

## ***Research Report***

### **The Disabilities of Chartered Secretaries in Rhodesia\***

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The professional position of chartered secretaries in Rhodesia is an unusual one. For in one respect the chartered secretary has an advantage that is unique to Rhodesia, in that since 1968 he together with the attorney has enjoyed a legal monopoly of preparing for a fee memoranda or articles of association of a company.

This came about as a result of attempts, in the course of amending the law relating to attorneys, to give attorneys a complete monopoly of this activity — the accountants having long agreed with the Law Society that they would not form companies on the understanding that attorneys in turn would not undertake the non-legal side of liquidation and insolvency work.<sup>1</sup> The first attempt came in 1957, despite the fact that a similar attempt in Northern Rhodesia had failed the year before;<sup>2</sup> the proposal was met by 'lobbying' of M.P.s by members of the Chartered Institute of Secretaries and the Corporation of Secretaries, and the Minister of Justice and Internal Affairs consequently withdrew the proposal after an adjournment of the Second Reading of the Attorneys, Notaries and Conveyancers Amendment Bill.<sup>3</sup> A similar situation arose in 1968 but on that occasion representations were made by the Institute of Chartered Secretaries to the Minister of Justice and evidence was

provided by a lawyer, who had acted as examiner to the Law Society and to the Corporation of Secretaries, to the effect that the secretaries' training in income tax and the law and procedure of meetings enabled secretaries to draft memoranda and articles of association as well as attorneys. The Minister thereupon introduced an amendment at the Committee stage of the Attorneys, Notaries and Conveyancers Amendment Bill so that attorneys and secretaries had equal rights in preparing memoranda and articles of association for a fee.<sup>4</sup> This was the first time that secretaries had been included in Rhodesian legislation and the result of this privilege was that the Chartered Institute of Secretaries and the Corporation of Secretaries, which were in the process of amalgamating, were obliged to obtain a private Act for the regulation of the now combined Chartered Institute of Secretaries.<sup>5</sup>

In other respects, however, as will be shown, the status of the chartered secretary is inferior to that of the chartered accountant, the disabilities being of two types, that of status and that of constriction of activity.

\*The views expressed in this article are not those of the Institute of Chartered Secretaries and Administrators in Rhodesia.

## DISABILITIES OF STATUS

The most obvious derogation of status is in respect of Employment Regulations under the Industrial Conciliation Act, a typical example being the Commercial Undertaking of Salisbury Employment Regulations.<sup>6</sup> These omnibus regulations attempt to regulate a variety of activities, from hairdressing and shoe repairing to company secretaryship, trusteeship and executorship but not accountancy; in this way practising as a chartered secretary comes under these regulations, being classified equally as 'the rendering of commercial services for reward',<sup>7</sup> not, be it noted, of professional services for a fee, a less inelegant way of putting it. Banks and insurance companies are explicitly excluded from the ambit of these Regulations, and even the following categories of commercial service, of a less established professional nature than company secretaryship and trusteeship, are omitted from the regulations: freight costing services, credit intelligence reporting, public relations, marketing research, computer accounting services, printing consultancy and commercial artistry. The Regulations also have a potential for constricting activities in that there are no references to conditions of studentship and training normally applicable to professions; and it is required that the employee must be paid the wage prescribed for that part of his work that is the most advanced, thereby reducing, instead of maximizing, any incentive for the chartered secretary employer to try out his trainee staff on advanced types of work.<sup>8</sup>

### *The Accountants Act*

This Act, passed in 1918 and remaining basically unchanged until 1969,<sup>9</sup> not only limits the use of the terms 'chartered accountant' and 'auditor', but also restricts the term 'accountant' to chartered accountants and persons 'employed exclusively at a salary on accounts'<sup>10</sup> thereby excluding anyone else in practice from describing himself as an accountant, no matter what his training or his qualifications. It was not, in fact, until 1972 that chartered accountants of Australia and Canada and Certified Public Accountants of the U.S.A. could also so describe themselves without obtaining special dispensation.<sup>11</sup> In 1970 a member of the Institute of Cost and Works Accountants was enabled to describe himself as 'cost accountant'

or 'cost and works accountant',<sup>12</sup> but still not as simply 'accountant', a legislatively hallowed term, as one can see, in Rhodesia. Despite the growing orientation toward computers and universities, with accounting training at graduate and post-graduate levels, the restriction continues to apply.

Thus a chartered secretary in practice, or working on a fee (instead of salary) basis for a group of companies, or not employed exclusively on accounts may not even designate himself as 'secretary-accountant' or 'account-secretary', let alone 'accountant', whatever his function or training. He may not legally reply affirmatively when answering a telephonic query as to whether the caller is speaking to the accountant; nor, when unemployed, may he use the term accountant in a 'situations-wanted' column in the press.

Similarly the commonly-used designation 'internal auditor' is legally restricted in Rhodesia to chartered accountants. As it happens, a number of chartered secretaries in Rhodesia have distinguished themselves as liquidators and trustees of insolvent and assigned estates, frequently involving comprehensive investigations and examinations,<sup>13</sup> which frequently result in prosecutions; but none of these chartered secretaries can describe themselves as examiners, auditors or, of course, as investigating accountants.

