



MEMO

To: Board of Directors
From: Company Secretary
Subject: **RECORDING DIRECTORS / SHAREHOLDERS' MEETINGS**

The function of minutes is to provide a written summary of what is accomplished at a meeting (i.e., brief discussion on a matter, and the decisions reached expressed as resolutions) factually and concisely – rather than to provide an account of everything that happens at it (that would be a 'transcript of proceedings').

Legal Requirements

The Corporations Act section 251A(1) requires that a company must 'record' the 'proceedings and resolutions' of meetings of the company's shareholders and directors' meetings 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 (although 'reasonable' in this context is not defined in the Act).

It is noted that the use of 'record' in the Act in this section/context relates to 'creating a record' in writing – by writing down the proceedings of a meeting in a lasting form (i.e., as 'minutes'). Under sec. 251A(6) once the minutes have been signed they are taken to be evidence of the proceedings and resolutions of the meeting noted therein, unless the contrary is proved.

Tape Recording of Meetings

In a different context, meetings may be 'recorded' by use of a tape or video recorder (machine). Some people say that the only way to accurately prepare minutes is to tape record what happens in a meeting and then to transcribe (what's required – not necessarily everything) from the tape recording.

There is nothing in the Act – or in our Constitution – on this matter, although it may be covered by some Constitutions (either specifically allowing – or disallowing). However, 'wisdom' would suggest that the individual wishing to tape-record the meeting (eg, the Chairman) should seek the prior consent of those present (who would, presumably, want to know the reason why), or at least inform them of what was happening.

I have not been able to find any legal cases/precedents on this subject, but I do note that in NSW local government councils some do tape record council meetings, usually with tapes destroyed after say 3 months, although the position has become unclear of recent because it is considered by some parties that tape recording may be breach of the Privacy Act.



Our Shareholders' Meeting

As I understand it the board would like the forthcoming AGM tape recorded just in case there are some 'aggressive' shareholders present, upset at what the company has been doing and its poor financial performance, and it would be 'nice' to have it recorded so that we have something to refer back to should there be terse words said and/or 'arguments' with shareholders, etc during the meeting, that may or may not result in subsequent adverse legal or other actions against the company and/or its directors.

Given this desire to tape-record the meeting, my suggestion then is for the Chairman to simply say to the shareholders right up front – during the opening remarks – that “the meeting is being recorded to assist with the minutes”, or something like that, without making a big deal of it or asking for their agreement (i.e., 'just do it').

We need to remember too that shareholders may inspect, and/or obtain copies of, the minutes of shareholders' meetings under sec. 251B (but note, for the record, that there is no provision in the Act, or case law, generally allowing shareholders – or other 'outside' parties – access to minutes of directors' meetings). So, this could be another reason to support the desire to accurately compile the minutes of the AGM.

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.