correlation analysis so as to establish the relationship between the Company turnover, years of existence and Company Secretary function of the public companies and the extent to which they have taken up corporate governance guidelines.

CHAPTER FOUR: DATA ANALYSIS, FINDINGS AND DISCUSSION

4.1 Introduction

This chapter presents an analysis of the research data using various statistical techniques and presents the research findings and an interpretation of the same. The study used questionnaires to collect data for analysis. The questionnaires were framed in a simple manner to enable quick and easy response and also deliver the fundamental information that the study was seeking. The returned questionnaires were first edited for completeness and then coded before being subjected to statistical manipulation and evaluation using statistical tools. The data was analyzed and presented in the form of tables. A cross sectional census survey of the 59 listed companies as at 31 May 2012 was conducted. The questionnaires was mainly emailed to the respondent and followed up by frequent telephone calls but in a few instances they were dropped and picked later. Out of the 59 listed companies, 52 companies were contacted as the Company Secretaries of the other seven companies were not accessible through phone calls or emails during the data collection stage.

4.2 Demographic Information

Out the 52 companies that were contacted, 30 gave positive feedback, 6 declined to complete the questionnaires while 17 of these companies did not respond. This yielded a response rate of 60.02% which was considered adequate for data analysis. NSE is stratified into segments according to various trading sectors (see appendix 2). The

Agricultural, Energy & Petroleum and insurance sectors each produced an equal number of respondents (3 each) making it 8% of the respondents while the Commercial and Services, Banking, Manufacturing and Allied, Construction and Allied sectors each produced 5 respondents making it 13.8% of the total respondents. The Investment sector produced 4 respondents (11.1%) while the Telecommunication & Technology and Automobiles & Accessories produced the lowest respondents of 1 (2.7%) and 2 (5.5%) respectively.

The following summary gives an analysis of the demographic information of the respondent companies in terms the function of the company secretary, turnover per annum, number of employees, years of existence and type of ownership.

Table 4.2.1: Company Secretary's function

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Internal	10	33.3	33.3	33.3
	Outsourced	20	66.7	66.7	100.0
	Total	30	100.0	100.0	

Source: Research data

From Table 4.2.1, 66.7% of the Company Secretaries in the respondent were outsourced while 33.3% were in-house. There seems to be no direct connection with respect to whether the function of the Company Secretary was in-house or external and the adoption of corporate governance practices in the various respondent companies. It was established that irrespective of where the function was housed, there was adoption and practice of corporate governance practices to a very large extent.

Table 4.2.2: Company Turnover per Annum

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	10 M - 100 M	1	3.3	3.3	3.3
	101 M - 500 M	2	6.7	6.7	10.0
	501 M - 1 B	3	10.0	10.0	20.0
	Over 1 B	24	80.0	80.0	100.0
	Total	30	100.0	100.0	

Source: Research data

From Table 4.2.2, 80.0% of the respondent companies had turnover of over 1 billion Kenya shillings per annum while 10.0%, 6.7% and 3.3% of the respondents had turnover of between Kenya shillings 501 million to 1 billion, 101 million to 500 million and 10 million to 100 million respectively. There seems to be a connection between the size of the respondent Company in terms of turnover per annum and the adoption of corporate governance guidelines as best practice.

Table 4.2.3: Number of Employees

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	10 - 50	2	6.7	6.7	6.7
	51 - 200	6	20.0	20.0	26.7
	201 - 500	6	20.0	20.0	46.7
	Over 500	16	53.3	53.3	100.0
	Total	30	100.0	100.0	

Source: Research data

From Table 4.2.3, 53.3% of the respondent companies had over 500 employees while 40% had less than 500 employees. Only 6.7% of the respondent companies had between 10 and 50 employees.

Table 4.2.4: Years of Existence

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 6 - 10	1	3.3	3.3	3.3
11 - 15	2	6.7	6.7	10.0
Over 15	27	90.0	90.0	100.0
Total	30	100.0	100.0	

Source: Research data

From Table 4.2.4, 90.0% of the respondent companies had existed for over 15 years while only 10% of the respondent companies had existed for between 6 and 15 years.

Table 4.2.5: Majority Shareholding

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Local	22	73.3	73.3	73.3
Foreign	5	16.7	16.7	90.0
Both - (50 /50)	3	10.0	10.0	100.0
Total	30	100.0	100.0	

Source: Research data

From Table 4.2.5, 73.3% of the respondent companies were local companies while 16.7% had the majority shareholders as foreigners. Only 10% of the respondent companies were owned 50% by local and 50% by foreigners.

4.3 Extent of practice of Corporate Governance

The summary below gives an analysis of the extent of practice of Corporate Governance within the respondent companies in terms of whether the Company had adopted the CMA Corporate Governance guidelines, the industry related Corporate Governance guidelines and its own customized internal Corporate Governance guidelines among other corporate governance guidelines.

