

Taking Minutes: Best Practices For Company Secretaries

Written by Carissa Duenas on September 17, 2019



Meeting minutes serve the purpose of recording board actions and decisions. They are a critical component of board meetings, but they are often overlooked as a cursory documentation requirement. The reality is that there are legal and practical reasons for them.

SIGNIFICANCE OF BOARD MINUTES

Meeting minutes are evidentiary records that reflect the Board's fulfillment of its legal and fiduciary duties. Should litigation concerns arise, these minutes can be scrutinised in courts of law. It serves the Board's best interests to ensure that these are crafted in a way that demonstrates the Board's informed decision-making process: one that is compliant, thoughtful, and impartial.

In many jurisdictions, meeting minutes are also a matter of regulatory compliance. The United Kingdom, for instance, has the [Companies Act \(2006\)](#). Section 248 stipulates that meeting minutes must be taken and kept for ten years. Failure to do so would constitute a criminal offence for directors.

BEST PRACTICES FOR COMPANY SECRETARIES

Whether created electronically through a [board portal](#) or outside of one, there are no official templates or hard-and-set rules that organisations must follow in the crafting of minutes. There are, however, a number of best practices that revolve around relevant, deliberate, and thoughtful minute-taking – all of which would be helpful for company secretaries to consider in light of today's legal and regulatory environment.

Here are some [suggested best practices](#) [culled primarily from the Institute of Chartered Secretaries and Administrators (ICSA) and various legal practices involved in corporate governance] that can be adopted by company secretaries. These address and factor-in the significance of meeting minutes discussed above.

PRE-MEETING PRACTICES

1. Circulate the minutes of the prior Board meeting a few days prior to the upcoming board meeting.

CREATING BOARD MINUTES

1. The board minutes, at a minimum, should include the following:
 - The company name in full.
 - The date, time and venue where the meeting was held.
 - The mechanism by which it was held (i.e. in person, by telephone, etc.)

- The names of those directors and other attendees present, identifying the chairman and secretary, and whether anyone was not present for the whole meeting.
- Clear distinction between those directors attending in person, those attending remotely (and how they are doing so), those attending as an alternate and those who are not directors but are in attendance at the meeting.
- Apologies from directors unable to attend.
- Confirmation that notice of the meeting has been given and a quorum is in attendance (when applicable).
- Declarations of the directors' interests in the matters being discussed, where required.
- Approval of minutes of the previous meeting.
- A short narrative recording the matters discussed or approved and decisions taken at the meeting.
- A note of any instructions to the company's officers (e.g. to make any filings with Companies House or any other regulatory authority, or changes to the company's statutory books and registers.)

2. When it comes to length and content, the following should be considered:

- Achieve an optimal balance between having too much content and that of being too ambiguous. Keep in mind the minutes' wider audience, e.g. shareholders, external auditors, and participants of possible legal proceedings.
- Board minutes should not be a verbatim record of what transpired during the meeting. It should instead include a summary of key points of discussion, decisions, and recommendations with sufficient context and assurance that they were done properly. This will serve as documentation for future reference and provide a reliable audit trail.
- The length of key points and summaries should be commensurate to the importance of the item in the agenda. In other words, more important items merit a longer summary.
- Minutes should include action items as evidence of directors discharging their duties. However, the company secretary must ensure that recorded action items are at the board level, and not focused on required actions for management.
- When it comes to conflicts of interest, the board minutes should capture and identify the abstention or recusal of board members who have a conflict of interest regarding the matter at hand, and any actions taken by the Board to address the conflict (e.g. confirm the absence of director in the room).
- The Board has collective responsibility for decisions. The naming of individuals in the minutes should be avoided as much as possible.

3. With respect to style, the following practices are suggested:

- Minutes should be written so that those who are not present can follow the decisions made.
- Minutes should be written in reported speech (i.e. in the past tense), and future actions should be recorded in the "conditional mood" (i.e. the use of "would" and "should" rather than "will" and "shall")
- Maintain an impartial and objective tone. Avoid the use of opinionated language.
- Maintain a consistent writing style for board minutes. Additionally, committee meeting minutes should follow the same tone and style of the board minutes.

4. As for audio and video recordings, they are discouraged for three reasons:

- It stifles debate or drives discussion outside of the meeting.
- It is a security concern. The recording might fall into the wrong hands.
- It is disclosable to future litigation.

POST-MEETING PRACTICES

1. Circulate the minutes to the Board and committee members.

2. There should be a review and approval process in place for Board minutes.

- The members must review and/or comment on the draft of the minutes prior to final approval. All meeting minutes are considered drafts until approved.
- Once approved and signed, the minutes should not be altered or changed.

3. With respect to the retention of board minutes. Consider the following:

- Board minutes should be retained for at least ten years (or as prescribed by specific regulating bodies or the law).
- Along with the stipulated requirements of a company's articles of association, board minutes can be kept in (a) hard copy or (b) electronic form so long as the paper copy can be produced.
- Companies must take precautions towards preserving the integrity and truthfulness of the records.
- Directors should destroy copies of personal notes and drafts. The meeting minutes should be the sole and official record of the meeting for security and liability purposes.

CONCLUSION

Board meeting minutes can be used, as best described in this [article](#), “defensively by the corporation as well as offensively by plaintiff attorneys.” That statement emphasises the importance of creating reflective, accurate, and effective minutes. Its significance goes beyond the act of recording Board decisions and recommendations. Board minutes can memorialise and illustrate that board members exercised due diligence in the fulfilment of their duties – minimising their exposure to legal and regulatory liabilities.



ABOUT THE AUTHOR

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