



Meeting Procedures

Incorporation into Constitutions

7 April 2016

This is a supplement to Newsletter dated 6 April 2016, titled “Time for a Rebirths of our Ukrainian Community, Branches, State and National Hromadas – Constitutions Should be Review”, it was stated that “adopted Meeting Procedures and Chairmanship Rules”.

During my investigation and discussion with member of our Ukrainian community, it appears that there are no formal meeting procedures that are followed.

There are a number of standard rules that can be adopted. As a starting point we have suggested that the attached document title “Meeting Procedures” by Alan Davidson, Lecturer in Law, University of Queensland, be used to develop our own set of Meeting Rules that are to be attached as an Appendices to our Constitutions.

Alternatively, state within the Constitution, that meeting procedures shall be conducted in accordance with a suitable recognised publication. I am familiar with the book “Take the Chair” published by [Rostrum Australia](#) (Public Speaking Club) at a cost of \$27.95. It is recommend that each and every member of a Board be issued with such a publication on their appointment as Director. (Available online: <http://www.rostrum.com.au/publications-order-form>).

Basic Meeting Principles

Chairman’s Role

- The Role of the Chairman is to conduct the meetings, being a Board of Directors or a Committee, in an orderly manner following the agenda.
- Discussions on issues, the Chairman does not express their own personal point of view as they are there, as the “Umpire”. Any comment by the Chairman can be viewed as attempting to influence discussion as well as stems and even extinguishes discussion on the issue.
 - A Chairman is not the supreme commander or dictator in our democratic society.
 - The Chairman is to use speech and body language that is neutral and not use authoritative speech, behaviour or gestures, as this can be seen as intimidating members, which does extinguishes discussions.
- The successful Chairman encourages members of the Board or Committee to state their point of view on the subject matter freely without undue influence.
- The successful Chairman, after a member’s presentation, may encourage expansion on an issue, by asking specific questions of the member, to which the member may wish to respond.
- The Chairman summarises the views of the meeting without expressing their personal point of view, before a vote is taken on the issue.

Members of Board and Committee Roles

- It should be remembered that members of a Board of Directors or Committee have been elected by the membership; in the case of Committees have been nominated by Boards to perform their duties and have equal rights with other members, including the Chairman.
 - Members of Board and Committees should be encouraged to express their opinions freely without due influence by the Chairman or other members.
 - Members are not to criticise, denigrate or demean other members' points of views.
 - Everyone has the democratic right to their point of view.
 - Criticism and making derogatory comments is a form of "Bullying" and is not acceptable behaviour.

Addendum to the Newsletter dated 6 April 2016, titled "Time for a Rebirths of our Ukrainian Community, Branches, State and National Hromadas – Constitutions Should be Review",

Board Nominees (Elections) - "Fit and Proper"

Each and every nominee should complete a declaration form which may include the following issues:

- Commitment to Ukrainian Traditions and Customs
- Acknowledge they have:
 - read and fully understand and abide by the Constitution.
 - read and fully understand and abide by the Meeting Rules
- Acknowledge they will
 - perform their role in the interest of the community forsaking their personal views
 - not be influenced by specific interest individuals and groups.
 - actively foster a succession plan
- Commitment to attend all monthly and other designated meetings
- Willingness to:
 - be included on Committees
 - to participate in Community Activities
 - to take the "Chair" as and when called upon
 - to encourage younger persons to become members

Elections

- a. In the Notice of an Annual General Meeting the Notice shall be posted to members so as to receive it 30 clear days prior to the AGM. The Notice shall state the date of the AGM and provide a list of retiring Directors and stating that they have the right to re-nominate.

Attached to the Notice shall be Directors Nomination Form and the Fit and Proper Form; stating to whom and where to post these forms and the closing date.

- b. A further Notice shall be posted to Members with the list of Nominees together with their Statement and their "Fit and Proper" responses to be received 14 days prior to an AGM.

Chairman of Boards

A number of people have strongly encourage that the term of Chairman shall not exceed two years.