Table 4.3.1: Extent of practice of Corporate Governance

No.	Corporate Governance Practice	Response	Frequency	Percent	Mean Score	Standard Deviation
1.	The Company has adopted the CMA Corporate Governance guidelines	Not at all	1	3.3	4.43	0.56832
		Large Extent	15	50.0		
		Very Large Extent	14	46.7		
		Total	30	100.0		
2.	The Company has adopted the industry related Corporate Governance guidelines	Not at all	5	16.7	3.83	1.64177
		Large Extent	12	40.0		
		Very Large Extent	13	43.3		
		Total	30	100.0		
3.	The Company has its own customized internal Corporate Governance guidelines	Not at all	2	6.7	4.17	0.98553
		Moderate Extent	6	20.0		
		Large Extent	7	23.3		
		Very Large Extent	15	50.0		
		Total	30	100.0		
4.	Publishing of a corporate governance statement in the annual report.	Not at all	2	6.7	4.53	1.16658
		Large Extent	5	16.7		
		Very Large Extent	23	76.7		
		Total	30	100.0		
5.	Where the company is not fully compliant with the set guidelines, it identifies the reasons for non-compliance and indicate the steps being taken to become compliant.	Not at all	8	26.7	3.43	2.02882
		Moderate Extent	1	3.3		
		Large Extent	7	23.3		
		Very Large Extent	14	46.7		
		Total	30	100.0		
6.	The Company has adopted principles of good corporate governance practices with regard to the attributes and composition of board and board committees	Moderate Extent	3	10.0	4.57	0.67891
		Large Extent	7	23.3		
		Very Large Extent	20	66.7		
		Total	30	100.0		

No.	Corporate Governance Practice	Response	Frequency	Percent	Mean Score	Standard Deviation
7.	The Company has one third of its Board of directors as independent and non-executive directors	Not at all	2	6.7	4.20	1.37465
		Moderate Extent	3	10.0		
		Large Extent	3	10.0		
		Very Large Extent	20	66.7		
		Total	30	100.0		
8.	The Chairman of the Board is independent and non –executive	Not at all	5	16.7	3.83	1.5775
		Moderate Extent	5	16.7		
		Large Extent	4	13.3		
		Very Large Extent	16	53.3		
		Total	30	100.0		
9.	The Board of Directors ensures that approval of major decisions is done by Shareholders in Annual/ Extraordinary General Meetings.	Moderate Extent	2	6.7	4.77	0.56832
		Large Extent	3	10.0		
		Very Large Extent	25	83.3		
		Total	30	100.0		
10.	The Board of Directors ensures accountability through having internal and external audits and through the preparation of Annual Reports and Accounts.	Large Extent	3	10.0	4.90	0.30513
		Very Large Extent	27	90.0		
		Total	30	100.0		
11.	The Board of Directors ensures public disclosure of general and sensitive information that could influence share price at the Securities Exchange.	Not at all	1	3.3	4.67	0.99424
		Moderate Extent	1	3.3		
		Large Extent	3	10.0		
		Very Large Extent	25	83.3		
		Total	30	100.0		
12.	The Company has an Audit Committee which carries out the duties of Audit Committees and liaises with the internal audit functions	Not at all	1	3.3	4.73	0.82768
		Moderate Extent	1	3.3		
		Large Extent	2	6.7		
		Very Large Extent	26	86.7		
		Total	30	100.0		

No.	Corporate Governance Practice	Response	Frequency	Percent	Mean Score	Standard Deviation
13.	The Company has a detailed Board Manual/Charter which inducts and explains to each Director his collective and individual duties, obligations and responsibilities as a Director.	Not at all	5	16.7	3.77	1.6121
		Moderate Extent	1	3.3		
		Large Extent	1	3.3		
		Very Large Extent	10	33.3		
		Total	13	43.3		

Source: Research data

From Table 4.3.1, 46.7%, 43.3% and 50% of the respondents indicated that they had adopted CMA Corporate Governance guidelines, the industry related Corporate Governance guidelines and its own customized internal Corporate Governance guidelines respectively to a very large extent while 50.0%, 40.0% and 23.3% of the respondents indicated that they had adopted CMA Corporate Governance guidelines, the industry related Corporate Governance guidelines and its own customized internal Corporate Governance guidelines respectively to a large extent. A mean score of 4.43 was obtained with respect to the adoption of CMA Corporate Governance guidelines yielding a standard deviation figure of 0.568. From the results above, we can confidently say that over 90% of the respondents surveyed have to large extent adopted the CMA Corporate Governance guidelines. This is further supported by the low standard deviation of 0.568 implying that the data points are very close to the mean of 4.43.

