

Board meetings: Get the details right

1.) Obligation

There is no specific legal obligation for directors to meet as a board. The default Articles applying to any company not adopting alternative or amended articles state a '*general rule*' that any decision made by directors must be either a majority decision if made at a meeting or a unanimous decision otherwise. If no meeting takes place the regulations suggest that agreed resolutions be written and signed by all those eligible; the resolution only taking effect once the last director has indicated agreement - but it is only a *suggestion* that the resolution be in writing.

Many companies have a policy that should attendance not be possible then agreement to resolutions has to be confirmed (for example by the sending of PDF files to email addresses specified for that purpose).

Suggestion: Amend Articles specifying either agreed different methods of making board decisions or stating that decisions reached are always confirmed in writing - shareholders are less likely to challenge the validity of decisions made if this is shown to have been agreed.

The '*general rule*' does not apply if a company has one director; the default Articles do not require more than one. Hence no legal requirement for Board Meetings equals no legal need for minutes.

2.) Reasons

As the company grows, it is likely to need a formalised corporate strategy to facilitate that growth. The company's directors will have to plan for the resources needed to implement the strategy.

All contracts not in the normal course of business (eg those concerning land) should be referred to the board.

The board is legally responsible for ensuring that the company complies with its Articles as well as other relevant legal, regulatory, and governance rules.

Any source of outside finance will require assurance that their money is being well managed; they will expect evidence of a correctly run framework for governance.

Declaration of interim dividends and recommendation of dividend payout - dividends cannot be declared unless the directors have previously recommended the amount.

Suggestion: Prepare a standard text confirming due consideration of accounts and authorisation of the dividend. This does not need to be formally minuted, but should be signed and dated by the director(s) when each payment is made.

3.) Conduct

A valid board meeting requires a quorum of at least two directors; the actual number being decided upon by the directors themselves.

The Companies Acts leaves it to the directors to decide how to convene and conduct board meetings, but if not structured the meeting could result in just a meeting of informal discussion.

Preparation is key to a successful meeting and keeping to a set agenda will help to ensure:

that matters needing to be discussed are discussed.
that enough time is allowed to reach each decision.
advance preparation by attendees.
assistance as an aide memoire in the meeting itself and for minute taking.

Best practice is for a formal notice to be sent to each director with a board pack comprising concise back-up information enabling effective preparation and use of meeting time. Directors should be able to prove that they had sufficient information to comply with their statutory and other duties.

The location for the meeting should be specified in the notice and ideally at least one director should be physically present at that location. If the majority of directors participate remotely, it could be argued that a decision was made where the majority were physically present which could have tax consequences if deemed outside of the UK.

Suggestion: Amend Articles to agree a policy on remote participation; telephone conferencing being a common means of participation.

The Health and Safety Executive recommends that the safety of workers be a regular item for discussion by the Board.

4.) Minutes

Format - a recent debate within industry centred on this topic and came to the conclusion that:

The Companies Acts give no specific indication as to whether minutes can be kept electronically. s248 Companies Act 2006 just states that minutes are required and s249 confirms that any minutes that are produced are deemed evidence of meeting content.

Article 15 states that directors must ensure that a record is kept of every unanimous or majority decision, be in writing and be kept for at least 10 years from the date the decision is recorded.

s1134-1135 of the Companies Act 2006 confirm that company records include minutes and can either be held as hard copies or in electronic format but "must be capable of being reproduced in hard copy form if so required".

Suggestion: whichever format is decided upon, the decision should be confirmed at a board meeting.

Minutes record decisions taken and as such need to include sufficient background to those decisions for future reference.

Minutes are evidence should a third party such as the company's bank, landlord or member of a Tax Tribunal require sight of a particular board resolution.
Shareholders have no legal entitlement to view board minutes

Minutes should not be too long or too short but be detailed enough to confirm that the board were aware of and have complied with their obligations.

Suggestion: wording confirming compliance should be inserted into board minutes once a year as a reminder.