



Corporate Governance and Best Practices: Taking Minutes at Board of Director's Meetings

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Corporate Governance

Best Practices – Taking of Minutes of BOD Meetings

Subject to what may be contained in the Bylaws of any particular Corporation (which would supersede and replace my below musings), following are a consolidation of my thoughts on the matter:

- There is no statutory requirement that Boards must take minutes of their meetings, although there is a statutory obligation on a Corporation to maintain copies of any minutes of meetings or resolutions of directors in the corporate minute book;
- If taken, there is no statutory format that minutes are required to follow.
- Yet taking of proper minutes of board meetings is important for several reasons:
 - Facilitates good corporate governance
 - Provides continuity and historical record
 - Provides record of what was reviewed, presented to the board, agreed to or authorized
 - Most importantly, from my perspective, proper minutes provides evidence that the board has (or has not) met its fiduciary obligation or properly dealt with conflicts of interest when debating or considering any matter or proposed course of conduct
- Minutes are evidence only that a meeting was held and that the subject matter referred to in the minutes was discussed. Minutes are not presented for the truth of the matters referred to in the minutes. The truth (or accuracy) of the minutes must, if in issue, still be verified or borne out by the viva voce evidence of those in attendance at the meeting. In such circumstances, the minutes only form a basis to refresh the witness' memory of the events that transpired at the meeting, the discussions engaged in and any decisions made.
- Although there is no statutory requirement to do this, good corporate governance and best practice dictates that minutes be approved at the subsequent meeting following the meeting at which such minutes were taken.
- What if there is a dispute or disagreement over (or error or omission within) the content of the minutes?
 - At the meeting where the minutes of the prior meeting are being reviewed, the error, omission or concern is noted and, if there is disagreement on what transpired, a majority vote of those present at the prior meeting is required to determine what the minutes of the prior meeting should reflect. This sometimes occurs when there are differing view as to what particular course of action was agreed to at the meeting.

- If the minutes contain an error or omission the minutes should be corrected and only the corrected version placed into the minute book. The minutes of the meeting at which such error or omission was discussed should note the error or omission that occurred and reflect that the prior minutes were to be corrected before being placed into the minute book. Incorrect or erroneous minutes should not be retained, as to do so may subsequently cause confusion.
- Who is entitled to review the minutes?
 - Any director and the Corporation's auditor are entitled to review the minutes of any meeting of the directors;
 - Any interested person (including directors, shareholders, the auditor and creditors of the company) are entitled to review the minutes of any meeting of the shareholders;
 - Shareholders are not generally able to review or have access to the minutes of the directors meetings.
- What about *in camera* meetings or meetings of a committee of the directors?
 - Same rules apply – although for *in camera* meetings there is typically discussion but no records kept as access and disclosure can be an issue. The chairman of that special committee or in camera meeting should, as one of the first orders of business, determine whether formal minutes of the ensuing discussion are to be kept.
- Should directors keep their own notes from meetings?
 - Yes – for the reason set out above, notes are just evidence of what was discussed and do not represent the truth of what the notes reflect. They are used only to refresh the author's memory of what transpired at the meeting. But be forewarned that, in litigation where the subject matter of what the board discussed or agreed to is in issue, the author can be compelled to disclose such notes to the litigants.
 - Keeping notes should enable the director to support their contention that they were cognizant of and met their fiduciary obligation to the corporation when deciding upon any particular course of action – assuming of course that the conduct followed by the director in that case was amenable to good corporate governance and meeting such director's fiduciary obligation.
- Are there any content requirements for the proper taking of meeting minutes?
 - No, but best practices would suggest that, at a minimum, minutes should identify:
 - Date, time and place of meeting
 - Who was in attendance

- Who was not in attendance (of those whose attendance was expected)
 - Quorum requirement having been met
 - Approval of prior minutes (if applicable)
 - Highlights of any discussions or reports received by the board – it is not necessary to include the full text of such reports, only that such reports were received. Generally it is not necessary to include the names of the persons raising any questions arising out of the reports received, only the fact that questions were raised or discussions were held, and the results of any such questions or discussions. The exception to this would be if there is a contentious matter before the board, in which event it may be appropriate to include more detail and the names of who asked any particular question and who gave the response.
 - Full text of any resolutions passed by the board, together with an indication of whether the resolution was unanimous or if any director abstained from voting or voted against such resolution. In such circumstances it is appropriate to note the names of those who abstained or voted against the resolution.
 - Disclosure of any declared conflicts of interest by any board member involving any matter being put before the board.
- Who should sign the minutes once they have been approved?
 - There are differing schools of thought on this.
 - Some believe that the Chairperson of the meeting should sign off on the minutes once they have been approved at the subsequent meeting, as an indication that someone other than the author of the minutes reviewed and verified the content of the minutes.
 - My preference is that the author of the minutes (typically the recording secretary for the meeting) sign off on the minutes once they have been approved at the subsequent meeting, as the recording secretary is the author and their signature verifies that the minutes contain an accurate representation or reflection of what the author of the minutes recalls having (or believes) transpired at the meeting.
 - What types of things should be discussed at regularly scheduled board meetings?
 - Typically management or the person calling the board meeting sets the agenda of matters to be discussed at the meeting.
 - For regularly scheduled board meetings, independent directors (being those who are not involved in the day to day operations of the business) typically also want a report from management on such things as updates on performance, financial position, material changes within the company since the last meeting, confirmation that source deductions, corporate

income tax and GST have been properly remitted and/or that adequate provisions have been made for any perceived, contingent or existing liabilities. And if not, why not. These questions, and the answers to such questions, go to the due diligence of each board member in meeting their fiduciary obligation to the corporation (and its stakeholders) and also in managing the inherent risk such directors personally face for statutory liability in the event the corporation fails to make certain remittances when due.

- Who can call a Board meeting?
 - The answer to this question can be found in the Bylaws of the corporation.
 - Typically the Chairman of the Board or President or CEO is authorized to call a meeting of the Board on such notice as the bylaws may specify.
 - Meetings can be attended by conference call or other electronic means that permit all members in attendance to freely and instantaneously communicate with each other
 - A written consent resolution signed by all directors entitled to vote on a matter is as valid and sufficient as if a formal board meeting was held to review and consider such matter.