



Meritas Corporate Governance Presentation

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Agenda

1. Preparation for Meeting of Directors and Shareholders
2. Meetings Generally
3. Minutes and Notes of Meetings
4. Voting
5. Inspection of Records
6. Removal of Directors and Officers
7. Due Diligence Before and After Becoming a Director

“Corporate Governance”

- Relationship between a corporation’s management, board, shareholders, and stakeholders
- Structure for setting and achieving goals
- Good for market economy

1. Preparation for Meetings of Directors and Shareholders

1.1 Preparation for Meetings of Directors

- Materials:
 - Timely
 - Concise
 - Accurate
 - Organized
 - Informational
 - Key issues given in advance
 - Agenda
- During Meeting:
 - Focused discussion
 - Democratic principles

1.2 Preparation for Meetings of Shareholders

- Preparation:
 - Requirements met
 - Helps management
 - Ensures meeting runs smoothly
 - Main messages and themes
- Considerations:
 - Location
 - Reception
 - Rehearsal
 - Script

2. Meetings Generally

2.1 Right to Attend Meetings

- Directors have a right to attend meetings of directors
- Other persons may attend
 - Consent
 - By-laws
- Confidentiality
 - Directors and Officers
 - Agreements for Third Parties

2.2 No Attendance by Proxy

- Directors:
 - Cannot attend meeting by proxy
 - Cannot delegate duties
 - Cannot use power of attorney to sign written resolutions

2.3 Who can Chair?

- Chair of the Board
- President
- Elected Director

2.4 Conflict of Interest

- Directors with a conflict of interest:
 - Must disclose their interest
 - Refrain from voting
 - OBCA: Cannot attend board meeting
 - CBCA: Cannot vote

2.5 Quorum

- Shareholder Meetings – quorum dictated by:
 - Statute
 - Bylaws
 - Unanimous Shareholder Agreements
 - Common Law
 - Maintaining quorum not required
- Directors Meetings
 - Maintaining quorum required

2.6 In Camera Directors Meetings

- Usually without management
- Commonly held when
 - Candid discussion required
 - Sensitive issues discussion
 - Only certain number of Directors attend
- Disadvantages
 - Risk to Directors
 - No binding decisions
 - Secrecy
- Alternatives to in camera meetings

3. Minutes and Notes of Meetings

3.1 Minutes of Meetings

- Solicitor's role in creating minutes
- Minutes may be:
 - Used as corporate record
 - Admissible in Court
 - Signed by Chair and Secretary of Meeting
- Must be accurate
- Solicitor's advice to directors
- Issues of contention

3.2 Notes of Meetings

- Problems if official record is challenged
- Director's ability to show due diligence
- Policy to destroy notes after approval of minutes



4. Voting

4.1 Voting

- Show of hands
- Secret ballots

4.2 Dissent Votes

- Recording dissent votes in minutes
- Absent directors deemed to have consented
 - Unless dissent placed in minutes within 7 days

4.3 Abstentions

- “Abstention” – refusal to vote either for or against a motion
- Deemed to have consented unless abstention recorded

4.4 Withholding Votes

- Shareholders may use proxy
- Withholding does not mean vote is used
- Proxy may still have discretion to vote



5. Inspection of Records

5.1 Director Rights

- Broader than shareholder rights
- Rights contained in:
 - OBCA
 - CBCA
 - Caselaw
- May be denied in limited circumstances
- Related to fiduciary duties

5.2 Shareholder Rights

- Narrower than directors' rights
- Statutory rights are limited
- Rights may be found in:
 - Articles, bylaws, USAs, meeting minutes, and resolutions of shareholders
 - Director conflict of interest
- Confidentiality of the minutes of directors meetings

6. Removal of Directors and Officers

6.1 Removal of Directors

- Remedies available in corporate statutes
 - *Ontario Corporations Act*
 - By-laws
 - 2/3 majority
 - Other statutes
 - Simple majority
- Directors cannot remove directors

6.2 Removal of Officers

- Unanimous Shareholders Agreement could allow shareholders to elect officers
- Directors appoint and remove officers

7. Due Diligence Before and After Becoming a Director

7.1 Due diligence before become a director

- Due diligence check can limit liability
- Considerations:
 - Motives
 - Corporation's strength
 - Job description
 - Selection criteria
 - Perspectives
 - Materials
 - Time commitment
 - Advisors
 - Minutes
 - Orientation
 - Conflicts
 - Reports
 - Litigation
 - Regulatory requirements
 - Indemnification
 - Insurance
 - Legislation

7.2 Due diligence while serving as director

- Carrying out responsibilities diligently
- Suggestions:
 - Meetings
 - Materials
 - Minutes and notes
 - Independent experts
 - Operations
 - Financial status
 - Financial variations

7.3 What corporations can do to protect directors

- Corporations can take an active role in protecting directors
- Suggestions:
 - Point person
 - Financial literacy
 - Meetings
 - Preparation
 - Discussion
 - Membership restriction
 - Insurance
 - Code of Conduct

Comments or Questions





Thank you

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