

GOVERNANCE STANDARD 002

GS 002: MEETINGS OF THE BOARD AND COMMITTEES

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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.

For any feedback or clarifications, please contact:

The Secretary/ CEO
Institute of Certified Secretaries
CPS Governance Centre, Kilimanjaro Road, Upper Hill,
P.O. Box 46935-00100, Nairobi, Kenya
Tel: 254 20 3597840; Mobile: 0734603173, 0770159631
E-mail: info@ics.ke Website: www.ics.ke

1. PURPOSE

This Standard describes the recommended governance practise for the preparation and conduct (pre, during and post) of Board and Committee Meetings.

2. SCOPE

This Standard is applicable to the Meetings of Board of all Organisations except One Person Companies as provided in the Companies Act, in which there is only one Director on its Board. The principles set out in this Standard for Meetings of the Board are also applicable to Meetings of Committees of the Board, unless otherwise stated herein or stipulated by any other applicable Guidelines, Rules or Regulations.

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. State Corporations Act (Cap 446)
- 3.9. Insolvency Act, 2015
- 3.10. Mwongozo: The Code of Governance for State Corporations in Kenya, PSC 2014
- 3.11. Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015
- 3.12. Code of Governance for Private Organizations in Kenya, ICPSK 2014.
- 3.13. GS 005: Board Reports and Board Pack

4. DEFINITIONS

- 4.1. "Annual Board Work Plan" is a document that enables the Board and Management effectively prepare for meetings and other Board activities;
- 4.2. "Articles" means the Articles of Association of a company;
- 4.3. "Board" means the body or person, by whatever name called, carrying out or empowered to carry out functions relating to the overall direction and oversight of an Organisation;
- 4.4. "Board Member" means a Director, Trustee or Member of the Board of an Organisation;
- 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. "Committee" means a Committee constituted by the Board.
- 4.7. "Conflict of interest" means a situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's self- interest and professional interest or public interest;
- 4.8. "Constitutive Document" collectively means the Articles, By-laws, Constitution, Charter, Trust Deed or similar document of an Organisation;
- 4.9. "Council" means the Council of the Institute of Certified Public Secretaries of Kenya ;
- 4.10. 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;
- 4.11. "Institute" means the Institute of Certified Secretaries;
- 4.12. Minutes - Record of the proceedings of a meeting prepared or written by the secretary from the notes taken during the meeting
- 4.13. Notice – Notification of an upcoming meeting
- 4.14. "Organisation" means a Company, Society, Cooperative Society, University, Trusts, Non-Governmental Organizations ,Government Owned Entities, Commissions, County Public Service Boards or other similar institution
- 4.15. "Related party transaction" means a business deal or arrangement between two or more parties who are joined by a special relationship prior to the deal. This special relationship may arise where a person or other entity has control or significant influence, directly or indirectly through one or more intermediaries, over the reporting entity;or another entity over which the reporting entity has control or significant influence, directly or indirectly through one or more intermediaries as a result of a family affiliation with a person controlling the Organisation,or affiliation with a member of key management or Board Member, a major shareholder, a subsidiary, an associate, affiliate, donor of the Organisation;
- 4.16. "Secretary " Certified Secretary as defined in the Certified Public Secretaries of Kenya Act;
- 4.17. "Terms of Reference" a document describing the objectives, structure and modus operandi of a Committee.
- 4.18. Words importing the masculine gender shall also include the feminine gender

5. STANDARD GUIDELINES

5.1. Definition

A Board Meeting is a duly convened physical or virtual meeting of the Board Members empowered to carry out functions relating to the overall direction and oversight of an Organisation.

5.2. Types of Board Meetings

- 5.2.1. Full Board Meeting - Meeting properly convened for attendance by all the Board Members.

- 5.2.2. Board Committee Meetings - Meeting properly convened for attendance of a select number of Board Members that form a Committee. The Committee may be Standing or Ad-hoc.
- 5.2.3. Special Board Meeting – A meeting properly for attendance by all Board members convened to discuss urgent matters.

5.3. Convening of Board Meetings

- 5.3.1. The authority to convene a Board Meeting shall either be as prescribed by the Law and /or the Constitutive Documents of the Organisation.
- 5.3.2. Unless otherwise specified, the responsibility to convene the Board shall be vested in the Chairperson of the Board. If the Chairperson fails to convene a Meeting or is unable to for whatever reason, any other Member of the Board may convene the Board Meeting under the circumstances and procedure set out in the Organization's Constitutive Documents.
- 5.3.3. Board Meetings dates, timings and matters for discussion should be contained in the Annual Board Work Plan approved by the Board.

