

Meetings and Writing



Webinar on Law & Procedures in Meetings



Wednesday, 7th July 2021

Time: 9:00am-11:00am

Order of Play



Introduction



Meetings of the Board



General meetings



Tools for meetings



Challenges during Meetings



Conclusion and Q & A

Introduction

- Meeting; coming together for a common purpose
- usually the verbal interaction, such as sharing information or reaching agreement for a common purpose
- A company having one member -
- physical assembly/ virtual meetings – thro' teleconferencing or video links are possible and legitimate.

Common principles

- The same broad principles apply to all meetings generally be they of associations, corporations or the different types of meetings within these institutions.
- For instance, the essentials of a valid meeting are:
 - Proper authority
 - a sufficient number to form a quorum; -Should the Managing Director (an ex-officio member of the Board) count for quorum? Should quorum be present through out the meeting?
 - adequate notice of the meeting must be given;

Common Principles

- No person entitled to be present may be excluded;
- Someone presiding over the meeting;
- The proceedings of the meeting are recorded and where necessary extracted;
- Business is conducted according to specific set out rules.



Meetings of the Board



Meetings of the Board

Board

- For overall direction and oversight of an organisation;
- Legal Framework, in constitutive acts such as companies Act, State Corporations Act, Sacco societies Act etc
- Appointments: Members at a general meeting, respective Cabinet Secretaries etc

Meetings of the Board

- Types - Full Board (ordinary or special) and Committee meetings
- Convening (Chairperson or according to constitutive documents)
- Secretary

Meetings of the Board

- Issuing Notice, Agenda and Board Papers – Secretary to the Board
- Board work plan – Board approval of dates/events
- Frequency of Board and Committee meetings – generally quarterly
- Quorum, attendance register.

Sample agenda board meeting

1. Preliminaries

a) Prayers/Calling meeting to order

b) Notice of meeting

c) Quorum and Apologies

d) Adoption of Agenda

e) Declaration of Interest

2. Confirmation of Minutes of Previous Meeting(s)

3. Matters arising from Previous Minutes

4. CEO's Report

5. Affixing of the Common seal

6. Committee

Reports/Recommendations

7. AOB

Meetings of the Board

- Quorum and departures,
- Should the Board discuss substantive items not in the agenda?
- Any other business?
- Virtual meetings as per constitutive documents

Meetings of the Board

- Declaration of conflict of interest and register
- Role of secretary
- No AOB at special meetings. AOB in ordinary meetings for non-substantives
- Tele and video (virtual) conferencing meetings to be specifically allowed for and properly handled.

Why Board Meetings?

- Strategy Development
- Performance management –oversight of strategy implementation
- Corporate governance
- Key stakeholder relations
- Risk Management

Committees of the Board



Committees: Introduction

- Established, in line with constitutive documents consisting for the purposes of supporting the board's work. May be standing (permanent) or *ad hoc* (special temporary purpose).
- The board is ultimately responsible for the acts delegated to the committee

Committees: Introduction

- Number and Constitution is determined by organizational need, board size and strategy.
- Mwongozo: Maximum of 4, Audit Committee is a must
- Avoid large committees and multiple committee membership.
- Board chairperson should not be a member of any Board committee save for an ad-hoc committee.

The official winner of the "not my job" contest...



What is a Board Committee?

“A group of the unwilling,
picked from the unfit to do
the unnecessary.”



“The Camel is a horse
designed by a Committee.”

General Meetings





Even though I'm a shareholder, I really don't care what this company earns. I just love the intrigue.

Legal Provisions on Meetings

- Governed by the Companies Act 2015 and Insolvency Act, 2015, subsidiary legislation.
- Two regimes:
 - lighter-touch regime for regulated aspects of private companies to reduce time and cost, and
 - heavier scrutiny and accountability for publicly owned/listed companies.

General Meetings

Two types of General Meetings

- Annual General meeting as required by law
- Extra ordinary General Meeting to discuss special business of the company

Companies Act, 2015

- All Companies, including single member companies, are required to hold annual general meetings
- Public Companies still required to hold annual general meetings :
 - Must give 21 days' notice to members in case of annual general meetings
 - 14 days' notice for any other meetings
 - Use of electronic medium for meeting requests and notices for meetings

Companies Act, 2015

- Notice of meetings to be given in hard copy form, electronic form or via websites (newspapers not mandated)
- Must hold annual general meetings within 6 months from and including the day following their accounting reference date despite holding other meetings in the same period
- Failure to comply with this attracts a fine of Kes one million (Kshs.1,000,000)

