



The Institute of Certified Public Secretaries of Kenya

GOVERNANCE STANDARD - GS 009

GS 009: FORFEITURE OF SHARES

Secretary
CPS Governance Centre, Kilimanjaro Road, Upper Hill,
P.O. Box 46935-00100, Nairobi, Kenya
Tel: +254 20 3597840/2; Mobile: 0734603173, 0770159631
E-mail: info@icpsk.com Website: www.icpsk.com

1. PURPOSE

The standard describes the recommended governance practise for all companies in respect of “Forfeiture of Shares”. This standard seeks to lay down a set of principles for forfeiture of both equity and preference shares arising on non-payment of calls.

2. SCOPE

The standard applies to all Companies.

3. INTRODUCTION

3.1. If a shareholder fails, neglects and/or refuses to pay the due amount of allotment or any call on shares issued by the Company the Board of Directors may decide to cancel his/her membership with the Company. With such cancellation the defaulting shareholder also losses the amount paid by him/her on such shares. When a shareholder is deprived of his/her membership due to non-payment of calls this is called “forfeiture of shares”.

3.2. The procedure for forfeiture of shares must be prescribed by the Articles;

3.3. The ground on which a share(s) can be forfeited has to be explicitly stated in the Articles and generally the ground mentioned is non-payment of call(s).

3.4. But if the articles provide, the Company can forfeit fully paid-up shares on grounds other than the non-payment of a call.

4. LEGAL FRAMEWORK

The Standard takes into consideration the applicable laws, regulations and global best practices including but not limited to The Companies Act (No. 17 of 2015)

5. DEFINITIONS

5.1. “Articles” means the Articles of Association of the company.

5.2. “Board” means the body or person, 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;

5.3. “Board Member” means a Director, Trustee or Member of the Board of an Organisation

5.4. "Call" means a demand made by a Company on members for payment of an amount due on shares in respect of nominal value or premium or both;

5.5. “Constitutive Document ” collectively means the Articles , By-laws, Constitution , Charter , Trust Deed or similar document of an Organisation

5.6. “Council” means the Council of the Institute of Certified Public Secretaries of Kenya (ICPSK) ;

- 5.7. “Member” means a person /body with an interest in an Organisation and having the right to attend and vote at a General Meeting;
- 5.8. “Organisation” means a Company ,Society , Cooperative Society , University , Trusts, Non-Governmental Organizations , Government Owned Entities , Commissions , County Public Service Boards or other similar institution
- 5.9. “Secretary” means Certified Secretary as defined in the Certified Public Secretaries Act.
- 5.10. “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 :
- 5.10.1. 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
 - 5.10.2. Offers to perform or performs services involving the submission of official and statutory returns of companies and trading organizations;
 - 5.10.3. Offers to perform or performs services involving the certification of statutory returns or records related to statements; or
 - 5.10.4. 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.

- 5.11. Words importing the masculine gender shall also include the feminine gender

6. GENERAL STANDARD GUIDELINES

6.1. AUTHORITY

- 6.1.1. The power to forfeit shares must be expressly given in the Company’s Articles of Association (Articles). It cannot be implied; and
- 6.1.2. The Authority to forfeit shares is given to the Board of Directors in the Company’s Articles;

6.2. CALL ON SHARES

- 6.2.1. The Call must be made under the resolution of the Board of Directors passed in a properly constituted and convened meeting of directors.
- 6.2.2. The Call must specify the amount of the call, the time and place of payment of the calls;

6.2.3. The Call must be made in good faith and for the benefit of the Company. The call on unpaid shares shall be made on a *bona fides basis* i.e. when it is necessary for the promotion of the objects of the Company;

6.2.4. The Calls must be made on uniform basis i.e. the call should be made on all shares falling under the same class.

6.2.5. The Call must be made in accordance with the Companies Act and the Articles of Association of the Company.

6.3. NOTICE

6.3.1. A default in payment does not on its own bring about forfeiture.

6.3.2. A notice of demand requiring the member to pay calls within a reasonable fixed period of the notice must be given to the holder of shares;

6.3.3. In the absence of a reasonable fixed period being outlined in the Articles the said period shall be taken to mean 21 (twenty-one) clear calendar days from the date of the Notice;

6.3.4. The notice shall also state that in the event of non-payment of calls shares shall be forfeited;

6.3.5. The amount to be paid by way of interest or expenses besides the amount due on the call must be stated specifically in the notice otherwise the forfeiture will be invalid.

6.3.6. The notice should state the following:-

- a) The amount of the call due;
- b) Time and place of payment of the calls;
- c) The interest accrued thereon;
- d) Any expenses associated thereto.

6.3.7. The notice should also

- a) specify a day not being earlier than the expiry of 21 (twenty-one) days from the date of posting of the notice on or before which the payment required by the notice is to be made; and
- b) state that in the event of non-payment on or before the date so specified the shares in respect of which the call was made including the amount already paid thereon will be forfeited.

6.3.8. In default of the notice the forfeiture cannot be effected.

6.3.9. Service of Forfeiture Notice shall be by registered post to the address registered with the Company by any other mode provided for by Law and/or Constitutive Documents;

6.4. FORFEITURE ON NON-PAYMENT

6.4.1. If the amount payable as set out in the notice is not paid on the stipulated date, any share in respect of which the notice has been given may at any time thereafter be forfeited by way of resolution of the Board of directors in a properly convened meeting.

