



The Institute of Certified Public Secretaries of Kenya

GOVERNANCE STANDARD 001

GS 001: GENERAL MEETINGS

The 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

This Standard describes the recommended governance practice for convening and execution of a General Meeting in an Organisation.

2. SCOPE

Applies to Organisations generally

3. LEGAL FRAMEWORK AND GOVERNANCE STANDARDS

The Standard takes into consideration the applicable laws, regulations and global best practices including but not limited to: (Or any other statutory re-enactment thereof)

- 3.1. Certified Public Secretaries of Kenya Act (Cap. 534)
- 3.2. Companies Act (No.17 of 2015)
- 3.3. Co-operative Societies Act (Cap. 490)
- 3.4. Sacco Societies Act (Cap. 490 B)
- 3.5. Societies Act (Cap. 108)
- 3.6. Trustee Act (Cap.167)
- 3.7. Non-Governmental Organizations Coordination Act (Cap. 134)
- 3.8. Insolvency Act, 2015
- 3.9. Mwongozo: The Code of Governance for State Corporations in Kenya, PSC 2014
- 3.10. Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015
- 3.11. Code of Governance for Private Organizations in Kenya, ICPSK 2014.

4. DEFINITIONS

- 4.1. “Articles” means the Articles of Association of a company, and where they apply, the Regulations contained in the Tables in Schedule I of the Act.
- 4.2. “Board” means the body or person, by whatever name called, carrying out or empowered to carry out functions relating to the overall direction and management of an Organisation.
- 4.3. “Board Member” means a Director, Trustee or Member of the Board of an Organisation.
- 4.4. “By Laws” means the Rules that govern the operation of a Society or Cooperative Society or
- 4.5. “Chairperson” means the chairperson of the Board or the chairperson appointed or elected to chair a meeting of the Board or of the Organisation, as the case may be;
- 4.6. “Constitutive Document ” collectively means the Articles, By-laws, Constitution, Charter, Trust Deed or similar document of an Organisation;
- 4.7. “Council” means the Council of the Institute of Certified Public Secretaries of Kenya;
- 4.8. “External Auditors” include financial auditors and governance auditors;
- 4.9. “IFRS” means International Financial Reporting Standards;
- 4.10. “Institute” means the Institute of Certified Public Secretaries of Kenya;

- 4.11. “Member” means a person /body with an interest in an Organisation and having the right to attend and vote at a General Meeting;
- 4.12. “Ordinary business” means business transacted as an Annual General Meeting;
- 4.13. “Organisation” means a Company, Society, Cooperative Society, University, Trusts, Non-Governmental Organizations, Government Owned Entities, Commissions, County Public Service Boards or other similar institution;
- 4.14. “Proxy” means an instrument in writing signed by a Member, authorising another person, who need not be a Member, to attend and vote on his behalf at a meeting, and also means the person so appointed;
- 4.15. “Secretary” Certified Secretary as defined in the Certified Public Secretaries of Kenya Act;
- 4.16. “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:
- 4.16.1. 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;
- 4.16.2. Offers to perform or performs services involving the submission of official and statutory returns of companies and trading organizations;
- 4.16.3. Offers to perform or performs services involving the certification of statutory returns or records related to statements; or
- 4.16.4. 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.
- 4.17. “Special business” means all business other than ordinary business to be transacted at an Annual General Meeting, and all business transacted at an Extraordinary General Meeting.
- 4.18. Words importing the masculine gender shall also include the feminine gender

5. STANDARDS GUIDELINES

5.1. Definition

A General Meeting is a duly convened Meeting of all the Members (or of a class of members) that have an interest and have the right to attend and/or vote at such Members’ Meetings in an Organisation.

5.2. Types of General Meetings

5.2.1. Annual General Meeting; this is a general meeting held by the Members of an Organisation each year, required by the Law (and /or the Constitutive

Documents) to discuss past, present and future activities of the Organisation.

