

# BLOCKCHAIN ASSOCIATION OF KENYA CONSTITUTION

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## 1. NAME

The name of the society shall be .... Blockchain Association of Kenya. (In this constitution referred to as "the Society").

## 2. OBJECTS

- a. To promote professional standards in the use, distribution, and training of blockchain technology Education
- b. To assist its members in improving their capacity to provide the highest quality blockchain technology services.
- c. To promote professional standards in the use, distribution, agency and market making of blockchain assets by its members.
- d. To provide training, education and business development services for people working as practitioners of blockchain technology.
- e. To promote exchange and cooperation between members and encourage members to cooperate with public and social organizations with similar business interests.
- f. To carry out research on the blockchain technology industry's policy, plans and behavior in order to improve and further the capacity of Kenya's blockchain technology industry.
- g. The Society has non-political objects.
- h. To form branches.

## 3. MEMBERSHIP

- 3.1. Any Person, regardless of their nationality, over the age of eighteen years shall be eligible for membership of the Society and shall, subject to the approval of the committee, become a member on payment of an entrance fee of Shs. ....1000..... or any additional fee that may be otherwise set by the Committee from time to time, depending on the class and type of member.
- 3.2. Every member shall pay a monthly subscription of Shs. ...1000..... not later than the 15th day of each month.; or any additional fee that may be otherwise set by the Committee from time to time, depending on the class and type of member.
- 3.3. Members shall be contained within the following categories;
  - 3.3.1. **Ordinary Member**
    - 3.3.1.1. Ordinary Members shall be Block chain professionals, practitioners, enthusiasts and any party or person that the Committee deems eligible and useful in fulfilling the Societies objectives, and meets any further criteria set out by the Committee.
    - 3.3.1.2. Each Ordinary Member shall be entitled to one vote at the General Meeting.
    - 3.3.1.3. Ordinary members shall further be classified on the basis of the Members' Terms of

Reference or other Criteria set out by the Committee follows;

- i) Category A;
- ii) Category B;
- iii) Category C; and
- iv) Category D

### **3.3.2. Academic Institutions**

3.3.2.1. These shall be academic institutions providing educational and training programs relevant to the Blockchain Industry, licensed by the relevant Government body or International body (where applicable), and meeting any further additional criteria that the Committee may from time to time prescribe.

3.3.2.2. Academic Institutions may be invited to attend Annual General Meetings and vote on any resolution or amendment to the Constitution but shall not be entitled to vote for Office Bearers or any other agenda points outside the scope of amending the Constitution.

### **3.3.3. Industry Partners**

3.3.3.1. Industry partners shall be private or public institutions providing services that are directly or indirectly linked to the Blockchain Industry and meet any additional criteria that the Committee from time to time may prescribe. The applicant shall be licensed by the relevant Government body or (additional licensing or criteria).

3.3.3.2. Industry partners may be invited to attend Annual General Meetings but shall not be entitled to vote.

### **3.3.4. Government Representatives**

3.3.4.1. These shall consist of representatives from relevant Government Ministries such as the Ministry of Information, Communications and Technology; amongst any other ministries that may be interested or intend to contribute or facilitate the objectives of the Society.

3.3.4.2. Government representatives may be invited to attend Annual General Meetings but shall not be entitled to vote

### **3.3.5. Honorary Members**

3.3.5.1. Honorary Members shall be individuals who have served in the Blockchain Industry or similar industry that lend specific insight to Blockchain and the objectives of the Society, for a period that the Committee deems adequate and retired but wish to contribute to the objectives of BAK.

3.3.5.2. Honorary Members shall be considered to have a good understanding of the Blockchain Industry as may be determined by the Committee. Honorary Members shall have no interest in Ordinary or Allied Members of BAK.

3.3.5.3. Honorary Members may be invited to attend Annual General Meetings but shall not be entitled to vote.

3.4. The Executive Committee shall formulate a Members' Terms of Reference setting out the requirements, conduct and obligations of membership.