General Meetings

Who can convene:

- The Board on its own motion
- Requisition of members
- The Registrar/Commissioner
- An order of the Court
- Any other persons authorized by law or rules of the organization

Effective General Meetings

- Notice and agenda (contents, length – companies 21, cooperatives 15 days), may be shortened with consent of the members or proportion of members, dispatch)
- Quorum (threshold as per constitutive documents/law)
- Chairperson
- Proxies
- Decision making (show of hands, polling, acclamation & electronic voting)

Adjourning or Postponing the Meeting

- Reasons for adjourning provided to be given and an adjourned meeting to be held at the same place, time and venue the following week.
- If adjournment is for more than 7 days, meeting Notice to be re-issued.
- Original proxies are still valid unless revoked.
- Procedure provided in the Constitutive Documents.



Minutes



Minutes

- Amendments of previous minutes (substantive record in the current minutes, if minor – Chairperson to initial)
- Maintenance of minute book (as per retention policy and applicable laws)
- No Names-

Minutes

- The minutes should be written in third person and past tense.
- Be objective: Avoid inflammatory and personal observations
- Upon confirmation, Signed by Chairman
- Ultimate responsibility for the accuracy and correctness
- Records: Minute Book.

Circulation of minutes

- ❖ Circulate to all other members after approval by the Chairman for their input.
- ❖ Deal with comments received from members. These may be simple or more fundamental.
- ❖ The former can be effected immediately while the latter may need to be exposed to all at the meeting

Tips: preliminary approval of minutes

- ❖ Obtain Chairperson's approval before circulation to other members.
- ❖ Retain a record of your original notes until the minutes have been adopted or as long as reasonable-**MAINTAIN CLEAR RECORD OF ISSUES IN DISPUTE OR POTENTIAL DISPUTE**
- ❖ It must be clear on the surface of the minutes that the Chairman's approval is for purpose of circulation not a true record of the proceedings.

Resolutions

- Types of resolutions
 - Ordinary – simple majority
 - Special – 3/4 support or as per constitutive documents
 - Circular/round robin resolutions or written – simple majority of members to sign approval
 - Board resolutions – made at board meetings
 - Members resolutions – made at General Meetings or under the Companies Act

Resolutions

- Contents (summary of matter, decision, execution responsibility, time frames)
- Forms (resolutions within minutes, extract of resolutions)
- Should resolutions be actioned immediately after the respective meeting is over or after the minutes are formally recorded, signed and adopted at the subsequent meeting?

Board Papers



Board Papers

- Form (organization, meeting, title of paper, author, department, agenda, item number)
- Substance (introduction, executive summary, details, appendices)
- Board file (cover page, notice, agenda, previous minutes, matters arising, board papers, draft resolutions – where necessary)
- Chronological order – serialized/tagged/segmented for ease of reference)

Challenges in meetings

Which one describes your meetings?



Best practices -to minimize challenges

- ✓ PREPARATION- Time
- ✓ Clearly identify purpose of the meeting and have clear objectives to achieve
- ✓ Have specific agenda for the meeting
- ✓ Invite the right participants to the meeting and don't exclude key persons relevant to the meeting

Practical problems

- ❖ No member who was present in the previous meeting that is present in the current meeting. How will the Minutes be confirmed?
- ❖ In the event of total overhaul of the Board, how do you deal with previous set of unconfirmed minutes?
- ❖ Where meeting has not raised quorum, do you write Minutes? Do you pay Sitting allowance?

Practical problems

- ❖ How do you deal with dissenting opinions?
- ❖ If Secretary is asked to step out of a meeting, who takes responsibility of minutes during such absence of the Secretary?

Practical problems

- ❖ How do you capture recordings of proceedings during the time you were not at the meeting where such recording was taken by someone else?
- ❖ Before sending Minutes to Chairman to approve circulation, should you send to the same to the CEO?

Ethical issues

- ❖ Due to current prevailing situation, the Board members in a meeting refuse to adopt previous minutes insisting a specific item is not captured as discussed. You are totally sure their intention is to achieve some ulterior motive. How do you deal with that?

Ethical issues

- ❖ What do you do if your manager, CEO or Chairman insists on substantive amendments to Minutes outside the meeting?
- ❖ In a special meeting in which you are the only member of management intendance, the Board resolved to terminate the CEO's contract after completion of a project that he is overseeing and which will take the next 5 months. Would you inform the CEO?

- ✓ Recap & Take-home
- ✓ Recommendations/Action Points
- ✓ Assessment and closure

THANK YOU

'The Governance Profession'



Q & A