It was noted from Table 4.3.1, that a large majority of respondents (76.7%) normally publishes a corporate governance statement in their annual report while 16.7% did so to a large extent. Only 6.7% of the respondent did not publish a corporate governance statement in their annual report. This gives a mean score of 4.53 and a standard deviation

figure of 1.167 implying that the data points are spread out over a moderately large range of values. It was further noted that a large majority of respondents (66.7%) had the attributes and composition of board and board committees as per the corporate governance guidelines while 23.3% did so to a large extent. Only 10.0% of the respondent companies did not consider the corporate governance guidelines in coming up with the attributes and composition of board and board committees. 83.3% of the respondent companies had the Board of Directors in the respondent companies ensure that approval of major decisions is done by Shareholders in Annual/ Extraordinary General Meetings to a very large extent while 10% of the respondent companies did so to a large extent. From the results above we can confidently say that 90% of the respondents Company's Board of Directors surveyed, have at the very minimum ensure that all major decisions is done by Shareholders in Annual/ Extraordinary General Meetings. This is supported by the low standard deviation figure of 0.305. It can also be pointed out that 83.3% of the Directors in the respondent companies had at a very large extent ensured the disclosure of general and sensitive information that could influence share price at the Securities Exchange.

4.4 The Role of the Company Secretary in Corporate Governance

The summary below gives an analysis on the extent to which the Company Secretary plays a role in enhancing corporate governance practices such as facilitating the smooth operation of the company's decision making and reporting mechanism, convening board, committee meetings and Annual General Meetings are held in accordance with the

requirements of the Companies Act and the company's Articles of Association among others.

Table 4.4.1: The Role of the Company Secretary in Corporate Governance

No.	Corporate Governance Practice	Response	Frequency	Percent	Mean Score	Standard Deviation
1.	Facilitating the smooth operation of the company's decision making and reporting mechanism.	Not at all	1	3.3	4.43	0.93526
		Moderate Extent	3	10.0		
		Large Extent	7	23.3		
		Very Large Extent	19	63.3		
		Total	30	100.0		
2.	Convening board and committee meetings in accordance with the requirements of the Companies Act and the company's Articles of Association and taking proper account of such meetings.	Moderate Extent	2	6.7	4.77	0.56832
		Large Extent	3	10.0		
		Very Large Extent	25	83.3		
		Total	30	100.0		
3.	Ensuring that Annual General Meetings are held in accordance with the requirements of the Companies Act and the company's Articles of Association	Large Extent	2	6.7	4.93	0.25371
		Very Large Extent	28	93.3		
		Total	30	100.0		
4.	Ensuring that the company complies with its Memorandum and Articles of Association, monitoring and ensuring compliance with the CMA and NSE requirements.	Large Extent	3	10.0	4.90	0.30513
		Very Large Extent	27	90.0		
		Total	30	100.0		

No.	<u>Corporate Governance Practice</u>	<u>Response</u>	<u>Frequency</u>	<u>Percent</u>	<u>Mean Score</u>	<u>Standard Deviation</u>
5.	Maintenance of up to date statutory registers of Members, Mortgage and charges; Directors and secretary, Directors' interests in shares and debentures.	Moderate Extent	1	3.3	4.77	0.50401
		Large Extent	5	16.7		
		Very Large Extent	24	80.0		
		Total	30	100.0		
6.	Notifying the Registrar of Companies on certain changes regarding the company such as timely filing of annual returns, accounts, returns of allotments, notices of changes in directors and/or the Company Secretary.	Large Extent	6	20.0	4.80	0.40684
		Very Large Extent	24	80.0		
		Total	30	100.0		
7.	Coordinating the publication and circulation of the company's annual report and accounts and interim statements to all the stakeholders.	Not at all	1	3.3	4.57	0.97143
		Moderate Extent	1	3.3		
		Large Extent	4	13.3		
		Very Large Extent	23	76.7		
		Total	30	100.0		
8.	Participating as a key member during corporate acquisitions	Not at all	3	10.0	4.27	1.25762
		Moderate Extent	2	6.7		
		Large Extent	6	20.0		
		Very Large Extent	19	63.3		
		Total	30	100.0		

