



The Fundamental Importance of Reliable Board Minutes

Author: Justine Blakesley, Global Head of Client Services

In extraordinary times such as the present COVID-19 pandemic, the importance to a business of focusing on fundamentals like the accurate recording of Board Minutes, cannot be overstated. As difficult as it may be in the present circumstances, it is important that directors hold regular meetings (by telephone or video-conference) and record in the Minutes any commercial decisions they make based on reputable independent advice. Such Minutes may prove vital in the event of insolvency or litigation.

Essentially all jurisdictions and all companies' articles of association or bye-laws require the production and maintenance of Minutes of meetings of Directors. Accurate Board Minutes serve to remind participants of their decisions and assigned responsibilities; brief those unable to attend; evidence the conduct of the participants in accordance with legal and or regulatory requirements; and provide a formal record for posterity. Failure to maintain reliable Minutes may have serious adverse consequences.

Minutes serve two critical functions. They provide a written summary of matters raised, views expressed and decisions made at a meeting, and they act as a permanent record of the business conducted, on which interested parties may rely.

Contents of Minutes

Minutes should report agreed information and data, while reflecting the major elements of the discussions that preceded conclusions and resolutions. Matters to be raised at Board meetings may include both the formal and informal. Examples of the former would include approval of financial statements, appointments of officers, recording conflicts of interest and material transactions to be entered into, and other legally required subjects. Informal discussions may cover such areas as the company's strategy, succession planning and other operational matters.

Minutes of important meetings, such as those of Boards of Directors or Board committees, are traditionally approved at the following meeting, to confirm their veracity before their adoption as part of the formal record.

Essential point of reference

Board Minutes form a key element of a company's statutory record-keeping and may be used as both an internal and external point of reference. Potential disputes may be quickly resolved by reference to approved Minutes. The need for Minutes is universal: companies need not fall within a regulated classification or maintain a stock exchange listing to require the preparation and maintenance of accurate Minutes of Board Meetings. The importance of the accurate recording of meeting Minutes is therefore paramount. This responsibility usually falls to the Company Secretary or a suitably qualified delegate.

Minutes are rarely a verbatim report of proceedings. The discussion of a particular topic may range broadly across the subject, and can often drift into other topics. Well-written Minutes distil the essence of the conversation that took place, forming in effect an executive summary of discussions and decisions taken at the meeting.

Imprecise or poorly written Minutes may lead to disputes, and return matters previously decided to the forum of debate. For this reason alone, the taking of Minutes should be carried out by a skilled professional. Summarising and reducing the contents of a lengthy discussion to a few sentences is an art, as well as a science.

Legal and regulatory protection

In law, approved Minutes are the official history of a meeting, and reliance may be placed on them. Without accurate Minutes, memories may differ and the basis on which decisions are made may be subject to legal challenge. Differences of opinion expressed during meetings may be referred to in the Minutes, but decisions made and duly recorded in approved Minutes are final.

A lack of suitable accurate Minutes may open those who attend the meeting to personal liability for the company's actions. Traditional legal protections may be placed in jeopardy if a company's failure to keep accurate Minutes were to lead to a piercing of the corporate veil.

Certain business activities, such as the opening of a bank account or the introduction of pension or other financial plans, require the production of approved Minutes as part of the implementation process. Without suitably prepared Minutes, a company might lose the operational authority to conduct its business.

Maintenance of Minutes

A company's articles of association or Bye-laws may dictate the form in which Minutes are to be kept. Hard copy and electronic Board minutes are usually acceptable, providing that suitable precautions are taken against their loss or falsification. Legal retention requirements vary across jurisdictions.

Professional assistance

Professional corporate secretaries can provide the high-quality Board meeting support a company requires to minimise risk to its operations. For more information on Conyers Client Services, please call or email us - we will be happy to discuss your needs.

Author:

Justine Blakesley Global Head of Client Services justine.blakesley@conyers.com +1 441 279 5373

Other Contacts:

Tracey Spevack Head of Corporate Services Bermuda tracey.spevack@conyers.com +1 441 299 4942

Sharon P. Pierson Corporate Manager, Cayman Islands sharon.pierson@convers.com +1 345 814 7397

Adam Holdt Corporate Manager, BVI adam.holdt@conyers.com +1 284 852 1142

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