Michael Karaszekwycz

Member of AUV Central, Member Sunshine Hromada, Member St. Albans Hromada
Editor, Ukrainian International Directory

Refer Attached Document

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MEETING PROCEDURES

**Working Paper No. PONC76
Alan Davidson**

**SPEECH PRESENTED
AT THE PROGRAM ON NONPROFIT CORPORATIONS SEMINAR
4 February, 1998**

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**©Queensland University of Technology February 1998
Published by the Program on Nonprofit Corporations
The Queensland University of Technology
G.P.O. Box 2434
Brisbane QLD 4001
Phone: 3864 1268
Fax: 3864 1812**

ISBN 1 86435 130 6

Program on Nonprofit Corporations *QUT*

MEETING PROCEDURES

MEETINGS

The same broad principles apply to meetings of all associations and corporations as they do to company meetings both general and to board meetings. Meetings are basically democratic occasions, which means fairness, reasonableness and good faith to all who are entitled to be there.

The essentials of the meeting are:

- a sufficient number to form a quorum;
- adequate notice of the meeting must be given;
- no person entitled to be present can be excluded.

For companies the relationship between the general meeting and the board meeting may be expressed as:

- (1) the general meeting is the principal agency for the members, by resolution, to reach a decision;
- (2) at the general meeting, the members appoint directors, to whom are generally delegated all powers of management by the articles;
- (3) the directors usually make their decisions at board meetings.

Companies are regulated by articles which deal with matters of internal management such as the holding of meetings and the procedure at meetings. Other types of corporations and associations have similar internal management provisions which they variously call rules, the constitution, by-laws or standing orders.

Consider the old term “extraordinary general meeting” that was part of company law for many years. It has been expunged from recent legislation and general meetings of the company, other than the AGM and statutory meetings, are simply called general meetings. But the term extraordinary general meeting lingers on in the articles of some of the older companies. Hence those companies are still holding their extraordinary general meetings as *their articles* require.

There are also other meetings that may be held in connection with companies, namely:

- *a meeting of a class of members*: required where there is a proposal to vary class rights, or for a -scheme of arrangement to be approved;
- *a meeting of holders of prescribed interests*: may be convened by a number of holders of prescribed rights so that the company’s accounts can be laid before them and to give directions to the trustee or representative;
- *a creditors’ meeting*: to be convened so that the creditors may decide the company’s future.

GENERAL MEETINGS

A company other than a proprietary company must hold an AGM at least once every calendar year and not more than five months after the end of the company’s financial year. This is slightly relaxed for newly formed companies (other than proprietary companies) which have 18 months in which to hold their first AGM. All bodies should have an AGM to account to members for the past year. Almost all constitutions provide for such meetings.

If the company fails to hold an AGM, the company itself and any defaulting officers are guilty of an offence.

The main business of the AGM is commonly laid down in the company’s articles. Typically, it consists of:

- the declaring of dividends (unless prohibited by relevant rules)
- consideration of the accounts and the reports of the directors and auditors
- the election of directors in the place of those retiring
- the appointment and remuneration of the auditors

The constitution/articles often provide that any director/committeeperson may convene a general meeting whenever he or she thinks fit.

Moreover, the directors must convene a general meeting on the written requisition of 100 members (in the case of a company which has a share capital) or members having 5% of the votes. Upon receiving such a requisition, the directors are bound to call a meeting to be held as soon as practicable but in any case not later than two months after receiving the requisition. It hardly needs to be said that at any such meetings the incumbent directors may be liable to be replaced by nominees of a new controlling shareholder.

If the directors fail to *proceed* to convene the meeting within 21 days after receiving the requisition, the requisitioning members themselves may convene the meeting. For this purpose, they may require the directors to supply them with a list of names and addresses of those persons who are entitled to receive notices of general meetings of the company.

ANNUAL GENERAL MEETING

General meetings are the main agency for a company, per a resolution of its shareholders, to reach its decisions, but AGMs are held mainly to allow (and require) you and your fellow directors to report to the shareholders on your stewardship over the previous 12 months. Companies other than proprietary companies must hold an AGM at least once every year.

REQUIREMENTS FOR HOLDING AN AGM

There's a distinction between the first and all subsequent AGMS. The first must be held within 18 months of incorporation or within 5 months after the end of the first financial year of the company whichever is the earlier. Others must be held at least once every calendar year, not later than five months after the end of each financial year. Hence, of course, that log jam in mid to late November.

