Making every minute count

In this article Michael Archer and Richard Morgan look at best practice when it comes to minute-taking and recording the decisions made by the board.

There is an increasing focus on the conduct and decision-making of boards of companies, whether that is, for example, in their approach to issues of health and safety, or in establishing “adequate procedures” under the Bribery Act, or when assessing and managing business risk more generally. Proving how the board considered and dealt with these areas could be vital in protecting the company’s and its board directors’ positions and reputations. If you are tasked with taking the minutes of a meeting, or advising a board how they should do so, where these sorts of discussions are taking place, some recently-issued guidance from the ICSA might help.

ICSA guidance on minute taking

The ICSA have recently published guidance on minute taking and the principle function of meeting minutes following on from its consultation paper earlier in the year. Unlike company General Meetings, board meetings are almost entirely unregulated by the Companies Act 2006 (CA 2006). The only references to minutes are under section 248, which requires minutes of board meetings to be taken and kept for at least 10 years, and section 249 which stipulates that the minutes are evidence of the proceedings at the meeting, unless the contrary is proved.

Ultimately there is no correct way to draft minutes and it is the decision of each organisation how best to record meeting minutes. The level of detail required depends on a number of factors including the needs of the organisation, its operating sector, regulatory requirements and the working practices of the board.

The guidance published by the ICSA is not prescriptive but does provide a useful guide for organisations wanting to ensure their board minutes are drafted in such a way as to demonstrate that the board members have
observed their responsibilities to the company and complied with their legal and regulatory duties. The ISCA guidance covers the following areas:

1. The purpose of minutes;
2. Responsibility for minutes;
3. How to prepare minutes and the style and content of the minutes;
4. How draft minutes should be approved and edited; and
5. Who should have access to minutes and how long they should be retained for.

The purpose of minutes

The purpose of minutes is to provide an accurate, impartial and balanced internal record of the business transacted at a meeting. The degree of detail recorded will depend on the needs of the organisation, the sector in which it operates, the requirements of any regulator and the working practices of the chairman, the board and the company secretary. Minutes should include the key points of discussion, decisions made, where appropriate, the reasons for them and the agreed actions.

Minutes may be used to demonstrate that the directors have fulfilled their statutory duties, in particular by evidencing appropriate challenge in order to hold the executive to account and by showing that issues of risk and both shareholder and stakeholder impact have been properly considered.

Responsibility for minutes

ICSA regards the company secretary as being responsible to the chairman for the preparation and retention of the minutes. Too often minuting a meeting is left (at short notice) to a junior member of staff without the appropriate experience or training.

It is recommended that the company secretary be supported by a suitably skilled minute taker in order to participate fully in the meeting. For large groups of companies, it may be helpful to have a minute-taking policy or style guide to ensure a consistent approach.

Preparing Minutes

The guidance note contains useful information on how companies can best deal with the issues of quorum and conflicts of interest. A quorum statement

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will only be required where the company has a high quorum requirement or where there are a large amount of absences. When deciding how to deal with conflicts the ICSA recommends that conflicts of interests should only be referred to in the minutes where:

+ The chairman or another board member raises the issue of conflict.
+ A potential or actual conflict of interest is declared.
+ A conflicts register is circulated, tabled or reviewed as part of the meeting or it is necessary to amend the conflicts register.

Style and content of minutes

Minutes need to be written in such a way that someone who was not present at the meeting can follow the decisions that were made. They should include the key points of discussion, decisions made and, where appropriate, the reasons for them and agreed actions, including a record of any delegated authority to act on behalf of the company. The degree of detail recorded will depend on the needs of the organisation and sector in which it operates.

Draft minutes

Draft minutes should be circulated to attendees as soon as possible after the meeting and be clearly marked as draft.

Access to and retention of minutes

The ICSA does not recommend publishing minutes unless there is a legal or regulatory requirement to do so. Producing an audio recording of the board minutes is not recommended, any recording that is made should be deleted once the minutes have been approved.

The ICSA recommends that board minutes should be kept for the life of the organisation despite the Companies Act 2006 only requiring them to be retained for 10 years. Once the minutes are approved any written notes of the meeting should then be destroyed. If the written notes are kept by the company secretary, these could be disclosable in any future litigation.

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