



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **MEETINGS OF DIRECTORS: MINUTES**

---

'Minutes' of a meeting provide prima facie 'evidence' of what was discussed and/or agreed at that meeting.

The Oxford English Dictionary defines the minutes [of a meeting] as "a brief summary of the proceedings", derived from the Latin "made small" (similarly – with a different pronunciation – 'minute' means 'tiny' – hence minutes are not voluminous) .

The function of minutes, therefore, is to record factually and concisely what a meeting accomplishes (ie, the decisions reached, expressed as resolutions), 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 (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.

Neither the Act nor the company's Constitution requires the minutes of the previous meeting to be confirmed. However, it is virtually universal practice 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. However, to my mind, there are 2 separate functions described in the Act – that is why they are separate sub-sections – the first [sec. 251A(1)] being to enter the minutes into the Minute Book – which I satisfy by simply putting an unsigned copy into the Minute Book within 1 month. The second action [sec. 251A(2)] is to have them signed, which I have 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).

The 'Minute Book' must be kept at either the company's Registered Office, its Principal Place of Business or at another place approved by ASIC – sec. 251A(5).

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.

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 Criminal Code).

### **Some Practical Issues**

Minutes generally record only a positive decision on a matter considered/discussed at a Board meeting – i.e., by a majority, not necessarily unanimously – and a dissenter may wish to have his name recorded in the minutes as having a different/opposite view, voting against or abstaining on a matter. A positive decision is a "resolution of the Board" (i.e., 'It was resolved that .....').

A resolution is usually preceded by a few "scene setting" words to put the "resolution" in context.

Normally, more than half the directors in favour would be necessary for a resolution to be passed/approved at a meeting. In some company Constitutions the Chairman has a casting vote if there is an equality of votes.

Of course, only directors are entitled to participate in voting at a Board meeting. Also, it is noted that only directors can be regarded as 'Present' at Board meetings – with their names entered into the minutes – and anyone else is simply 'In Attendance' (because of their position – e.g., the Company Secretary – or by invitation). Note too, only directors can be recorded as 'Apologies' as no-one else has a legal "right" to attend a Board meeting.

The generally accepted style of commercial Board minutes does not include the name(s) of proposer/seconded. In fact, motions do not actually need a "seconded" at all – they only have to be "moved" by one director and then can be voted on.

On the question of tape-recording minutes, there is nothing in the Act on this – although it may be covered by some Constitutions (either specifically allowing – or disallowing) – but wisdom would suggest that the individual wishing to tape-record the meeting should seek the prior consent of those present (who would, presumably, want to know the reason why). I have not found any legal cases/precedents on this



aspect, 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.

Minutes of directors' meetings are not generally open for inspection by shareholders or anyone else. Whilst not specifically touched on in the Act, case law has long denied members (shareholders) and/or the public the general right to inspect/obtain a copy of the minutes of Board meetings on the grounds that such might frustrate the company's business if members could "gain a knowledge of every commercial transaction in which the directors engage" (*R v. Mariquita & New Granada Mining* [1858]). However, the courts have ruled in specific cases that certain minutes (or extracts therefrom) may be inspected by members to the extent necessary in particular circumstances (eg, *Edman v. Ross* [1922]; *Claremont Petroleum v. AGL* [1990]).

On the other hand shareholders may inspect, and/or obtain copies of, the minutes of shareholders' meetings – sec. 251B.

---

**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.*