



The Institute of Certified Public Secretaries of Kenya

GOVERNANCE STANDARD 004

GS 004: RESOLUTIONS

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1. PURPOSE

This Standard describes the recommended governance practice for preparation, passing, recording and maintenance of resolutions.

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. Societies Act (Cap. 108)
- 3.5. Trustee Act (Cap.167)
- 3.6. Non-Governmental Organizations Coordination Act (Cap. 134)
- 3.7. State Corporations Act (Cap 446)
- 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.
- 3.12. GS 001: General Meetings
- 3.13. GS 002: Board Meetings
- 3.14. GS 003: Minutes

4. DEFINITIONS

- 4.1. “Articles” means the Articles of Association of the company.
- 4.2. “Board” means the body or persons, 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. “Constitutive Document ” collectively means the Memorandum, 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 or a body or entity with an interest in an Organisation and having the right to attend and vote at a General Meeting;
- 4.7. “Person” includes incorporated and or registered company, organization, etc.

- 4.8. “Organisation” means a Company ,Society, Cooperative Society, University, Trusts, Non-Governmental Organizations, Government Owned Entities, Commissions , County Public Service Boards or other similar institution
- 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. “Simple Majority” means fifty-one percent of the Members present and voting at a Meeting

5. STANDARD GUIDELINES

5.1. Definition

Resolution means a recorded or written decision made of the Board or of the Members of an Organisation.

5.2. Types of Resolutions

- 5.2.1. Ordinary Resolutions; require a simple majority of Members constituting a quorum, present and voting at a Meeting.
- 5.2.2. Special Resolutions; require support of at least a three-fourths (3/4) majority or as the constitutive documents or law may require of those entitled to vote in person or through proxy.
- 5.2.3. Resolutions requiring special notice.
- 5.2.4. Circular or Written Resolutions; require the signatures of a simple majority of Members through circulation, without needing to hold a physical Meeting.
- 5.2.5. Board Resolutions; resolutions made at Board Meetings.
- 5.2.6. Members Resolutions; resolutions made at General Meetings.

5.3. Any important and /or statutorily defined matters for deliberation by the Board at a Board Meeting, or by Members at a General Meeting, shall be determined by resolution. Such resolutions are usually passed by Members subject to the Constitutive Documents of the Organisation.

5.4. In specific matters, the Constitutive Documents of an Organisation or the law may require that resolutions be passed by a defined majority. This must be observed or else the Resolution shall be deemed void.

5.5. **Contents of a Resolution**

Substance and form shall be adhered to in the preparation of a resolution, always subject to the requirements of the Constitutive Documents of an Organisation and the applicable law.

5.6. **Resolutions within Minutes**

These are the resolutions /decisions made by Members in the proceedings of a Meeting and are contained in the Minutes thereof. In preparing these, the following should be adhered to:

5.6.1. **Form**

The Resolution;

- a) Must be in writing within the Minutes and prefixed with the words “*Resolved that ...*”
- b) Maybe duly extracted and filed with the Registrar (when legal requirements demands it).
- c) Must have clear and concise decisions.

5.6.2. **Substance**

The Resolution shall;

- a) State in summary the matter that was deliberated and the decision(s) made by the Members.
- b) State persons charged with the execution of the decisions made.
- c) State the effective date of the decision(s) made (where applicable).

5.7. **Extract Resolutions**

These are resolutions /decisions extracted from the Minutes of a Meeting for a specific purpose for example: *the appointment of a Board member to the Board for filing at the registry, or the change of mandates of a bank account of the Organisation etc.* In preparing these, the following should be adhered to:

5.7.1. **Form**

The Resolution shall contain;

- a) Name of the Organization

- b) The Meeting the Resolution relates to
- c) Date and Time of the Meeting
- d) Place of the Meeting
- e) Common Seal (when applicable or required)
- f) Date of Signing
- g) Must be in writing
- h) Duly Filed with the Registrar (when legal requirements demands it)
- i) Clear and concise decisions

5.7.2. **Substance**

The Resolution shall;

- a) Refer to the Meeting it is drawn from
- b) State what type of resolution it is i.e. “*Extract of ...Meeting*”
- c) State in summary the matter that was deliberated and the decision(s) made by the Members
- d) State the effective date of the decision(s) made.
- e) The extract thereof from the Minutes should be certified by at least two Board Members or a Member and the Secretary, or authorized representatives of the Organization as the case may be.

5.8. **Circular Resolutions**

These are resolutions/decisions made by Members of a General or Board Meeting in the absence of an actual Meeting. The resolution is therefore the written decisions made in lieu of the Meeting. In preparing these, the following should be adhered to:

5.8.1. **Form**

The Resolution shall contain;

- a) Name of the Organization
- b) The Meeting the Resolution relates to
- c) Date and Time of the Meeting
- d) Date of Signing
- e) Must be in writing
- f) Duly Filed with the Registrar (when legal requirements demands it)
- g) Clear and concise decisions

5.8.2. **Substance**

The Resolution shall;

- a) Refer to the Meeting it is drawn from
- b) State what type of resolution it is i.e. “*Circular resolution of ...*”

- c) State in summary the matter that was deliberated and the decision(s) made by the Members
- d) State persons charged with the execution of the decisions made
- e) State the effective date of the decision(s) made.
- f) A simple majority of Members of the Organisation or Board must sign the resolution.

5.8.3. Noting of Circular Resolutions

All circular resolutions shall be noted at the next meeting for Minute purposes.

5.9. Filing of Resolutions and Maintenance of a Register

5.9.1. Any resolutions passed by either the Board or the Members at a Meeting, and required by the law to be filed with the Registrar or any other authority, shall be filed accordingly and within the specified timelines.

5.9.2. The Organisation shall also maintain a Minute book containing all the Minutes and resolutions made by the Board or 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