

GOVERNANCE STANDARD 006

GS 006: REGISTERS AND RECORDS

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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 maintaining registers and records of 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. Companies Act (No.17 of 2015)
- 3.2. Co-operative Societies Act (Cap. 490)
- 3.3. Data Protection Act (No. 24 of 2019)
- 3.4. Insolvency Act (No.18 of 2015)
- 3.5. Societies Act (Cap. 108)
- 3.6. State Corporations Act (Cap.446)
- 3.7. Universities Act (No.42 of 2012)
- 3.8. Trustee (Perpetual Succession) Act (Cap.164)
- 3.9. Non-Governmental Organizations Coordination Act (Cap. 134)
- 3.10. GS 003: Minutes
- 3.11. GS 004: Resolutions
- 3.12. Mwongozo: The Code of Governance for State Corporations in Kenya, PSC 2014
- 3.13. Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015
- 3.14. Code of Governance for Private Organizations in Kenya, ICPSK 2014

4. DEFINITIONS

- 4.1. "Articles" means the Articles of Association of the company.
- 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 oversight of an Organisation.
- 4.3. "Board Member" means a Director, Trustee or Member of the Board of an Organisation.
- 4.4. "Constitutive Document" or "Constitutive Instrument" collectively means the Articles, By-laws, Constitution, Charter, Trust Deed or similar document and/or instrument of an Organisation
- 4.5. "Council" means the Council of the Institute of Certified Public Secretaries of Kenya ("ICPSK").
- 4.6. 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.

- 4.7. "Member" means a person /body with an interest in an Organisation and having the right to attend and vote at a General Meeting.
- 4.8. "Organisation" means a Company, Society, Cooperative Society, University, Trust, Non-Governmental Organization, Government Owned Entity, Commission, County Public Service Board or other similar institutions.
- 4.9. "Secretary" means Certified Secretary as defined in the Certified Public Secretaries Kenya Act.
- 4.10. "Annual Financial Statements" are financial reports based on a twelve-month consecutive time period and may be audited or unaudited.

The financial reports include Statement of Financial Position, Statement of Financial Performance, Statement of Changes in Equity, Cashflows Statement and the accompanying notes.

- 4.11. "Practising Secretary" means a person that practises as a 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:
 - 4.11.1. 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.
 - 4.11.2. Offers to perform or performs services involving the submission of official and statutory returns of companies and trading organizations.
 - 4.11.3. Offers to perform or performs services involving the certification of statutory returns or records related to statements. or
 - 4.11.4. 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. STANDARD GUIDELINES

5.1. Definition

Records of an Organization means any register, index, accounting records, agreement, memorandum, minutes or documents and instruments required to be kept by an Organisation.

- 5.2 .An Organisation shall keep its records in physical and/or electronic form at its registered office and ensure that the information contained in the records is accessible for future reference and is capable of being reproduced in physical form.

- 5.3. The Organisation's Constitutive Documents and Instruments or the relevant laws may specify places other than the registered office at which records of the Organisation are required to be kept available for inspection by Members.
- 5.4. Every Organization shall keep proper records comprising:
- 5.4.1. All resolutions passed by the Organisation's Members or Board.
 - 5.4.2. Minutes of all proceedings of a General Meeting.
 - 5.4.3. Minutes of all proceedings of a Board or Committee Meeting.
 - 5.4.4. Register of interests disclosed.
 - 5.4.5. Register of charges.
 - 5.4.6. Register and index of debentures holders.
 - 5.4.7. Register of mortgages.
 - 5.4.8. Register and index of Members (where applicable, including application and allotments, transfers and transmission of shares for companies limited by shares).
 - 5.4.9. Register of beneficial owners and their residential addresses (where applicable).
 - 5.4.10. Register of directors and secretaries.
 - 5.4.11. Register of directors' shareholding (where applicable, especially for companies registered under the repealed Companies Act, Chapter 486).
 - 5.4.12. Register of directors' residential addresses (where applicable).
 - 5.4.13. Register of buy-back of shares (where applicable).
 - 5.4.14. Register of authorized signatories (where applicable).
 - 5.4.15. Register of attendance at meetings (separated registers for Members, Board and Committee meetings, and to include a Register of Proxies).
 - 5.4.16. Register of documents and instruments executed under common seal (where applicable).
 - 5.4.17. Share certificate book (where applicable).
 - 5.4.18. Register of investors' complaints.
 - 5.4.19. Assets register.
 - 5.4.20. Risk register.
 - 5.4.21. Copies of Returns submitted to the relevant authorities.
- 5.5. In the case of an unquoted company (not listed on a securities exchange), the Organisation shall keep:
- 5.5.1. Annual financial statements.
 - 5.5.2. The Board report.
 - 5.5.3. Governance auditor's report (where applicable).
 - 5.5.4. Financial auditor's report (where applicable).

- 5.6. In the case of a quoted company (listed on a securities exchange), the Organisation shall also keep:
 - 5.6.1. Annual audited financial statements.
 - 5.6.2. The Board Members' remuneration report.
 - 5.6.3. The Board report.
 - 5.6.4. Governance auditor's report.
 - 5.6.5. Financial auditor's report.
 - 5.6.6. Annual report.
 - 5.6.7. Legal and compliance audit report.
- 5.7. A Society registered under the Societies Act, shall also keep:
 - 5.7.1. Annual financial statements.
- 5.8. A Cooperative Society registered under the Cooperative Societies Act shall also keep:
 - 5.8.1. Annual audited financial statements.
 - 5.8.2. Personal Ledger.
 - 5.8.3. A stock control ledger.
 - 5.8.4. Register of loans to Members.
 - 5.8.5. Ledger showing deposits and withdrawals by members.
 - 5.8.6. Such other additional books as the Committee or Commissioner decide.
- 5.9. A University registered under the Universities Act shall keep proper books and records of accounts for the income and expenditure and assets and liabilities.
- 5.10. A trust shall keep its annual audited accounts; Trustees' and Investments reports and such other documents and registers or information as may be required under the Act.
- 5.11. Non-Governmental Organizations shall keep proper books and records of its income, expenditure, assets and liabilities.
- 5.12. An Organisation shall keep the records for at least ten (10) years from the date of the relevant resolution, meeting or decision, however, the registers may be kept longer for permanent records.
- 5.13. A copy of a resolution passed at a General Meeting, Board Meeting or Committee Meeting, is evidence of the passing of the resolution, if certified by at least two Board Members or a Board Member and the Secretary.
- 5.14. For Single Member companies, a copy of a resolution passed at a General Meeting, Board Meeting or Committee Meeting is evidence of the passing of the resolution, if certified by the single director.

- 5.15. If a record of proceedings of a General Meeting, Board Meeting or a Committee Meeting of an Organization exists, then, until the contrary is proved:
 - 5.15.1. The meeting is presumed to have been duly convened and held.
 - 5.15.2. All proceedings at the meeting are presumed to have duly taken place.
 - 5.15.3. All appointments duly made at the meeting are presumed to be valid.
- 5.16. A copy of a Register of an Organization, if certified by the Secretary and/or a Member of the Board or any other person authorized by the Board for that purpose, is prima facie evidence of the statutory records of an organization.
- 5.17. The Organization's Registers should be maintained in accordance with the Data Protection Act.

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 26, 2020.

Institute of Certified Secretaries

'The Governance Profession'



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