Gulf Business (https://gulfbusiness.com/)

Home (https://gulfbusiness.com) › Insights (https://gulfbusiness.com/section/insights/) ›
Opinion (https://gulfbusiness.com/section/insights/opinion/)

Boardroom challenges: How to best avoid the perils of e-voting? (https://gulfbusiness.com/boardroom-challenges-how-to-best-avoid-the-perils-of-e-voting/)

As more boards go online, e-voting will be here to stay

BY DR M MUNEER AND RALPH WARD
DECEMBER 5, 2020

Ah, the good old days of board voting over kava, kebbah and dates! Will we be seeing those physical meetings any time soon?

Directors of a board make decisions by following the prescribed voting protocol. The reason for the protocol is obvious in view of the crucial decisions that affect the future of the enterprise the board serves. The voting therefore needs to be transparent, accurate and secure.

Board members are supposed to deploy their fiduciary duties effectively and efficiently and the voting is one part of fulfilling that. The chair is required to ensure a good voting procedure not very dissimilar to Parliament procedures. Some enterprises even have written down the voting details in their memorandum of association.

The question of voting arises when a board director makes a motion for action, based on a proposal. In board meetings of yore – pre-pandemic era – there used to be steps to make a motion and for approving it. And whenever a board member makes a motion, the board has to act to approve or deny it.

In the good old days, the chairman asks everyone around the table for a motion and a second, asks if there is any discussion, calls the vote, everyone mutter "aye," and on to the next item.

But in the new regime of online virtual board meetings, informed, legally defensible board votes have become both trickier and more technical. How do your board chair and company secretary assure remote board voting that can stand up to any subsequent legal scrutiny?

The way most boards voted at their in-person sessions just doesn't translate well to the virtual world. A recent EY survey found that, before the lockdown, 77 per cent of boards still voted by raising their hands at personal meetings. Taking this approach online means a dozen postage-stamp sized Zoom images all waving their hands (or maybe just swatting away a mosquito).

And that's assuming a unanimous vote. If there is a split, tallying the ayes and nays with precision, in a way that avoids second-guessing later, just won't work. A voice teleconference where sorting out the mumbled ayes and nays would be no less easy than guesswork on the part of the secretary taking minutes.

The secretary recording votes in the minutes needs to make sure the tally is well documented. For either video or voice board meetings, this could mean a roll call vote with each member chiming in. This takes up a lot of time, though you will know if a member skipped out at the moment the vote was underway.

Before the Covid crisis, a few boards that met electronically often used hybrid measures to take and confirm votes. Directors could use email to vote on an item. This was especially popular for unanimous written consents, or approval by "circulation." Directors signed off on key items, and either emailed (or postal mailed) their responses. Again, there are problems in using these tools as standard meeting practices. They tend to be slow, uncertain and open to question. While the use of written consents have solid legal standing, board votes by email may or may not be legally binding in your jurisdiction, so be sure to check with legal counsel. For example, there may be legal rules that an email vote can only be sent when the meeting itself is in session. In either case, the process is inefficient and open to second-guessing.

Your online board portal systems will have built in tools for votes that create solid legal verification and confidentiality. Such tools electronically create a strong audit trail to show how the voting process was handled. While you will need to dig into the specifics of your own portal platform, most should create a time-stamped, verifiable record of exactly what the vote totals were, when the votes were cast, and who voted how. There is also a trail of when the vote fit in with the course of the board meeting, which can help prove adequate discussion time was provided prior to the voting.

All these data logging points may appear cumbersome but they are really good for voting through board portals. It creates a detailed record of your board actions outside of the meeting minutes. That means your minutes may simply state a motion was approved, but the e-trail shows a divisive 4-3 vote. Or your minutes could suggest extensive board discussion, but the log time stamp shows you brought the item up on the agenda, discussed it, and voted all within two minutes flat. Talk with your tech staff on how to vote electronically to show good, legal governance – without leaving a trail of breadcrumbs that could prove awkward in a court later.

In the new format board meetings, online voting makes things more accurate and efficient than in the old style meetings. As more and more boards are online today, e-voting will be here to stay and a number of online board tools have perfected the process of voting and resolution making.

Dr. M Muneer is managing director of CustomerLab Solutions and co-founder of the non-profit Medici Institute. Ralph Ward is a global authority and publisher on board advisory

---

BOARD MEMBERS (HTTPS://GULFBUSINESS.COM/TAG/BOARD-MEMBERS/)
DATA LOGGING (HTTPS://GULFBUSINESS.COM/TAG/DATA-LOGGING/)
E-VOTING (HTTPS://GULFBUSINESS.COM/TAG/E-VOTING/)   MINUTES (HTTPS://GULFBUSINESS.COM/TAG/MINUTES/)
ONLINE BOARD PORTALS (HTTPS://GULFBUSINESS.COM/TAG/ONLINE-BOARD-PORTALS/)

f **SHARE** (https://www.facebook.com/sharer.php?u=https://gulfbusiness.com/boardroom-challenges-how-to-best-avoid-the-perils-of-e-voting/)

🐦 **TWEET** (https://twitter.com/share?text=Boardroom%20challenges%3A%20How%20to%20best%20avoid%20the%20perils%20of%20e-voting%3F&via=GulfBusiness&url=https://gulfbusiness.com/boardroom-challenges-how-to-best-avoid-the-perils-of-e-voting/)

in **SHARE** (https://www.linkedin.com/cws/share?url=https://gulfbusiness.com/boardroom-challenges-how-to-best-avoid-the-perils-of-e-voting/)

🟢 **SHARE** (whatsapp://send?text=https://gulfbusiness.com/boardroom-challenges-how-to-best-avoid-the-perils-of-e-voting/)