

8 THINGS TO KNOW ABOUT BOARD MEETING MINUTES

Minutes serve as the permanent record of a meeting of the board or one of its committees. Rather than providing multiple records of what occurred at a given meeting, the minutes, once approved by the board, serve as the official record. They record what topics were discussed, what decisions were reached and give management the authority to act. When drafted properly, minutes can serve as a shield against liability. Here are eight things companies should keep in mind when drafting and reviewing board meeting minutes.

+ 1. GENERAL ORGANIZATION OF MEETING MINUTES

The basic features of meeting minutes are the date, time, location and attendees, followed by a record of the board's actions, including brief descriptions of any presentations or topics discussed, specific resolutions adopted, and finally, general resolutions.

+ 2. STATE WHO WAS PRESENT

In the opening paragraph, state what time the meeting began, and which attendees were present in person versus those present via telephone conference. Make note of the presence of a quorum and the titles of any people attending the meeting at the board's request (for example, a lawyer, an officer or an auditor). At the end of the opening paragraph, state who served as secretary pro tem (the person who will actually be drafting the minutes) for the meeting.

+ 3. APPROVE THE PREVIOUS MEETING'S MINUTES

Often, a board's first action at a meeting is to approve the previous meeting's minutes, which should be distributed in advance of the meeting to the board members. This gives each board member an opportunity to review the minutes and discuss any corrections prior to approval.

+ 4. STRIKE THE BALANCE BETWEEN TOO MUCH AND TOO LITTLE

Keep a basic record of what went on during the meeting. For example: who gave a presentation, did a "discussion ensue," were "questions asked and answered?" But avoid recording everything. Minutes are not supposed to be verbatim and including too much detail may only provide ammunition that may be used against the board in a lawsuit. However, with too little detail the minutes may be useless and may leave an impression that the board did not adequately consider one or more matters. Minutes often serve to remind people what decisions were made and what next steps management should take. Perhaps more importantly, minutes serve as a shield against liability for the directors. Corporate directors owe a duty of care to their shareholders (see [Everyone on Board? What Companies and Directors Can Expect of Each Other](#) for more on director duties). This duty means that they must make informed decisions, not that they necessarily must make the *right* decision. Well-written minutes can show that the board carefully considered a topic, asked questions, considered alternatives and arrived at a well-reasoned decision. With too little detail in minutes, proving the board properly discharged their duty of care becomes difficult. If the board is considering a significant corporate transaction such as a sale of the company, the minutes become particularly important and should reflect that the board carefully considered the transaction at hand.

+ 5. AVOID EMOTIONAL STATEMENTS

Avoid non-factual statements such as "heated discussion" or that someone "seemed upset." Minutes are, first and foremost, a factual record of the events of a meeting.

+ 6. ADOPT RESOLUTIONS

If a board member calls for a vote or the board otherwise needs to formally approve a particular matter, the board should adopt a resolution or "resolve" to act. For example, after discussing the new budget, one board member might call for a vote to approve the budget. Once approved, the decision is called a "resolution." Thus, the minutes would say "Resolved, that the budget provided to the board in advance of the meeting is approved, unanimously." (Of course, if board members vote against the resolution, be sure to include a description of the votes received for and against any action.)

In most cases, the board knows the list of actions it is going to consider at a board meeting. As a result, as a best practice, prepare, or ask the company's lawyers to help prepare a set of resolutions for the board's consideration in advance of the meeting. By preparing, the board can have these resolutions in front of them as they make their decision. Following board discussion and consideration of draft resolutions, appropriate changes (if any) can be made prior to their adoption.

If one or more board members have a conflict of interest with respect to any resolutions being considered, the minutes should specifically reflect that this conflict was disclosed to the other directors and that the resolution was approved by a majority of the disinterested directors.

+ 7. ADOPT GENERAL RESOLUTIONS AT THE END

One of the last things a board should do is adopt general resolutions. These resolutions give management the authority to act on the matters decided at the meeting, just in case the other specific resolutions end up being insufficient. General resolutions can also ratify actions that management has already taken in advance of the meeting, such as starting negotiations with a new key employee.

+ 8. VOTE TO ADJOURN

At the end of the meeting, one board member should call for a vote to adjourn the meeting and the board should resolve to adjourn.

+ HERE ARE SOME SAMPLE MINUTES TO ILLUSTRATE HOW MUCH DETAIL TO INCLUDE IN BOARD MINUTES.

FASHION, INC.

