

Corporate Resolution: An Instrument Of High Significance To Corporate Entities

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"I felt uneasy about making the rapid decisions I have always made, and wondered whether every decision should be formally ratified and minuted at a board meeting." Richard Branson – Virgin Group.

The Oxford English Dictionary defines a resolution as "A formal decision, determination, or expression of opinion, on the part of a deliberative assembly or other meeting". Corporate entities record their decisions by means of corporate resolutions, which appear in minutes of meetings and – if the corporate entity's constitutive documents permit it – in written resolutions adopted in lieu of a meeting. Nowadays, many corporate entities find it more convenient to adopt resolutions by written consent.

For instance, in the United Arab Emirates, the Commercial Companies Federal Law No. 8 of 1984 (and its subsequent amendments) in its articles (107) and (134) has obligated all public and private joint stock companies to record all their shareholders / board minutes of meetings in a special book signed by all the shareholders / directors attending those meetings. Notwithstanding the aforementioned, the Law allows such companies to pass written resolutions signed by all shareholders / directors and such resolutions are deemed to be valid, effective and correct as if adopted in a meeting duly convened and held.

In our role as corporate lawyers we are often called upon to draft or review corporate resolutions. To a greater or lesser degree, many of such resolutions that we encounter suffer from opaque and convoluted language of the sort that afflicts many corporate agreements.

This article focuses on written resolutions, because lawyers tend to draft corporate resolutions more often than minutes.

The traditional form of written corporate resolutions usually contains the following elements which can be used as a starting point before tailoring the document to suit the purposes of the corporate entity:

- 1) the title;
- 2) the recitals;
- 3) the lead-in;
- 4) the resolutions; and
- 5) the concluding clause and the signature blocks.

The Title: The title usually refers to the resolution as a "written resolution". This is not strictly necessary – a corporate resolution is manifestly written, whether or not it is described as such in the title – but it serves to highlight that the resolutions were adopted by means of the statutory alternative to voting at a meeting.

The clearest layout for the title is to state the entity name at the top, in boldface all-capitals, with underneath, in regular all-capitals, unanimous written consent of corporate entity in question.

Lead-In: The lead-in to corporate resolutions constitutes a category of contract language that is referred to as "language of performance", in that it records an action of the parties that is concurrent with the signing of the resolution.

Traditionally, resolutions open with a statement to the effect that the signatories are adopting the resolutions that follow.

A resolution lead-in contains more information than a normal contract lead-in, as it states the capacity in which the signatories are signing the resolution (as shareholders, directors, or otherwise) and what portion of the applicable corporate entity they represent (all of it, a majority, more than two thirds, or otherwise). It is also usual to include a statement that the signatories are acting by written consent in accordance with a given section or article of the corporate entity's articles of association or otherwise.

In the lead-in, drafters also invariably provide the defined term for the entity that is the subject of the resolution, such as the "Company", allowing readers to more readily distinguish that entity from any other entities that might be mentioned.

It is always desirable to state in the lead-in that "the signatories resolve as follows."

Recitals: A resolution will often contain, after the lead-in, paragraphs beginning with Whereas that explain the background to the resolutions therein. The recitals are also sometimes referred to collectively as the "Preamble". One can readily distinguish recitals from resolutions without using Whereas to notice them, and as such one can draft the recitals without the use of the word Whereas.

A more interesting issue is where should the recitals be placed in the resolution. Given that the preferred form of resolution does not permit any intervening language, and knowing that the recitals do not constitute resolutions, and since the lead-in refers to the resolutions that follow, this requires that the recitals be placed before the lead-in rather than after.

Resolutions: Most formal actions and decisions approved by a corporate entity's board of directors or shareholders will be in the form of a resolution. These resolutions can range from appointing managers or authorized signatories, increasing the company's capital, to assigning a lease or authorizing a contract, selling real estate or terminating a lease or a contract. If any thing is to be done or sign the person or persons another to do so should be specified.

The Concluding Clause and the signature blocks: After the resolutions and before the signatures is a statement as to when the resolution is being signed. By analogy to contracts, one can refer to this statement as the "concluding clause".

The recommended form of concluding clause is as follows: "this resolution is signed on [insert a date]."

Each signature block consists of a signatory's name accompanied by a signature line. If all signatories are individuals, it is always appropriate to state each signatory's name in initial capitals rather than all capitals.

Finally, we can say that a corporate resolution is a powerful document and, as such, must be drafted correctly and efficiently. Keeping these resolutions long term is useful in the event that the actions of the shareholders or board of directors of a corporate entity are subsequently challenged. Properly maintained corporate resolutions are vital to a good corporate governance and the protection of its directors and shareholders.