3.5. Any member desiring to resign from the Society shall submit his resignation to the secretary,

which shall take effect from the date of receipt by the secretary of such notice.

- 3.6. Any member may be expelled from membership if the committee so recommends and if a general meeting of the Society shall resolve by a two-thirds majority of the members present that such a member should be expelled on the grounds that his conduct has adversely affected the reputation or dignity of the Society, or that he has contravened any of the provisions of the constitution, guidelines, regulations or bylaws of the Society. The committee shall have power to suspend a member from his membership until the next general meeting of the Society, following such suspension but notwithstanding such suspension a member whose expulsion is proposed shall have the right to address the general meeting at which his expulsions to be considered.
- 3.7. Any person who resigns or is removed from membership shall not be entitled to a refund of his subscription or any part thereof or any moneys contributed by him at any time.
- 3.8. Any member who falls into arrears with his monthly subscription for more than six months shall automatically cease to be a member of the Society and his name shall be struck off the register of members. The committee may, however, at its discretion, reinstate such member on payment of the total amount of subscription outstanding.

### 3.9. **Obligations of All Members**

- 3.9.1. Every Member shall be bound by BAK's Constitution, Code of Ethical and Professional Standards and Terms of Reference of their particular membership category as stipulated by the Committee.
- 3.9.2. Every Member shall provide all documentation required by BAK as and when requested for the same and pay the set membership fees for each category of membership.

### 3.10. **Application for Membership**

- 3.10.1. The form, method and terms of application for Membership shall be prescribed by the Committee in accordance with the Members' Terms of Reference or any other guidelines that they may issue.

### 3.11. **APPROVAL OF NEW MEMBERS**

- 6.4.1 The Committee will consider new applications for Membership and may accept, reject, postpone for further consideration or refer new applications back to the applicant to supply further information or documents.
- 6.4.2 Upon approval by the Committee, the ordinary members shall receive notice of the details of the newly adopted member.
- 6.4.3 In case of a valid objection by an Ordinary Member(s), the application will be referred back to the Committee for further action as it may deem fit and the Committee may take into consideration the recommendation(s) of the Ordinary Member(s) objecting to the application.

#### 4. OFFICE BEARERS

- 4.1. The office bearers of the Society shall be:
- i. The chairman
  - ii. The Secretary
  - iii. The Treasurer

all of whom shall be fully paid-up members of the Society and shall be elected at the annual general meeting to be held in each year. (See also rule 6.2 below).

- 4.2. All office bearers shall hold office from the date of election until the succeeding annual general meeting subject to the conditions contained in sub-paragraphs 4.3 and 4.4 of this rule but shall be eligible for re-election.
- 4.3. Any office bearer who ceases to be a member of the Society shall automatically cease to be an office bearer thereof.
- 4.4. Office bearers may be removed from office in the same way as is laid down for the expulsion of members in rule 3.7 and vacancies thus created shall be filled by persons elected at the general meeting resolving the expulsion.

#### 5. DUTIES OF OFFICE BEARERS

- 5.1. **Chairman** - the Chairman shall, unless prevented by illness or other sufficient cause, preside over all meetings of the committee and at all general meetings.
- 5.2. **Secretary** - the Secretary shall deal with all the correspondence of the Society under the general supervision of the committee. In cases of urgent matters where the committee cannot be consulted, he shall consult the Chairman. The decisions reached shall be subject to ratification or otherwise at the next committee meeting. He shall issue notices convening all meetings of the committee and all general meetings of the Society and shall be responsible for keeping minutes of all such meetings and for the preservation of all records of proceedings of the Society and of the committee.
- 5.3. **Treasurer** - the Treasurer shall receive and shall also disburse, under the directions of the committee, all moneys belonging to the Society and shall issue receipts for all moneys received by him/she and preserve vouchers for all moneys paid by him/she. The Treasurer is responsible to the committee and to the members that proper books of account of all moneys received and paid by the Society are written up, preserved and available for inspection.
- 5.4. In exercising its powers under rule 6.3 below, the Committee may create any further, rule, regulations, guidelines or bylaws, that it deems necessary to appropriately cater and set out the roles, obligations and duties of the officer bearers.

