



Armstrong
Teasdale

Board Meetings and Decisions

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The Framework

- Notice
- Meet
- Quorum
- Record What Happened

Notice

- Unless otherwise provided by the By-Laws, regular meetings of the Board may be held without notice if the time and place of such meetings are fixed by the By-Laws or the Board.
- Special meetings of the Board require notice to the directors unless waived.
- Notice of meeting must state the place, date and time of the meeting.
- Notice need not specify the purpose of any regular or special meeting of the Board, unless required by the By-Laws.
- By-Laws determine other notice requirements, including manner of giving notice (e.g. by e-mail).

Meet

- **Boards generally act at a meeting.**
- **Required vote is a majority unless the Certificate of Incorporation sets a higher threshold.**
- **Boards can meet anytime, anywhere.**
- **Board meetings are held as frequently as the Board deems necessary.**
- **Board members may participate in a meeting by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time.**

Action Without Meeting

- Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents should be filed with the meeting minutes.
- Unanimous written consent required.
- Emails as action:
 - Statement of proposition
 - “For” or “Against” statement
 - Signature block

Quorum

- A minimum number of directors who must be in attendance so that business may be transacted at the meeting.
- No meeting is “legal” unless there is a quorum.
- Typically, quorum is a majority of directors unless the Certificate of Incorporation requires a higher threshold.
- Certificate of Incorporation or By-Laws may require less than a majority, but never less than 1/3.

Proxies

- An authorization by a shareholder giving his right to attend and vote to another.
- Proxies cannot be used by directors at a Board meeting.
- A director's vote is non-delegable.

Confidentiality – Conflicts of Interest

- BCL Section 717 says the member must act “in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances.”
- Fiduciary Obligations:
 1. “due care”
 2. “reasonable care”
 3. “undivided loyalty to the corporation”
- BCL Section 713 governs “interested directors”
- BCL Section 727 requires an annual report of contract action

Committees

- BCL Section 712 allows the Board to appoint committees from among the Board members to exercise some of the powers of the Board
- Use of informal committees
- Effect of Directors and Officers Liability Insurance

Record What Happened

- **Business Corporations Law §624(a) requires Corporations to keep meeting minutes.**
- **Not necessary to write down every word spoken at the meeting.**
- **Minutes should include:**
 - the date, time and place of the meeting;
 - the directors and the guests in attendance and those absent;
 - whether minutes of the prior meeting were approved;
 - the results of any vote or election; and
 - if a member or members objected to an action taken by a vote of the full board.
- **Minutes should NOT include:**
 - discussions and direct quotes by board members; or
 - names of an individual shareholder.

Record What Happened (cont'd)

- Not necessary or recommended to tape record Board meeting.
- Meeting minutes should be approved – after a meeting, the minutes should be circulated and directors given the opportunity to comment. Best practice is for the minutes to be approved at the following meeting.

Contact



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