

**GHANA BAR  
ASSOCIATION**

**CONTINUING LEGAL  
EDUCATION**

**THE ART AND SCIENCE OF MINUTE TAKING  
BY FELIX NTRAKWAH**

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### THE ART AND SCIENCE OF MINUTE TAKING

BY FELIX NTRAKWAH

#### INTRODUCTION

Various societies, village committees, clubs, churches, church societies, professional associations, old students associations, local and international organizations, companies and constitutional authorities such as Parliament and the Cabinet take minutes of their meetings. The minutes are taken possibly in pursuance of existing practices, policies or regulations or in obedience to the requirements of the law.

The minutes may be taken by holders of MSLC, BECE, or degrees. Lawyers, chartered secretaries, chartered accountants, other professionals and professors may also take minutes.

Given the fact that minutes are taken at various levels by people with various backgrounds, there are people who question the need to discuss such a topic since minutes, they say, are minutes whether they are taken by the holder of MSLC or BECE or by the professor. Their argument is simple; any educated person can take minutes.

In Ghana where some educated people assume that anybody at all can take minutes, it is difficult, if not impossible for anybody to make a convincing speech on “the art and science of minute taking”.

I must state from the onset that I do not have any experience relating to the taking of the minutes of village committee meetings or those of the other societies, Parliament or Cabinet. My limited experience relates to company minutes. If you find that by drifting more and more towards the minutes of company meetings I have lost the battle, I will readily concede while hoping at the same time that you will realize that even in the battlefield the victor sometimes has some lessons to learn from the vanquished. It is however gratifying to note that we are not in the battlefield. We are merely going to engage in discussions by which we will learn from each other. It is about the basics most of which you already know.

The discussion which will focus on board minutes will be in parts as follows:

1. In Part 1 the obligation to keep minutes will be noted. It will be assumed that you are the company secretary and you attended a board meeting.
2. Part 2 will consider the factors that influence the drafting of company minutes.

3. In part 3 you are drafting your minutes out of the notes you took at the board meeting and the materials that were made available to you. A distinction will be drawn between a report and minutes. The essentials of good minutes and the challenges in drafting minutes will be treated.
4. Part 4 deals with resolutions.
5. Part 5 will briefly discuss the minutes of general meetings.
6. The conclusion is in part 6.

## **PART 1**

### **A. OBLIGATION TO KEEP MINUTES**

Companies take minutes of their meetings because the law requires them to do so. In Ghana this legal requirement is contained in Sections 177 and 201 of the Companies Act 1963, Act 179, (hereinafter referred to as Act 179)

As regards the minutes of general meetings Section 177 of Act 179 provides that:

- “177 (1)**      *A company shall cause minutes of the proceedings of general meetings and meetings of a class of members to be entered in a book or books kept for the purpose.*
- (2)            *A minute under subsection (1), if purporting to be signed by the chairman of the meeting at which the proceedings took place or of the next succeeding meeting, is prima facie evidence of the proceedings.*
- (3)            *Where minutes have been made in accordance with this section then, until the contrary is proved, the meeting shall be deemed to be duly held, convened and conducted.*
- (4)            *Where a company fails to comply with subsection (1) the company and every officer of the company who is in default is liable to a fine not exceeding [two hundred and fifty penalty units.]*

Section 201 of Act 179 provides that:

- “201 (1)**      *A company shall cause minutes of the proceedings of meetings of its directors and a committee of directors to be entered in a book or books kept for the purpose.*
- (2)            *A minute kept under subsection (1) if purporting to be signed by the chairman of the meeting at which the proceedings took place or of the next succeeding meeting, is prima facie evidence of the proceedings.*
- (3)            *Where minutes have been made in accordance with this section then, until the contrary is proved, the meeting shall be deemed to be duly*

*convened, held and conducted and the appointments of directors shall be deemed to be valid.*

- (4) *Where a company fails to comply with subsection (1) the company and every officer of the company who is in default is liable to a fine not exceeding [five hundred penalty units.]*

## **B. ATTENDANCE AT THE BOARD MEETING**

It is assumed that you are the company secretary of ASEM BEBA DABI Ltd. (the company). You attended the board meeting of the company. You entered the boardroom early and ensured that everything was set for the meeting. You were decently dressed. You took note of the time and attendance. You checked the quorum. Five out of the seven directors are nominees of bodies corporate which are shareholders of the company. One director was absent. One director came in thirty minutes late after some decisions had been taken. Another director left the meeting forty five minutes before closing. You sat throughout the meeting and you did not want to be disturbed. However, occasionally whilst you were still writing an important point made by one director, another would draw your attention to something else. You took the minutes using your own abbreviations and shorthand and at the same time listened to the proceedings. You observed the directors as they spoke. You appreciated most of the subjects that were discussed.

During the meeting you were also engaged in some form of mental exercises and psychological preparation aimed at dealing with issues or alerting the board on some procedural and legal matters that could arise from the speeches and decisions that were made.

All the items on the agenda which included the minutes of the previous meeting, the audited accounts for the year, the budget for the next year and various reports were dealt with. You took the minutes in such a way that at a glance, you would easily find in each page the conclusions that were reached. Your board chairman did not sum up all the discussions. The next board meeting was scheduled to take place in a month's time. You took note of the fact that prayers were said before and after the meeting. Practically, this is the first part of minute taking.

## **PART 2**

### **FACTORS THAT INFLUENCE THE WAY MINUTES ARE DRAFTED**

The minutes you took at the board meeting are full of abbreviations, incomplete statements and possibly some inaccurate figures. Nobody else has seen those minutes. You recognize the fact that even you cannot read some of the minutes you took. You obviously have to draft the minutes for circulation to the directors. Some people will say you should polish the minutes. Before you do so it is important that we consider some of the factors which directly or indirectly influence the drafting of company minutes. The list may be endless but it will suffice to consider a few. These are:

- A. The background, knowledge, attitude and experience of the directors, especially the board chairman.
- B. The business of the company and industry practices.
- C. Corporate culture.
- D. The subjects considered at the meeting.
- E. The law and court decisions.
- F. The power of language.
- G. The background, knowledge, training, attitude, experience and communication and all material skills of the company secretary.
- H. Planning.