An AGM must be called and concluded within the calendar year and what you cannot do is call the meeting in one year and adjourn it to the next *unless* all that has to be done by law is done at the original meeting.

There must be presented to each AGM a copy of the company's financial statements for the financial year and directors' statements accompanying those financial statements, the directors' report, and the auditor's report.

OTHER THINGS THAT ARE USUALLY DONE

It is usual that the business of the AGM includes (as well as presentation of the annual accounts) declaring a dividend, election of directors in the place of those retiring, and appointment of the auditor and the fixing of the auditor's remuneration.

PRE-AGM PREPARATION

The matters for which the directors are responsible at the AGM require work to be done before that meeting. A board meeting held before the AGM must attend particularly to the accounts and to the directors' report.

CONVENING & GIVING NOTICE

Convening the AGM is usually left in the hands of the directors.

Note: The law allows members of a company to call a general meeting but not the AGM.

The notice of meeting should:

- state the date, time and place of meeting;
- indicate the nature of the business (include an agenda if possible);
- be clear and well set out (giving fair and reasonable information so that shareholders will understand what is actually proposed to be done at the meeting);
- be issued on proper authority;

- be sent to all those entitled to get it.

Directors and Committeepersosns have a duty to see that the members are not misled and, if the notice is claimed to be misleading, it's possible that you as one of the directors or committeepersons might receive a letter claiming that the notice was likely to breach the *Trade Practices Act*, the Stock Exchange Listing Rules and the Corporations Law. Legal action might then follow seeking to stop the business to which the misleading notice relates from being considered at the AGM.

SPECIAL NOTICE

Special notice is needed for some resolutions, for example, to remove a director of a public company, to remove an auditor, to reappoint a director aged 72 or over, or for special resolutions.

CHAIR

The articles usually provide that a general meeting is chaired by the person elected by the directors to chair their meetings. If they have not done so, or if that person is not present, the members shall elect one of their number to chair the general meeting.

Note: There has been some controversy as to the correct method of addressing (and referring to) the person who presides at a meeting. Traditionally, this person was the "chairman" but now "chairperson" is widely accepted. "Chair" is also used widely, especially for the office itself. During a meeting, all comments, questions and motions should be addressed to the Chair. Preferred forms include "mister chairman" or "madam chair".

The rule for the person in the chair at a general meeting is to maintain a firm and effective hand, remaining neutral during debate, acting as referee, keeping order and not infringing upon members' rights as defined in the articles. There is no casting vote in the Chair unless the articles or constitution bestow one, which they most commonly do.

The main duties of the person in the chair are to:

- preside at meetings in a proper manner;
- see that the meeting has been properly convened and that a quorum is present, in accordance with the articles or constitution;
- conduct proceedings properly and in accordance with the articles or constitution;
- ensure that the sense of the meeting is properly ascertained with regard to any question under consideration;
- preserve order, and to see that a proper procedure is followed, particularly regarding the rules of debate;
- give all persons present and entitled to vote a reasonable opportunity to do so;
- vouch for the correctness of the minutes by signing them;
- declare the meeting closed on termination of the business.
-

VOTING

Normally every shareholder has one vote and the usual methods of voting are:

- by the voices;
- by a show of hands;
- by a ballot;
- by a postal vote (only if permitted by the articles or constitution).

If the articles or constitution do not permit a postal vote then voting must be in person by the member or proxy.

Anyone attending a meeting and entitled to vote has the right to demand a poll and, though the articles can regulate the way a poll may be taken, they cannot exclude that right. If demanded, the poll is a vote taken by requiring those present and entitled to vote (in person, by representative, by attorney or by proxy) to sign a written form declaring whether they are in favour of or against a motion.

VOTING BY JOINT HOLDERS

Where shares are jointly held, the senior holder is entitled to exercise the vote. For this purpose, seniority is determined by order in the register of members. (For companies with a share capital)

MINUTES

The minutes of a general meeting must be kept and must be entered into the minute book within a month of the meeting. Minutes are simply a record of proceedings, particularly of resolutions and matters related to them.

The real purposes of the minutes are to:

- tell those who did not attend what happened;
- give future officers and members a better understanding of the affairs of the body;
- preserve continuity in debates;
- be available as evidence in legal proceedings and for auditing purposes;
- be available for inspection by the members.