No.	<u>Corporate Governance Practice</u>	<u>Response</u>	<u>Frequency</u>	<u>Percent</u>	<u>Mean Score</u>	<u>Standard Deviation</u>
9.	Continually reviewing developments in corporate governance and advising the Board on new legal requirements.	Not at all	1	3.3	4.40	0.89443
		Moderate Extent	5	16.7		
		Large Extent	5	16.7		
		Very Large Extent	19	63.3		
		Total	30	100.0		
10.	Ensuring the safe custody and proper use of company seal and letterheads	Not at all	1	3.3	4.70	0.87691
		Moderate Extent	2	6.7		
		Large Extent	1	3.3		
		Very Large Extent	26	86.7		
		Total	30	100.0		
11.	Ensuring that procedures are in place for the correct administration of subsidiary companies and that correct information is given to the holding company.	Not at all	1	3.3	4.50	1.00858
		Moderate Extent	2	6.7		
		Large Extent	4	13.3		
		Very Large Extent	22	73.3		
		Total	30	100.0		
12.	Ensuring that procedures are in place to allow adequate historical archives of key company records.	Not at all	1	3.3	4.53	0.9371
		Moderate Extent	3	10.0		
		Large Extent	4	13.3		
		Very Large Extent	22	73.3		
		Total	30	100.0		

Source: Research data

From Table 4.4.1, 83.3% of the respondents indicated that they had at a very large extent ensured compliance with the Company's Memorandum and Articles of Association in convening board and committee meetings and taking proper account of such meetings while 10% of the respondents did so to a large extent. This resulted to a mean score of 4.77. From the results above we can confidently say that over 90% of the respondents surveyed have to large extent ensured compliance with the Company's Memorandum and Articles of Association in convening Board and Committee meetings. This is further supported by the low standard deviation of 0.568 implying that the data points are very close to the mean of 4.77. From Table 4.4.1, 93.3% of the respondents indicated that to a very large extent, they played the role of ensuring that Annual General Meetings are held in accordance with the requirements of the Companies Act and the company's Articles of Association while 6.7% of the respondents played the same role to a large. From the results above we can confidently say that over 100% of the respondents ensure that Annual/ Extraordinary General Meetings are convened in accordance with the statutory requirements. This is supported by the low standard deviation of 0.253 implying that the data points are very close to the mean score of 4.93.

It can also be pointed out that 80% of the respondents indicated that they had at a very large extent ensured that the Registrar of Companies was notified of all the changes that require notification to be made as per the Companies Act while 20% of the respondents did so to a large extent. This is a statutory requirement which relates to notification on changes in share capital, shareholding, directors, company secretary, registered office among other changes be made to the Registrar of Companies. From the table above, it is

important to note that the Company Secretary in most of the respondent companies was not part of the key member during company restructuring or acquisitions. This can be deduced by the high standard deviation figure of 1.258 and a mean score of 4.25 which is relatively lower than the other mean scores in the various governance practices where the Company Secretary is deemed to play a key role. This therefore raises a point of emphasis on the need to have the Company Secretary participate as a key member of the company team established to implement corporate acquisitions and ensuring that due diligence disclosures enable proper commercial evaluation prior to completion of a transaction. In addition, the Company Secretary should ensure that procedures are in place for the correct administration of subsidiary companies, that correct information is given to the holding company and that procedures are in place to allow adequate historical archives of key company records given the moderately high standard deviation figures of 1.00 and 0.94 respectively.

4.5 Correlations between Demographic Information and Selected Corporate Governance Practices

The summary below gives an analysis on the data using correlation analysis so as to establish the relationship between the Company turnover and Company Secretary function and the extent to which they have adopted various corporate governance guidelines.

Table 4.5.1: Company turnover p.a * adoption of CMA corporate governance guidelines

		Company turnover p.a	CMA corporate governance guidelines
Company turnover p.a	Pearson Correlation	1	.207*
	Sig. (1-tailed)		.136
	N	30	30
CMA corporate governance guidelines	Pearson Correlation	.207*	1
	Sig. (1-tailed)	.136	
	N	30	30

*. Correlation is significant at the 0.05 level (1-tailed).

The above table, 4.5.1 has one dependent variable i.e. adoption of CMA corporate governance guidelines and one independent variable i.e. Company turnover p.a. A comparison was made using a statistical analysis model, specifically the Pearson Product-Moment Correlation {Sig. (1-tailed)} to ascertain the strength as well as direction of the relationship between the Company turnover and adoption of CMA corporate governance guidelines in listed companies. The coefficient (r) was computed as the ratio of covariance between the variables to the product of their standard deviations.

The hypothesis of the Pearson Product-Moment Correlation coefficient (r) was:

- $r > 0$ (indicates a positive relationship)
- $r < 0$ (indicates a negative relationship)
- $r = 0$ (indicates non existence of any relationship)

The closer the coefficients are to +1.0 or –1.0, the greater the strength of the linear relationship. The Pearson correlation coefficient r , is 0.207 (table 4.5.1 results) which shows that there is a weak relationship between the Company turnover and adoption of CMA corporate governance guidelines in listed companies. The Sig. (1-Tailed) value indicates if there is a statistically significant correlation between the two variables. Since the Sig. (1-Tailed) value is more than 0.05 (0.136) then we conclude that there is no statistically significant correlation between the two variables. That means, increases or decreases in Company turnover (independent variable) does not significantly relate to increases or decreases in adoption of CMA corporate governance guidelines (dependent variable).