Each of the foregoing factors will now be discussed briefly:

**A. Background, knowledge, attitude and experience of the directors, especially the board chairman**

The background, knowledge, attitude and experience of your directors may influence the way you draft your minutes. Among the directors may be former company secretaries, experienced board chairmen and other knowledgeable people who will virtually take you back to school and more importantly, share their experiences with you. With such directors, if only you are willing to learn, your minutes will be almost perfect. Since it is the board chairman who will sign the minutes, his or her style will matter in the way the minutes are drafted. In my capacity as chairman or non – executive director of some companies, I have had occasion to invite company secretaries who are lawyers to my office for the purpose of discussing my concerns about their minutes ahead of the next board meeting. My main aim is to help the lawyer to limit, if not completely avoid the embarrassment his or her minutes may bring.

If on the other hand you meet board members most of whom are inexperienced or are used to certain ways of drafting society minutes which may be less formal, their influence may also be different. At meetings of such directors, you may often be asked to add a little more flesh or meat to an otherwise acceptable company minutes. You may be asked to state the names of persons who move and those who second almost every motion. Some directors may even ask you to record their individual contributions to the debate in the boardroom. If you are also inexperienced what you eventually produce may be anything but company minutes.

There may be teachers, communication consultants, retired civil and public servants who have all the time in the world to debate whether a sentence should be punctuated by a comma, or semi colon. There may be a lawyer on the board who will not forgive you if a resolution does not begin with the word “Whereas”.

**B. The business of the company and industry practices**

In one company it may be sufficient to record that an application was considered and approved in terms of the draft agreement that was placed before the board. However, in

the case of another company, for example a bank whose board has considered a loan application, this will not be sufficient. Apart from the fact that clear instructions will have to be given to the management who will in turn instruct other executives and eventually the branch manager, it is important that the material terms and conditions of the loan are clearly stated in the minutes.

### **C. Corporate culture**

In my experience, corporate culture can also sometimes influence how some aspects of the minutes should be drafted. The typical example I give is the prayers said before and after the meeting. The directors of a company of which I was the company secretary observed that I was not recording the fact that prayers were said before and after meetings. The justification I gave for not recording the prayers was that the prayers were not on the agenda and that they were said before or after the meeting. The directors immediately and unanimously passed a resolution ordering the company secretary to record in the minutes at all times, the fact that prayers were said before and after meetings.

Some companies would like to see margins on either sides or one side of the paper on which the minutes have been drafted with a provision for actions by named officers. Other companies care less about margins. Some companies number the meetings (for example 124<sup>th</sup> meeting) but others are content with the date of the meeting.

On my first day at another company's board meeting, the heated argument almost ended up in the exchange of blows. I recorded the following in the minutes "In view of the altercation that followed a director's motion the meeting ended abruptly."

At the next board meeting the company secretary was ordered to delete the statement quoted above. It was explained that in that company quarrelling at meetings was not only normal but a daily bread and was not meant for the records.

The minutes were changed so that the chairman who unceremoniously left the meeting in anger was recorded as having formally closed the meeting.

### **D. The subjects considered at the meeting**

The subjects considered at the meeting may sometimes necessitate the use of some particular words or expressions which more accurately express the decisions taken at the meeting. For example, in a year in which a successful company is reported to have made huge and unprecedented losses, it will not be sufficient simply to minute that the board considered and approved the audited accounts. The directors would in particular like to note the fact of the huge loss, seek explanation as to the cause and also give directions to management regarding the future. These are important matters that cannot be omitted.

## **E. The law and court decisions**

The minutes of a company may contain certain words and expressions because their use may be required by either the company's regulations or by Act 179.

A resolution might be passed by the board recommending a direct transfer from "income surplus" to stated capital without a corresponding capitalization issue. Obviously, what the directors may have intended was transfer from "surplus" (not income surplus) to stated capital which is sanctioned by section 66 (1) (c) of Act 179. Despite the use of "income surplus" during the meeting, you may have to record "surplus" in the minutes in conformity with the said section 66 (1) (c).

How much fees must be paid to directors is determined by shareholders but the proposal may come from the board or even first from management to the board. If it is recorded in the board minutes that the directors resolved to increase their fees by a specified amount, it would amount to a usurpation of the powers of the shareholders. Issues may also arise as to the validity of such a decision. What you may do in the minutes is to record that the directors recommended the fee increase to the shareholders which they are entitled to do.

The board may refer some reports or policies to what is commonly called the "audit subcommittee" or "the governance subcommittee". In my view, you should not repeat subcommittee in your minutes when you know that Act 179 expressly provides for the appointment of committees of the board and not subcommittees.

Your board of directors may include persons who are nominees of bodies corporate. It seems to me that it will suffice to record the names of the individual directors as being present. However, it appears to be a common practice for some companies in Ghana to indicate against each of such names the companies or institutions which nominated the directors.

The following appeared in the minutes of Twifo Oil Palm Plantations Limited.

### **PRESENT**

<b>1. HON. IBRAHIM ADAM</b>	<b>-</b>	<b>MP</b>	<b>-</b>	<b>CHAIRMAN</b>
<b>2. MR. T.E. OSAM – DUODU</b>	<b>-</b>	<b>CREDEC</b>	<b>-</b>	<b>MEMBER</b>
<b>3. MR. G.D. APATU</b>	<b>-</b>	<b>MIN. OF FIN.</b>	<b>-</b>	<b>MEMBER</b>
<b>4. MR. S.A. DUAH</b>	<b>-</b>	<b>S.I.C.</b>	<b>-</b>	<b>MEMBER</b>
<b>5. MR. P.M. BOYCE</b>	<b>-</b>	<b>P.Z.</b>	<b>-</b>	<b>MEMBER</b>
<b>6. MR. I.K. YEBOAH</b>	<b>-</b>	<b>MD. TOPP LTD.</b>	<b>-</b>	<b>MEMBER</b>
<b>7. DR. T.E.O. ASAMOAH</b>	<b>-</b>	<b>O.P.R.I.</b>	<b>-</b>	<b>MEMBER</b>
<b>8. MR. NELSON KYEI</b>	<b>-</b>	<b>N.I.B.</b>	<b>-</b>	<b>MEMBER</b>
<b>9. MR. E.R.M. LYNE</b>	<b>-</b>	<b>P.S. INVESTMENT</b>	<b>-</b>	<b>MEMBER</b>
<b>10. MR. FRANK BAKU</b>	<b>-</b>	<b>D.I.C.</b>	<b>-</b>	<b>G.O.G NOMINEE</b>

A few questions arise from this practice which is seemingly innocuous. Does this mean that the companies which have been named in the minutes are bound by what their nominees say at board meetings? Does it mean that the individual directors listed in the minutes speak on behalf of the companies which nominated them? Do these directors represent the bodies corporate when they attend board meetings?