Note: Members have the right to inspect the minutes of a general meeting and obtain a copy. However, if the directors or committee persons have had a transcript of the proceedings of a general meeting made, a shareholder only has the right to see the minutes that are composed from that transcript, not the transcript itself.

Once minutes are recorded (they may not be altered other than by resolution) and signed as correct by the person who chairs the meeting (or the next meeting), they obtain legal status as evidence of what occurred at the meeting.

The minutes of an AGM should record:

- name, place, date and hour of the meeting
- apologies for non-attenders
- names of guests or others present by invitation
- names of persons who vote against a resolution, if they request it
- precise words of every resolution
- time the meeting closed

SPECIAL RESOLUTIONS

Certain matters must be decided by a special resolution of a general meeting. The requirements of a special resolution for companies and typically most other bodies are:

- at least 21 days' notice of the meeting must be given;
- that notice must specify the intention to propose the resolution as a special resolution;
- the resolution must be passed by a 75% majority.

The 21 day notice is not required if a 95% majority agrees and passes the resolution. (This is a common sense exception particularly for companies with a hand full of members who are all in agreement and do not wish to wait 21 days for a resolution to come into operation.)

RULES OF MEETING

For a normal, formal meeting the following provides a guide to procedure.

STEP 1: PRE-MEETING PREPARATION

Ensure that the room is available (and that you have the key), and is equipped with pads, pens, water, drinking glasses and such appropriate items.

Have a whiteboard and marker pens on hand if required.

Have the agenda available for distribution.

STEP 2: OPEN THE MEETING

The Chair calls the meeting to order and declares the meeting open for business (the secretary having checked that a quorum is present).

The Chair asks for apologies and then moves “that the apologies be accepted”.

The Chair welcomes any new members or visitors.

Some commentators believe that the Chair should not move motions. This is not a requirement of law but good practice to ensure the appearance of impartiality of the Chair as the Chair has the control of the debate and procedure. However for non-contentious motions such as accepting apologies this has no application.

STEP 3: MINUTES OF PREVIOUS MEETING

The Chair calls on the secretary “to read the minutes of the last meeting held on ...” but if minutes have been earlier circulated, the Chair may ask for a motion “that the minutes be taken as read”.

The Chair asks if there are any corrections to the minutes, and if not: “is it the meeting’s wish that I sign these minutes as a true and correct record?”

If a correction or alteration to the minutes is sought, the meeting must consent. The Chair should initial any corrections.

STEP 4: BUSINESS ARISING

The Chair asks if there is any business arising from the minutes not on the agenda.

STEP 5: CORRESPONDENCE

If appropriate to the meeting, the secretary can be asked to report on letters and communications sent and received since the last meeting and may read such of them as the meeting requests. The Chair does not require a motion to that effect. Each letter or other communication may be dealt with after having been read and the appropriate action taken by resolution, but no motion shall be required if no action is desired.

When correspondence has been dealt with, the Chair asks for a motion “that the inward correspondence be received and the outward correspondence be confirmed”.

STEP 6: FINANCIAL REPORT

If appropriate to the meeting, the treasurer may present a financial statement... in which case a formal motion is required approving the accounts for payment.

The financial statement should be received (it is the audited accounts at the AGM that are adopted).

STEP 7: COMMITTEE REPORTS

If appropriate to the meeting, committee reports are received.

The Chair may determine whether a report shall be given to a meeting without requiring a motion to that effect, irrespective of whether such report is to be presented by a member of the meeting or a person not a member. After a report has been given the meeting may deal with it by motion for its adoption, rejection, reference back for further report, or for such other action, but no motion shall be required if no action is desired but normally the person presenting the report after it has been discussed moves “that the report be received”.