#### 6. THE COMMITTEE

- 6.1. The committee shall consist of all the office bearers of the Society and Two other members elected at the Annual General Meeting in each year; such committee members shall hold office until the following Annual General Meeting. The Committee shall meet at such times and places as it shall resolve but shall meet not less than once in any three months.
- 6.2. Quorum for a meeting of the Committee shall be no less than four (4) members of the Committee or where the members of the Committee exceed five (5), two-thirds of the members forming part of the Committee
- 6.3. Any casual vacancies for members of the committee caused by death or resignation shall be filled by the committee until the next annual general meeting of the Society. Vacancies caused by members of the committee removed from office will be dealt with as shown in rule 4.4.
- 6.4. The Committee shall also be responsible for drafting and establishing a Code of Ethical and Professional Standards and Members' Terms of Reference; amongst any other documentation, guidelines, rules and bylaws to govern the operations of the Society in fulfilling its objectives.
- 6.5. The Committee, upon assessing the various objectives that the Society intends to fulfill, may create additional Sub-Committees to fulfill various objectives and functions of the Society and that shall remain answerable to the Committee.
- 6.6. In creating the aforementioned Sub-Committees mentioned in rule 6.4., the Committee may also create the relevant guidelines, rules and bylaws to govern the functions and operations of the relevant Sub-Committees, which shall also include the manner in which members shall be assigned to such Sub-Committees.

## **7. DUTIES OF THE COMMITTEE**

- 7.1. The Committee shall be responsible for the management of the Society and for that purpose may give directions to the office bearers as to the manner in which, within the law, they shall perform their duties. The committee shall have power to appoint such sub-committees as it may deem desirable to make reports to the committee upon which such action shall be taken as seems to the committee desirable.
- 7.2. All moneys disbursed on behalf of the Society shall be authorized by the committee. except as specified in rule 12.4.

## **8. GENERAL MEETINGS**

- 8.1. There shall be two classes of general meetings - annual general meetings and special general meetings.
- 8.2. The annual general meeting shall be held not later than ...the Second Week Of April.. in each year. Notice in writing of such annual general meetings, accompanied by the annual statement of account (see rule 11.2 ) and the agenda for the meeting shall be sent to all members not less than 21 days before the date of the meetings and, where practicable, by Press advertisement not less than 14 days before the date of the meetings.
- 8.3. The agenda for any Annual General Meeting shall consist of the following:
  - a. Confirmation of the minutes of the previous annual general meeting.
  - b. Consideration of the accounts.
  - c. Election of office bearers and the committee members (and trustees where necessary in

accordance with rule 10.1.

- d. Appointment of auditors in accordance with rule 11.1.
- e. Such other matters as the committee may decide or as to which notice shall have been given in writing by a member or members to the secretary at least two (2) weeks before the date of the meeting.
- f. Any other business with the approval of the Chairman.

8.4. A special general meeting may be called for any specific purpose by the committee. Notice in writing of such meeting shall be sent to all members not less than 7 days before the date thereof and where practicable by Press advertisement not less than 7 days before the date of such meeting.

8.5. Quorum for general meetings shall be not less than two thirds of the registered members of the Society.

#### 8.6. **Votes and Voting**

8.6.1. At all General Meetings of BAK each Ordinary Member present in person or by proxy shall be entitled to one vote.

8.6.2. At any General Meeting a resolution put to the vote shall be decided on by a show of hands unless a poll is demanded. In the event of a Poll, all proxies correctly signed and lodged in accordance with Clause 8.6.4.4 will be counted.

8.6.3. If a poll is demanded, it shall be taken in such a manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

8.6.4. On a poll, but subject to 8.6.2 votes may be given either personally or by proxy. The following provisions shall relate to proxies:

8.6.4.1. Any Ordinary Member may appoint a proxy who shall attend, speak and vote at any General Meeting. The instrument appointing a proxy to vote at a meeting shall be deemed also to confer authority to demand or join in the demanding of a poll.