Meeting of the Board of Directors

A meeting of the Board of Directors (the “Board”) of Fashion, Inc. (the “Company”) was held via telephone conference on January 1, 2016, beginning at 9:00 a.m., Eastern Time. The following directors, representing a quorum of the members of the Board, participated: Oscar De LaRenta, Carolina Herrera, and Donatella Versace. Also present, at the invitation of the Board, were: Anna Wintour, the Company’s Chief Executive Officer, Nina Garcia, the Company’s Chief Financial Officer, and Annie Associate of Latham & Watkins LLP, counsel to the Company. Board member Ralph Lauren did not participate in the meeting. Ms. Herrera, the Chairman of the Board, presided and Ms. Associate kept the minutes of the meeting.

Ms. Wintour reviewed the agenda of the meeting.

Approval of Minutes

Ms. Wintour referred the directors to the minutes of the meeting of the Board that had been provided to the directors in advance of the meeting. After discussion, upon motion duly made and seconded, it was unanimously

RESOLVED, that the minutes of the meeting of the Board held on December 1, 2015, in the form provided to the directors in advance of this meeting, are hereby approved.

Financial Presentation

Ms. Garcia then directed the Board to the financial presentation that had been provided to the directors in advance of the meeting. Ms. Garcia described the financial results of the last month. Questions were asked and answered.

Proposal to replace Black with Orange

Ms. Wintour then described a proposal that the color black be removed from the Company's clothing lines and replaced with the color orange. A discussion ensued. Upon motion duly made and seconded, a vote was taken. Mr. DeLaRenta and Ms. Herrera voted in favor of the proposal. Ms. Versace voted against the proposal. It is hereby

RESOLVED, that orange is the new black.

Proposal to enter into Commercial Transaction with DLR Corporation

Ms. Wintour then described a proposal for the Company to enter into a commercial agreement with DLR Corporation. Ms. Wintour advised the Board that she believed the transaction was in the best interests of the Company and that it would provide the Company with a distribution platform for its products on commercially favorable terms. Ms. Wintour also informed the Board that Mr. De LaRenta owned a majority of the equity of DLR Corporation and therefore had an economic interest in the proposed transaction. Questions were asked and answered, including as to the interest of Mr. De LaRenta in the transaction. Upon motion duly made and seconded, a vote was taken and the resolutions that follow were adopted. Ms. Herrera and Ms. Versace voted in favor of the resolutions and Mr. De LaRenta abstained.

WHEREAS, there has been presented to the Board a proposal that the Company enter into a commercial agreement with DLR Corporation based on the terms set forth on Exhibit A hereto (the "Proposed Transaction");

WHEREAS, pursuant to Section 144 of the Delaware General Corporation Law, no contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers, are directors or officers, or have a financial interest, is void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee which authorizes the contract or transaction, or solely because any such director's or officer's votes are counted for such purpose, if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of the majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the board of directors, a committee or the stockholders;

WHEREAS, it is hereby disclosed or made known to the Board that Mr. De LaRenta is a director of the Company and by virtue of his ownership interest in DLR Corporation has a direct financial interest in the Proposed Transaction;

WHEREAS, the Board is aware of all of the material facts related to the Proposed Transaction and has had an adequate opportunity to ask questions regarding, and investigate the nature of, the relationships and/or interests of Mr. De LaRenta with the Company in connection with the Proposed Transaction.

NOW THEREFORE, BE IT RESOLVED, that the Proposed Transaction is hereby approved;

RESOLVED FURTHER, that the officers of the Company be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company to enter into an agreement with DLR Corporation memorializing the terms of the Proposed Transaction with such changes therein, deletions therefrom or additions to amendments thereto as such officer of the Company shall determine to be necessary,

appropriate or desirable to effect the Proposed Transaction, and the Company is authorized to perform all of the agreements and obligations of the Company thereunder.^[1]

Executive Session

At this point, Ms. Garcia and Ms. Wintour left the meeting and the board met in executive session.

Thereafter, the board discussed various actions taken at the meeting and it was unanimously

RESOLVED, that any officer of the Company be, and each of them hereby is, authorized and directed in the name and on behalf of the Company to: (i) execute such documents and instruments; (ii) make and effect all such filings, applications and registrations; and (iii) take such actions as they may deem necessary or desirable to carry out the purposes and intents of the foregoing resolutions; and

RESOLVED FURTHER, that all acts and things heretofore done by any such officers, or by any other employees or agents of the Company, on or prior to the date hereof, in connection with the transactions contemplated by the foregoing resolutions be, and the same hereby are, in all respects ratified, confirmed, approved and adopted as acts on behalf of the Company.

There being no further matters to discuss, it was unanimously

RESOLVED to adjourn at 9:45 a.m.

Annie Associate, Secretary of the Meeting

^[1] If the Board is considering a number of different resolutions at a meeting, it may be more appropriate to include all resolutions in an annex or exhibit to the minutes and use the minutes to reflect the discussion relating to the resolutions (and then cross-reference the resolutions in the annex or exhibit as having been approved).