STEP 8: GENERAL BUSINESS

Motions for which notice has been given (as the articles or constitution or by-laws require) are dealt with. The Chair may require (depending on the formality of the meeting) that formal meeting rules for motions and amendments be followed. They are:

- No discussion shall be permitted on a motion or an amendment until it is seconded and, if there is no seconder, it shall lapse except that the Chair, before calling for a seconder, may allow the mover to explain briefly the import and purpose of the motion.
- A person may second a motion or an amendment pro forma in order to permit discussion; he or she need not support or vote for the motion.
- A motion shall be clear and unambiguous, couched in precise and definite language, affirmative in form and comply with the articles, constitution or by-laws as to form and notice.
- A motion or an amendment may be withdrawn by a proposer with the consent of seconder and with the agreement of the meeting.
- An amendment shall not, except with the Chair's permission, be moved by the proposer or the seconder of the motion.
- An amendment may be proposed even though the motion is one of which due notice has been required and given, but must not alter the character of the original motion. However an amendment to a proposed special resolution may depart from the text of the circulated motion to correct, eg grammatical or clerical errors, or reduce the motion to the form of new text, if in either case there is no departure whatever from the substance.
- An amendment shall relate to the matter involved in the motion and shall not be a direct negative of the motion.
- A right of reply is exercisable by the proposer of a motion, but not by the proposer of an amendment.
- The debate shall be terminated when the proposer of the motion has replied.
- An amendment shall be voted on before the original motion is put.
- If the amendment is lost, the original motion is revived and is subject to further amendment until all amendments have been disposed of.
- Amendments may be dealt with in any order provided each subsequent amendment differs from the motion and the defeated amendments.
- If the amendment is carried, the amended motion becomes the motion and may be further amended.
- Amendments may not be amended.
- If no further amendment is proposed, the amended motion as carried takes the place of the original motion and becomes the motion. It is then put to the meeting as a motion, subject to right of reply.
- One amendment only shall be discussed at a time, but a person may inform the Chair that he or she foreshadows an amendment and may state its form but shall not propose or discuss it until the amendment before the meeting has been dealt with.

STEP 9: GENERAL PROCEDURE AT MEETING

There are *formal rules* for the procedure at a meeting which, as indicated, the Chair may wish to have followed. They are:

- Discussion shall not be permitted unless there is a motion before the meeting.
- Discussion shall be relevant to the matter before the meeting, whether it be a motion, an amendment, a point of order, or a personal explanation.
- Speakers at a meeting shall rise and address the Chair.
- The Chair may at any time rise to address the meeting and any person then speaking shall resume his or her seat.
- No person shall speak more than once to a motion, except the proposer of a substantive motion who is entitled to reply. This procedure may be relaxed at the Chair's discretion at "informal" meetings.
- A previous speaker to a motion may again speak on an amendment, or a motion for the adjournment of the debate, on a point of order and, by permission of the Chair, in personal explanation of his or her previous remarks.
- The Chair shall decide which speaker is entitled to priority provided that the meeting may, by resolution, determine that a particular person shall or shall not be heard, and a motion to that effect shall be moved and seconded but not debated.
- The Chair may require a speaker to resume his or her seat if the speaker exceeds the time prescribed or, if no time is prescribed, a reasonable time for speaking. The meeting may by resolution determine that the speaker's time be extended. This motion shall be moved and seconded but not debated.

- The meeting may by resolution determine that a speaker be no longer heard. This motion shall be moved and seconded but not debated.
- The Chair may terminate a debate after a reasonable discussion and put the motion to the meeting for voting. (Note - not all speakers wishing to be heard may be permitted a chance to speak. However before the right of reply the meeting may by resolution determine that further debate continue. This motion shall be moved and seconded but not debated.)
- The Chair of a meeting shall be impartial but, in small informal meetings, he or she may take part in a discussion, and may move or second a motion or an amendment. He or she need not vacate the chair. However, in more formal meetings, to preserve impartiality, the Chair should play no part in formulating motions.
- The business of the meeting shall be conducted in the order of the agenda, unless the meeting determines to take the items in some other order.
- Voting takes place in accordance with the articles, constitution or by-laws.
- The Chair declares the motion won or lost.

STEP 10: OTHER BUSINESS

Unfinished business is dealt with and, if the meeting consents, new topics may be discussed, but new business may not be discussed at a general meeting unless notice has been given. The reasoning is that all members entitled to vote should have knowledge of questions to be discussed so that they may determine whether to attend the meeting.

STEP 11: NEXT MEETING

If appropriate, the Chair might allow discussion on date and arrangements for the next meeting.