Table 4.5.2 Company Secretary function * Extent of corporate governance practice

		Company Secretary function	Extent of corporate governance practice
Company Secretary function	Pearson Correlation	1	.168*
	Sig. (1-tailed)		.187
	N	30	30
Extent of corporate governance practice	Pearson Correlation	.168*	1
	Sig. (1-tailed)	.187	
	N	30	30

*. Correlation is significant at the 0.05 level (1-tailed).

The above table 4.5.2 has one dependent variable i.e. extent of corporate governance practice and one independent variable i.e. Company Secretary function. A comparison

was made using a statistical analysis model, specifically the Pearson Product-Moment Correlation {Sig. (1-tailed)} to ascertain the strength as well as direction of the relationship between the Company Secretary function and extent of corporate governance practice in listed companies.

The hypothesis of the Pearson Product-Moment Correlation coefficient (r) was:

- $r > 0$ (indicates a positive relationship)
- $r < 0$ (indicates a negative relationship)
- $r = 0$ (indicates non existence of any relationship)

The Pearson correlation coefficient r , is 0.168 (table 4.5.2 results) which shows that there is a weak relationship between the Company Secretary function and extent of corporate governance practice in listed companies. The Sig (1-Tailed) value indicates if there is a statistically significant correlation between the two variables. Since the Sig. (1-Tailed) value is more than 0.05 (0.187) then we conclude that there is no statistically significant correlation between the Company Secretary function and extent of corporate governance practice in listed companies.

Table 4.5.3: Company Secretary function * Efficient company operations

		Efficient company operations	Company Secretary function
Efficient company operations	Pearson Correlation	1	.400*
	Sig. (1-tailed)		.014
	N	30	30
Company Secretary function	Pearson Correlation	.400*	1
	Sig. (1-tailed)	.014	
	N	30	30

*Correlation is significant at the 0.05 level (1-tailed).

The above table 4.5.3 has one dependent variable i.e. efficient company operations and one independent variable i.e. Company Secretary function. A comparison was made using a statistical analysis model, specifically the Pearson Product-Moment Correlation {Sig. (1-tailed)} to ascertain the strength as well as direction of the relationship between the Company Secretary function and efficient company operations in listed companies.

The hypothesis of the Pearson Product-Moment Correlation coefficient (r) was:

- $r > 0$ (indicates a positive relationship)
- $r < 0$ (indicates a negative relationship)
- $r = 0$ (indicates non existence of any relationship)

The value of r is 0.400 (table 4.5.3 results) which shows that there is a weak relationship between the Company Secretary function and efficient company operations in listed companies. Since the Sig (1-Tailed) value is less than 0.05 (0.014) then we conclude that

there is a statistically significant correlation between the Company Secretary function and efficient company operations in listed companies.

Based on the above findings, it can be deduced that irrespective of the level of the Company turnover per annum, there was adoption of corporate governance practices by the respondent listed companies. In addition, the function of the company secretary in terms of whether the Company Secretary was internal or outsourced did not impact on the adoption of corporate governance practices by the respondent listed companies. On the other hand, the function of the company secretary in terms of whether the Company Secretary was internal or outsourced did have an impact on the level of efficiency in company operations in listed companies.

4.6 Summary and Interpretation of Findings

The findings of the study show that Company Secretary play a significant role in adoption of corporate governance practices in Kenyan listed companies.

The above findings are in tandem with the Private Sector Corporate Governance Trust guidelines (PSCGT, 1999) which maintains that a company must always have a qualified, competent, fit and proper Company Secretary who must have the requisite knowledge and experience necessary to undertake the statutory duties and advise the Board accordingly. The findings of this study are also in tandem with the research publications of ICSA (2008) which states that the company secretary should share responsibility with relevant specialist functions for ensuring that the board is aware of current regulations and that it takes account of its role in its stewardship and oversight of the company. In

addition, the study concurs with the Institute of Certified Public Secretaries of Kenya (ICPSK) chairperson's statement that " failure to use certified public secretaries was at the heart of poor corporate governance in companies, including conflict of interest at the Board level" (Irungu, 2012).

The study largely concurs with the agency theory especially in the fact that the stakeholders who are the various interest groups/ or principals of the company look up to the Company Secretary as a key agent and delegates the running of business to the Board and management, who are the shareholder's agents. The Company Secretary therefore must step in to fill knowledge gaps that might otherwise appear during a board meeting especially with regard to compliance and adoption of corporate governance practices. In so doing, the Company Secretary ensures that the stakeholders' interests are realized which advances the agency theory in the development of corporate governance theories.