5.2.2. Extra-Ordinary General Meeting; a general meeting held by the Members when convened to discuss matters that require the input of the entire membership and that are too important and urgent to wait until the next Annual General Meeting.

5.3. Convening of General Meetings

General Meetings may be convened by;

5.3.1. A Board on its own Motion ;

5.3.2. A Board on the requisition of Members (as per the law or constitutive documents);

5.3.3. The Registrar/ Commissioner , on the application of any Member, in default of holding an Annual General Meeting by the Organisation;

5.3.4. An order of the Court, either of its own motion or on the application of a Member where provided by Law;

5.3.5. Any other persons authorised by the applicable laws of the Organisation.

5.4. Who should receive the Notice

The Notice of the Meeting shall be given to:-

5.4.1 Every Member of the Organisation who is entitled to attend;

5.4.2 Every Director of the Organisation;

5.4.3 The Company Secretary;

5.4.4 The Financial Auditors of the Organisation;

5.4.5 The Governance Auditor of the Organisation;

5.4.6 In the absence of a Nominee, the Notice shall be sent to the legal representative of the deceased Member.

5.4.7 In case of insolvency of a Member, the Notice shall be sent to the assignee of the insolvent Member.

5.4.8 In case the Member is a company or body corporate which is being wound up, Notice shall be sent to the liquidator.

5.5. Contents of the Notice

The notice should contain;

5.5.1. Day, date, time and complete particulars of the venue of the Meeting;

5.5.2. The nature of the meeting such as the annual or extra-ordinary general meeting;

5.5.3. The details of the ordinary business to be conducted at the General Meeting which may include;

a) Reading and confirming issuance of a proper Meeting Notice

b) Tabling of the valid proxies received

- c) Noting of Quorum
- d) Confirmation of the Minutes of the Previous Meeting or shareholders circular resolutions
- e) Adoption of the Financial Statements, Board Reports, Governance Auditors Reports and Financial Auditors Reports
- f) Approval of Dividends (where applicable)
- g) Retirement and Appointment of Board Members
- h) Board Remuneration
- i) Retirement and Appointment of External Auditors
- j) Retirement and appointment of Governance Auditor
- k) Any Other Business that may be transacted at a General Meeting and for which a notice has been given as prescribed by law or as required in the Constitutive Documents.

5.5.4. Any documentation to be reviewed or discussed by the Members at the Meeting

5.5.5. Details of Persons retiring from the Board and those proposed for election/ re-election to the Board:

- a) Full Name (Including Former Names)
- b) Date of first Appointment
- c) Qualifications
- d) Other Board Memberships

5.5.6. Special Business

Each such item shall be in the form of a resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.

5.5.7. Proxy Forms

5.5.8. Waiver of Notice Forms

NB: Any matters arising from the previous year's Meeting should be dealt with appropriately within the Chairperson's Report, and not as an Agenda item

5.6. Dispatch of Notice

5.6.1. The notice may be sent by post, delivered by hand, by electronic means, or where the Constitutive Documents so permit, display on the Organisation's website.

5.6.2. Where the law requires, the notice should be published either in full or in an abridged form, in one or more newspapers with national circulation.

5.6.3. The notice should be sent to each Member or to one of joint shareholders unless the Constitutive Documents provide otherwise.

5.7. Length of Notice

5.7.1. Ensure that the Members have been notified of the Meeting in good time, with at least twenty-one (21) clear days before the date of the Meeting;

5.7.2. The legal requirements as relates to the length of notice for General Meetings differ from one Organisation to another;

a) Companies require at-least twenty-one (21) clear days before the date of the meeting.

b) Co-operative Societies require a minimum of fifteen (15) days' notice before the date of the meeting.

5.7.3. Meetings may however be convened on shorter notice provided that consent for short notice is obtained from all the Members or such number of members as provided for in the Constitutive Documents of the Organisation.

5.8. Frequency of Meetings

5.8.1. Ensure that upon set-up of an Organisation, a Statutory Meeting is held within three months from set up of the Organisation to enable the Members appoint Board Members and align themselves with the objectives and direction of the Organisation.

