

GOVERNANCE STANDARD 001

GS 001: GENERAL MEETINGS

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ICS is a membership professional body, established under the Certified Public Secretaries of Kenya Act, Cap. 534 of the Laws of Kenya, with its core mandate being promotion of good governance.

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1. PURPOSE

This Standard describes the recommended governance practice for convening and conducting 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:

- 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, ICS 2014.

The Standard will also take into consideration any other statutory re-enactment of the law thereof.

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 running and direction 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" or "Constitutive Instruments" collectively means the Articles, By-laws, Constitution, Charter, Trust Deed or similar document or Instrument of an Organisation;

- 4.7. "Council" means the Council of the Institute of Certified Public Secretaries of Kenya;
- 4.8. "Electronic Voting" means voting by electronic or digital means.
- 4.9. "External Auditors" include financial, governance and legal auditors;
- 4.10. "IFRS" means International Financial Reporting Standards;
- 4.11. Institute of Certified Secretaries "ICS" means Institute of Certified Public Secretaries of Kenya as established under the Certified Public Secretaries of Kenya Act, Cap. 534 of the Laws of Kenya.
- 4.12. "Institute" means the Institute of Certified Secretaries;
- 4.13. "Member" means a person/body with an interest in an Organisation and having the right to attend and vote at a General Meeting;
- 4.14. "Minutes" are a permanent, formal, true record of the proceedings of the business transacted and resolutions passed at a Meeting, whether kept in physical or electronic form.
- 4.15. "Minute Book" means a permanent book where the Minutes are inserted and/or pasted for storage.
- 4.16. "Ordinary business" means business legally specified and transacted at an Annual General Meeting;
- 4.17. "Organisation" means a Company, Society, Cooperative Society, University, Trust, Non-Governmental Organization, Government Owned Entity, Commission, County Public Service Board or other similar institution;
- 4.18. "Proxy Form" means a written instrument by a Member, authorising another person, who need not be a Member, to attend and vote on his behalf at a meeting.
- 4.19. "Proxy" means the person so appointed through the Proxy Form;
- 4.20. "Secretary" Certified Public Secretary as defined in the Certified Public Secretaries of Kenya, Act;
- 4.21. "Practising Secretary" means a person that practises as a corporate 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:
 - 4.21.1. 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;
 - 4.21.2. Offers to perform or performs services involving the submission of official and statutory returns of companies and trading organizations;
 - 4.21.3. Offers to perform or performs services involving the certification of statutory returns or records related to statements; or
 - 4.21.4. 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.

- 4.22. "Special business" means all business other than ordinary business transacted at an Annual General Meeting, and all business transacted at an Extra-ordinary General Meeting.
- 4.23. Words importing the masculine gender shall also include the feminine gender

5. STANDARDS GUIDELINES

5.1. Definition

A General Meeting: this is a Meeting of the Members (or of a class of Members) that have an interest and have the right to attend and/or vote at such a Members' Meeting in an Organisation.

5.2. Types of General Meetings

- 5.2.1. Annual General Meeting: this is a statutory general meeting held by the Members of an Organisation each year, required by the Law (and/or the Constitutive Documents) to discuss the general business of the company and any special business.
- 5.2.2. Extra-Ordinary General Meeting: this is a general meeting held by the Members when convened to discuss Special business of the company.

5.3. Convening of a General Meeting

A General Meeting 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 sent to:

- 5.4.1 Every Member of the Organisation who is entitled to attend. In case of a joint ownership, the first named person in the list.
- 5.4.2 Every Director of the Organisation.
- 5.4.3 The Corporate Secretary.
- 5.4.4 The External Financial Auditor of the Organisation.
- 5.4.5 The Governance Auditor of the Organisation (if any).
- 5.4.6 In the case of a deceased Member, the Notice shall be sent to the legal representative, in the absence of a nominee. Further, if the Organisation has not been informed of any legal representative, then, the last known address 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.
- 5.4.9 In case the Member is a company or body corporate which is under receivership, Notice shall be sent to the receiver manager.

5.5. Contents of the Notice

The notice should contain:

- 5.5.1. Day, date, time and complete location 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. A statement to the effect that business may be transacted by remote electronic voting and the digital credentials enabling the electronic voting.
- 5.5.4. The details of the ordinary business to be conducted at the General Meeting which may include:
 - a) Reading and confirming issuance of a proper Notice for the meeting
 - b) Tabling of the valid proxies received.
 - c) Noting of Quorum and any apologies.
 - d) Confirmation of the Minutes of the Previous Meeting or shareholders circular resolutions.
 - e) Adoption of the audited Financial Statements, Board Reports, Governance Auditor's Report (if any) and Financial Auditor's Report.
 - f) Approval of Dividends (where applicable).
 - g) Retirement and Appointment of Board Members.
 - h) Approval of Board Remuneration.
 - i) Retirement and Appointment of External Auditors.
 - j) Retirement and appointment of Governance Auditors (if any).
 - k) Any Other Business that may legally 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.
- 5.5.5. Any documentation to be reviewed or discussed by the Members at the Meeting.
- 5.5.6. 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) Term served so far
 - d) Qualifications
 - e) Other Board Memberships

5.5.7. 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.

5.5.8. Proxy Forms

5.5.9. 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. Any notice sent by an Organisation through electronic means must be duly authorised, secure, and capable of producing confirmation and keeping record of such.

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

5.6.4. The notice should be sent to each Member or to the first named person in the case 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, as per the law and/or the Constitutive Documents.

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 an Annual General Meeting.
- b) For the Special General Meeting, companies will require at least fourteen (14) clear days before the date of the meeting.
- c) Co-operative Societies require a minimum of fifteen (15) days' notice before the date of the meeting.
- d) For other Organisations, the length of the notice period shall be as provided in their Constitutive Documents.