In the case of PS Investment Limited v. Central Regional Development Corporation & 13 others, Suit No. AC51/2004 (unreported), which involved a dispute brought by a shareholder against the directors with Twifo Oil Palm Plantations Ltd. as a nominal defendant, I argued as counsel for the plaintiff that the plaintiff's nominee director attended board meetings in his personal capacity and that what he did or said did not mean that the plaintiff was present at the meeting. I submitted that the names of the bodies corporate which appeared in the minutes (as shown above) were only used as the addresses of the nominee directors.

Delivering the judgment of the court, Yaw Appau J.A., sitting as an additional High Court Judge said on 21<sup>st</sup> June 2007 that:

“it is ironic that in all the deliberations of the board of directors of TOPP (including a representative of the plaintiff), as is captured in copies of their minutes tendered in evidence during this trial, there was no dispute to the fact that the 80.46% shares CEREDDEC owned in TOPP were Government of Ghana shares. In fact, they were referred to as such in all the minutes during their deliberations pertaining to the divestiture and plaintiff never challenged that.”

The implication in this opinion of the court is that the plaintiff's nominee represented the plaintiff and that what was said at the board meeting bound the plaintiff. I lost the case in both the High Court and the Court of Appeal and one major ground was that the plaintiff was estopped. The Supreme Court finally set aside the entire judgment on appeal.

You can avoid the kind of interpretation that arose in the case of P.S Investment Ltd. v Central Regional Development Corporation by simply stating the name of the director present without reference to whoever nominated him or her.

#### **F. The power of language**

Do not underestimate your power as company secretary. You do not derive your power from your salary, fees or title. You derive your power from the use or misuse of what I call potent and impotent words and expressions as well as the addition or omission of other words and expressions in your minutes. This power may be exercised innocently or mistakenly, deliberately or even capriciously and the effects on the minutes, the board or the company as a whole may be devastating.

Where the board makes a definite decision, some of the potent words and expressions to be used are: it was resolved, the board resolved, the board directed that, the board

considered and approved, management was directed, the report was rejected, consideration of the report was deferred.

Even though a definite decision may have been made by your board, what you may do as secretary is that in your minutes you may instead use impotent words and expressions like “the board suggested, it was suggested, the chairman suggested, it was proposed, the board advised or the board recommended”. Where a report or proposal has been submitted by management to the board and clear instructions are sought, if after the deliberations of the board these impotent words and expressions appear in the minutes, what you have succeeded in doing innocently, deliberately or capriciously is that you have created uncertainty regarding the position of the board on the proposal or report. Why will a board which has the final authority in terms of the administration of the company make suggestions or recommendations to management? Management will be entitled to ignore such suggestions or recommendations and the board cannot enforce them. It is well understood that the board sometimes makes recommendations to shareholders but that is an entirely different matter and the board will be justified in doing so where it finds that the final say lies with the shareholders.

What has been said above regarding impotent words and expressions must not be confused with what actually transpires in the boardroom when draft policies, proposals or reports are being considered. Individual directors make suggestions or express opinions which are accepted by the entire board or the majority of its members. The totality of these suggestions and opinions constitute the observations, remarks or directives of the board on the draft policies, proposals or reports and may be the basis for their rejection or adoption. The board may however simply take note or direct that the draft policies or reports be resubmitted taking into account such remarks, observations and directives.

It is important to note that as the company secretary you are working with the board of directors from whom management expects clear and unambiguous decisions. The directors are not board of advisers who merely make suggestions and give advice.

By your choice of words and expressions and depending on who constitute the board, you are in a position to make your directors look indecisive and ignorant or firm, effective and purposeful. However, you should never be tempted to put words in the mouth of the board or its chairman. These days a number of directors make their own notes and some attend meetings with recording gadgets you may not see. You can be challenged at any time.

It is sometimes not easy to determine what to record. The board of a company of which I was the chairman resolved to reconstitute a committee of the board. As the last speaker on the subject I mentioned a gentleman's name as the chairman of the reconstituted committee. There was no dissent or open support for my view. At the next board meeting, when the minutes of the previous meeting were being considered, it was observed that the secretary had recorded that “the chairman appointed Mr. X as the chairman of the committee.” Considering the fact that the idea came from the chairman the secretary was perhaps right. The board wondered how in terms of the law such a

minute should be retained. The board expected the secretary to have observed from the atmosphere at the meeting that there was consensus. The minute was corrected to read, “Mr. X was appointed the chairman of the committee.”

#### **G. The background, knowledge, training, attitude, experience and communication and all material skills of the company secretary**

Apart from your professional or academic knowledge, your background can be a factor in the way you draft minutes. You may have previously drafted the minutes of meetings of your village association, youth club, church committee, old students association, teachers or pastors association. In that case, you are more likely to introduce the practices and styles of drafting of minutes of that association, club, committee or association into the minutes of a company. It is the experience you acquire and the skills you develop over the years that help you to limit or do away with any practices and styles which are not required in drafting company minutes.

As we shall soon discuss, whereas you may have the latitude to state as much as you may wish in the minutes of those clubs, committees or associations, the introduction of such practices and styles into company minutes may not be wholly accepted. The inability to avoid or depart from such practices and styles has been the bane of many who are called upon to draft company minutes.

Irrespective of your academic or professional background, you may also be a victim of the improper use of language in that you may introduce in your company minutes words and expressions which are commonly used but which are wrong. For example, some print and electronic media and also individuals use “request for”, or “a book titled”, among others. If you are one of those who unconsciously fall victim to the peoples’ language you may, for example, state in your board minutes that “the board requested for a report from management” or you may state that “the CEO quoted a passage from a book “titled” “African Electronics”. You might perhaps know even from your elementary school days that the word ‘request’ when used as a verb does not require the addition of the preposition “for” or that in reference to a book or a report you would state that it is “entitled” not “titled” which has an entirely different meaning. If the directors who may know the correct words or expressions do not correct you, you will continue to use those words or expressions in your minutes.

