

“But All You Do Is Change The Dates!”

We hear that all the time!

Why should private corporations keep their minute books at their lawyer's office and pay the lawyer to prepare annual minutes or resolutions and document other corporate transactions?

Do They Get Value for Their Money?

The short answer to these questions is that:

- A corporate lawyer is the best person to ensure proper corporate procedures are followed and proper corporate records are maintained.
- Maintaining records is essential, so that corporations and the people who own and operate them can avoid significant legal and financial liabilities as the structure, ownership and business of the corporation changes over time.

This article provides an overview of the importance and value of following proper corporate procedures and maintaining proper corporate records. It also provides a glimpse of the things corporate lawyers attend to behind the scenes, so business owners can focus on business.

Legal Obligations – Corporate Records and Public Filings

Obligation to Hold Annual Meetings or Pass Annual Resolutions

Whether you operate an Ontario or a Canada corporation, and no matter what size your business is, you are obliged by law to hold an annual meeting of shareholders or to have annual resolutions signed instead of holding an annual meeting.

Financial statements are submitted at the annual shareholders' meeting, directors are elected for the following year and the auditors or accountants are appointed for the following year. Traditionally, a directors' meeting precedes the annual shareholders' meeting to approve the financial statements for presentation and a directors' meeting follows the annual meeting to appoint the officers for the following year. At the same time, the new Board of Directors passes resolutions approving dividends, management salaries or bonuses based on the financial results of the corporation over the past year. Smaller corporations deal with these issues by signing annual resolutions.

Obligation to Document other Transactions

The corporation is legally required to record many other transactions in the minute book. These include the appointment and resignation of directors and officers, changes in the registered office address of the corporation, the addresses of directors, officers and shareholders, and issuances and transfers of shares. It is also required to file notices with the government when there are changes in the directors or officers of the corporation or to their addresses, or in the registered office of the corporation.

Consequences of Ignoring Corporate Procedures and Record-Keeping Obligations

The owners of privately-held corporations are very often unaware of the things that must be documented in minute books and frankly, often have many other important responsibilities they worry about more than corporate records.

Whenever there is a legal obligation, there are possible consequences of not complying with it. They may come in any combination of government-imposed penalties, adverse tax consequences, private law suits and the interruption of corporate business.

We described the purpose of the annual meetings of shareholders and the purpose of the minute books in the previous section. Failure to hold shareholders' meetings or to maintain the minute books accurately can have a range of consequences:

1. Failure to hold an annual meeting or to sign annual resolutions, or to maintain the minute book properly constitutes a breach of the Business Corporations Act (Ontario) or the Canada Business Corporations Act and can potentially expose the corporation to a significant fine.
2. Resolutions concerning financial transactions that are typically passed by the directors annually, such as the declaration of dividends, management salaries or bonuses,

support the income tax filing position taken by the corporation. If the Canada Revenue Agency performs an audit, it may also review the corporate minute book. It has been known to reassess corporations by insisting that transactions reported in their income tax returns did not actually happen because the required minute book documentation was not signed.

3. Where there is more than one shareholder of a corporation, annual meetings or the signing of annual resolutions are evidence that each shareholder approved the matters that were dealt with in the annual meeting or annual resolutions. These include the transactions referred to in the financial statements and the amounts of dividends, management salaries and bonuses. If this is not done annually, shareholders who have a falling out have been known to claim (sometimes years later) that they were unaware of certain transactions, or that if they were aware of them, that they never approved them. If the minute book does not document their awareness and approval, a disgruntled shareholder may successfully seek to unwind these transactions and claim a greater portion of the funds distributed by the corporation in the period for which there is insufficient documentation.
4. Very often, at an annual shareholders' meeting or in annual resolutions, the shareholders of a privately held corporation will formally waive the statutory requirement for audited financial statements. If such waivers are not given by every voting shareholder, then even a minor shareholder can demand that audited financial statements be prepared. When there is a dispute among the shareholders, this demand is often made and the corporation incurs significant costs.
5. Lawyers are often called upon to provide legal opinions to financial institutions when financing transactions are involved. Failure to hold annual meetings or sign annual resolutions would not by itself usually interfere with giving an opinion. However, failure to properly document the shareholdings or the identity of the directors or officers could prevent a lawyer from giving the required opinion, at least until the matter has been rectified. In some circumstances, where people who were shareholders of the corporation at the relevant time are not available to sign documentation to update the corporate records (whether they have disappeared, died, are unfriendly or simply uncooperative), it may become impossible for the lawyer to provide the required opinion. At a minimum, there will likely be delays and additional expense, and the corporation's ability to obtain the financing itself may be compromised.
6. If the shareholders of a corporation decide to sell their shares to a third party or to introduce a third party investor as a shareholder, the corporate minute book will often come under the scrutiny of the lawyer for the purchaser or investor. Difficulties with the corporate records can result in issues having to be dealt with that would not otherwise have come up. Again, this can be a problem if people who were shareholders of the corporation at the relevant time are not available to sign documentation to update the records. In some circumstances there may be delays and additional expenses incurred to complete a transaction, and in extreme cases it may not be possible to complete it.
7. If a corporation does not comply with its obligation to file notice with the government of changes to its registered office address, it may not receive notices from the government, which can result in the corporation being dissolved and its property becoming the property of the government. This can result in adverse legal consequences and expense to rectify the situation.
8. If a corporation does not file the required annual corporate information returns, the corporation and its directors may be subject to significant fines and penalties for non-compliance. Enforcement steps by government against both corporations and their directors are becoming more common.
9. The federal government will take steps to dissolve a federal corporation if an annual return is not filed within six months of its financial year end. The federal government will not accept an annual return which does not state the date of the last annual meeting or annual resolutions.