## CONSTRICTIONS OF ACTIVITY

It is to be expected that restrictions in the use of the designation 'accountant' will almost inevitably lead to restriction of function of those not so designated. Thus it is not permitted to a chartered secretary or any one else other than an accountant to certify the accounts of Sports Pools<sup>14</sup> or the trust accounts of Estate Agents;<sup>15</sup> and without special dispensation even applications for refunds of sales tax cannot be handled by chartered secretaries.<sup>16</sup> Special dispensation can admittedly be obtained for this and other types of business, usually of a not highly attractive nature; in the case of trade unions, employers' associations and industrial councils under The Industrial Conciliation Act,<sup>17</sup> and charities under the Welfare Organizations Act,<sup>18</sup> the organisations concerned may apply for permission to engage someone suitable, like a chartered secretary,

who is not a chartered accountant to certify the accounts, but only if the organisation cannot afford the services of a chartered accountant. For similar reasons the Accountants Act was amended in 1969<sup>19</sup> to enable not just chartered secretaries but anyone 'without receiving any fee or reward' to prepare or report 'on the accounts of a club, society, institute or other association not established for the acquisition of gain' and to describe 'himself as an "honorary auditor" in relation to the preparation of reporting on such accounts'; but, of course, the chartered secretary cannot then charge or accept an honorarium.

A further constriction of the activities of a chartered secretary came with the Estate Agents Act in 1970,<sup>20</sup> which imposed a double disability. On the one hand, chartered secretaries were not favoured, as were attorneys and chartered accountants, with a specific exemption from the limitations on practice as an estate agent. On the other hand, chartered secretaries were not included with those firms, such as book-keeping and secretarial companies, which carried on estate agency and rental-collection work in a commercial way by such means as the use of advertising and shop-premises. These firms were recognised and registered as Estate Agents, but those who conducted property negotiating and rent-collecting only as part of their professional activities did not receive this recognition and registration; and it was into this latter category that most chartered secretaries practising independently fell and as a

result they are now severely circumscribed in conducting this sort of business.

## CONCLUSION

The position of the chartered secretary is somewhat peculiar. On the one hand, he shares a statutory privilege, with attorneys, of preparing articles of association for companies; but in fact this is not generally of great importance in most chartered secretaries' practice. On the other hand, he suffers from statutory restrictions which affect his status and professional functions: he may neither call himself an accountant or auditor nor certify that he has examined accounts, and his business activities in respect of property are severely circumscribed.

In some ways such close, and restrictive, delineation of professional activities is surprising in an economy as small as that of Rhodesia, where in the past the functions referred to in this paper (and indeed others in addition) have all been successfully concentrated in the hands of an individual. In other ways, however, the trend of legislation to disaggregate and restrict professional activities is not surprising in a political society as small as that of Rhodesia, where access to those in power is fairly direct for sectional interests and where the representation even of a well-placed or determined individual can often influence the shape of legislation.

## REFERENCES

- <sup>1</sup>[Southern Rhodesia,] *Debates [of the Legislative Assembly, Third Session, Eleventh Parliament . . . from 23rd January . . . to 19th April, 1968]*, Salisbury, Government Printer, 1969], 70, c.185, 25 Jan. 1968.
- <sup>2</sup>The Legal Practitioners Bill, Clause 25; Northern Rhodesia, *Official Verbatim Report of the Debates of the Third Session (Resumed) of the Tenth Legislative Council, 27th November-14th December 1956 (Hansard No. 90)*, Lusaka, Govt Printer, 1957, cc.325-6, 328, 439-40, 5 and 7 Dec. 1956.
- <sup>3</sup>*Debates*, 39, cc.1951-6, 1959-61, 28 May 1957.
- <sup>4</sup>*Debates*, 70, cc.394-6, 412, 1 Feb. 1968; the Attorneys, Notaries and Conveyancers Amendment Act, No. 10 of 1968, section 14(c) (amending Chapter 209, section 24(1)).
- <sup>5</sup>Chartered Secretaries (Private) Act, No. 35 of 1971; the merger had taken place on 1 Jan. 1970.
- <sup>6</sup>R[hodesia] G[overnment] N[otice], No. 108 of 1973.
- <sup>7</sup>*Ibid.*, section 3 (3).
- <sup>8</sup>*Ibid.*, section 4 (12, 13).
- <sup>9</sup>Chapter 206; Accountants Amendment Act, No. 47 of 1969.
- <sup>10</sup>*Ibid.*, section 19.
- <sup>11</sup>R.G.N., No. 940 of 1972.

- <sup>12</sup>R.G.N., No. 593 of 1970. The change of the name of the Institute to 'Cost and Management Accountants' necessitated a modification to this regulation; see R.G.N., No. 38 of 1973. It is interesting, however, to note that in case of this branch of the profession, it was apparently not thought necessary, as it was with chartered secretaries, to enact legislation to define and control it.
- <sup>13</sup>This should not be surprising in view of the fact that membership of the Chartered Institute of Secretaries is an acceptable qualification for the post of Bankruptcy Examiner in the British Board of Trade, and that of Income Tax Examiner in the Rhodesian Income Tax Department.
- <sup>14</sup>Pools Control Act, No. 51 of 1960, section 8.
- <sup>15</sup>Estate Agents Act, No. 8 of 1970; R.G.N., No. 975 of 1970, section 15.
- <sup>16</sup>R.G.N., No. 494 of 1964.
- <sup>17</sup>Act No. 246 of 1959, sections 47 (16), 79( 2).
- <sup>18</sup>Act No. 63 of 1966, section 19.
- <sup>19</sup>Accountants Amendment Act, No. 47 of 1969, section 14.
- <sup>20</sup>Act No. 8 of 1970.