

# Startup board meeting FAQ

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A discussion and guide on questions founders will want to consider

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What are some of the best practices to help you prepare for a board meeting so you can leverage the board's expertise and knowledge in a productive manner? In this FAQ, we cover some of the key things you should consider.

Note that this FAQ assumes that the relevant corporation is governed by the *Canada Business Corporations Act*.

## Q: What is the role of the board?

A: The role of the board is to help the company succeed! Don't be afraid to ask your board member for advice outside of scheduled board meetings. You should also solicit their input on key action items ahead of board meetings, so they are not caught off guard by potential issues.

## Q: Who should attend the board meeting and how should seats be allocated?

A: Board members, observers (if any), founders, and relevant management team members (often needed to deep dive on topics) may attend for the relevant portion of the meeting. It is important to note that directors cannot appoint a proxy to attend or vote in their place.

You should give careful consideration to the allocation of board seats and the number of directors. Look for directors that add value through their knowledge, skills, experience and network. It is often appropriate to add board members as the company develops and grows. However, if boards grow too fast or too large, they can become inefficient—something to keep in mind as new board seats may be sought at each new investment round while existing investors may be reluctant to give up board representation.

Significant investors without board representation may ask for a non-voting board observer right. While this can assist in limiting the size of the board, you should also take care to not let the number of observers get out of hand.

## Q: When should board meetings be scheduled?

A: Each quarter, with additional meetings planned on an as-needed basis. Try to schedule your quarterly board meetings three to six months in advance, as investors get busy. Any additional board meetings should be scheduled as far in advance as possible.

If the company is going through an important transaction such as a material financing or M&A, or is facing critical challenges, then more frequent board meetings may be needed and this should be discussed with the directors.

## Q: How should notice be given to directors?

A: You must give notice of the time and place of a board meeting in accordance with the notice period set out in the corporation's by-laws or shareholders agreement. This is particularly important if there will be a discussion or vote on a controversial matter.

## Q: What if there is an emergency?

A: If there is an emergency, you can schedule a meeting without meeting the notice requirements. Attendance by the directors is in itself a waiver of notice however it is recommended that you get a written waiver of notice from them (an email confirming they waive the notice period will suffice).

## Q: What should be discussed during the board meeting?

A: Sit down with the executive officers and identify key issues that the board should discuss. This should include good or bad news, issues which would benefit from board advice, and items that must be approved by the board.

Distribute the key issues list to the directors ahead of time and, if any of the key issues may be controversial, have a brief chat with individual members of the board to see whether they have other concerns.

## Q: Should the board meeting have an agenda?

A: Prepare a thoughtful agenda, which outlines each discussion topic and allocates time accordingly. Topics should be addressed in order of highest to lowest importance/priority (see a sample agenda below).

1. Approval of previous meeting minutes and the financial statements. (5 minutes)
2. CEO introduction and highlight of key progress and challenges of the company since the last meeting. (10 minutes)
3. Review from each operational group (e.g., finance, marketing, sales, product development, business development, human resources) comparing performance with targets. (30 minutes)
4. Discussion and voting on option grants and other resolutions requiring board approval. (15 – 30 minutes)

5. Discussion of prospective goals and plan for growth (e.g., hiring plan for next six months, upcoming product and engineering developments, strategies for increasing revenue, business development, and operations). Set your target benchmarks that you want each group to achieve by next meeting. (30 minutes)
6. Deep dive on a couple of specific key issues on which the board can help advise. (30 minutes per topic)
7. A closed session with CEO, legal counsel, and board (no other management or observers), which allow the board to give the CEO advice in private. (15 minutes)

## Q: What should be included in the board meeting package?

A: Send the board meeting package to the directors at least three business days ahead of the meeting. The package should include:

- board deck;
- minutes from the previous board meeting;
- up-to-date detailed capitalization table;
- list of proposed stock option grants;
- list of proposed resolutions that directors may be asked to vote on (together with any relevant materials such as copies of agreements to be approved);
- summary financial statements, including balance sheet, income statement, and cash flow statement; and
- short operational reports from each group in the company.

If there are any board observers, confirm under the relevant agreement (e.g., Investors' Rights Agreement, Management Rights Agreement, Side Letter etc.) if the same materials also need to be distributed to the board observers.

## Q: What else should be considered prior to the board meeting?

A: Directors should be expected to have carefully reviewed the board meeting package in advance—this will significantly increase the productivity of the meeting.

Think about whether you need the board to approve any compensation guidelines around salary, bonus, and options. If yes, drafts of any compensation materials should be provided to the board along with the board deck (your legal counsel can help you with this) and this should be noted as a discussion item in the meeting agenda.

## Q: What should be considered at the start of the meeting?

A: Ensure that you have quorum (i.e. the minimum number of voting members who must be present) in accordance with the quorum requirements set out in the corporation's by-laws and/or shareholders agreement. Pay particular attention to the requirements of which board members need to be present, and if a required board member is not present, when the follow-on meeting needs to be scheduled.

In light of COVID-19 restrictions, you should also confirm that the by-laws and/or shareholders agreement allow for board meetings to be held via video conference or teleconference.

## Q: How should minutes be taken during the meeting?

A: Have your legal counsel take minutes for the meeting. Minutes should be a high-level summary of the meeting contents and should not contain any confidential information.

## Q: What if there are resolutions that require a vote of the directors?

A: Any resolutions that require a vote of the directors should be raised in the meeting and recorded in the meeting minutes (along with whether it was passed by the board). If any board member is in a conflict of interest situation in respect of a resolution, generally, they:

- must disclose the conflict;
- may not vote on such resolution; and
- should leave the room when the board is discussing this resolution.

The minutes should reflect that the conflict was declared and that the conflicted board member did not vote on the matter.

## Q: Does the board have the right to approve all matters?

A: It is important to note that certain approvals are reserved for the shareholders of the company and cannot be approved by the board of directors (e.g., approving senior classes of securities, approval of board members etc.). You should also check if specific decisions require the approval of certain groups of shareholders (e.g., the protective provisions under the articles). Consult with your legal counsel to ensure that the board has the right to approve all matters intended to be voted on at the meeting.

## Q: How should disagreements be handled?

A: If a director disagrees with a decision being made, the disagreement should be properly documented in the meeting minutes if the director so requests.

## Q: How should legal matters be discussed?

A: Do not discuss legal issues, or potential liability of board members, with observers or non-board members. These matters can be discussed in a closed session with board members and your legal counsel present (to preserve privilege). Let your counsel know ahead of time about any legal matter that you plan to raise at the board meeting so they can prepare accordingly.

## Q: Should sensitive information be discussed in the board meeting?

A: Do not be afraid to be vulnerable in areas where the board can be useful—and don't be afraid to share bad news. If the information is divisive, then it may be beneficial to call board members before the meetings to set expectations.

## Q: What should be considered after the meeting?

A: Write down what went well and what could be improved in the way you ran the meeting; consider asking board members for feedback. Send minutes to all the directors shortly after the meeting for their review while the discussion is still fresh in their minds.

*To discuss these issues, please contact the author(s).*

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