STEP 12: CLOSE

Normally, on receipt of a motion to this effect, the Chair declares:

“it has been moved that the meeting be adjourned. All in favour please say Aye, against No. I declare the meeting stands adjourned till the next meeting on ...”

BOARD MEETINGS OR MANAGEMENT MEETINGS

Board or management meetings are where you play your part in the governance of the body. As that delegation was (as it normally is) to the directors or committee as a whole, it is as a whole that you all act. Essentially, the board or committee should think and act as one body and not as a collection of individuals.

Note: Remember, as a general rule, directors or committee persons are not supposed to make decisions outside their meeting - unless authorised in some way. There can, however, be resolutions that are assented to by all the directors not assembled at a meeting.

The board or management committee must meet regularly, retain full and effective control over the company and monitor the executive management.

There should be a clearly accepted division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. Where the Chair is also the chief executive, it is essential that there should be a strong independent element on the board, with an appointed leader.

Boards and management committees should have a formal schedule of matters reserved to them for decision to ensure that the direction and control of the company is firmly in their hands.

CHAIR

Directors can usually elect one of their own to preside. The articles or constitution normally go on to provide that, if the elected Chair is not present within 10 minutes of the appointed meeting time, you can choose someone to chair the meeting.

The Chair's primary job is to preside and though it's been said that the person chairing a meeting has greater authority than the other directors, there does not seem to be any legal support for that view.

Note: Often the articles or constitution give the person in the chair a casting as well as a deliberative vote in cases where the voting is equal, but note *this right has to be given* by the articles. It does not exist at common law... but the casting vote may not be used arbitrarily so as to result in an unjust or inequitable decision.

QUORUM

If your company is a public company, you must have at least two directors who are entitled to vote in relation to a matter at a board meeting, otherwise a quorum will not be present.

If your company is a proprietary company, it's up to you, the directors, to set the number necessary for a quorum at board meetings but if you do not, most articles stipulate that it's two for other than single director companies.

Most articles provide that any director disqualified from voting at a meeting because of an interest in the business before that meeting does not count towards the quorum. Other bodies should make similar provision.

What you cannot do is wilfully stay away from board or management committee meetings to prevent a quorum and frustrate business. For example, with a board of two with a quorum of two one of the two cannot stay away prevent business taking place.

ATTENDANCE

Do not be like a certain English Marquis at the end of the last century. His excuse for not attending the board meetings of the Cardiff Savings Bank *for some years* was that he forgot he was its president.

That was a hundred years ago and an excuse like that is not acceptable today, because now you are under the general duty to exercise reasonable care and diligence in exercising your duties. That duty may not bind you to attend all board meetings, but you ought to attend whenever, in the circumstances, you reasonably can.

In addition to your general duty to exercise diligence there is, in relation to public companies (not being wholly-owned subsidiaries), the not so subtle persuasion that the directors' report must indicate how many board meetings (and committee meetings of the board) were held during the year and *how many each director attended*.

Nor, as in the Practice Note above, can you refuse to attend board meetings to thwart business by denying a quorum.

Equally as important as your obligation to attend when possible is your right as a director not to be excluded from a board meeting.

If you as a director take part in the improper exclusion from the boardroom of a fellow director or committeeperson, you (together with the body and the others) may be sued personally.

NOTICE

Reasonable notice of a board or management meeting should be given to all directors and committeepersons. If it is not, the meeting is invalid. It might be saved if all members of the board are actually present or if notice was expressly or simpliciter waived.

An example of not giving notice occurred in 1993 when the board of a church (incorporated, so the board members were directors) met to decide an important issue involving the membership. One member was overseas and was not given notice of the meeting. On his return he complained that the meeting was invalid and his claim was upheld by the court.

What is reasonable? Have regard to the usual practice of the body. If the board or management committee meets at a fixed time and place every month, notice may be unnecessary. If the company's normal practice is to give verbal notice then verbal notice is reasonable.

But be aware that notice must be given to all directors. Notice given to a majority does not validate the proceedings.

The occasions when lack of notice becomes important is often in relation to the *instant meeting*. Sometimes there's be an attempt to hold a meeting *now*. If that's convenient, the directors or committee persons may immediately proceed to business. But if you as a director committee person feel an instant meeting is being foisted on you, what to do? Complain about it there and then!