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter presents a summary of the research findings with respect to the adoption of corporate governance practices in Kenyan listed companies and the role that the Company Secretary plays in enhancing corporate governance practices. In addition, it draws conclusions from the research findings and proposes recommendations and suggestions for further research.

5.2 Summary

In line with the researchers' belief, the adoption of corporate governance guidelines as best practice seems to have taken root in Kenya as shown by a considerably and satisfactory confirmation of over 70% of the respondents surveyed who indicated have at the very minimum had adopted either CMA Corporate Governance guidelines, the industry related Corporate Governance guidelines or have their own customized internal Corporate Governance guidelines. In addition most of the Companies indicated that they disclose on an annual basis, in the annual report, a statement of the directors as to whether the company is complying with the guidelines on corporate governance as prescribed under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

It was also noted that in most companies the Company Secretary played a significant role in enhancing corporate governance practices such as facilitating the smooth operation of

the company's decision making and reporting mechanism, convening board, committee meetings and Annual General Meetings are held in accordance with the requirements of the Companies Act and the company's Articles of Association, among others.

Lastly, it was noted that many of the respondent companies (80.0%) had a turnover of over 1 billion Kenya shillings and 53.3% had of over 500 employees. A large majority (90.0%) of these companies had also been in existence for over 15 years. Though the study did not show a direct relation between these factors and the adoption of corporate governance practices, it was evident that the various companies were keen in adoption of corporate governance practices. This is because the adoption of corporate governance practices is a key success factor for such companies which are subject to public scrutiny and are under strict observation by the regulatory bodies given the large interest/stake amongst the various stakeholders.

5.3 Conclusion

It was noted that most of the respondent companies had turnover of over 1 billion Kenya shillings, had been in existence for over 15 years and had over 500 employees. However, there seems to be no direct connection between the size of the respondent Company in terms of turnover per annum, the number of existence and the adoption of corporate governance guidelines as best practice.

A large number of the respondents indicated that they had adopted CMA Corporate Governance guidelines, the industry related Corporate Governance guidelines and its own

customized internal Corporate Governance guidelines to a very large extent. From the results, it can be ascertained that over 80% of the respondents surveyed had at the very minimum adopted either CMA Corporate Governance guidelines; the industry related Corporate Governance guidelines or have their own customized internal Corporate Governance guidelines.

It was noted that a large majority of respondents had the attributes and composition of board and board committees as per the corporate governance guidelines. In addition they had adopted other corporate governance guideless such as having an independent and non –executive Chairman of the Board, having a third of the board members as independent and non-executive directors, ensuring that all major decisions are passed by the shareholders at general meetings, among others. 90% of the respondents indicated that they had to a very large extent ensured compliance with the Company’s Memorandum and Articles of Association in the running of the respondent companies. From the results of these study, it can be deduced that in deed the Company Secretary plays a significant role in enhancing various corporate governance practices

5.4 Recommendations for Policy and Practice

First, to the companies which are yet to adopt corporate governance practices to consider doing so as there are many benefits that may accrue from embracing sound governance practices. The Company Secretaries also in these companies should be bold in taking up the role of being the key advocates of good corporate governance. Adoption of corporate governance practices has had a tremendous impact in improving the strategic direction and operations of many companies and the Company Secretary will continue to play a

critical role in ensuring the adoption of sound governance practices for the success of these organizations in the long term.

Secondly, to the Industries players and regulators the researcher recommends that efforts be put in place to encourage the adoption of corporate governance practices across the various industries. This is to ensure that the interests of the public at large are safeguarded as well as ensuring the perpetuity of these companies as the importance of corporate governance practices cannot be understated. It is important to note that in an efficient capital market, investors will invest in firms with better corporate-governance frameworks because of the lower risks and the likelihood of higher returns. At a macro level, if firms in developing countries attract investment, they will stimulate growth in the local economy.

Thirdly, to the Government as the biggest regulatory body, there is a need to regulate the implementation of corporate governance practices both in the private, public and government entities to ensure that it is done in a uniform manner meeting high standards of quality that is deserved . Lack of regulation leads to fraud and many firms may get away with malpractices such as endangering the resources of the stakeholders. The Government needs to step in and protect these through regulations and enforcement.

5.5 Limitations of the Study

Corporate governance is a wide study and in Kenya it is a relatively new area of study. This comes with its own challenges namely; there was limited local material on the

subject. Most of the, literature relied upon for the study was primarily foreign in nature. A few local examples could be found. Time was a limiting factor to the extent of the study, as has been pointed out, it is a relatively wide topic. In addition a census survey would require more time than was available for this study.

