

**THE
CONSTITUTION**

OF

Credit Information Sharing Association of Kenya (CIS - Kenya) formerly known as Association of Kenya Credit Providers (AKCP) as amended and adopted at the Annual General Meeting held on 4th December 2014

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1.0 PART I – NAME, REGISTERED OFFICE AND DEFINITIONS

1.1 Article IA - The Name

The name of the Association shall be “**CREDIT INFORMATION SHARING ASSOCIATION OF KENYA (CIS-KENYA)**” (in this Constitution referred to as the “**Association**”).

1.2 Article IB - The Registered Office

The office of the Association shall be situated at the Kenya School of Monetary Studies, off Thika Road, P. O. Box 65041-00618, Nairobi in the Republic of Kenya or at such other place as the Association may from time to time decide with appropriate notification to the Registrar of Societies.

1.3 Article IC - The Definitions

In this Constitution, the following words and expressions shall have the meanings indicated against each unless otherwise required by the subject or the context:

- a) “**Adverse Action Notice**” means a notice issued by a Credit Provider to a customer conveying denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavourable change in the terms of coverage or amount of, any loan, existing or applied for, or any other action or determination adversely affecting the customer, based on customer information obtained from a Bureau;
- b) “**Agent**” means an entity contracted by a Bureau and approved by the Central Bank to provide the services on behalf of the Bureau, in such manner as may be prescribed by the Central Bank;
- c) “**Amendment Notice**” means a written notice from a credit provider advising a Bureau of an amendment to credit information previously incorrectly reported to a Bureau by that Credit Provider;
- d) “**Association**” means Credit Information Sharing Association of Kenya (CIS - Kenya);
- e) “**Authorized Representative**” means a representative of a member whose name appears in the register of members of the Association;

- f) **“Bureau”** means a Credit Reference Bureau licensed under the Credit Reference Bureau Regulations 2013 (hereafter called “CRB Regulations 2013”), or such other Regulations or laws for the time being in force, to prepare or provide credit reports to credit information recipients based on data maintained by the Bureau and to carry out such other activities as are authorised under these Regulations;
- g) **“Central Bank”** means the Central Bank of Kenya established under section 3 of the Central Bank of Kenya Act or such other statute or statutes for the time being in force in that regard or its successor or successors;
- h) **“Chief Executive Officer”** means the Secretary of the Association who shall act as the Chief Executive Officer of the Association or such other person duly appointed by the Governing Council of the Association to the position of the Chief Executive Officer;
- i) **“Credit Information”** means any positive or negative information bearing on an individual’s or entity’s credit worthiness, credit standing and credit capacity or to the history or profile of an individual or entity with regard to credit, assets and any financial obligations;
- j) **“Credit Information Provider”** means a person or a credit provider who furnishes credit information to a Bureau;
- k) **“Credit Provider”** means any institution that grants credit and is a member of the Association;
- l) **“Credit Report”** means an electronic, written or other communication in any other permanent forms of any information by a Credit Reference Bureau relating to a person’s creditworthiness, credit standing, credit capacity, character or general reputation which is used or collected to serve as a factor in establishing that person’s eligibility for credit or other services or products provided by a Credit Provider or for such other purposes as may be permitted or required by law or contract or usage;

- m) **“Customer”** means any consumer of services or products who has a formal engagement to receive services or products on agreed terms and conditions from a Credit Provider under this Constitution, including a party or a person who seeks to open an account with a Credit Provider;
- n) **“Customer Information”** means credit information or any other positive or negative information provided by a customer or obtained from a Credit Provider, a third party or public record information, which may be exchanged pursuant to CRB Regulations 2013 or such other Regulations or laws for the time being applicable;
- o) **“Database”** means a set of customer information collected, managed and disseminated by a Bureau;
- p) **“General Body”** means the entire membership of the Association;
- q) **“Loan”** means direct, indirect and contingent obligations incurred by an individual or entity with a Credit Provider and includes any credit, discount, advance, overdraft, export bills purchased, other bills receivable or purchased, import bills, customers’ liability on off balance sheet items or any other credit facility extended to a customer of such a Credit Provider;
- r) **“Member”** means a full member, an associate member or an affiliate member of the Association;
- s) **“Negative Information”** means any adverse customer information relating to a customer, which includes, but is not limited to:-
 - (i) non-performing loan or credit default or late payment on all types of facilities or claims;
 - (ii) dishonour of, other than for technical reasons, cheques meant for settlement of credit in favour of Credit Providers;
 - (iii) accounts compulsorily closed other than for administrative reasons;
 - (iv) proven cases of frauds and forgeries;
 - (v) proven cases of cheque-kiting;

