



MEMO

To: Board of Directors
From: Company Secretary
Subject: **BOARD MINUTES – TIMING**

Minutes of all Board (and committee, and shareholders') meetings are intended to record factually and concisely what a meeting accomplishes - that is, the decisions reached, expressed as resolutions, with some brief 'scene setting' commentary.

Ideally, minutes should be prepared - and agreed - quite promptly after a meeting, if possible.

Legal Requirements

To this end, the Corporations Act section 251A(1) requires that a company must record (in the Minute Book) the 'proceedings and resolutions' of directors' meetings (and meetings of any committee of the directors) within 1 month and that – sec. 251A(2) – they be signed 'within a reasonable time' by either the Chairman of that meeting or the Chairman of the next following meeting. 'Reasonable' in this context is not defined in the Act.

Confirmation of Minutes

Neither the Act nor the company's Constitution requires the minutes of the previous meeting to be confirmed. However, in the opinion of many, it is imperative that at the next following Board meeting those who were present at the previous Board meeting vote to confirm that the minutes of that [prior] meeting are a true and correct record of proceedings and that they be signed by the Chairman.

This, of course, may mean that the entering into the Minute Book/signing of the minutes may not appear to meet the Act's timing requirements (i.e., in section 251A), even if Board meetings are actually held once a month.

Wording of Minutes

There is no prescribed wording of the confirmation of minutes, but I prefer the following:

Minutes of the Board meeting held on 25 October 2011, which have been entered into the Minute Book, were tabled and reviewed, and it was **RESOLVED** that the minutes be accepted as a true and correct record and that they be signed by the Chairman in confirmation.



Alternative wording might say something like:

RESOLVED that the signing of the minutes of the previous Board meeting held on 7 April 2011 by the Chairman as a true and correct record of proceedings be ratified by the Directors.

Minute Book / Signing Minutes

To my mind, there are 2 separate actions described in the Act – that is why they are separate sub-sections.

The first [sec. 251A(1)] is to enter the minutes into the Minute Book – which can be satisfied by simply putting an unsigned copy into the Minute Book within 1 month of the meeting date.

The second action [sec. 251A(2)] is to have them signed, which is done within a 'reasonable time' – i.e., usually at the next following Board meeting which even if far more than a month after the previous meeting is still, in my opinion, 'reasonable' in the circumstances (of the interval between Board meetings).

Minutes as Evidence

Under sec. 251A(6) once the minutes have been signed they are taken to be evidence of the proceedings and resolutions of the meeting recorded therein, unless the contrary is proved.

Offences

Any contravention of sec. 251A is an *offence of strict liability* [ref – sec. 251A(5A)], which means it is not necessary for ASIC to prove intention, knowledge, recklessness or negligence (see Section 6.1 of the Criminal Code). However, a "took all reasonable steps to comply" defence may be available (see Section 13.4 of the Criminal Code).

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.