

Why good minute taking is key for cleaning up culture of corruption

Faithful recording of boardroom meetings and adherence to practices around the process ensure there is no room for falsehoods and trickery

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Company record: While there are many ways of taking minutes, best practice involves a balance between detail and brevity and an adherence to circulation timelines. Picture: ISTOCK

As scandal after scandal is uncovered in SA, as we witness crisis after crisis and deepening corruption, the name of the game is blame.

It's always someone else's fault. Secrets co-conspirators believed were safe are being spilled and what transpired in corridors and parked cars is now being revealed.

We learn of instances where people recording the minutes of meetings were told either to leave the room or not record what was being said.

We hear also of circulated draft minutes being amended, resulting in an inaccurate recording — a record not of what happened in the meeting but what the parties wish had happened. This is often based on legal advice taken when draft minutes are received.

The result of all this is that what is agreed and recorded as having occurred at a meeting bears little resemblance to what was actually agreed and little or no relationship to what is executed after the meeting.

The Australian Institute of Company Directors has written an outstanding paper about meeting effectiveness and boardrooms in the digital age. They suggest that companies have a clear policy on the use of technology by directors, including electronic etiquette and private use of company-owned devices. Security measures should be implemented wherever possible.

If there is a requirement that annotations made by directors must be retained by the directors or the company, ensure this policy is in writing and enforced by the company secretary.

The institute also says it is important to ensure prompt circulation of board minutes for the directors' approval (by no later than one month after a meeting) and to remind directors that they should raise any additional matters to be included.

If matters discussed at board meetings are complex, risky or likely to give rise to litigation, the institute suggests that more detailed annotations of the board papers are retained.

A paper entitled *A Minute Guide to Minutes*, prepared by US law firm Patterson Belknap Webb & Tyler, says: "Among the many elements of corporate housekeeping and compliance that demand the time and attention of directors and officers [and staff], minutes often seem like a burden.

"No one doubts that minutes matter. A well-documented board meeting creates an important historical record that can guide future deliberations and may prove useful

during board disagreements, litigation, attorney-general investigations, other governmental enforcement actions, or an audit by the IRS [Internal Revenue Service].

"However, clients often nervously ask whether there is a legal standard regarding how much detail minutes should contain. Although some organisations favour minutes that transcribe the meeting in all its tedious and sometimes bloody detail, others simply enumerate the actions taken at the meeting," the paper says.

"The better practice, how-ever, lies somewhere in between. Minutes can be thought of as strategic documents that can reflect and reinforce an organisation's strategic priorities and goals. In this regard, they should be cognisant of (and speak to) key regulatory and oversight considerations and audiences, be mindful of potential litigation exposure and be concise and to the point."

The article says journalists are taught that a news story needs to answer five questions: Who? What? Where? When? Why? These also provide a useful framework for how minutes should be handled — they should answer the five Ws."

Parmi Natesan and Deshara Pillay of the Institute of Directors in SA prepared an excellent document, Minutes of Board Meetings, in which they explain why minutes need to be kept, the proper process for taking minutes, what should and should not be included and why it is vital for them to be an accurate reflection of the proceedings.

Although King IV does not specifically deal with minutes (other than requiring they are properly and accurately kept), EY prepared an article, Are You Ready to Implement King IV?, which states that because of the link between ethical leadership and ethical corporate culture and corporate citizenship, it is clear that ethics have to permeate everything done by the organisation and its employees.

EY cites a simple example of how governing body members would be acting unethically if they did not prepare properly for a board or board committee meeting. They conclude that ethical behaviour underpins all of King IV.

Fortunately, many honest politicians are making it clear they will not rest until all of those involved in state capture and corruption are brought to book.

SA has arguably the finest Constitution in the world, arguably the most independent and legitimate Constitutional Court in the world and the finest chief justice in the world.

SA also has a fearlessly independent media and fiercely independent journalists, who, notwithstanding the difficulties they sometimes face, report accurately and bravely on what is transpiring. We owe these exceptional men and women a huge debt of gratitude.

While remembering what has happened, and learning lessons from the past, we should not allow what we have witnessed to negatively influence us but rather start afresh and embrace King IV as an important and relevant code in achieving, among other things, independent judgment, a balance of power and an effective discharge of duties resulting in legitimacy and trust.

Directors, prescribed officers, committee members and company secretaries must be unwavering in ensuring there is correct behaviour in boardrooms, that they are meticulous in the preparation and reading of board packs, that minutes accurately reflect what was discussed and agreed and that corridors and parked cars are not used to discuss what should be discussed at meetings.

We must be unwavering in our determination that business sets an example all can follow. This will result in business regaining the respect it deserves and enable it to play the role of good corporate citizen in a wonderful country.

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