You may be one of those who have no regard for when “will” or “would” should be used. If you do not respect the difference between the present tense and the past tense you will create problems for your directors who have to spend considerable time correcting basic grammar and sometimes spelling mistakes.

The experience and the skills you acquire over the years at different meetings make the difference. Once you acquire knowledge, experience and the requisite skills to be able to draft company minutes acceptable to your board and shareholders, you should see yourself as the key factor in terms of the influences at play in drafting company minutes. You must therefore feel free to ask those who know better and be humble enough to accept your mistakes. Your ability to network with other company secretaries and your interest in researching corporate issues will immensely influence the way you draft

minutes. Your desire to learn should know no bounds. The greatest mistake you may make is to assume that because you are a lawyer, chartered secretary, accountant or a professor you know it all.

## **H. PLANNING**

Bearing in mind the influences at play, you now have to produce legible and accurate minutes for the existing and future directors of the company based primarily on the minutes you took at the meeting supported by the board papers made available to you. This will be the second stage in minutes taking. It is important to note that whatever you record in the minutes may one day be the subject matter of litigation. Company meetings are essentially about power, management, productivity, control and money. You cannot afford to do things haphazardly. You have to plan your approach to the drafting of minutes.

Among the points to be noted are the following:

- a. Assemble all the reports, previous minutes and other materials that were presented at the meeting. You may have to read some of the reports and other materials once more.
- b. Dedicate a specific time for the drafting of the minutes.
- c. Identify all the decisions that were made at the meeting so that you may not overlook any when you set out to draft the minutes.
- d. Make a first draft in the way you feel you should make it.
- e. Check grammar, sentence structure, meanings of words used and the arrangement of the minutes, numbering and attendance before making a second draft.
- f. Review the minutes a few times by yourself with a view to checking their clarity, consistency and accuracy.
- g. Finally, check whether any decision infringes any rule of law or procedure.

## **PART 3**

### **A. MINUTES AND REPORTS**

If you produce lengthy minutes you may be asked to delete certain unwanted or unnecessary details. Where the minutes are very terse you may be asked to add a little meat or flesh.

Minutes must be distinguished from reports. A report may be very detailed with schedules, appendices, maps and proposals for further action or debate. Some reports may include quotations from speeches and other publications. The opinions of individuals mentioned in the report may be included.

Act 179 does not define what constitutes minutes. However, in order that “*all proceedings*” used in Act 179 may not be understood to mean that everything that is said and done at the meeting should appear in the minutes, it is important that the word

“minutes” used to qualify “all proceedings” is properly understood. The Advanced Learner’s Dictionary defines “minute” as follows:

**“A brief summary or record of what is said and decided at a meeting, especially of a society or committee”**

“Minutes” is also defined in Chambers 21<sup>st</sup> Century Dictionary, Revised Edition as follows:

**“The official drafted record of what is said at a formal meeting”**

It has also been said that:

**“Directors ought to place on record, either in formal minutes or otherwise, the purport and effect of their deliberations and conclusions; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right.”<sup>1</sup>**

The record is kept in a minute book or minutes book. A specific record in the minutes may be called minute (singular), for example, minute 2 of the record. The entire record of proceedings is referred to as the minutes and it is plural.

## **B. CHALLENGES IN THE DRAFTING OF MINUTES OF BOARD MEETINGS**

### **i. Attendance and basic record**

It is important to record the name of the company or committee whose proceedings form the basis of the minutes. The place and date of the meeting must be recorded. The time of the meeting may also be recorded.

The individuals present at the meeting must be recorded. A clear distinction must be drawn between those who are present because they are the members (distinguishing them by their titles in the case of a board meeting, for example, chairman or director) and those who with the consent of the directors are in attendance. The names of directors who are absent must also be recorded.

Sometimes the issue arises as to whether it should be recorded that a director sought permission to be absent or rendered apology for being absent. There is nothing harmful about recording that someone is absent with apologies. At least it is courteous for a director who is absent from a meeting to inform the other directors or seek permission to be absent. A letter from a director to the secretary or the chairman apologising for his or her inability to attend a meeting is a correspondence with the board and it has to be recorded.

Where a director comes late after some decisions have been taken or leaves before a meeting is closed, that fact must be recorded. For example, against the name of

a director who joined the meeting during the discussion of item 3 on the agenda, the recording against his or her name may be “for items 3 to 15 only”.

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1. Re Lever Pool Household Stores Association (1890) 59 L.J. Ch. 616, 619

In the case of a director who leaves the meeting before closing, a similar recording may be made against his or her name. Alternatively, a statement may be made in the minutes as to when someone came in or left. The incidence of the repetition or reintroduction of matters already resolved by the board can be reduced if it is evident from the minutes that a director who reintroduced the matter that had been dealt with was not at the meeting when it was discussed. Above all, it will be easy to determine whether or not there was a quorum when the board proceeded to deal with an item on the agenda.

A decision taken at a board meeting may be against the best interest of the company or even amount to contempt of court or an infringement of another law. It is only directors who were present at the meeting when the decision was taken who may be punished in the event of proof of contempt of court or an infringement of another law.

## ii. Opening

Various expressions are used to introduce the proceedings or in recording the time the meeting was opened. It is however common to find in Ghana minutes which include the following or a variation of it:

### **“The chairman called the meeting to order at 1pm”**

Care should however be taken as to when the expression “*called the meeting to order*” is used. When used at the beginning of the meeting as in the example given above, it simply means the Chairman opened the meeting. If the expression “*called the meeting to order*” is used in other parts of the minutes after recording the commencement of proceedings, it may mean that there was disorder or noise or confusion at a point in time and the Chairman asked for the attention or co-operation of the board in order that the meeting could continue.

Some secretaries introduce the minutes as follows “*The Chairman declared the meeting open...*” Others draft “*The Chairman declared the meeting opened...*” Some directors waste time arguing about whether the word should be “*open*” or “*opened*”. In my opinion either will be correct. A secretary who records “*The Chairman opened the meeting at 1pm*” does not invite any argument over the tense used.

