

Board Minutes: Should You Document That Directors Can Hear During Online Meetings?

With the continued widespread use of virtual board meetings, we've had a few clients recently ask, "what is the recommended practice for documenting in the board minutes that the corporate secretary has confirmed that all of the attending directors were indeed online, that they had access to the appropriate board materials, and that they could adequately see and hear the meeting?" Here are three considerations:

1. Ensure you conduct a head count that includes checking their online connection - A good practice at the beginning of the board meeting is to do a director-by-director check to make sure that everyone can hear and be heard. Double check applicable state corporate law and company bylaws, but there is typically a requirement in one - or both - that attendance at a board meeting by teleconference or video conference that directors be considered as "present" only if they are all able to hear and be heard in real time.

2. Alternative approaches for documenting "presence" - Companies have made different decisions about whether to specify in the minutes that the director-by-director check was performed. Practices typically fall within the following range: - In light of the corporate law or bylaw provisions mentioned above, reflection in the minutes of which directors were "present" *implicitly* confirms that each director could speak and be heard in real time. - To help remind meeting participants to do the check at the beginning of each meeting, include mention of the practice in the minutes. Here are a few examples of possible language for that: - [The corporate secretary] confirmed that each member present at the meeting was able to hear each of the other members present.< - It was confirmed that all [board/committee] members could hear and speak via [Zoom/Webex/teleconference technology].

3. Remember to be consistent in the minutes - One point of caution: if you start including a statement in the minutes that identifies a director-by-director check, you'll want to be consistent about including it in each set of minutes going forward. If you typically include it - but then leave it out for a particular meeting - it could raise questions about whether the confirmation was made at that meeting or not.

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