We Don't Just Change the Dates

The work involved in maintaining minute books for our clients, and the investment that we make to do this work properly, is not always readily apparent to our clients.

Accordingly, we cannot blame our clients for sometimes thinking that all that we do is "change the dates from last year's annual minutes and send a bill." There is a lot more to the process than that.

Here is what is involved:

1. First, you should be aware of our team and the tools they use. We have assembled a team of administrative staff and experienced law clerks with many years of experience in maintaining corporate records. We have also set up systems to have this work monitored by corporate lawyers.
2. We have invested in a sophisticated computer database and document production software, which is used by our team to keep track of all of the corporations which we maintain and to prepare corporate documentation, as well as to allow our lawyers to easily access details of each corporation's organizational structure.
3. We have also invested in a secure, fire-rated storage facility for the minute books that we maintain.
4. We use our corporate database to track the year end dates for each of the corporations that we maintain. We follow up with accountants to be certain that we have the information required to prepare the annual minutes or annual resolutions within the time period required by the relevant legislation.
5. We critically examine the instructions that we receive from accountants pertaining to dividends and other corporate transactions to be certain that they appear to be correct, and work with accountants to resolve any discrepancies.
6. We review financial statements when they are provided to us. We determine if there are any transactions referred to in the notes to the financial statements that should be reflected in formal resolutions. We confirm that the information contained in the financial statements pertaining to share capital is consistent with the information contained in the minute book. Again, we work with accountants to resolve discrepancies.
7. We prepare the annual minutes or annual resolutions and arrange for them to be signed. Each year, when preparing annual minutes or annual resolutions, we also check to see if the annual minutes or annual resolutions prepared in the previous year were signed and returned to us and we follow up as required.
8. We also use our corporate database to track the expiry dates for business names registered to the corporations that we maintain and we follow up with our clients to remind them to renew their business names to avoid adverse legal consequences. These consequences include the loss of the right to the use of such business names, and the principals inadvertently incurring personal liability in connection with corporate transactions.
9. We use our corporate database to track the renewal dates for trade-marks owned by the corporations that we maintain and we follow up with our clients to remind them when it is time to renew their trade-mark registrations.
10. We also track the renewal dates of extra provincial registrations for corporations carrying on business in other provinces and territories, and coordinate the filing of the annual renewal documentation.
11. We prepare a current summary of each corporation's organizational structure and provide it to the corporation and its accountants each year, because a corporation will sometimes undergo changes of which we are not advised. This gives them an opportunity to advise us of changes that they have made or want to make. Upon receipt of the updated information we prepare documentation as required, and attend to government filings as required by law.
12. We respond to a myriad of requests from corporations to provide current information concerning the corporate structure or to send copies of corporate documents to accountants, bankers, investment dealers, leasing companies and others, as well as requests from accountants for information.

Conclusion

There are many sound legal and business reasons for retaining a law firm to maintain corporate records properly. In order to do the job, a law firm has to invest in people and technology, and has to commit a good deal of time to attending to corporate maintenance. Of course, a law firm has to charge reasonable fees to cover the costs associated with these matters.

The process and value of maintaining corporate records is least obvious when it is done right. At Pallett Valo LLP, we are pleased to provide these services. This allows our

clients to focus on the development of their business rather than worrying unnecessarily about the government penalties, tax re-assessments, shareholder disputes, lapsed business name and trade-mark registrations, and other costs and inconveniences that can result from improper record-keeping.

Should you have any questions about the topics covered by this article or the cost of maintaining corporate records, please do not hesitate to speak to any member of our Business Law Group.

Pallett Valo LLP Business Law Group

Structuring your business, and business proposals, for success requires the right partnerships and specialized expertise. At Pallett Valo, we represent both growth businesses and established enterprises in all sectors. Our specific legal knowledge and wide-ranging experience will empower your business decisions – enabling you to act with confidence and decisiveness to take advantage of all opportunities. We bring a rarely-found enthusiasm, creativity and cost-effectiveness to both your day-to-day legal requirements, and more complex strategic legal needs.

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If you would like additional copies of the bulletin, or know of anyone who would be interested in joining our mailing list, please contact **Jenny Chiu** at **jchiu@pallettvalo.com**.