5.4. Notices

- 5.4.1. The responsibility of issuing notices for the Board Meetings shall lie with the Secretary to the Board.
- 5.4.2. The notice of the Meeting shall be given in writing to every Board Member by hand, post, e-mail or by such other electronic mode duly authorised by the Constitutive Documents of the Organisation.
- 5.4.3. The notice shall contain the day, date, time, full address and the venue of the Meeting.
- 5.4.4. The notice for the Meeting should be given irrespective of the fact that meetings are usually held on pre-determined calendar dates and fixed times.
- 5.4.5. A notice of at least fourteen (14) days should be issued for the Board Meeting, and at least seven (7) days for a special board meeting subject always to the minimum requirements of the applicable law and the Constitutive Documents of an Organisation.
- 5.4.6. Such notice period shall not affect an adjourned meeting unless the Meeting is adjourned without assigning a new date. In which case, the notice of the new meeting date shall be given to those Board Members who did not attend the adjourned meeting.

5.5. Agenda and Board Meeting Materials

- 5.5.1. The Agenda, setting out the business to be transacted at the Meeting, and the relevant reports, materials or papers on the agenda should be given to the Members at least seven (7) days before the date of the Meeting, unless the Constitutive Documents prescribe a longer period.
- 5.5.2. A Board Meeting Agenda may include the following;
- a) Welcome note
 - b) Noting of quorum
 - c) Adoption of the Agenda
 - d) Declaration of Conflict of interest
 - e) Confirmation of Minutes of the previous Meeting
 - f) Reports on matters arising from the Minutes of the previous Meeting
 - g) Matters for discussion, decision and /or approval such as;
 - i. Board Committee Reports
 - ii. Management Reports
 - iii. Budget and Financial Reports
 - iv. Internal Audit Report
 - v. Project approvals
 - vi. Governance and Sustainability Reports
 - vii. Risk Management Report
 - h) Matters for ratification for example Common Seal Registers
 - i) Matters for noting and information
 - j) Any Other Business (with the approval of the Chairperson)
- 5.5.3. Each item in the agenda should be supported by a Board Report setting out all the relevant facts and what resolutions and approvals are required from the Board or Committee Meeting.
- 5.5.4. The Board or Committee should not handle or discuss items not in the Agenda or delivered to the Members beforehand, unless all Members consent to dealing with such an item. Consequently, any new substantive item added to the Agenda should be duly noted in the Minutes by the Secretary.
- 5.5.5. The Board or Committee may raise any other business as the last agenda item of the Meeting but it shall not constitute a substantive discussion and no resolution should be derived from it. It may however be listed as an Agenda item in the next Meeting.
- 5.5.6. For further reference, refer to GS005: Board Reports and Board Pack.

5.6. Frequency of Meetings

5.6.1. Board Meetings; The Board should meet a minimum of four times a year, meaning that the Board must meet at least once every three months in each calendar year.

The Law or Constitutive Documents may prescribe more Meetings.

5.6.2. Board Committee Meetings; the frequency of Board Committee Meetings should be clearly outlined in the Terms of Reference of that Committee.

5.7. Quorum

5.7.1. No business shall be transacted in the Board or Committee Meeting without the prescribed quorum. The quorum for such meetings should be as prescribed in Law and the relevant Constitutive Document of the Organisation.

5.7.2. Quorum shall be present throughout the meeting and shall be present not only at the time of the commencement, but also while transacting the business of the Meeting.

5.7.3. Board Members participating in a Meeting through electronic media shall be deemed present for the purpose of quorum unless they are to be excluded from any discussion on the Agenda in accordance with the Meeting procedures, provisions of the Law and/or the relevant Constitutive Document of the Organisation.

5.7.4. Where the prescribed quorum threshold is not met, the Meeting should be adjourned and re-convened subject to availability of the Board or Committee Members.

5.7.5. The quorum of the Board, where not specifically set out in legislation or the Constitutive Documents should not be less than a (1/3) of the Board Members, provided that where there is any fraction contained in the one third, the same shall be rounded off to the next number.

5.7.6. A Board Member shall not be counted for quorum in the respect of an item in which he has an interest in and shall not be present whether physically or electronic mode during discussions and voting on such item.

5.8. Attendance at Meetings

5.8.1. The Secretary shall attend all Board Meetings.

5.8.2. The Secretary shall maintain an attendance register, containing the names and signatures of the Board Members physically present, apologies and those in attendance at the Meeting. Where Members are virtually present, the Secretary shall take a roll call, and the Members present shall be noted in the register clearly indicating the mode of attendance (as the case may be).

