



The Institute of Certified Public Secretaries of Kenya

GOVERNANCE STANDARD - GS 007

GS 007: FILING ANNUAL RETURNS

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1. PURPOSE

This Standard describes the recommended governance practice for the filing of Annual Returns for an Organisation.

2. SCOPE

Applies to all Organisations generally.

3. LEGAL FRAMEWORK

The Standard takes into consideration the applicable laws, regulations and global best practices including but not limited to:

3.1. The Companies Act (No.17 of 2015)

3.2. Co-operative Societies Act (Cap. 490)

3.3. Sacco Societies Act (Cap. 490 B)

3.4. Societies Act (Cap. 108)

3.5. Trustee Act (Cap.167)

3.6. Non-Governmental Organizations Coordination Act (Cap. 134)

3.7. Mwongozo: The Code of Governance for State Corporations in Kenya, PSC 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 monitoring performance of management in 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 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 /body with an interest in an Organisation and having the right to attend and vote at a General Meeting;

4.7. “Organisation” means a Company ,Society , Cooperative Society , University, Trusts, Non-Governmental Organizations , Government Owned

Entities , Commissions , County Public Service Boards or other similar institution

4.8. “Secretary” means Certified Secretary as defined in the Certified Public Secretaries Act.

4.9. “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 :

4.9.1. 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

4.9.2. Offers to perform or performs services involving the submission of official and statutory returns of companies and trading organizations;

4.9.3. Offers to perform or performs services involving the certification of statutory returns or records related to statements; or

4.9.4. 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

4.9.5. Words importing the masculine gender shall also include the feminine gender

5. GENERAL STANDARD GUIDELINES

5.1. Definition

5.1.1. An Annual Return means a periodic update to the Registrar, or relevant authorities, on any changes in ownership, membership, indebtedness, officials, registered office location, address, the activities or the operations of an organisation occurring in a year.

5.1.2. Returns are usually filed at least once a year, after the annual Members meeting.

- 5.1.3. If however any significant changes occur within the Organisation in the course of the year, the Secretary shall update the changes with the Registrar (or the relevant authority) on a continuous basis.

6. STANDARD GUIDELINES FOR COMPANIES

- 6.1. It is the duty of the company to submit to the Registrar its Returns from time to time on the Company's return date. This shall be done by the Secretary or the Directors.
- 6.2. The Returns should be lodged with the Registrar within twenty eight days after the date to which it is made up.
- 6.3. The Company's return date is the anniversary of the company's incorporation or the anniversary of the date on which the last returns were filed.
- 6.4. A company shall ensure that its annual return contains the following information.
 - 6.4.1. The Company name and Number
 - 6.4.2. The address of the company's registered office, Post Office box number, and the physical location of that office.
 - 6.4.3. The date to which it is made up
 - 6.4.4. The type of company and its principal business activities. Information on the type of company by reference to the classification scheme prescribed by the regulations.
 - 6.4.5. The particulars prescribed by the regulations of the directors of the company; the secretary or joint secretaries of the company; and any person appointed as an authorized signatory of the company;
 - 6.4.6. Financial statements or exemption statement where applicable.
- 6.5. A company having a share capital shall include in its annual return a statement of capital which shall state;
 - 6.5.1. The total number of shares of the company;
 - 6.5.2. The aggregate nominal value of those shares;

- 6.5.3. The class of shares also stating the following:
- 6.5.3.1. The particulars prescribed by the regulations of the rights attached to the shares;
 - 6.5.3.2. The total number of shares of that class; and
 - 6.5.3.3. The aggregate nominal value of shares of that class; and the amount paid up and the amount (if any) unpaid on each share, whether on account of the nominal value of the share or in the form of a premium.
- 6.5.4. The company shall ensure that the return includes the particulars prescribed by the regulations of every person who:
- 6.5.4.1. Is a member of the company.
 - 6.5.4.2. Has ceased to be a member of the company since the date to which the last return was made or, in the case of the first return, since the incorporation of the company.
- 6.5.5. The company shall further ensure that the return states —
- 6.5.5.1. The number of shares of each class held by each member of the company at the date to which the return is made up;
 - 6.5.5.2. The number of shares of each class transferred since the date to which the last return was made up; or In the case of the first return, since the incorporation of the company, by each member or person who has ceased to be a member;
 - 6.5.5.3. The dates of registration of the transfers.
 - 6.5.5.4. Indebtedness secured by a charge over the assets of the company.

