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CORPORATE MEETINGS SERIES FROM MC CORPORATE SERVICES (MCCS)



Often misspelt as “bored” meetings by many an unwary secretary, Board Meetings are at the very core of corporate co-ordination, director-level interfacing and strategic manipulations that determine the progress and growth of Companies.

Once again, in this second of a series of four articles on Corporate Meetings, we will refrain from basic academic theory and focus on the hitherto lesser known practical facts on Board Meetings and associated best practices that our Corporate Executive reader will hopefully find useful.

The article also highlights the significance of the role of the Company Secretary before, during and after such meetings such as but not limited to quorum for board meetings, how the agenda and associated questions to be tabled are decided, the issuance of correct and timely notices for the board meeting, the choice of the Chairman, the management of relevant resolutions and the management of minutes and records for such meetings.

It is noteworthy to mention that well-managed and conclusive Board meetings are a deliberate result of planning and co-ordination that results in a beneficial consensus generating corporate exercise.

Poorly planned ones often result in an utter waste of top executives’ time. In fact on a more sardonic note, the outcome can be summed up as banter aimed at basic compliance rather than corporate progress, interspersed by toilet breaks and coffee.

Role of the Company Secretary at Board Meetings.

This section includes a summary of the legal, procedural and practical aspects of meetings that a qualified and experienced Corporate Secretary will know.

Corporate Definition of “Meeting” - the coming together of at least 2 persons for any lawful purpose. Therefore, unless there are at least 2 persons present at the same place and time, no meeting can be said to have taken place.

However, in the case of Board Meetings, the simplified definition above alone will not necessarily ensure compliance with the plethora of legal and regulatory requirements that could apply to such meetings depending on the agenda, nature of business and the expected outcome associated with the meeting.

Here is where the Company Secretary plays a very significant role in using their knowledge and experience to ensure that both, business and compliance priorities are taken into account whilst arranging and conducting such meetings.

The general rules and regulations on the conduct of meetings of companies or the companies’ boards of directors are laid down by the Singapore Companies Act, the articles of association of the company and the general law.

Outcome of Board Meetings

Decisions made at Board Meetings:

- Are binding on the company, (e.g. the amount of dividends to be declared)
- Determine the validity of contracts and agreements
- Determine the validity of any delegation of authority. (e.g. the

delegation of the various management functional areas to executive directors in charge of marketing, finance and human resource or the delegation of the revision of salary scales for senior management to a committee; and

- Determine the legitimacy of documents to which the company affixes its seal and other documents that are executed, etc.

It is thus imperative that the company secretary is familiar with the objectives of the meeting and business to be transacted. Has the competence and experience; and possesses adequate knowledge of the relevant legal and statutory requirements to advise and ensure a successful Board meeting. A Company Secretary duly qualified in law is best suited to meet these requirements.

Briefly, the company secretary plays a vital role towards (but not limited to):

- Providing advice on the legal requirements for the various decisions to be undertaken by management at meetings. Clearly, here the advantage of a legally qualified Company Secretary is strategically advantageous to the Company.

- Advising and attending to the procedures that need to be complied with, (if the directors decide on an issue or a further allotment of shares in the company, the Company Secretary can readily prepare the necessary documents).

- Ensuring that the requirements for valid decisions and meetings are complied with. Singapore Corporate Law Case Reports hold several examples of Board meetings that are not validly constituted and resolutions that are subsequently found to be invalid. ▶



Notice for Board Meetings

A director may, and the secretary at the request of any director shall at any time summon a meeting of the directors to be held and shall usually give the directors no less than seven (7) days prior notice in writing thereof. Some Articles state

NOTE : A meeting that is not validly held may result not only in the question of validity of the decisions taken therein, but may also have consequence on the subsequent transactions ensuing or influenced by such invalid decisions.

a seven (7) days notice period whilst others may be silent on the actual period of notice that is required to be given to the directors.

However as an exception, a board meeting that is called by notice shorter than is required can be deemed to be duly called if it is so agreed by all the directors entitled to receive such notice and they attend and vote at the meeting.

Care must be taken in the preparation of the notice for a meeting. The notice must specify the place, date and time of the meeting and the business to be transacted. The notice must give sufficient information to enable a director to decide whether he wishes to attend the meeting. The notice should be fair and should provide reasonable intimation of what is actually proposed to be the expected outcome. This is especially important for attending independent non-executive directors.

Quorum for Board Meetings

The quorum is usually stipulated in the company's articles of association. The board may fix the quorum and where none is fixed, the quorum is usually a

minimum of 2. Two directors present personally or by his alternates shall be a quorum. However if a person is an alternate for 2 different directors, that does not satisfy the requirement for a quorum of 2 persons.

How is the quorum ascertained?

To be counted as quorum, a director must have the right to attend and vote at the meeting.

Whether proxies are taken into account for the quorum

Although proxies have the right to attend and vote on behalf of a member for general meetings, they will not be counted in determining the quorum for a directors meeting.

Chairman for Directors Meeting

A chairman must be appointed to preside over the meeting to exercise procedural control over the proceedings of the meeting and to keep the meeting in order.

In legal terms, the Chairman is "that person who is expressly or by acquiescence permitted by those present to put motions to the meeting so as to enable the purpose or decision of the meeting to be ascertained".

The Articles usually provide for the appointment of a chairman who need not be a member of the company. In the absence of provisions in the articles, any director elected by the existing and attending directors at the meeting maybe the chairman for the meeting. The chairman's job is to ensure that the meeting is properly run and that order is maintained. The Act does not provide for how meetings are to be conducted. Generally it is for the meeting to regulate its own conduct and procedure. As long as the chairman acts bona fide, any irregularities in the conduct of a meeting by the chairman will probably be treated

NOTE : The requirement for quorum is to be distinguished from the number of votes required for passing a resolution.

as an internal irregularity ratifiable by the directors. The chairman may be given a casting vote by the articles, but he has no automatic casting vote.

How decisions are made

A decision is made and is binding on the board when an ordinary resolution passed by a simple majority of all the directors is obtained.

Conclusion

Board meetings have a high demand of top management time and are the springboard for the progress and compliance of Companies.

Planning and co-ordination of such meetings must not be left to chance.

An efficient Corporate Secretary with legal knowledge can optimize the outcome of such meetings to the maximum benefit of the Company.

It is extremely important to ensure that both business and regulatory priorities are addressed in such meetings.

Invalidation or disqualification of decisions taken at Board meetings often have far-reaching and damaging consequences and must be avoided. It is the fiduciary duty of the Company Secretary to advise the management and implement measures to safeguard against such issues. ■



MS. HELEN CAMPOS
MANAGING DIRECTOR

MR. FARZIN R. KARMA
DIRECTOR/PARTNER

NOTE : If a material fact is not disclosed in the notice calling the meeting, any resolution passed may be invalidated and will not be binding on any director who did not attend the meeting because he was not apprised of the contents of the agenda for that meeting.

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