8.6.4.2. The instrument appointing a proxy shall be in writing and in the format prescribed by the Committee.

8.6.4.3. The Chairperson on behalf of the Secretary shall, in relation to any General Meeting at which an amendment to the Constitution is to be proposed and/or an election for Office Bearers is to be held, send to each Member with the notice convening the meeting and a form of proxy complying with the provisions hereof but nothing in this sub-paragraph contained shall deprive an eligible Member from submitting a proxy, in the prescribed form, in respect of other business to be conducted at a General Meetings

8.6.4.4. The instrument of proxy shall be valid only if completed in all respects and it is in the hands of the Secretary (in the case of General Meetings of BAK), at least forty eight (48) hours before the appointed time of the meeting. The Proxy shall be stamped as received, dated and time logged and recorded before the applicable General Meeting and a stamped copy sent to the appointer.

8.6.5. In the case of equality of votes, whether on show of hands or on a poll, the Chairperson of the meeting shall be entitled to a second or casting vote.

- 8.6.6. No resolution shall be passed unless a majority of the votes are in favour of it, provided that no amendment to this Constitution shall be passed unless 75% of the votes on the resolution are in favour of it.

## **9. PROCEDURE AT MEETINGS**

- 9.1. At all meetings of the Society the Chairman, or in his absence, a member selected by the meeting shall take the chair.
- 9.2. The Chairman may at his discretion limit the number of persons permitted to speak in favor of and against any motion.
- 9.3. Resolutions shall be decided by simple voting by a show of hands. In the case of equality of votes, the Chairman shall have a second or casting vote.

## **10. TRUSTEES**

- 10.1. All land, buildings and other immovable property and all investments and securities which shall be acquired by the Society shall be vested in the names of not less than three (3) trustees who shall be members of the Society and shall be appointed at an annual general meeting for a period of three years.
- 10.2. On retirement such trustees shall be eligible for re- election. A general meeting shall have the power to remove any of the trustees and all vacancies occurring by removal, resignation or death, shall be filled at the same or next general meeting.
- 10.3. The trustees shall pay all income received from property vested in the trustees to the Treasurer. Any expenditure in respect of such property which in the opinion of the trustees is necessary or desirable shall be reported by the trustees to the committee which shall authorise expenditure of such moneys as it thinks fit.

## **11. AUDITOR**

- 11.1. An auditor shall be appointed for the following year by the members at the Annual General Meeting. All the Society's accounts, records and documents shall be opened to the inspection of the auditor at any time. The Treasurer shall produce an account of his receipts and payments and a statement of assets and liabilities made up to a date which shall not be less than six weeks and not more than three months before the date of the Annual General Meeting. The auditor shall examine such annual accounts and statements and either clarify that they are correct, duly vouched and in accordance with the law or report to the Society in what respect they are found to be incorrect, unvouched or not in accordance with the law.
- 11.2. A copy of the auditor's report on the accounts and statements together with such accounts and statements shall be furnished to all members at the same time as the notice convening the annual general meeting is sent out. An auditor may be paid such honorarium for his duties as may be resolved by the annual general meeting appointing him.
- 11.3. No auditor shall be an office bearer or a member of the committee of the Society.





## **12. FUNDS AND FINANCIAL PROVISIONS**

### **12.1. General Financial Management Terms**

- 12.1.1. The funds of the Society may only to fulfill the objects of the Society as set out in rule 2 above.
- 12.1.2. All moneys and funds shall be received by and paid to the Treasurer and shall be deposited by him in the name of the Society in any bank or banks approved by the committee.
- 12.1.3. No payments shall be made out of the bank account without a resolution of the Committee authorizing such payment and all cheques on such bank account shall be signed by the Treasurer or the Assistant Treasurer and two other office bearers of the Society who shall be appointed by the committee.
- 12.1.4. A sum not exceeding Shs. 50,000 may be kept by the Treasurer for petty disbursements of which proper account shall be kept.
- 12.1.5. The Committee shall have power to suspend any office bearer who it has reasonable cause to believe is not properly accounting for any of the funds or property of the Society and shall have power to appoint another person in his place. Such suspension shall be reported to a general meeting to be convened on a date not later than two months from the date of such suspension and the general meeting shall have full power to decide what further action should be taken in the matter.
- 12.1.6. The financial year of the Society shall be from 1st January to 31st December.

