



The Institute of Certified Public Secretaries of Kenya

GOVERNANCE STANDARD - GS 008

GS 008: COMMON SEAL

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1. PURPOSE

The standard describes the recommended governance practise for the use and custody of the Common Seal for an organisation.

2. SCOPE

Applies to the following organisations generally:-

- 2.1** Companies;
- 2.2** Societies;
- 2.3** Cooperative Bodies;
- 2.4** Non-governmental Organizations.

3. LEGAL FRAMEWORK

The Standard takes into consideration the applicable laws, regulations and global best practices including but not limited to:

- 3.1** The Companies Act (No. 17 of 2015)
- 3.2** Societies Act Cap 108
- 3.3** Cooperative Societies Act (Amended) 2004
- 3.4** Non-Governmental Organisations Coordination Act Cap 134

4. DEFINITIONS

- 4.1.** “Articles” means the Articles of Association of the company.
- 4.2.** “Board” means the body of persons, by whatever name called, carrying out or empowered to carry out functions relating to the overall direction and monitoring performance of management in an Organisation;
- 4.3.** “Board Member” means a Director, Trustee or Member of the Board of an Organisation
- 4.4.** “Constitutive Document ” collectively means the Articles , By-laws, Constitution , Charter , Trust Deed or similar document of an Organisation
- 4.5.** “Council” means the Council of the Institute of Certified Public Secretaries of Kenya (ICPSK) ;
- 4.6.** “Member” means a person /body with an interest in an Organisation and having the right to attend and vote at a General Meeting;
- 4.7.** “Organisation” means a Company ,Society , Cooperative Society , University , Trusts, Non-Governmental Organizations , Government Owned Entities , Commissions , County Public Service Boards or other similar institution
- 4.8.** Seal” means the common seal of the organization
- 4.9.** “Secretary” means Certified Secretary as defined in the Certified Public Secretaries Act.
- 4.10.** “Practising Secretary” means a person that practises as a certified public secretary in consideration of remuneration or other benefits received or to be received and whether by himself/herself or in partnership with any other person, meaning that he /she :
 - 4.10.1.** Engages in the public practice of secretaryship or performs the statutory duties of a certified public secretary or holds himself out to the public as a person entitled to do so
 - 4.10.2.** Offers to perform or performs services involving the submission of official and statutory returns of companies and trading organizations;
 - 4.10.3.** Offers to perform or performs services involving the certification of statutory returns or records related to statements; or

4.10.4. Engages in any practice, or performs or offers to perform any services, which may be prescribed.

PROVIDED THAT a salaried employee of a government, Company or of any other person does not practise as a certified public secretary by reason only of doing, in his/her capacity as such employee, any of the acts referred above.

4.11. Words importing the masculine gender shall also include the feminine gender

5. GENERAL STANDARD GUIDELINES

5.1. FORM AND CONTENT

5.1.1. The common seal should be made of metal and capable of being manually operated.

5.1.2. The common seal should have the name of the company and city in which the registered office is situated engraved in legible characters.

5.2. APPROVAL

5.2.1. The promoters of the company shall table and adopt the impression of the seal at the 1st meeting of the Board and by resolution of this meeting, authorize the making of the company seal.

5.2.2. Where required by the Articles of the company, the Board shall approve each use of the seal to execute documents approved by the Board, and shall appoint the persons who shall attest the affixation of the seal in accordance therewith.

5.3. AUTHORITY AND MODE OF AFFIXATION

5.3.1. Where required, the Board shall authorize a person to affix the seal to any deed or other document to which the company is a party.

5.3.2. The affixation of the seal shall be attested by either two directors, or one director and the Certified Secretary, or otherwise as provided by the Articles of Association of the Company.

5.3.3. A deed, instrument or other document to which the seal is duly affixed shall bind the company as having been duly executed.

5.3.4. The person affixing the official seal shall sign and write on the Register or other instrument, the date and place at which the seal was affixed.

5.4. CUSTODY

5.4.1. The seal should be kept in the custody of the Certified Secretary or a member of the Board, or such other person as may be authorized by the Board.

5.4.2. The seal should be kept at the registered office of the Company, or any other office authorized by the Board.

5.5. REGISTER OF DOCUMENTS EXECUTED UNDER SEAL

5.5.1. Every company should maintain a register containing particulars of documents on which the official seal of the company has been affixed.

5.5.2. The Certified Secretary shall develop and maintain a systematic way of numbering the impressions of the company seal, for record purposes.

5.5.3. The register should contain:

- (a) the description of the document;
- (b) date and number (where applicable) of the resolution authorizing the affixation of official seal;
- (c) date of affixing seal on the document;
- (d) name(s) of person(s) who attested the affixation; and
- (e) the place at which the document was so sealed;
- (f) where adopted, the number of the impression of the company seal.

5.5.4. All entries into the register shall be made by the Certified Secretary or under the direction of the Certified Secretary.

5.5.5. The register should be maintained at the office where the seal is kept, with a duplicate or parallel register transmitted to and maintained at the registered office of the Company, in instances where the seal is not held in the registered office of the Company.

5.6. OFFICAL SEAL FOR USE OUTSIDE KENYA

5.6.1. A Company may have more than one official seal.

5.6.2. A Company whose objects require or comprise transactions of business outside Kenya, and it has enabling provisions in its Articles of Association, may have for use in any territory, district or place not situated in Kenya, an official seal.

5.6.3. Each additional official seal shall be a replica of the Company's original common seal.

5.6.4. The official seal to be used in an external territory shall have engraved in it, in addition to the name of the Company, the name of the territory, district or place where it is to be so used.

5.6.5. The Company shall, however, not have more than one official seal in each territory, district or place not situated in Kenya.

5.6.6. The official seal should be adopted by a resolution of the Board and the impression of such seal shall be made part of the minutes of the meeting in which it is adopted.

5.7. OFFICIAL SEAL FOR SECURITIES

5.7.1 A Company that has a common seal may also have an official seal for use in sealing the following per s.43(1) of the Companies Act, 2015:-

- (1) Securities issued by the Company;
- (2) Documents creating or evidencing securities so issued.

5.7.2 A Company's official seal for securities is only effective if it is a facsimile of the Company's common seal with the addition on its face of the word "SECURITIES";

5.7.3 When duly affixed to a document an official seal has the same effect as the Company's common seal.

5.8. REPLACEMENT

5.8.1. On being satisfied on the reasons for the need to obtain a new seal to replace the existing or misplaced one, the Board shall authorize such replacement by a resolution and the impression of the new seal should be approved in the minutes of the relevant meeting.

5.8.2. The company shall make every reasonable effort to notify the third parties and the general public of the replacement of the seal and warn of possible fraudulent acts arising from such replacement.

6. APPROVAL DATE

This Governance Standard was approved by the Council of the Institute on

7. REVIEW OF STANDARD

This Governance Standard may be reviewed from time to time by the Council at its discretion and subject to the laws,

8. EFFECTIVE DATE

The Governance Standard shall come into effect from