You may feel obliged to participate, but when you (if you do) challenge the meeting later, it will probably be accepted that your complaint indicated that your participation was unwilling. It's a good idea, if you do complain of insufficient notice, to have that complaint *recorded in the minutes*.

CASUAL OR INSTANT MEETING

Great tolerance is allowed in determining the degree of casualness that can accompany a meeting of directors and management committees, particularly of smaller bodies. Directors and committee persons may, and indeed frequently do, meet in a casual manner for the transaction of business, but there's a bottom line. There must be at least an *intention* that the particular occasion in question is a board or management committee meeting and an awareness by those present that they are concurring as directors in the governance of the company's affairs.

For example, it's not good enough for you to say to a fellow director "this is a directors' meeting" while he or she says it is not. If both of you are willing to hold a meeting you may do so under any circumstances, but one of you cannot convert a casual meeting into a board meeting.

Sometimes there'll be an attempt to convert what was in reality a casual conversation between two directors. This happens particularly when, well I after the event, a transaction of the company needs to be retrospectively formalised. Minutes which purport to record such a meeting often do not stand closer scrutiny, particularly when they in fact report a conversation over lunch. It's not uncommon to hear a judge say that "the conclusion I have reached is that the meeting between these two people at the restaurant was *not a directors' meeting*".

DIRECTORS WITH AN INTEREST

If you have an interest in a matter before the board you must declare it. This rule invariably applies to other bodies.

In the case of a public company not only cannot you vote on the matter but you must not be present while the matter is being considered. If, however, the board has passed a resolution which spells out your interest then says that your fellow directors are satisfied that interest should not disqualify you, then you may stay and vote.

In the case of a proprietary company, you must declare your interest and refrain from voting. You cannot assume that all the other members of the board know of your interest. You must declare fully the nature and extent of your interest at a duly convened board meeting. The secretary has an obligation to record that declaration.

If you are disqualified from voting, you must be careful not to break your fiduciary duty by promoting the cause you are interested in or by becoming closely associated with efforts to ensure its success.

You cannot for example do a deal with another director of the "you scratch my back, I'll scratch yours" kind. This happened when two directors whose contracts with the company were under review dutifully refrained from voting on their own contract but each, with some apparent connivance, voted in favour of the other's contract. The court frowns on such an arrangement and will declare both contracts void.

MINUTES

Minutes must be kept of all proceedings of directors' and management committee meetings. They must be entered in the minute book within a month of the meeting's date. They must be signed by the person who chaired the meeting or who chairs the next.

Directors who fail to ensure that this is done may be liable for a fine or imprisonment or both.

A further offence that of making false statements in the minutes may be visited with a penalty or imprisonment, or both. The relative seriousness of this offence is because the minutes of board meetings take on a certain sanctity. A minute entered and signed by the person presiding at that meeting (or the next) is evidence of the proceedings of which it relates. Therefore, when the minutes have been authenticated, there's a presumption that what's in the minutes is correct.

The minute book of board meetings is kept at the company's registered office or principal place of business in Australia unless the ASC allows otherwise. However, the provision which allows members to inspect the minutes of general meetings does not extend to the minutes of directors' meetings.

You should for your own protection remember that particulars of voting, notably your dissents, should be minuted.

To avoid personal liability for incurring a debt when the company was insolvent you will need to show that the debt was incurred without your express or implied authority or consent. Dissenting at a board meeting against the incurring of the debt would assist in this defence. Having that dissent noted in the minutes would be important in providing evidence of that dissent.

DIRECTORS NOT PRESENT: ROUND ROBIN RESOLUTION

Under the articles of most companies and constitution of most bodies, it is possible to pass a resolution without meeting physically. The usual provision permits a resolution to be adopted on the signature of all the directors or committee persons. This procedure is not available unless all may validly vote on the resolution. If, for example, one person has an interest in the transaction and cannot vote, the circulated resolution is not available. There are several other points to observe:

- there may be two or more separate resolution documents circulating they must be in identical terms;
- it is necessary that the document (or several) signed by the directors contains a statement that those signing "are in favour of a resolution of the directors set out in the document";
- the resolution is regarded as having been passed at a meeting held on the day on which the document was last signed by a director.

MEETING BY TELEPHONIC OR VIDEO LINK

Directors have always been required to "meet together" in order to hold a valid meeting.