Companies listed on the stock exchange were very information sensitive. Any information that does not meet the criteria of public information is not easy to obtain as it can be classified as company strategy or secret. Corporate governance seems to fall under this definition as many respondents shied away from delving deep into the topic for fear of releasing sensitive company information. This limitation forced only a high level questionnaire, which only drew out minimal information from the respondents.

A census survey of the NSE may not necessarily draw concrete conclusions about the state of corporate governance in Kenya as no private company was surveyed in the exercise. Again time and resources act as a major cause but the scope of academic work may demand definite samples to be researched upon. This being a pioneer study, the researcher wanted to cut across the industry as opposed to focusing on a particular industry for the research. The only appropriate population that contains members across the industry in Kenya for the time being is the NSE.

5.6 Suggestions for Further Research

While corporate governance may not dictate the economic prospects of developing countries, it certainly plays an important role in shaping them. Adoption of corporate-

governance framework in Kenya is commendable for a developing country. However, considerable room remains for improvement in enforcement mechanisms, redefining the corporate laws and embracing corporate governance as a philosophy. The Company Secretaries must continually review areas that need development in corporate governance and works towards ensuring that there is total reform on how boards of directors function towards the overall benefit of all the stakeholders.

The scope of the study covered only the NSE which has 59 listed companies. The country has far more companies than listed, though these were representative for the purpose of the study. It would be important for future studies to focus on various industries as well as on public non listed companies, Government departments, parastatals, small and medium sized enterprises (SMEs), privately owned entities and any other organisations beyond the NSE.

The CMA released guidelines on Corporate Governance Practices by public listed companies in Kenya in 2002 as was indicated in the study. These guidelines were meant to initiate a process of regulation on the public listed companies. Another area of recommendation would be a study designed to find the extent of the success of the CMA's Corporate Governance Practices. In this study, milestone can be measured as well as challenges that the regulating body (CMA), the company Secretary and the institutions been regulated have faced in implementing Corporate Governance Practices. There is also the need for further development of theory in the area of corporate governance as that would lead to developing more comprehensive and robust models for corporate

governance in organizations which could be tested empirically and form the basis for more effective policy formulation and corporate governance reforms.

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APPENDICES

Appendix 1: Research Questionnaire

A Study on the role of the Company Secretary in corporate governance in Kenyan listed companies

This questionnaire has been designed based on the corporate governance guidelines that are provided by the Capital Markets Authority and the Private Sector Corporate Governance Trust

PART A: Company Profile

1. Name of organization
2. Name of the Respondent (Optional)
3. Is the Company Secretary function internal or outsourced?

() Internal) Outsourced
4. Company's turnover p.a. (Kshs Millions)

a) 10M - 100M [] b) 100M - 500M [] c) 500M - 1B [] d) over 1B []
5. No. of employees

a) 10 - 50 [] b) 50 -200 [] c) 200 - 500 [] d) over 500 []
6. Years of existence

a) 1 - 5 [] b) 5 - 10 [] c) 10 - 15 [] d) over 15 []
7. Ownership (Majority shareholder)

a) Local [] b) Foreign [] c) Both (50-50%) []

PART B: Extent of practice of Corporate Governance

Indicate the extent to which the following Corporate Governance Practices apply in your organization using the scale below:-

1. Not at all 2. Less Extent 3. Moderate Extent 4. Large Extent 5. Very Large Extent

No.	Corporate Governance Practice	1	2	3	4	5
1.	The Company has adopted the CMA Corporate Governance guidelines					
2.	The Company has adopted the industry related Corporate Governance guidelines					
3.	The Company has its own customized internal Corporate Governance guidelines					
4.	The Company discloses on an annual basis, in its annual report, a statement of the directors as to whether the company is complying with these guidelines on corporate governance as prescribed under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.					
5.	Where the company is not fully compliant with the set guidelines, it identifies the reasons for non- compliance and indicate the steps being taken to become compliant.					
6.	The Company has adopted principles of good corporate governance practices with regard to the attributes and composition of board and board committees					
7.	The Company has one third of its Board of directors as independent and non-executive directors					
8.	The Chairman of the Board is independent and non – executive					

9.	The Board of Directors ensures that approval of major decisions is done by Shareholders in Annual/ Extraordinary General Meetings.					
10.	The Board of Directors ensures accountability through having internal and external audits and through the preparation of Annual Reports and Accounts.					
11.	The Board of Directors ensures public disclosure of general and sensitive information that could influence share price at the Securities Exchange.					
12.	The Company has an Audit Committee which carries out the duties of Audit Committees and liaises with the internal audit functions					
13.	The Company has a detailed Board Manual/Charter which inducts and explains to each Director his collective and individual duties, obligations and responsibilities as a Director.					

