

### **Documenting Decisions: Board Meeting Minutes**

Business decisions that require board member or shareholder participation necessitate the creation of board meeting minutes to capture the details and context of decisions made. Meeting minutes serve as an important area of directors and officers liability loss control. If any business decision is questioned by shareholders, auditors, donors or regulatory agencies later on, directors and officers can bolster their defence with accurate, detailed minutes that can serve as the chief piece of evidence for their side of the case.

Directors and officers should expect that board meeting minutes will be subpoenaed as evidence for a potential legal action; therefore, minutes should be prepared with diligence and detail. The minutes should be accurate and should include:

- A list of the attendees of the meeting and who was absent
- A detailed account of what occurred at the meeting
- A list of voting results, including the names of those who voted in favour and those who dissented
- Copies of any supporting documents distributed at the meeting and a reference to those documents

In the event of a legal action, directors and officers cannot claim ignorance or absence when decisions were made that resulted in wrongdoing. Directors and officers who are unable to attend a board meeting should review the meeting minutes to find out what decisions were made. If they disagree with a decision made in their absence, they should submit their disagreement in writing to include with the record.

## **Recordkeeping and the Board of Directors**

Insight for business owners, directors and officers—provided by

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Recordkeeping preserves a company's history of business and financial decisions. Unfortunately, creating and maintaining accurate records is often overlooked by companies of all sizes. It's more than just a formality; recordkeeping is a critical element of directors and officers liability loss control.

For executive management, maintaining accurate records—most importantly, documenting important business decisions and the context in which they were made— not only builds a clear financial and business foundation for future decisions, but also reinforces a director's or officer's case in the event of litigation.

### **Leaving a Paper Trail of Critical Decisions**

Maintaining company records creates a paper trail of important financial and business decisions that may be referenced in the future by other directors and officers, shareholders, funders, auditors and more. Not only is this important in the case of litigation, but it helps to streamline the deliberation process of future decision-making.

*A comprehensive business record should contain:*

- Bylaws or operating agreement
- Resolutions
- Company policies (conflicts of interest, political contributions and more)
- Board meeting minutes
- Annual meeting minutes
- Shareholder communications
- Stock certificates issued to shareholders
- Current list of shareholders
- Annual reports
- Year-end financial statements and tax returns
- Employee personnel files
- Dissolution documents

Before simply stuffing papers into a file cabinet, it's important to review the overall records management system of the company, or create one if it's not already in place. Organising company records is key; establishing an easy-to-use and accessible filing system will help if a document needs to be located and referenced in the future. For some large companies, there are a vast number of documents and records management can quickly get out of control. Scanning printed documents and saving an electronic copy on an external storage device may help to save physical storage space, although

paper records should be kept as well. Some companies decide to store their records off-site. Controlled access to company records may also be necessary, as many documents, such as employee personnel files, must be kept confidential.

Controlled access should be part of a company's recordkeeping policy that complies with UK laws. All directors, officers and employees should be aware of this policy.

Directors and officers face numerous liabilities; good recordkeeping of company decisions is just one way to mitigate the risk of costly legal actions. Contact **Crendon Insurance Brokers Ltd** for more information about directors and officers liability and how to mitigate risk with Directors and Officers Liability (D&O) insurance.