6.4.2. Any entitlement of the defaulting member for dividends on his partly paid-up shares may be adjusted against his dues on calls.

6.5. THE EFFECT OF THE FORFEITURE OF SHARES

6.5.1. Cancellation of membership of the shareholder and the removal of the member's name from the register in respect of those shares;

6.5.2. A person whose shares have been forfeited would notwithstanding the forfeiture remain liable to pay the Company all monies which at the date of forfeiture were payable by the member to the Company in respect of the shares; and

6.5.3. Reduction of issued share capital of the Company.

6.6. BONA FIDE

6.6.1. The power to forfeit shares is in the nature of a trust.

6.6.2. Directors must exercise this power bona fide for the benefit of the Company.

6.6.3. It should not be exercised to expel a member or to get rid of him/her, nor should it be exercised to relieve a shareholder from liability.

6.7. BOARD RESOLUTION OF FORFEITURE

6.7.1. The Board of Directors must pass a resolution approving the forfeiture of shares.

6.7.2. The forfeiture becomes final upon the passing of the Board resolution.

6.7.3. A declared intention to forfeit not carried into effect is no forfeiture at all.

6.7.4. Forfeiture without a board resolution is invalid.

6.8. REQUIREMENTS OF FORFEITURE

6.8.1. The Board at a duly convened meeting should approve the forfeiture and authorize the Company Secretary, any Director or Manager to make a declaration of such forfeiture;

6.8.2. An authenticated list of shares to be forfeited together with the names of shareholders thereof should be placed before the Board for this purpose.

- 6.8.3. The date of approval by the Board is the date of forfeiture;
- 6.8.4. Upon forfeiture, the Company Secretary, any Director or Manager authorized by the Board of the Company shall make a declaration specifying the particulars of shares forfeited;
- 6.8.5. The declaration shall be conclusive evidence of forfeiture as against all persons claiming to be entitled to the shares of the Company which have been forfeited.
- 6.8.6. The Board should issue individual notices to the defaulting members whose shares have been forfeited;
- 6.8.7. The Board should require the defaulting members to return the allotment letters and share certificates in respect of the forfeited shares to the Company and in default of which the share certificate shall stand cancelled.
- 6.8.8. within one (1) month following forfeiture and cancellation of the shares, the Company shall lodge with the Registrar of Companies for registration a Notice giving details of the cancelled shares and the statement of capital including the following:
- (i) The total number of shares of the company;
 - (ii) The aggregate nominal value of those shares;
 - (iii) For each class of shares:-
 - ✓ The particulars of the rights attached to the shares prescribed by the regulations for the purposes of this section;
 - ✓ The total number of shares of that class;
 - ✓ The aggregate nominal value of shares of that class; and
 - ✓ The amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or in the form of a premium).

6.9. ANNULMENT OF FORFEITURE

- 6.9.1. The Board can annul the forfeiture by passing a resolution before the reissue of the forfeited shares;
- 6.9.2. On annulment the name of the member shall be restored in the register of members for those shares;
- 6.9.3. In case of shares issued in physical form, fresh share certificates should be issued for those shares;
- 6.9.4. The forfeiture can be annulled by the Board at its discretion, if the member pays all outstanding calls due on the shares together with any accrued interest;
- 6.9.5. The member whose shares have been forfeited shall be duly informed by the Board on revoking the forfeiture and restoring the name of the member in the register of members.

6.10. EFFECT OF FORFEITURE

- 6.10.1. A person whose shares have been forfeited ceases to be a member of the Company in respect of those shares;

- 6.10.2. A person whose shares have been forfeited would notwithstanding the forfeiture remain liable to pay to the Company all moneys which at the date of forfeiture were payable by him to the Company in respect of the shares;
- 6.10.3. The liability of the defaulting member shall not cease till the Company receives the full payment which is due in respect of the shares.
- 6.10.4. The name of the defaulting members will be placed as a past member on the list of contributories if a winding up of the Company commences within 1(one) year of the date of forfeiture.

6.11. REISSUE

- 6.11.1. A forfeited share may be reissued or otherwise disposed of on such terms and in such a manner as the Board may think fit;
- 6.11.2. Reissue of forfeited shares is a sale of shares and it does not amount to an allotment;
- 6.11.3. The company should duly record the particulars of the members who acquire those shares as if it were a transfer of shares;
- 6.11.4. The directors should fix a price for the forfeited shares that should not be lower than the amount of the call(s) due and unpaid on the share at the time of forfeiture;

6.12. EFFECT OF REISSUE

- 6.12.1. On reissue the transferee should be registered as the holder of the share;
- 6.12.2. A new share certificate should be issued in the name of the transferee who shall be registered as the holder of the shares;
- 6.12.3. The title of the transferee should not be affected by any irregularity or invalidity in the proceedings in reference to the **forfeiture, sale or disposal of the share.**

6.13. PROCEDURAL STEPS MANDATED BY STATUTE:

The steps to be taken in the event of a share forfeiture shall be as provided by the Companies Act, any other applicable Law and the Constitutive Documents.

7. APPROVAL DATE

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

8. REVIEW OF STANDARD

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

9. EFFECTIVE DATE

The Governance Standard shall come into effect from