- 5.8.3. Every Board Member, Secretary who is in attendance and those in attendance at a Meeting of the Board or Committee thereof shall sign the attendance register at that Meeting. In case of Board Members participating through electronic mode, the Chairperson shall verbally confirm the attendance of such Board Members for noting by the Secretary in the Minutes.
- 5.8.4. Subject to the provisions of the Constitutive Documents of an Organisation, Board Members shall be deemed to be in attendance of a Meeting when ;
- a) Physically present;
 - b) Present by alternate appointed in writing by the substantive Board member;
 - c) Present through Video Conferencing facilities; or
 - d) Present through Telephone Conferencing facilities
- 5.8.5. Where virtual facilities are used to convene the Meeting, the same must fully conform to the form and procedural requirements of this Standard.
- 5.8.6. The Secretary shall indicate in the Attendance Register, the time each Board Member joins and when they depart from the Meeting. For the Members joining the Meeting electronically, the Secretary shall indicate the medium and location they are calling-in from.
- This information shall also be reflected appropriately in the Minutes of the Meeting. This is done to ensure that quorum is maintained throughout the Meeting in accordance with the requirements of the law and /or Constitutive Documents of the Organisation.
- 5.8.7. Leave of absence may be granted to a Board Member only when a request is communicated to the Secretary or to the Board through the Chairperson in advance of the meeting date and time.

5.9. Virtual Meeting Guidelines

- 5.9.1. Virtual Meetings are meetings held in two or more geographical locations through electronic media. These may include video conferencing, telephone conferencing or a combination of these and/or other methods.
- 5.9.2. Virtual Meetings should be permitted by the Constitutive Documents of the Organisation before use by the Board of that Organisation.

5.9.3. An Organisation holding virtual meetings must have documented policy and procedures guiding the Board on these and other areas:

- a) Nature of meetings that may be held through virtual meetings.
- b) The maximum number of virtual meetings that may be held.
- c) The role of the Secretary with regard to sending out notices and the Meeting agenda, noting the location of the Meeting, noting attendance of the Board Members, circulation of Board materials, taking minutes of the proceedings of Meeting among others.
- d) The manner in which the Board Members will participate in the Meeting Proceedings.
- e) The voting procedures in the Board Meeting.
- f) Any other related matters that maybe required in the conduct of the virtual Meeting.

PROVIDED THAT where there is no clear provision, or there is some ambiguity in the Organisation's procedures and/or guidelines relating to virtual Meetings, the Board shall refer to the procedures and /or guidelines already in place relating to physical Meetings, in accordance with the law and /or Constitutive Documents of that Organisation.

5.10. Sitting Arrangement at the Meeting

The sitting arrangement at the Meeting should allow the Chief Executive Officer and Secretary to sit in close proximity with the Chairperson of the Meeting to allow for easy consultation during the Meeting.

Generally the Chairperson sits at the end of the table furthest point from the entrance.

5.11. Conduct of Board Meetings

5.11.1. The Role of the Chairperson of the Board or Committee Meeting

- a) Every Board or Committee shall have a Chairperson either prescribed by-law, or contained in the Organisation's Board Charter or Terms of Reference respectively.
- b) Where the Chairperson is absent at a Board or Committee Meeting, the Board or Committee Members (as the case may be) shall appoint one of their Members to chair the meeting. The person so appointed shall assume the power and the voting rights of the Chairperson subject to the law or the relevant Constitutive Documents of the Organisation.
- c) The Chairperson is responsible for the leadership of the Board or Committee Meeting, and must ensure its effectiveness in all aspects of its role.
- d) It is the duty of the Chairperson, on the advice of the Secretary, to ensure that the Meeting is duly convened and constituted in accordance with the law or any applicable Constitutive Document before it proceeds to transact business.
- e) The Chairperson is pivotal in setting the agenda and conducting the business of the Board or Committee Meeting.