PART C: The Role of the Company Secretary in Corporate Governance

Indicate to what extent the Company Secretary in your organization is involved in implementing the following corporate governance practices using the scale below:-

1. Not at all 2. Less Extent 3. Moderate Extent 4. Large Extent 5. Very Large Extent

No.	Corporate Governance Practice	1	2	3	4	5
1.	Facilitating the smooth operation of the company's decision making and reporting mechanism.					
2.	Convening board and committee meetings in accordance with the requirements of the Companies Act and the company's Articles of Association and taking proper account of such meetings.					
3.	Ensuring that Annual General Meetings are held in accordance with the requirements of the Companies Act					

	and the company's Articles of Association					
4.	Ensuring that the company complies with its Memorandum and Articles of Association, monitoring and ensuring compliance with the CMA and NSE requirements.					
5.	Maintenance of up to date statutory registers of Members, Mortgage and charges; Directors and secretary, Directors' interests in shares and debentures.					
6.	Notifying the Registrar of Companies on certain changes regarding the company such as timely filing of annual returns, accounts, returns of allotments, notices of changes in directors and/or the Company Secretary.					
7.	Coordinating the publication and circulation of the company's annual report and accounts and interim statements to all the stakeholders.					
8.	Participating as a key member of the company team established to implement corporate acquisitions and ensuring that due diligence disclosures enable proper commercial evaluation prior to completion of a transaction.					
9.	Continually review developments in corporate governance, facilitating the proper induction of directors into their role, advising and assisting the directors with respect to their duties and responsibilities, in compliance with company law, CMA and NSE requirements.					
10.	Ensuring the safe custody and proper use of company seal and letterheads.					
11.	Ensuring that procedures are in place for the correct administration of subsidiary companies and that correct information is given to the holding company.					
12.	Ensuring that procedures are in place to allow adequate historical archives of key company records.					

Thank you for taking your time to complete this questionnaire.

Appendix 2: Companies Listed on Nairobi Securities Exchange

The below list comprises of the companies listed at the Nairobi Securities Exchange in their respective sectors as at 31 May 2012

Agricultural

1. Eaagads Ltd
2. Kapchorua Tea Co. Ltd
3. Kakuzi Ltd
4. Limuru Tea Co. Ltd
5. Rea Vipingo Plantations Ltd
6. Sasini Ltd
7. Williamson Tea Kenya Ltd

Commercial and Services

8. Express Ltd
9. Kenya Airways Ltd
10. Nation Media Group
11. Standard Group Ltd
12. TPS Eastern Africa (Serena) Ltd
13. Scangroup Ltd
14. Uchumi Supermarket Ltd
15. Hutchings Biemer Ltd
16. Longhorn Kenya Ltd

Telecommunication and Technology

17. AccessKenya Group Ltd
18. Safaricom Ltd

Automobiles and Accessories

19. Car and General (K) Ltd
20. CMC Holdings Ltd
21. Sameer Africa Ltd
22. Marshalls (E.A.) Ltd

Banking

23. Barclays Bank Ltd
24. CFC Stanbic Holdings Ltd
25. Diamond Trust Bank Kenya Ltd
26. Housing Finance Co Ltd
27. Kenya Commercial Bank Ltd

- 28. National Bank of Kenya Ltd
- 29. NIC Bank Ltd
- 30. Standard Chartered Bank Ltd
- 31. Equity Bank Ltd
- 32. The Co-operative Bank of Kenya Ltd

Insurance

- 33. Jubilee Holdings Ltd
- 34. Pan Africa Insurance Holdings Ltd
- 35. Kenya Re-Insurance Corporation Ltd
- 36. CFC Insurance Holdings
- 37. British-American Investments Company (Kenya) Ltd

Investment

- 38. City Trust Ltd
- 39. Olympia Capital Holdings Ltd
- 40. Centum Investment Co Ltd
- 41. Trans-Century Ltd

Manufacturing and Allied

- 42. B.O.C Kenya Ltd
- 43. British American Tobacco Kenya Ltd
- 44. Carbacid Investments Ltd
- 45. East African Breweries Ltd
- 46. Mumias Sugar Co. Ltd
- 47. Unga Group Ltd
- 48. Eveready East Africa Ltd
- 49. Kenya Orchards Ltd
- 50. A.Baumann CO Ltd

Construction and Allied

- 51. Athi River Mining
- 52. Bamburi Cement Ltd
- 53. Crown Berger Ltd
- 54. E.A.Cables Ltd
- 55. E.A.Portland Cement Ltd

Energy and Petroleum

- 56. KenolKobil Ltd
- 57. Total Kenya Ltd
- 58. KenGen Ltd
- 59. Kenya Power & Lighting Co Ltd