**iii. Is It Confirmation or Approval of Previous Minutes?**

Opinions differ as to what the board does when the minutes of the previous meeting are laid before it at the subsequent meeting. Some secretaries record that the minutes of the previous meeting were confirmed. Others record that the minutes were approved. There are others who also record that the minutes of the previous meeting “were confirmed as a true reflection of the proceedings that took place”. The argument against the use of the word “confirmed” is that it appears to suggest that the previous meeting was not valid or legal or that confirmation amounts to a ratification of the previous meeting when there is no need to do so.

As to confirmation of minutes generally, the following case may be of interest;

**“At a vestry meeting it was the usual procedure to read over at the next meeting the resolution of the preceding one. At the second of two meetings there was considerable diversity of opinion as to the votes admitted at the first meeting, but judgment was to the effect that there was no necessity for the confirmation by the second vestry of what was legally done at the first. If the first was a legal vestry the election thereat was legal”<sup>2</sup>**

There is no express provision in Act 179 requiring the board to confirm or approve the minutes of its previous meeting laid before it. It is however obvious from Section 202 (1) of Act 179 that the duty of the company to cause minutes of meetings to be entered implies that the directors must first see the minutes, agree with the contents before causing them to be entered. The directors act as a body usually through meetings. The boardroom not being a market place someone will move (and usually someone does) for the minutes to be adopted and when the motion is seconded the minutes are usually adopted by consensus subject to any corrections to be made. It is therefore essential for the minutes to be laid before the board before they are signed by the chairman.

**iv. What do you do after corrections are made to your previous minutes?**

There seems to be a needless debate originated by three schools of thought.

The first school of thought is that what the secretary circulates among the directors before or during the meeting is only a draft and that after all the corrections are made at the meeting a clean record of proceedings must then be sent to the board chairman for his signature.

What one is likely to observe is that the minutes of companies following this school of thought do not record any corrections and virtually contain no errors since the minutes are redrafted following the corrections and signed by the chairman after the meeting or on a date subsequent to the meeting.

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2. Mauley v Barbet (1803) 2 ESP. 687 cited at page 87 of Strackleton on The Law and Practice of Meetings  
New Edition by Ian Shearman

The minutes as redrafted may or may not be seen again by the other directors until an issue crops up. The justification for this, it is argued, is that what the chairman has signed constitute the minutes and not what was previously circulated and considered at the meeting. The proponents contend rather feebly that it is not nice for the minutes to contain so many mistakes.

Apart from the fact that the minutes are most likely to be signed outside the boardroom, whether the chairman or secretary deletes or adds some minutes the other directors may not know immediately. The board chairman who wants to do things properly has to go through a painstaking reading of the redrafted minutes presented by the secretary once more in order to ensure that everything is in order.

To overcome the possibility of having the minutes redrafted after the meeting, as practised by those who follow the first school of thought, some companies do as a matter of practice; require the company secretary to have the minutes reviewed first by the managing director or the chairman before they are circulated to the other directors. The practice helps to save the time of the board in discussing errors and omissions whilst at the same time ensuring the cooperation between the management and the company secretary in their dealings with the board.

This practice has its own pitfalls. A secretary once told me that his minutes were often massaged by the managing director before they were circulated, and this was done to the extent that certain vital minutes were removed or replaced, especially where management was the subject of criticism by the board. The company secretary who is also an employee of the company is often intimidated in the process. You are the secretary to the board and not management. If you are able to develop the confidence and requisite skills for the drafting of accurate minutes, you will not require any strategic alliance with the managing director.

The third school of thought is that unless the minutes that have been circulated prior to the meeting have been so badly drafted as to compel the board to order that they be redrafted, then what the board does is to approve the minutes. The corrections that are made are noted. These corrections are part of the proceedings of the day and they will appear in the minutes to be submitted to the next board meeting.

To my mind, there should be no argument and no three schools of thought on how minutes drafted by the company secretary should be treated.

A company must have a secretary who is not only competent or skillful but also a good communicator. Besides, Act 179 does not leave room for the kind of practice or arguments that support the first school of thought. It is conceded that once in a while the need may arise for the correction of clerical or factual errors. However, if the board has to spend considerable time at every meeting correcting several aspects of the minutes drafted by you, then you are just incompetent and you must be fired.

To ensure that you are in control of the minutes and in order to avoid the situation where your board will have to spend considerable time making corrections to them, the best approach is to begin drafting the minutes almost immediately after the meeting. At that time what transpired at the meeting will be fresh in your mind. The early drafting of the minutes allows you sufficient time to check your grammar, tenses and arrangement. You are in a position to organize your thoughts. You also have sufficient time to review the minutes a few times on your own before dispatching them to the directors. You do not need the interference of your managing director if you have acquired the requisite skills. Your directors will not also have the opportunity to order you to redraft or clean the minutes.

It is wrong to assume that the minutes you have produced are only a draft and that you will have the opportunity to finalise them after the board meeting. You are supposed to be the expert at the meeting that is why you should rather see the minutes you have drafted and circulated as the final meant for the signature of the board chairman at the next meeting. Directors are appointed generally for the purpose of managing the company, formulating policies and ensuring their implementation and not for the purpose of marking grammar or sentence structure. You will therefore be digging your own grave if your directors must spend time at every meeting on correcting clerical and factual errors. Once the directors are unable to trust your ability to communicate, they may not entrust anything to you.

One lesson you have to learn very early is that the time it takes to draft the accurate minutes of some meetings is about the same as the time you spent at the board meeting with the directors, if not more. Your minutes will not be accurate if you wait till the last moment and use fifteen minutes to draft them.

**v. Are we doing the right thing?**

What one may find in the board minutes of a number of companies is the following or words to the same effect:

*“On a motion by Mr. Alex Armah and seconded by Mrs. Ablavi Quarshie the minutes of the 50<sup>th</sup> board meeting held on January 10, 2013 were approved subject to the following corrections:...”*

This type of minute may be the kind that is influenced by the background of the directors or the company secretary or both. Space and time are found for the fact that someone moved, another seconded in addition to the names of the persons involved. A critical examination of Section 201 of Act 179 would seem to suggest that the example given above which seems to be common in Ghana, does not adequately address the statutory command to the directors. It seems to me that, what should rather be recorded in the minutes is the fact that the board

caused the minutes of the previous meeting to be entered; the approval of the text being only a process prior to issuing the command that the minutes should be entered.

