

Legal Update

It may take just a minute to protect a director

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Directors often take difficult decisions. These may be analysed, and often are if their company subsequently fails.

With the increase in litigation against directors and the continued reference in the press and elsewhere to directors' duties, a director may wonder how to go about protecting his position.

There may be many a complex and technical response and depending on the circumstances there may well be specific actions required, however from a general position there is one very basic answer.

What is the first obligation upon a director?

Forget trying to reference statutory provisions, or considering case law; the answer is, to attend board meetings.

How does a director show he has attended meetings and, following attendance, what was decided and that he complied with his duties as a director at those meetings? He or she produces minutes.

Board minutes.

Board minutes are a contemporaneous record. Contemporaneous records are one of the most

important reference points to show what occurred and what was decided at any particular time.

Acting on many transactions we see the production of board minutes passed to junior or trainee lawyers, as if they are an afterthought or an insignificance.

Board minutes should record matters considered by the directors and provide a rationale for their decisions. Minutes do not have to be complex (although they could be).

A director should remember that he does not have to be correct in every decision he takes; whoever is correct in everything they do?

A director has to have acted reasonably and properly in the circumstances bearing in mind the duties he owes to the company.

If documents are considered at a board meeting, then the minutes should record the documents referred to, the thought processes implemented by the director in considering the documents and within the conduct of the business of the meeting as a whole.

If these matters are properly recorded, then what better place to refer to when.

For any further information please contact Stephen Blair, Partner at Stephen.blair@weightmans.com or our [experienced banking and finance advisors](#).

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