5.8.2. Subsequently, not more than Twelve Months (12) months should elapse between the date of one annual general meeting and the next.

5.9. Date, Time and Venue

5.9.1. The notice convening the General Meetings should clearly state the day, date, time and complete particulars of the venue of the Meeting.

5.9.2. General Meetings may be held at the registered office of the Organisation or other suitable venue appropriate for a majority of the Members as guided by the Board or Statute.

5.10. Quorum

The quorum of a Meeting attains at least the number set in the Constitutive Documents or regulations. The Constitutive Documents should provide the threshold for quorum and such threshold must be met throughout the Meeting or else such Meeting must be adjourned for lack of quorum. Proxies shall be included for determining the quorum unless otherwise specified in the Constitutive Documents.

5.11. Attendance

- 5.11.1. In addition to the Members attending the Meeting, the following persons should also attend:
- a) All Board Members
 - b) Secretary
 - c) Governance Auditors
 - d) Financial Auditors

5.12. Proxies

- 5.12.1. Provide Members unable to attend the General Meeting with an option to nominate a representative to vote on their behalf (a Proxy).
- 5.12.2. A form of the Proxy instrument will usually be provided in the Constitutive Documents of the Organisation for such use.
- 5.12.3. The Proxy form should be signed and dated by the appointing Member. Such Form is valid for the Meeting for which it is issued and any adjournment thereof, unless it is revoked prior to the said Meeting.
- 5.12.4. Proxy forms should be deposited with the Organisation, usually through the Secretary, within the time specified on the Form and as guided by the Constitutive documents of the Organisation or statute or else they become invalid.
- 5.12.5. All Proxy Forms received should be recorded in a register and safely stored by the Secretary or a person designated.

5.13. Chairperson

- 5.13.1. The Chairperson of the Board chairs the General Meeting unless the law or the Constitutive Documents provide otherwise.
- 5.13.2. In the absence of the Chairperson or vice chairperson, a Board Member selected from among the Board Members will take over the Chairperson's role and chair the Meeting accordingly.
- 5.13.3. The Chairperson's role in the General Meeting includes ;
- a) To provide leadership and guidance throughout the Meeting
 - b) To guide the Agenda of the Meeting
 - c) To read /expound on any Reports tabled at the Meeting
 - d) To explain the reason and implication of any decisions / resolutions proposed by the Board and /or Members before they are put to vote at the Meeting.

- e) To encourage participation by Members in the Meeting through queries and comments
- f) To formally propose any resolution before the General Meeting for adoption /voting and resolution

5.14. Election and Appointments

Subject to the requirements of the law and the Constitutive documents, the following shall be elected or appointed, as the case may be:

- a) Board Members
- b) Governance Auditors
- c) Financial Auditors

5.15. Decision Making at the General Meeting

5.15.1. Subject to the requirements of the Constitutive Documents of the Organisation which will guide the decision making process in each Organisation, decision making may be through the following methods:

- a) Show of Hands- Where the Members raised hands are counted.
- b) Polling - Where the votes are based on the number of shares/interests held by the Member.
- c) Acclamation - Where the decision is based on the volume of the applause by the Members.
- d) Electronic Voting - Where voting is carried out through electronic methods.

5.15.2. Usually, the decision making process in General Meeting shall be by a show of hands. The decision is carried by a simple majority (over 50%) of the Members present either in person or by proxy and entitled to participate and vote at the meeting.

5.15.3. Where the law or the Constitutive Documents of the Organisation require a higher than simple majority such as 75%, the specifications must be observed for the resolution to be deemed valid.

5.15.4. It should be noted however that a poll may be requested for by the Meeting, a minimum percentage of the Organisation's Members or by the Chairperson, subject to the laws and/ or the Constitutive Documents of the Organisation.