Another statutory requirement which is often ignored in the minutes is the signing of the minutes. The minutes are required to be signed by the chairman of the board or in his absence by the person who presides at the board meeting when the previous minutes are placed before the board. The obvious implication is that the minutes should be signed at the meeting and not outside it. One would expect company secretaries to record the fact that the chairman signed the minutes but this is hardly done. This is not surprising considering the fact that from some of the practices considered above, some company minutes end up in the bedroom or office of the chairman before they are signed.

Instead of the current practice whereby one has to choose between approved, confirmed or adopted, it is suggested that after the minutes have been signed by the chairman at the meeting, a possible minute should be like the following:

“The board having received and considered the minutes of the 50<sup>th</sup> board meeting, held on August 20, 2013, it was resolved that the said minutes be entered. The following corrections were noted: .....

The chairman signed the minutes.

It is for the purpose of further debate that I now introduce further remarks on section 201 of Act 179. It is my view that Section 201 (2) of Act 179 which provides that minutes signed by the chairman shall be prima facie evidence is often misconstrued. It is not just any minutes signed by the chairman that is prima facie evidence. It is only minutes which the board has caused to be entered pursuant to section 201 (1) and which is signed at the meeting by the chairman that matters. In the event that the validity of any minutes is challenged, the party relying on the minutes may have to answer the following questions, among others:

Did the board cause the minutes to be entered?

Did the chairman sign the minutes during a board meeting?

It seems to me that if the answers to these two questions are in the negative, then there is a problem. However, it is submitted that if the answers to the two

questions are in the affirmative then the obvious thing to be done is the production of the board minutes which support the answers. This is where many companies will be found wanting.

**vi. Essentials of Good Minutes**

What are the essentials of good minutes? The dictionary meaning of the word “minutes” and the duty imposed on directors by Act 179 as well as judicial pronouncements as we have noted above; give an idea of what good minutes should be like. The minutes of a meeting must be:

- Concise
- Precise
- Accurate
- A record of essentials of each item
- Formal
- Devoid of comments and expression of opinions
- Clear and unambiguous
- A record of decisions or conclusions

The minutes of a meeting should record the decisions taken and provide sufficient background to those decisions. All papers presented at the meeting should be clearly identified in the minutes and retained for reference. <sup>3</sup>

**vii. Tenses, Titles and Numbering**

The record of what transpired at the meeting must be drafted in the past tense. An example may be the following:

**“The managing director reported that he had (not he has) prepared the organogram as requested by the board at the meeting held on January 1, 2008”.**

In the minutes, the board of directors should not be referred to as “we” or “they”. The “Board” or the “meeting” may be used. “Management” not “they” may be used when you want to attribute a statement to the management. Officers or executives must be referred to by their titles and not names. Management, directors and committees usually REPORT on matters that are assigned to or referred to them.

In other respects, management or the chairman may INFORM the board about some developments in the company or EXPLAIN in answer to an enquiry by a director as to why something was done or was not done.

It is advisable to number the minutes for convenience and for cross reference purposes.

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3. ICSA Code of Boardroom Practice 1991

**viii. Minutes Drafted by Someone other than the Secretary**

Your board may request a subordinate officer or your assistant to record the proceedings whilst you are expected to pay attention to the details of the debate in the boardroom. The idea behind this is that as the secretary you should be able to give appropriate advice when it is sought so that your assistant will be free to take notes. Nothing prevents a person other than the secretary to record proceedings where necessary.

My concern about this practice is that if the level of the assistant is far below yours, important decisions may not be appreciated or recorded with the result that the minutes that may eventually be drafted may not be accurate.

It is best practice for you as an officer of the company who is sometimes equally liable for the defaults of the company to attend meetings, take notes and draft minutes.

Obviously, permitting a person who was not at the meeting to draft or correct minutes can be disastrous if the correction is not about grammar but the substance.

If your company's regulations do not expressly provide for the appointment of joint secretaries and the company has not also appointed joint secretaries or an assistant it will have to allow you to attend meetings and draft the minutes without interference. The ICSA's Code on Good Boardroom Practice provides:

“9 the company secretary should be responsible to the chairman for the proper administration of meetings of the company, the board and any committees thereof. To carry out this responsibility the company secretary should be entitled to be present at (or represented at) and prepare (or arrange for the preparation of) minutes of the proceedings of all such meetings”.

**ix. Self-standing**

It is possible for you to be asked by a director, especially one who was not present at the previous meeting, to explain a statement in the minutes. This may arise

because of how the minutes were drafted. You must avoid this situation. Irrespective of whatever influences and practices there may be in a company, the minutes must be self-standing. In other words, a person reading the minutes, say a director who was not present or an auditor, does not need to call another director or the secretary to explain anything in the minutes. Others simply say that anything that is minuted must be self-explanatory. For this reason, the style of drafting minutes which depends mainly on the heading of the particular minute should be discouraged. The following is an example:

“2     The Managing Director’s Trip

In connection with the above the Board advised the Managing Director to suspend his trip until further notice”.

What is “above” in the minutes and where is the Managing Director going? What is the board’s reason for asking the Managing Director to suspend the trip? The danger in this style of drafting minutes (the above minutes) is that if there is a mistake in the heading of the minute on which the sentence depends, the entire meaning is lost. Besides, the heading of the minute is not a necessary part of the minutes but is provided for convenience only.

**x.    The Sense of the Meeting**

Directors usually take decisions by consensus. It is sometimes not easy to ascertain what the consensus is or whether any consensus has been reached. Directors vote on issues where they find it necessary to do so. You may observe that as regards a particular item on the agenda some directors may speak and others may not.

A director may nod or wink during another director’s speech. A director may be heard snoring in the corner. At the end of the discussion no specific statement may be made verbally as to the decision on the subject. However, you are required to record not the speeches made or the observation that a director was snoring but the conclusion that was reached.

In their deliberations directors may use metaphors, idioms or figures of speech. Speeches may be interspersed with laughter, jokes and sometimes altercations on a very bad day. The agenda for the meeting may not be followed in the order in which it was presented. Some speeches may stray into other areas that may not have been envisaged by the meeting or may be completely irrelevant. It is common to find directors who repeat themselves in their presentation. How do you produce minutes which can be said to be a summary or minutes which are concise, accurate, clear and unambiguous and devoid of opinions? Drafting of minutes is therefore a moment of challenges and great temptations for you as company secretary. A lot depends on your maturity, experience, knowledge and skills and how attentive you were at the meeting. You may wonder whether to

record that it was reported that the chairman's mother had kicked the bucket because that expression was used by a director or it should just be recorded that the chairman's mother was reported dead. To my mind, it is not best practice for metaphors and figures of speech to be used in the minutes. They may be used wrongly.