### **12.2. SUBSCRIPTIONS**

There shall be an annual or monthly, subject to the discretion of the Committee, subscription payable by all Members. The annual subscription shall be set by the Committee for approval at a General Meeting. Levies for a specific purpose may also be imposed at such a meeting. All Members shall pay annual subscription fees except for Government Representatives and Honorary Members.

### **12.3. SUBSCRIPTION DUE DATE**

- 12.3.1. Any member falling into arrears for Annual Subscription or any levy for more than three (3) months from due date shall automatically cease to be a member of BAK. The Committee may, however, at its discretion, reinstate such member on payment of the subscription outstanding.
- 12.3.2. Any member who ceases to be a member of BAK for whatever reason for more than one year may reapply and pay a Joining fee.

### **12.4. LEVIES**

- 12.4.1. Levies may be imposed by the BAK Committee against Members from time to time.

### **12.5. ACCOUNTING**

- 12.5.1. BAK shall not distribute any of its profits or gains to any person and shall utilise its funds solely for BAK's expenses, investment or in pursuance of the objectives for which it has been established.
- 12.5.2. Further to the provisions of rule 12.5.1, the Society shall be entitled to enlist, procure, contract

and otherwise acquire the services of any service or products providers and professionals of whatever nature, the services/products and professions of which are towards fulfilling the objectives of the Society. Records of such products, services and professionals shall be properly documented to enable proper and verifiable record of billing and payment.

- 12.5.3. All revenue such as subscriptions, joining fees, levies and fines shall be payable strictly by cheque to the “Blockchain Association of Kenya”.
- 12.5.4. Proper accounts of BAK shall be kept and shall be open for inspection at any reasonable time upon application to the Chairperson by any member of the Committee.
- 12.5.5. Within three (3) months of the close of each financial year, the balance sheet and revenue and expenditure account shall be prepared and, having been duly audited and certified.

## 12.6. **BUDGETS**

- 12.6.1. Unless otherwise required, a revenue and expenditure budget should be drawn up by the Treasurer in consultation with other office bearers as at the time holding office, in annual intervals and shall be submitted to the Committee at least two (2) months before the end of the financial year for approval. A periodic review of the budget will be conducted by the Office Bearers on a bi-annual basis. This will be done with the view of the following:
  - 12.6.1.1. To identify areas of gross departure from budgeted amounts and determine the underlying causes and make reallocations accordingly where possible. However, such reallocations will need approval of /by the following:
    - 12.6.1.1.1. The Treasurer as long as deviations are below 10% of the budget position under question;
    - 12.6.1.1.2. The Chairperson of BAK for deviations that are more than 10% but less than 30% of the budget position;
    - 12.6.1.1.3. The Committee for deviations that are over 30% of the budget position.
  - 12.6.1.2. To accommodate the items that may have been left out of the budget during the preparation
  - 12.6.1.3. To take care of new activities not foreseen.
  - 12.6.1.4. To accommodate changes in foreign exchange rates and changes in Government policies to the extent they have a bearing on the budget.
  - 12.6.1.5. To reveal deviations from the budget or any misuse or abuses and identify areas where corrective actions should be taken.
  - 12.6.1.6. To reveal how effective the implementers of the budget are and how successful BAK’s financial planning is.