Support for the use of modern technology for directors' meetings was given in 1995 where the Federal Court considered that the words "meet together" when ordinarily used in respect of a meeting of directors connote a meeting of minds made possible either by physical proximity or by technology.

As a result, directors and by analogy others can, generally speaking, meet together by video links or by using telephone conference connections. A meeting of only two persons can, by analogy, generally be held using an ordinary telephone connection. However, it would still appear that non-simultaneous telephone calls will not be an appropriate media.

If you are going to use electronic measures to hold meetings, you must ensure that each participating person is able to be aware of the contributions to the meeting made by each other director and to contribute himself or herself to the meeting without impediment.

It has been suggested a company wishing to allow directors' meetings to be held by conference telephone or video link should insert a suitable enabling provision into its articles. That way, any doubts about the validity of such a meeting will be satisfied by the articles.

When a director participates in a meeting by telephone the minutes should record:

- that the director was contacted by phone
- the time of the call and
- a brief description of the nature of the communication

DELEGATION TO A COMMITTEE

Typically delegation of powers to a committee is permissible by the board or management committee. The number on a committee is as the board decides and there can be delegation to a committee of one (if the articles or constitution allow). A committee can be authorised to appoint non-directors or non management persons.

The usual committees include:

- *Chair's committee*: a sounding board for the Chair on directed topics. Composition and meetings are at the Chair's discretion;
- *strategy committee*: the committee which develops the company's strategic planning for consideration by the board. Frequently chaired by the chief executive;
- *executive committee*: normally composed of executive directors for coordination of management views and proposals to present to the board as a whole. May also handle matters of importance which arise between board meetings;
- *audit committee*: a forum for discussion with the external auditor. Its members are usually non-executive (the purpose of this committee is set out in detail at 110-480); 1
- compensation committee: the body which reviews
- remuneration packages and policies for senior executives and directors themselves;
- *nominating committee*: responsible for nominating new board members from both internal and external sources and also overviews the succession plan for senior management.

As more responsibilities are imposed on boards, the need for other committees may occur, eg an ethics committee or an environment committee, but the main rule for the appointment of a committee remains there must be a perceived need for it.

The fact that a board has delegated some of its powers to a committee does not deprive that board of its power to act generally.

Committees may be ongoing or of a project nature, but however long term or short term their life, the need to have each committee should be reviewed *regularly and* the decision made for it to continue or for its functions to be absorbed back into the board.

SINGLE SHAREHOLDER AND SINGLE DIRECTOR COMPANIES

The usual rules in relation to the procedures for calling and running of meetings do not apply to general meetings where there is a single shareholder nor to directors meetings where there is a single director. The following procedure is to be observed. (Note that only proprietary companies may have a single shareholder or a single director.)

- The recording of the shareholder's decision in writing counts as the passing by the shareholder of a resolution to that effect.
- The recording of the directors' decision in writing counts as the passing by the director of a resolution to that effect.
- The record of the decision has the effect as minutes of the passing of the resolution.
- The recording of the director's declaration in writing counts as the making of a declaration to that effect at a meeting of the company's directors.
- The declaration has effect as minutes that record the making of the declaration."

LAW REFORM

The Federal parliament is currently engaged in a simplification program for corporate law. The following are some features in the pipeline that impact on company meetings.

- Proposals to alter members' rights to convene or requisition a general meeting
- Proposal to permit companies to hold general meetings at 2 or more venues using technology that gives members attending a reasonable opportunity to hear and be heard.

Program on Nonprofit Corporations QUT

- Proposal to give members the right to question or comment on the management of the company at general meetings.
- Proposal to reform and simplify the law regarding proxies.
- Proposal to abolish statutory meetings.
- Proposal to abolish Tables A and B and move the rules into the body of the Corporations Law.
- Proposal to reform the rules of meetings and introduce four new Parts into the Corporations Law:
 - Directors' meetings
 - Members' meetings of companies
 - Minutes and members' access to minutes
 - Members' meetings of registered collective investment schemes"

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The previous was a modified extract from the Meetings Tab of the loose leaf publication **The Directors Manual** published by CCH Australia. Alan Davidson is the editor in charge of the meetings section.