

# GOVERNANCE STANDARD 008

## GS 008: COMMON SEAL

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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 the use and custody of the Common Seal for an organisation.

## 2. SCOPE

Applies to the following organisations duly registered in the Republic of Kenya:-

- 2.1 Companies;
- 2.2 Societies;
- 2.3 Co-operative Bodies;
- 2.4 Non-Governmental Organizations.

## 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 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 Insolvency Act, 2015
- 3.8 Mwongozo: The Code of Governance for State Corporations in Kenya, PSC 2014
- 3.9 Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015
- 3.10 Code of Governance for Private Organizations in Kenya, ICPSK 2014.
- 3.11 Constitutive Documents.

## 4. DEFINITIONS

- 4.1 "Articles" means the Articles of Association of the company.
- 4.2 "Board" means a body of persons, by whatever name called, mandated to carry out functions relating to the overall direction of an Organisation;
- 4.3 "Board Member" means a Director, Trustee or Representative 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 Seal” means the common seal, company seal, official seal or corporate seal of the Organization
- 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 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 practice 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 Words importing the masculine gender shall also include the feminine gender

## 5. GENERAL STANDARD GUIDELINES

### 5.1 Form and Content

- 5.1.1 The Seal is an instrument bearing the Organization’s full name and/or other details and is used to emboss constitutive documents of the Organization.
- 5.1.2 The seal should be made of durable material and capable of being manually operated.
- 5.1.3 The seal should have the full name of the Organisation engraved on it in legible form and may contain other details of the Organization such as address, city etc

## 5.2 Approval

- 5.2.1 The Board of the Organisation shall table and adopt the impression of the seal at the 1st meeting of the Board and by resolution of this meeting, authorize the making of the seal, which shall be part of the minutes of the meeting in which it is adopted.
- 5.2.2 Where required by the Constitutive Documents of the Organisation, the Board shall approve each use of the seal to execute documents approved by the Board.

## 5.3 Authority and Mode of Affixation

- 5.3.1 Where required, the Board shall authorize a person to affix the seal to any constitutive documents to which the Organisation is a party.
- 5.3.2 The affixation of the seal shall be attested by either two Board Members, or one Board Member and the Secretary, or as otherwise provided by the Constitutive Documents of the Organisation.
- 5.3.3 Any constitutive document to which the seal is duly affixed shall bind the Organisation as having been duly executed.

## 5.4 Custody

- 5.4.1 The seal shall be kept in the custody of the Secretary or a member of the Board, or such other person as may be authorized by the Board.
- 5.4.2 The seal should be kept at the registered office of the Organisation, or any other office authorized by the Board.

## 5.5 Register of Documents Executed Under Seal

- 5.5.1 Every Organisation should maintain a register containing particulars of documents on which the official seal of the Organisation has been affixed.
- 5.5.2 The Secretary shall develop and maintain a systematic way of numbering the impressions of the Seal, for record purposes.
- 5.5.3 The register should contain:
  - (a) the description of the document;
  - (b) date and number (where applicable) of the resolution authorizing the affixation of official seal;
  - (c) date of affixing seal on the document;
  - (d) name(s) of person(s) who attested the affixation;
  - (e) the place at which the document was so sealed; and
  - (f) where adopted, the number of the impression of the Organisation's common seal.
- 5.5.4 All entries into the register shall be made by the Secretary or under the direction of the Secretary.
- 5.5.5 The register should be maintained at the office where the seal is kept, with a duplicate or parallel register transmitted to and maintained at the registered office of the Organisation, in instances where the seal is not held in the registered office of the Organisation.

## 5.6 Official Seal For Use Outside Kenya

- 5.6.1 A Organisation may have more than one seal.
- 5.6.2 A Organisation whose objects require or comprise transactions of business outside Kenya, and it has enabling provisions in its Constitutive Documents, may have for use in any territory or place not situated in Kenya, a seal.
- 5.6.3 Each additional seal shall be a replica of the Organisation's original seal.
- 5.6.4 The seal to be used in an external territory shall have engraved in it, in addition to the name of the Organisation, the name of the territory or place where it is to be so used.
- 5.6.5 The Organisation shall, however, not have more than one seal in each territory or place not situated in Kenya.

## 5.7 Official Seal For Securities

- 5.7.1 A Company that has a seal as per requirements of its Articles of Associations or other Constitutive Document may also have a seal for use in sealing the following:-
  - (1) Securities issued by the Company;
  - (2) Documents creating or evidencing securities so issued.
- 5.7.2 A Company's seal for securities is only effective if it is a replica of the Company's common seal with the addition on its face of the word "SECURITIES";
- 5.7.3 When duly affixed to a document the seal has the same effect as the company's seal.

## 5.8. Replacement

- 5.7.4 On being satisfied on the reasons for the need to obtain a new Seal to replace the existing or misplaced one, the Board shall authorize such replacement by a resolution and the impression of the new seal should be approved in the minutes of the relevant meeting.
- 5.7.5 The Organisation shall make every reasonable effort to notify the third parties and the general public of the replacement of the Seal and warn of possible fraudulent acts arising from such replacement.

## 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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