### **13. BRANCHES**

- 13.1. Branches of the Society may be formed with the approval of the Committee and the Registrar of Societies and they will adopt the same constitution as that of the headquarters with the following exceptions:
- a. The aims and objects will not include the formation of branches.
  - b. Amendments to the constitution can only be made by the headquarters of the Society in accordance with the provisions of rule 14.
  - c. The provisions of rule 15 shall apply to branches but, in addition, branches will not be dissolved without consultation with their headquarters.

### **14. AMENDMENTS TO THE CONSTITUTION**

Amendments to the constitution of the Society must be approved by at least a two-thirds majority of members at a general meeting of the Society. They cannot, however, be implemented without the prior consent in writing of the Registrar, obtained upon application to him made in writing and signed by three of the office bearers.

### **15. DISSOLUTION**

- a. The Society shall not be dissolved except by a resolution passed at a general meeting of members by a vote of two-thirds of the members present. If no quorum is obtained, the proposal to dissolve the Society shall be submitted to a further general meeting which shall be held one month later. Notice of this meeting shall be given to all members of the Society at least 14 days before the date of the meeting. The quorum for this second meeting shall be the number of members present.
- b. Provided, however, that no dissolution shall be effected without prior permission in writing of the Registrar, obtained upon application to him made in writing and signed by three of the office bearers.
- c. When the dissolution of the Society has been approved by the Registrar, no further action shall be taken by the committee or any office bearer of the Society in connection with the aims of the Society other than to get in and liquidate for cash all the assets of the Society. Subject to the payment of all the debts of the Society, the balance thereof shall be distributed in such other manner as may be resolved by the meeting at which the resolution for dissolution is passed.

### **16. INSPECTION OF ACCOUNTS AND LIST OF MEMBERS**

The books of account and all documents relating thereto and a list of members of the Society shall be available for inspection at the registered office of the Society by any officer or member of the Society on giving not less than eleven working days notice in writing to the Society. (This rule applies to registered societies only)

## **17. LIABILITY OF THE EXECUTIVE COMMITTEE AND BAK STAFF**

Every Office Bearer, Member of the Executive Committee and every officer and employee of BAK, and any person acting on the lawful directions of the Executive Committee shall be fully indemnified and shall be deemed always to have been indemnified from any claim made against such a person, against all damages, costs and expenses awarded for acts undertaken in the course of conducting lawful and authorised business on behalf of BAK.

## **18. DISCIPLINARY CODE**

### **18.1. OBJECTIVE**

18.1.1. The objective of the Disciplinary Code is to ensure the maintenance of good order in BAK by ensuring fair and equal treatment to all Members by adherence to the Constitution in normal business practices. The disciplinary code thus serves to protect not only consumers within the Blockchain Industry, but also the Members and management of BAK against any unfair, unlawful or irrational or unprocedural treatment, by serving as a mechanism for preventative and corrective control with a commitment to the promotion of consistency and fairness.

18.1.2. The Disciplinary Code shall be read together with the BAK Code of Ethical and Professional Standards, and in the event of conflict between the Disciplinary Code and the BAK Code of Ethical and Professional Standards, the provisions of the Disciplinary Code shall apply.

### **18.2. DISCIPLINARY PROCESS, HEARING PROCEDURES & ARBITRATION**

18.2.1. Whenever Members deem it necessary or whenever an official request for a disciplinary hearing is received from any Consumer of a Member or a Member of BAK, the disciplinary process shall be undertaken by the Legal, Ethics and Disciplinary Sub-Committee in accordance with the following procedure;

18.2.1.1. The matter will be brought to the attention of the Chairperson of the Legal, Ethics and Disciplinary Sub-Committee in writing by any concerned or involved person.

18.2.1.2. If that Legal, Ethics and Disciplinary Sub-Committee Chairperson or a single representative nominated by him is not able to resolve the matter through negotiations within fifteen (15) days of receipt of the complaint, the matter shall be referred to the entire Legal, Ethics and Disciplinary Sub-Committee which will sit as a Disciplinary Committee.

