IoDSA FAQs
Minutes of Board Meetings
Frequently Asked Questions

Minutes of Boards Meetings

1. Why do we need to keep minutes of meetings?

It is a statutory obligation. Section 73(6) of the Companies Act No. 71 of 2008 states that a company must keep minutes of the meetings of the board and any of its committees. The purpose of minutes is to serve as an official record of the proceedings and business transacted at a board meeting. Minutes may be used as evidence in court proceedings.

2. What is the proper process for minute taking?

The company secretary is responsible for ensuring that minutes of meetings are properly recorded and accurately reflect the proceedings and discussions at the meeting. It is good practice for the draft minutes to be sent to the chairman for his review whereafter the minutes should be forwarded to the rest of the board for their comment. Minutes of the previous meeting should be tabled, reviewed and approved at the next meeting of the board. Each company should set standard rules relating to the process that they wish to follow regarding the review and approval of minutes.

3. What should be included in minutes?

- Include meeting details:
  - Adoption of the agenda
  - Additions to the agenda
  - Confirmation of a quorum (which must be maintained throughout the meeting)
  - Type of meeting (regular/special, committee/board)
  - Date, time and location
  - Attendees (directors/management/invitees). The minutes must note the difference between directors and attendees/invitees. It should also indicate if any director and attendee/invitee had dialled in via teleconference or attended in person.
  - Directors who did not attend or who arrived late after a material discussion
  - Who presided over the meeting
  - Who served as secretary to the meeting

While the style of recording minutes differs, it should ultimately be prescribed by legal requirements and best practice, it is recommended that all material issues must be specified including:

- What submissions were included in the meeting pack, which documents should be maintained in a proper filing system to enable access should they be required at a later stage, if any
- Major points of discussion or matters considered, in summary form
- The decisions or actions taken should be very clearly stated:
  - Include resolutions adopted (which resolutions should be sequentially numbered), if any o Indicate names of directors voting against or abstaining on resolution, or not present at the time of the vote
  - When a conflict of interest situation is being dealt with by the board, indicate whether the director with the conflict was present for some or all of the discussion or action if matter was deferred or informally tabled
  - Identify information items and reports received
  - Include name of report or item and topics covered, as well as the action that is required; o Include list of materials distributed, if any

Include names of individuals (and if applicable, their position, such as committee chair) giving verbal reports. It is recommended though that even verbal reports be supported by a written document

4. What should not be included in minutes?

Minutes are a record of decisions taken, with the appropriate level of information about the discussion. Minutes are not a verbatim record or transcript of the meeting. Generally no more detail than is required to demonstrate that the board exercised due care and consideration regarding the decisions made. Minutes should not necessarily reflect all questions asked and the responses given, nor as a general rule should they identify which director asked a particular question, unless this is specifically requested by that director.
5. Why is it vital for minutes to be an accurate reflection of the proceedings?

Board members have the statutory and common law responsibilities to perform their board duties with care (diligence), obedience and loyalty. A board member's failure to meet any of these duties can result in a claim against the company, the board and/or its members. An effective method to minimize the chance of such a claim and to aid in its defence is to maintain detailed records of the board's activities. Thorough documentation of the board’s actions also provides a system for monitoring the members’ fulfilment of their legal duties. The minutes of the board’s meetings are an essential part of this process. Well drafted board minutes and directors’ resolutions serve as a record of corporate decisions and reflect director dissent where this should arise. Minutes that preserve an accurate and official record of the proceedings of a board or committee meeting are of particular importance where a dissenting director requires the formal recording of the dissenting view in the resolution of the meeting where the matter was discussed.

6. Can Minutes Be Used in Court as Evidence?

Yes, minutes may be produced as evidence in legal proceedings. Minutes are also used to prove what action was, in fact, taken by a board of directors. Corporate minutes are prima facie evidence of the proceedings that transpired at a meeting.

A strong set of minutes demonstrates the due diligence of the directors, supports their business judgment and protects the company.

A court will refer to the minutes of board meetings to establish ‘the business judgment rule’ as to whether a director/directors have, in a given case, acted in the best interests of the company; and with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as those carried out by that director/directors, and having the general knowledge, skill and experience of that director if the director/directors has/ have:

taken reasonably diligent steps to become informed about the matter;

- either- the director had no material personal financial interest in the subject matter of the decision, and had no reasonable basis to know that any related person had a personal financial interest in the matter; or the director complied with the requirements of section 75 of the Companies Act No 71 of 2008 with respect to any interest contemplated above); and

- the director made a decision, or supported a decision of a committee or the board, with regard to that matter, and the director had a rational basis for believing, and did believe, that the decision was in the best interests of the company.

7. Can minutes be amended after they have been signed?

Minutes for the previous meeting should be tabled, reviewed and approved at the board next meeting. It is the boards’ responsibility to ensure that any changes should be amended to the minutes and a new version submitted before the next meeting where the new version is reviewed to be accepted. Minutes should be retained in a minute book at the registered office of the company. Minutes cannot be amended after they have been signed by the Chairman unless a resolution to do so has been passed at a subsequent board meeting.