5.11.2. The Role of the Secretary in the Meeting

The Secretary shall perform the following roles in respect to the Board Meetings:

- a) Facilitating the smooth operation of the Organisation's formal decision making and reporting processes;
- b) Organizing Board and Committee Meetings;
- c) Formulating the Meeting agenda with the Chairperson and/or the Chief Executive of the Organisation;
- d) Advising management on the content and organization of Board Meeting materials;
- e) Collecting, organizing and distributing information, documents or other papers required;
- f) Ensuring that the minutes of the Meetings are confirmed, kept and that the minute books are properly maintained;
- g) Ensuring that all Meetings are properly constituted;
- h) Ensuring that the Board or Committee complies with the relevant Laws, rules and regulations affecting the operation of its conduct;
- i) Guiding the Chairperson as to timing and agenda items for discussion in the meeting;
- j) Advising the Board on matters relating to governance.
- k) Logistical arrangements for the meeting

5.11.3. Role of a Member

- (a) Review the agenda and Minutes and prepare to contribute
- (b) Collect all the necessary information as relates to the agenda
- (c) Prepare relevant questions on the items of the agenda
- (d) Take notes during meeting as a personal record of the proceedings

5.11.4. Procedure for the Conduct at the Board Meeting

The following procedure shall be followed during the Board Meeting:

- a) The Meeting shall be called to order by the Chairperson.
- b) The Secretary shall confirm the quorum, advise Members on apologies and read the Meeting notice and agenda.
- c) Once the quorum is confirmed, the Chairperson will call upon the Secretary to register apologies, if any have been received.
- d) The Chairperson shall ensure that the agenda is read to the Members, who will adopt or amend the agenda.
- e) The Chairperson shall invite the Board Members to declare any conflicts of interest on the agenda items.
- f) Once the Agenda is adopted, the Chairperson shall ensure that the minutes of the previous Meeting have been read and confirmed by at least two (2) members who were present at the previous meeting and thereafter appropriately signed provided that, any proposed amendments to the minutes will be discussed prior to confirmation of the minutes.

- g) Where no Board Member was present at the previous meeting, the Minutes shall be noted and adopted.
- h) Agenda items shall be discussed comprehensively and members allowed to contribute exhaustively to the deliberations within a reasonable time.
- i) On completion of deliberations and resolutions on all agenda items, the Chairperson will call the Meeting to a close.
- j) A special Meeting of the Board of Members or Board Committee will not discuss any matter other than that specified in the agenda.

5.12. Protocol of Meetings

- (a) The meeting rules and regulations should be observed and members protected from manipulation
- (b) A member can raise a point of order where there is a breach of protocol of meetings
- (c) Voting should be democratic and ensure a one man one vote system where members are not in agreement

5.13. Declaration of Conflict of Interest and Related Party Transactions

5.13.1. Declaration of Conflict of Interest shall be a standing agenda item at Board Meetings.

5.13.2. If the item of business in an agenda is one where a Board Member has an interest by virtue of him being a party related to the transaction, then the interested Board Member shall not be present at the meeting during the discussions and voting on that agenda item, subject to the provisions in the Organisations Constitutive Documents and applicable Law.

5.13.3. Board Members shall, in line with the relevant Laws and/or the Organisation's Policy on the management of conflict of interests:

- a) Declare any real or perceived conflict of interest with the Organization upon appointment to the Board.
- b) Declare to the Board any real or perceived conflict of interest that may subsequently arise.
- c) Not take part in any discussions or decision-making regarding any subject or transaction in which they have a conflict of interest.
- d) Not influence in any manner whatsoever decision making on any matter in which they have interest.

5.13.4. All such declarations of interest shall be appropriately recorded by the Secretary and maintained in a conflict of interest register.

5.14. Powers of the Board and Delegation

- 5.14.1. The Board shall exercise its powers as set out in the relevant Laws and Constitutive Documents of the Organization.
- 5.14.2. The Board may, in line with its Constitutive Documents or by a resolution passed at a meeting, delegate any powers to any Committee of the Board or the Chief Executive Officer, on such terms and conditions as it deems fit.
- 5.14.3. Where the Board has delegated any of its powers, the overall responsibility on the delegated power remains with the Board.

5.15. Output from the Meeting

- 5.15.1. The Secretary must ensure that notes are taken during the Meeting and preparation of a permanent, formal, and detailed record of business transacted, and any resolutions adopted at an Organisation's Meeting in form of Minutes for the Board and Committees.
- 5.15.2. A summary report or notes of the discussions and matters for Board approval from the Committee Meeting proceedings should be prepared by the Secretary for presentation to the Board Meeting.
- 5.15.3. The full Minutes from each Committee Meeting should be open for inspection by the Board on need basis.
- 5.15.4. The Minutes should be prepared within seven(7) days from the date of the meeting to enable members recollect the discussions as they occurred and make amends where necessary.

5.16. Confidentiality

Upon appointment to the Board, the Board Members and the Secretary shall sign a confidentiality statement as relates to matters and discussions of Board Meetings.

This confidentiality statement shall be signed on an annual basis for as long as the Members remain on the Board.

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

'The Governance Profession'



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www.ics.ke | info@ics.ke