18.2.1.3. The Disciplinary Committee will consist of the following Members who will each have one (1) vote: -

18.2.1.3.1. The Chairperson of the Legal, Ethics and Disciplinary Sub-Committee who will be the presiding officer;

18.2.1.3.2. Three (3) Members of the Sub Committee;

18.2.1.3.3. One (1) other member of the Sub Committee nominated by the person appearing before the Disciplinary Committee – such nominee shall not have any relationship (i.e. family or direct business) with the person appearing before the Committee;

18.2.2. Whenever a matter is referred to the Disciplinary Committee, all efforts shall be made to resolve the problem amicably through good faith negotiations. All Members shall resolve any differences between them as individuals and/or BAK and/or its Members amicably through negotiations and they shall agree to use their best endeavors to achieve such resolution.

- 18.2.3. In the event that negotiations envisaged in clause 18.2.2 fail, the Disciplinary Committee Chairperson shall ensure that notice of the complaint/charge, including all written supporting documentation and claims, is forwarded to all Members of the Disciplinary Sub-Committee as well as the BAK Member in question, by email, fax or physical delivery at least ten (10) days prior to the date of the disciplinary hearing. The holding of a hearing to determine the questions or matters in dispute shall be entirely at the discretion of the Disciplinary Committee.
- 18.2.4. No meeting held under the disciplinary code will be open to the public or other Members unless individuals are specifically called to attend in terms of any provision of this code.
- 18.2.5. Any person required to appear before the Committee will be given at least ten (10) days written notice (by registered mail, fax or physical delivery) of the date, time and place of any meeting of the Disciplinary Committee.
- 18.2.6. Any person required to reply to any statement and or allegation and/or charge will also, in the notice referred to in clause 18.2.5 above, be provided with written details of the case against him. Such a person shall be given free access to (and /or copies of) any documentary evidence and witness statements in the possession of the Disciplinary Committee, which may be used against him.
- 18.2.7. If requested and judged to be relevant, the Disciplinary Committee will have access to any privileged and/or confidential documents and/or information lodged by any Member with, or held by BAK and/or the Members for whatever reason. The decision as to the relevance of such documents will lie solely and exclusively with the Disciplinary Committee Chairperson, who may choose at his own discretion to provide only relevant extracts from documents.
- 18.2.8. After their appointment in terms of clause 18.2.1.3, any and all documents and/or information gathered and/or viewed and/or known to the Members of the Disciplinary Committee will be treated as strictly confidential and will only be used to decide on the matter before the Disciplinary Committee. If at any time other than conditions provided for in clause 18.2.4 a Member of the Disciplinary Committee, or otherwise is found to have used and/or distributed and/or published in any way or form and/or announced such information outside the Disciplinary Committee, he will immediately be expelled from the Disciplinary Committee.
- 18.2.9. Any person called to appear before the Disciplinary Committee shall be entitled to attend the meeting in person, or where the person is a company, partnership, association, trust or other body of persons, corporate or incorporate, by a duly authorised representative.
- 18.2.10. Parties referred to in clause 18.2.9 shall always be given a reasonable opportunity of replying in full to any allegations, complaints and statements and shall be given the opportunity of stating their case to the Disciplinary Committee.
- 18.2.11. The Member appearing before the Disciplinary Committee will be entitled to testify, to bring his own witnesses and to examine any witnesses heard by the Disciplinary Committee and/or question any evidence used or referred to by the Disciplinary Committee.
- 18.2.12. When all the evidence concerning the complaint/matter/charge has been considered and all affected parties have been heard, the Disciplinary Committee shall decide whether the Member is innocent or guilty by way of secret ballot on each individual issue. All individual complaints/matters/charges shall be decided by a two thirds (2/3) majority vote. Where such majority is not obtained, the complaint/charge against the person shall automatically be dropped.
- 18.2.13. If the Member is found guilty on any or all complaints/ charges, the Disciplinary Committee shall, before deciding the disciplinary action as set out in clause 18.3 allow the Member or his

representative to make a final representation to them. Only after having considered all the circumstances, shall the Committee decide on a suitable disciplinary penalty as provided for in clause 18.3 through a majority vote.