- 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.
- 5.7.4. The proceedings of a Meeting that does not comply with the requirements of notice in form and substance are null and void.

5.8. Frequency of Meetings

- 5.8.1. Ensure that upon set-up of an Organisation, a Statutory Meeting (for public companies) is held within three months 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 (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 will be held at a suitable venue as chosen by the Board.

5.10. Quorum

- 5.10.1. The quorum requirement of Members at a Meeting must be in line with the minimum numbers set in the Constitutive Documents, Laws and 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.
- 5.10.2. Where the Constitutive Documents are not clear on matters relating to quorum, the quorum requirement shall be interpreted in accordance with the applicable Laws governing the relevant Organisation.
- 5.10.3. The proceedings of a Meeting that does not comply with the requirement of quorum are null and void.

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) Corporate Secretary
 - c) Governance Auditors (if any)
 - d) Financial Auditors
 - e) Any other person (by invitation of the Board)

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. Such a representative is called a Proxy.
- 5.12.2. A Proxy form for the appointment of the Proxy will usually be provided in the Constitutive Documents of the Organisation for such use.
- 5.12.3. The Proxy Form should be filled, 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.
- 5.12.6. A Proxy is valid until written notice of revocation has been received by the Organisation before commencement of the meeting or the adjourned meeting.
- 5.12.7. When a Member appoints a Proxy and both the Member and Proxy attend the Meeting, the Proxy stands automatically revoked.
- 5.12.8. If a Proxy had been appointed for a Meeting and such Meeting is adjourned, another Proxy given specifically for the adjourned Meeting revokes the Proxy given for the original Meeting.

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 or expound on any Reports tabled at the Meeting
- d) To explain the reason and implication of any recommendations 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.
- e) Secret Ballot – Where voting is done in secret and in writing.
- f) A combination of any of the methods above PROVIDED THAT where electronic voting is used, it shall not be combined with acclamation.

5.15.2. Usually, the decision-making process at a General Meeting shall be by 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 requires a higher than simple majority such as 75%, the specifications must be observed for the particular resolution(s) 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 Law 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).

An Organisation may opt to provide an electronic voting facility to enhance voting at meetings. An Organisation providing an electronic voting facility, shall provide the facility to all its Members. The facility for remote electronic voting shall remain open for a period as prescribed by the Organisation's Constitutive Documents.

5.15.6. Any Member, who has already exercised his/her votes through remote electronic voting, may attend the Meeting but is prohibited to vote at the Meeting. Further, his/her vote if cast at the Meeting, shall be treated as invalid.

5.15.7. 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. Declaration of Poll Results

5.16.1. The Returning Officer shall submit his report within a time frame that is reasonably practicable for the Organisation from the Meeting to the Chairperson or a person authorised by him. The Chairperson shall countersign the report and declare the result of the voting forthwith with details of the number of votes cast for and against the resolution, invalid votes and whether the resolution has been carried or not.

5.16.2. The results of the voting shall be displayed for at least fourteen days on the Notice Board of the Organisation at its registered office and its head office if such office is situated elsewhere.

Further, the results of voting along with the Returning Officer's Report shall also displayed on the website of the Organisation immediately after the results are declared.

5.16.3. The resolution if passed by a requisite majority, shall be deemed to have been passed on the date of the relevant Meeting.

5.17. Appointment of Returning Officers

Chairperson may appoint such number of Returning Officers, as he deems necessary. These may include Corporate Secretary, Financial Auditor or such other person of repute who shall ensure that voting through a poll has been carried out in a procedural, legitimate, fair and transparent manner.

5.18. Adjourning/Postponement of the Meeting

5.18.1. 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

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

5.18.3. 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.

5.18.4. 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.

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

5.19. Governance Reports and Financial Statements

5.19.1. 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 represents the extent of compliance with good governance practices.

5.19.2. 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.

5.20. Procedure at the Meeting

The following procedure may be used at a General Meeting:

- 5.20.1. Welcome Remarks from the Chairperson.
- 5.20.2. Confirmation of quorum and noting of apologies and Proxies.
- 5.20.3. Introduction of the Board Members and Secretary.
- 5.20.4. Introduction of the Governance Auditors (if any).
- 5.20.5. Introduction of the Financial Auditors.
- 5.20.6. Reading of the Notice convening the meeting and adoption of the agenda thereof.
- 5.20.7. Reading and confirmation of the Minutes of the previous meeting.
- 5.20.8. Adoption of Financial Statements, Board Reports, Governance Auditors Reports and Financial Auditors Reports.
- 5.20.9. Declaration and approval of dividends (where applicable).
- 5.20.10. Approval of Board Members Remuneration.
- 5.20.11. Appointment of Governance and Financial Auditors.
- 5.20.12. Election of Board Members.
- 5.20.13. Voting on any matters that may require a poll.
- 5.20.14. Any Other Business received in advance as provided for in law or Constitutive documents.
- 5.20.15. Closure of the Meeting.

5.21. Minutes

- 5.21.1. 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.
- 5.21.2. Minutes shall contain a fair and correct summary of the proceedings of the Meeting.
- 5.21.3. Minutes, once entered in the Minutes Book, shall not be altered.
- 5.21.4. Minutes of a General Meeting shall be signed and dated by the Chairperson of the Meeting or in the event of death or inability of that Chairperson, 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 (Now Past).

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 (Now Past).

9. FIRST REVIEW DATE

This Governance Standard was first reviewed by the Council of the Institute on November 26th 2020

Institute of Certified Secretaries

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