5.15.5. A poll may be demanded where voting on a show of hands would be unclear or where the outcome of the vote on a show of hands would not reflect the position of the proxy votes registered. Such poll demanded has to be conducted in accordance with the provisions indicated in the Constitutive Documents of the Organisation and relevant statute (s).

5.15.6. If a Chairperson improperly refuses to take a poll where it has been properly requested by the Meeting or Members, any resolution passed on a show of hands will be invalid and ineffective.

5.16. Adjourning/Postponement of the Meeting

5.16.1. The Meeting may be adjourned where the legal and or governance circumstances so require. Such instances include but are not limited to:

- a) Incomplete Business due to inadequate time
- b) An improperly convened meeting
- c) Improperly issued notices
- d) Lack of quorum
- e) Chaos in the meeting

5.16.2. An adjourned Meeting will be held at the same place, time and venue the following week unless the Meeting provides otherwise.

5.16.3. If a Meeting is adjourned, the Meeting Notice should be re-issued accordingly, unless the adjournment is not for a period exceeding seven (7) days.

5.16.4. The Constitutive Documents will usually contain provisions on the procedures for adjourning Meetings. Unless otherwise revoked, proxies for the original meeting are valid for the adjourned meeting.

5.16.5. At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered.

5.17. Governance Reports and Financial Statements

5.17.1. Governance Reports

- a) Governance Report prepared in accordance with the relevant Governance Audit Guidelines shall be tabled at the General Meeting, for consideration and adoption.
- b) The Governance Report should be prepared by an independent and accredited Governance Auditor who should ascertain that the Governance Report represent the extent of compliance with good governance practices.

5.17.2. Financial Reports

- a) Financial statements and reports prepared in accordance with the relevant financial accounting standards shall be tabled at the General Meeting, for consideration and adoption /approval. The rationale for

this is that Financial Statements are a report, by the Board to the Members outlining /explaining the utilisation of the Organisation's resources.

- b) The Financial Statements and Reports should include but not be limited to; outlining the Organisation's Assets, Liabilities, Surplus /Profits, Deficit /Losses, Operational or Capital Expenditure.
- c) Additionally, it is a statutory requirement in some Organisations that the Financial Statements and Reports be audited by an independent auditor to ascertain that they "represent a true and fair view" of the Organisations financial health.
- d) It is also recommended for Organisations not mandated by law to seek the opinion of an independent auditor as relates to their Financial Statements and Reports.

5.18.Procedure at the Meeting

The following procedure may be used at a General Meeting;

- 5.18.1. Welcome Remarks from the Chairperson
- 5.18.2. Confirmation of quorum and noting of apologies and Proxies
- 5.18.3. Introduction of the Board Members and Secretary
- 5.18.4. Introduction of the Governance Auditors
- 5.18.5. Introduction of the Financial Auditors
- 5.18.6. Reading of the Notice convening the meeting and adoption of the agenda thereof
- 5.18.7. Reading and confirmation of the Minutes of the previous meeting
- 5.18.8. Adoption of Financial Statements, Board Reports, Governance Auditors Reports and Financial Auditors Reports
- 5.18.9. Declaration and approval of dividends (where applicable)
- 5.18.10.Approval of Board Members Remuneration
- 5.18.11.Appointment of Governance and Financial Auditors
- 5.18.12.Election of Board Members
- 5.18.13.Voting on any matters that may require a poll
- 5.18.14.Any Other Business received in advance as provided for in law or Constitutive documents
- 5.18.15.Closure of the Meeting

5.19.Minutes

- 5.19.1. Every Organisation shall maintain Minutes of the proceedings of all Meetings in physical or in electronic form. The Minute Books shall be kept at the registered office of the Organisation or such other place, as may be approved by the governing body of the Organisation.

5.19.2. Minutes shall contain a fair and correct summary of the proceedings of the Meeting.

5.19.3. Minutes, once entered in the Minutes Book, shall not be altered.

5.19.4. Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting.

6. APPROVAL DATE

This Governance Standard was approved by the Council of the Institute on Thursday January 21, 2016

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 March 1, 2016