The difficulty you will have during the deliberations on the specific item on the agenda is how to get the sense of the meeting. The sense of the meeting is normally the summing up of the chairman. **“Unquestionably it is the duty of the chairman and his function, to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting”.**<sup>4</sup>

Perhaps you may not be fortunate at all times to have the chairman sum up in respect of every item on the agenda. You will have to gather the sense of the meeting from the speeches that are made. This is where your personal experience, expertise and skills will count. Drafting of minutes can therefore be said to be an art. If you are in doubt as to the conclusion reached you may ask the Chairman. However, if you are always waiting to hear from the Chairman what the decision is on every item on the agenda that is discussed, then you may not be paying attention at meetings or you may not be competent. Some chairmen do not sum up but you must still produce minutes.

**xi. I Want to be Recorded**

There may sometimes be demands on you to record speeches or contributions of individual directors. There is no doubt that every director has the right to be heard. The recommended practice is however for you not to record in the minutes the lengthy debate or individual speeches.

If the directors are equally divided on an issue it means that they are unable to take a decision. Depending on the subject or circumstances some key points of those who are vehemently opposed to a decision being taken may be recorded without attributing the arguments to specific individuals. The individual names will not therefore matter.

However, it is sometimes necessary to go outside the general rule, and rarely though, to record individuals who are vehemently opposed to a step taken or to be taken by the company. The necessity to do this may depend on how essential, contentious, relevant or controversial the issue is.

The liability of a director may sometimes depend on whether that director took any steps to prevent the company taking any action. An objection raised by a director to a decision may absolve the director from liability, hence the need to record a director when appropriate. **For no action can be taken against a**

**director personally for breach of an order against a company unless the director knowing of the order actively assisted in the breach or willfully failed to take steps to ensure that the order was obeyed.** <sup>5</sup> You may sometimes be in doubt as to whether or not to record a very important statement made by a director which the majority disagree with.

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4. *National Dwellings Society v. Skyes*. [1894 N. 828.] per Chitty J.

5. *Barrie & Lowe, the Law of Contempt*. Third Edition, Nigel Lowe, Brenda Sufrin 571

This director may have given professional or expert advice or suggested another approach without asking to be recorded. In such circumstances, if in your judgment the statement or advice is a very useful one you may record it and leave it to the board to delete if the board thinks otherwise. For example, a statement that “a director advised against the resolution not to obey the court’s order” will suffice. In any court proceedings the evidence will establish who gave such advice.

## **PART 4**

### **A. RESOLUTIONS**

There is no magic in the word “resolution”. A resolution is simply a formal way of describing the decision taken at a formal meeting. It is often expressed in this way: “IT WAS RESOLVED” or words to the same effect may be used.

Ideally, each resolution that is recorded in the minutes must have two legs. It must comprise a minute of narration and a minute of resolution. In other words, each resolution must have a little background information (narration) in addition to the substance of the decision (resolution).

The background information may be a separate statement or sentence preceding the resolution or the background information and the decision may be combined in one sentence.

#### **i. Citing the Law in Resolutions**

The resolution must not contain anything that was not discussed. Whether the minutes also reflect a consideration of the legal requirements to be met in respect of a particular resolution will depend on the discussions which took place and the advice that the board received in the course of their deliberations.

One sometimes finds that a resolution in the minutes is prefaced by reference to the section of the law that authorizes the passing of the resolution. The minutes may for example, read as follows:

**“Pursuant to Section 202 of the Companies Act 1963, Act 179 it was resolved...”**

This will be good minutes if the provision of the law relied on was part of the resolution that was proposed and passed or if during the deliberations an amendment was made or an advice was given as to the section of the law under which the meeting was proceeding to pass the resolution.

It is submitted that outside the boardroom you have no business introducing the reference to the law in the minutes. The proceedings of the board do not require embellishment or dressing after closing and the minutes need not include references to sections of Act 179. Besides, if you make a mistake in the citation of the law

(which nobody requested you to cite) you will not only confuse the board but also you will mislead them.

**ii. Formality**

It is not everything which is considered at the meeting that should be expressed as a resolution. In some instances, words denoting that instruction or authority was given will suffice to signify the decision of the board. However, because meetings and minutes are formal every effort should be made to keep them as such.

**iii. Specimen Resolutions**

At the first board meeting of a company the minutes may reflect brief resolutions including the following:

**1. CHAIRMAN**

It was resolved that Mr. K. Essien being one of the directors named in the Regulations be and (he) is hereby appointed the Board Chairman.

**2. AUDITORS**

Messrs. AKOSA and ASSOCIATES having given their prior consent in writing be and are hereby appointed the company's auditors for two years.

In the case of a decision taken by the board in the course of its operations and not just in fulfillment of a formality like the appointment of a chairman or auditor the resolution may, depending on what was discussed and the style of the board, provide more information. An example may be the resolution for the appointment of a Managing Director. The style may differ from one company to another. The following specimen resolutions may be studied for comments:

**Resolution 1**

**“The board having considered the CV of Mr. F.K. Addo (director) and reviewed the draft contract for his employment initialed by the chairman, it was RESOLVED that Mr. F.K. Addo be and is hereby appointed Managing Director of the company with effect from October 1, 2013 subject to the signing of his contract on terms including the following**

- **Duration: Three years with an option to renew**
- **Salary: GH¢5,000.00 a month**
- **Provision of car with a driver**
- **Approval of the shareholders”**

#### **Resolution 2**

**“There was tabled for the consideration of the board the CV of Mr. F. K. Addo (director) together with the responses from his referees and a draft contract of employment.**

**After due consideration of the draft contract and other information available to the Board it was unanimously Resolved that Mr. F.K Addo be and is hereby appointed the new Managing Director of the company with effect from October 1, 2013 subject to the following terms:**

- a) **Execution of the contract of employment**
- b) **Salary of GH¢50,000.00 a month subject to annual review**
- c) **Duration of 5 years**
- d) **Termination by either party by three months’ notice**
- e) **Approval of all the terms of his contract by the shareholders”.**