18.2.14. A full written report containing the details listed in Clause 18.2.15 below shall be sent to the Member through the designated duly authorized email address within ten (10) days of a final decision being made.

18.2.15. The Disciplinary Committee shall publish their final decision as per clause 18.2.14 within ten (10) days of the final determination to all Members stating the following: -

- i. The Member's full details;
- ii. The facts of the complaint/charge and the circumstances giving rise to the complaint/charge
- iii. The matter(s) on which the Member was found guilty as per clause 18.2.13 with reasons for the findings;
- iv. The penalty applicable.

18.2.16. The Disciplinary Committee shall retain all correspondence and other documents relating to complaints /charges it hears and keep all minutes of the meetings, either in the original or in a reproduced form for a period of three (3) years from the day of final determination.

### **18.3. PENALTIES AND RELATED ISSUES**

18.3.1. Where a Member has appeared before the Disciplinary Committee and the Committee finds the Member guilty, the Committee shall in accordance with clause 18.2.13 be entitled to suspend, expel and/or fine and/or reprimand such Member.

18.3.2. Should a Member be suspended or expelled then no refund of membership fee shall be due to such a Member.

18.3.3. In suspending a Member, the Committee shall lay down the period of suspension, but this will not exceed three hundred and sixty-six (366) days.

18.3.4. The amount of the fine imposed upon a Member shall be determined by the Disciplinary Committee depending on the severity of the complaint/charge but shall not exceed the sum of Kenya Shillings Eighty Thousand Only (Kshs. 80,000.00) in respect of each count plus legal and professional costs as incurred on a case by case basis.

18.3.5. Suspended Members will automatically be re-admitted as full Members when the period of their suspension has expired.

### **18.4. RIGHT OF APPEAL**

18.4.1. Any Member who has appeared before the Disciplinary Committee and has received written notification of the outcome of such hearing as provided for in clause 18.2.15 will have the right to appeal (in writing) to the Committee of BAK if such a Member believes the decision of the Disciplinary Committee was incorrect or unfair.

18.4.2. Such appeal to the Committee of BAK will be heard by a relevant Member of the Committee to be agreed upon by both parties (i.e. the penalized Member and the Disciplinary Committee), or if they cannot agree upon such a person, then for judgment by two arbiters (chosen from the Committee) of whom one is appointed in writing by each person. In cases where there is a dispute between the arbiters, it shall be referred to a referee (appointed in writing by the arbiters before they entered the dispute, and such person's decision shall be binding on both the parties.

- 18.4.3. The manner and form in which the dispute is to be resolved will fall within the sole discretion of the arbiter(s), who may also determine the time and place for hearings to take place. The arbiter is to reach a decision within thirty (30) days of receiving instructions. A referee shall have the right to remuneration by the suspended or expelled Member as agreed upon before receiving instructions.
- 18.4.4. In the event that the disciplinary hearing and the appeal to the Committee fail to resolve the complaint/charge only after all processes provided for in this disciplinary code have also been exhausted, will a person have the right to refer the matter for mediation or arbitration as per the provisions of Clause 18.4.5 below.

**Arbitration**

- 18.4.5. If at any time hereafter any dispute difference or question shall arise between the Members or other persons or their personal representatives or any of them respectively touching the construction meaning or effect of this Constitution or any cause or thing therein contained or the rights or liabilities of any person under this Constitution or otherwise howsoever in relation to the Constitution then every such dispute or question shall be referred to arbitration by a single arbitrator appointed by agreement between the parties and in default of such agreement by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch) in accordance with and subject to the provisions of the Arbitration Act (Chapter 49) of the Laws of Kenya or any statutory modification or re-enactment thereof for the time being in force.

Witnessed by: ..... (Secretary).

.....

Witnessed by: ..... (Treasurer).

SOC/GEN/2

DEPARTMENT OF THE  
REGISTRAR-GENERAL P  
O Box 30031, Nairobi