7. STANDARD GUIDELINES FOR COOPERATIVES

7.1. The annual return should be lodged with the Commissioner for Co-operative Development within four months of the end of the financial year.

7.2. Contents of the annual return shall include:

7.2.1. Name of the co-operative society.

7.2.2. Registration number of the society.

- 7.2.3. Date of registration of the society.
- 7.2.4. Registered address of the society.
- 7.2.5. Type of co-operative society.
- 7.2.6. The liability of members.
- 7.2.7. The number of members in a society.
- 7.2.8. The number of shares issued.
- 7.2.9. The maximum liability which the society may incur in loans or deposits.
- 7.2.10. The total indebtedness of the society secured by registered charges.
- 7.2.11. The date the last annual general meeting was held.
- 7.2.12. Particulars of officers of the Society for the financial year to which the return relates
- 7.2.13. Certified copy of the accounts to be attached

8. STANDARD GUIDELINES FOR SOCIETIES

8.1. A registered society shall be required to furnish its return annually to the Registrar of Societies in the form provided in the Societies Act under Rule 13 Form I.

8.2. The Return shall contain the following :

- 8.2.1. Name and registration number of the Society
- 8.2.2. Date of Annual Meeting for period ended
- 8.2.3. Number of office bearers , their occupation and addresses
- 8.2.4. Details of changes in the following;
 - 8.2.4.1. The name of the Society
 - 8.2.4.2. The object of constitution or rules of the society
 - 8.2.4.3. The organisation or groups of a political nature established outside Kenya or which the society is a branch or to which it is affiliated or with which it is connected
 - 8.2.4.4. The Class or Classes of persons to which its membership is open
 - 8.2.4.5. The titles of its officers
 - 8.2.4.6. Land and premises which the society owns
- 8.2.5. Signature section by the office bearers

9. STANDARD GUIDELINE FOR UNIVERSITIES

9.1. Every University shall submit to the Commission of Higher Education;

- a) An annual report of its activities in each year
- b) A detailed evaluation, every three years, of the steps it has taken towards achievement of the aims and objects for which it was established
- c) And shall submit its Financial Reports in accordance with its Charter, to the University Council.

10. STANDARD GUIDELINE FOR TRUSTS

10.1. Trustees must comply with the provisions of the Trust Deed or other instrument creating the Trust strictly failure of which, an action may be brought against the Trustee(s) by a beneficiary for breach of trust.

10.2. With respect to Trust incorporated under the Trustee (Perpetual succession) Act, the trustees should file an annual return with the names and addresses of the trustees.

11. STANDARD GUIDELINES FOR NON – GOVERNMENTAL ORGANISATIONS

11.1. A Non – Governmental Organisation shall be required to file an annual report and annual return in accordance with the Non-Governmental Organisations Coordination Act under Rule 24, First Schedule Form 14.

11.2. The Return shall contain the following;

- 11.2.1. General Information including Name and address ,contact person, registration particulars of the NGO

- 11.2.2. Finance information, Assets & Reserves, Receipts, payments, audited accounts for the last financial year, breakdown of amounts spent on projects by sector, and the NGO's bankers.
- 11.2.3. Personnel Details; local and international; Privileges accorded to volunteers/interns and number of staff trained during the reporting period
- 11.2.4. Projects carried out, contributions from local community and Government (such as tax waivers) and type and nature of organizations collaborated with
- 11.2.5. Governance information such as meetings held, elections, directors, assets status, and names of current officials.

12. APPROVAL DATE

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

13. REVIEW OF STANDARD

This Governance Standard may be reviewed from time to time by the Council at its discretion and subject to the laws

14. EFFECTIVE DATE

The Governance Standard shall come into effect from March 1, 2016