#### **Resolution 3**

**The contract for the employment of Mr. F.K. Addo as the new Managing Director was produced by the company secretary. After due consideration it was resolved that Mr. F.K. Addo be and is hereby appointed the new Managing Director of the company in accordance with the terms of the contract of employment with effect from October 1, 2013. The chairman was mandated to execute the contract on behalf of the company.**

#### **iv. Comments on the Three Specimen Resolution**

We now consider the specimen resolutions on the appointment of the Managing Director. In specimen resolution 1 and 2, it is clear that before making the appointment the board satisfied itself as to the fact that the Managing Director was qualified. The legal requirement that the Managing Director should be appointed from among the directors was met. The salient aspects of the contract including remuneration, effective date and termination were disclosed by the minutes. The other details of his contract were not disclosed. Again the legal requirement that the terms of employment of the Managing Director should be approved by the shareholders was recognized by the minutes. It is however doubtful whether as in the specimen resolutions 1 and 2 above every Managing Director or board would be happy to see the Managing Director's salary in the minutes. Some boards will delete the salary.

Resolutions 3 contains less information but there is no doubt that an appointment was made.

## **B. REPRODUCTION OF REPORTS**

A report that is submitted to a meeting should not be reproduced in the minutes. It should be initialed by the chairman for the purposes of identification and this fact must be recorded in the minutes. The report should be mentioned by reference to its date, title or other particulars in addition to the decision that was taken on it. If need be some salient aspects should be recorded. The report considered and approved by the board may be kept separately and to be retrieved when necessary. There is however the other view that the report may be attached to the minutes. To my mind, this second view will and does make the minutes or minute's book unnecessarily bulky and should be discouraged. The following specimen resolutions dealing with reports may be studied for comments.

### **Resolution A**

**“The Board having considered the Managing Director's report on Corporate Social Responsibility Policy dated 10<sup>th</sup> September 2013, IT WAS RESOLVED that Management be and is hereby authorized to disburse a total of GH¢10,000,000.00 in 2014 to institutions named in the report.”**

### **Resolution B**

**As directed by the Board at its 107<sup>th</sup> meeting, the report on the company's Social Responsibility Policy dated 10<sup>th</sup> September 2013 was presented to the Board and initialed by the chairman. After a lengthy debate during which a member described aspects of the report as bogus and fraudulent, IT WAS RESOLVED that management be and is hereby authorized to disburse a total of GH¢10,000,000.00 in 2014 to institutions named in the report except Korle - Bu Teaching Hospital.**

### **Resolution C**

**The Board received and considered the Managing Director's report on the Company's Social Responsibility Policy dated 10<sup>th</sup> September, 2013. It was RESOLVED that in view of the company's current financial crisis an amount of GH¢10,000,000.00 should not be spent on Corporate Social Responsibility. Management was directed to resubmit the report with a lesser number of beneficiaries, an expenditure not exceeding GH¢1,000,000.00 and on projects for poverty reduction.**

### **Some Observations on the Specimen Resolutions A, B and C**

- i. The following may be observed from the specimen resolutions A, B and C with variations:
- ii. Identity of the report by date and the signature or initial of the chairman
- iii. The initiator of the report
- iv. The decision that was taken
- v. The mandate given to management

In the case of Resolution B the fact one director objected and also the nature of objection were recorded. The exclusion of one beneficiary was also recorded. As regards Resolution C, the fact that the amount and scope of the disbursement were changed by the board were also recorded.

## **PART 5**

### **A. MINUTES OF GENERAL MEETINGS**

Board meetings are usually less formal than general meetings (shareholder's meetings). However, most of what has been said about the contents of the minutes of board meetings will apply to general meetings.

Normally the minutes will include the name of the company, the place of the meeting and whether it is an Annual General Meeting, Extraordinary General Meeting or a class meeting.

It is important for the minutes to indicate that a quorum was present. This may be done usually by recording the number of shareholders present without disclosing their names in the case of a company with a large number of shareholders. The names of shareholders of a company with just a few shareholders must be listed. The directors present at the meeting should be listed. The company secretary will be in attendance.

At the Annual General Meeting or at any other meeting at which the auditors are present they will also have to be recorded as being in attendance.

## **B. APPROVAL OF MINUTES OF THE GENERAL MEETING**

It is best practice for the directors to satisfy themselves as to the accuracy of the minutes of general meetings, and to cause the minutes to be entered when signed by the chairman. Shareholders need not also meet to approve the minutes. Any shareholder who wants to inspect the minutes is entitled to do so. However, in private companies with a few shareholders who don't see a difference between themselves and the directors, the minutes of general meetings are sometimes considered at subsequent meetings and signed by the chairman.

The text of a resolution that is put to the meeting has to be recorded. Furthermore, the minutes should include any amendments to the resolution and the results of the vote.

Where a resolution is passed on a show of hands the minutes need only state that the chairman declared the resolution carried. However, in the event of a poll being demanded the minutes should not only state that the chairman declared the resolution carried but also the number of votes for and against.

## **Part 6**

### **CONCLUSION**

As we have already noted, various factors influence the way minutes are drafted. However, if you critically examine those factors you cannot but come to the conclusion that as the company secretary you are the key factor in the drafting of minutes.

Whereas the directors may be relaxed at the meeting and may offer excuses for their individual shortcomings, if any, you cannot. You are listening, writing, observing and thinking at the same time. The directors rely on you for an accurate statement of each decision they took at the meeting. You cannot depend on the chairman and the other directors all the time since they are entitled to forget and may in fact forget the contributions they made at the meeting. Knowing what to record and deciding on what to ignore is in itself a decision making process which you go through all alone in the hope that what you produce will be eventually accepted.

So far no claim has been made that the taking of minutes is the same as the study or application of rocket science. Nobody should make that claim especially in a country where anybody is said to be capable of taking minutes. My humble appeal is that you should not walk into a boardroom for the first time with your chest out thinking that because you are a lawyer, professor, chartered accountant or even a chartered secretary you are in a position to produce perfect or at least acceptable minutes.

Speaking for myself, company minutes are not just minutes which may be taken by anybody. To the extent that the drafting of company minutes requires a display of knowledge, experience,

continuous education, retentive memory and not just skills but the skills of an expert, it makes sense to talk about “the art and science of minute taking”.