- (vi) false declarations and statements;
 - (vii) receiverships, bankruptcies and liquidations;
 - (viii) tendering of false securities; and
 - (ix) misapplication of borrowed funds.
- t) **“Notice of Change”** means a written notice sent by a Bureau to a Credit Provider concerning a significant change to customer information that had previously been obtained by the Credit Provider from the Bureau for a period not exceeding twelve (12) months prior to the date of the Notice of Change;
- u) **“Notice of Resolution”** means a written notice sent from a Credit Provider to a Bureau, advising the results of an investigation by the Credit Provider into Customer Information previously reported to the Bureau by the Credit Provider where the customer has disputed the accuracy of information reported;
- v) **“Rules”** means the Rules of the Association as are in force from time to time, including its Code of Conduct and by-laws;
- w) **“Year”** means the period from 1st January to 31st December of every calendar year; and
- x) In this Constitution, any reference to the masculine gender only shall include the feminine gender or (as the case may be) the neuter gender and vice versa; and any reference to the singular number shall include the plural number and vice versa.

2.0 PART II – OBJECTIVES

2.1 Article II – Main Objectives

- a) The Association shall be non-profit making and non-political; and
- b) The Association shall facilitate the generation, collection, analysis, review, dissemination and use of accurate credit information and record for the benefit of all participants in the credit market.

2.2 Article III – Specific Objectives

Having thus stated the main objectives, and within the framework of the foregoing, the Association shall have the following principal objects:

- a) To promote and lobby for full file credit information sharing (CIS) amongst all credit providers;
- b) To represent the interests of all credit providers in policy and regulatory reforms relating to CIS;
- c) To undertake and promote education, awareness and communication initiatives in credit information sharing, credit access, consumer protection and dispute resolution in the credit market;
- d) To disseminate credible credit market information and research on a regular basis;
- e) To promote the highest standards in consumer protection and credit provision including, but not limited to, information sharing and credit-related dispute resolution and ensure that the value of credit rating to the economy and other stakeholders is fully appreciated;
- f) To facilitate the establishment of standards, codes and self-regulation in regard to credit information sharing, dispute resolution and credit rating as well as to ensure that Credit Reference Bureaus deliver value to the members, credit providers, the economy and credit consumers;
- g) To facilitate education of its members and all stakeholders on matters relating to credit, benefits of credit information sharing, benefits of alternative dispute resolution and to encourage the members and the credit consumers to check and make use of their credit reports on a regular basis;
- h) To promote and facilitate appropriate legislation in relation to CIS, credit access and dispute resolution and for any other related purposes;

- i) To ensure that discipline and good conduct in relation to submission, use and dissemination of credit information is observed among members by providing a code of conduct to be observed by all its members;
- j) To create awareness on the importance of maintaining good repayment discipline as well as avoiding over-borrowing or excess credit burdens;
- k) To enter into any arrangement with any governments or authorities that may seem conducive to the Association's objects or any of them, and to obtain from such government or authority any rights, privileges and concessions which the Association may deem desirable to obtain;
- l) To take such steps by personal or written appeals as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Association in the form of annual subscriptions or otherwise;
- m) To apply to any governments or authority, public bodies, corporations, companies or persons for and to accept grants or gifts of money and of any moveable or immovable property, dominions, gifts, subscriptions and other assistance with a view to promoting the objects of the Association and, in taking of any gift or property, to take the same subject to any special trust which may be prescribed by the donor thereof;
- n) To establish an endowment fund to receive grants, donations, gifts and other assistance in any form whatsoever from Kenya or from any other source for any one or more of the objects of the Association and to establish non-profit-making foundations in any country or countries for the purpose of receiving donations from private and corporate persons and for channelling the same to the Association's development operations;

- o) To do all such other things as are incidental or conducive to the attainment of any of the above objects;
- p) To oversee the establishment of a dispute resolution mechanism for resolution of CIS-related disputes;
- q) To open and establish branches within Kenya as it may deem necessary with the approval of the Governing Council and the Registrar of Societies. Such branches shall adopt the same constitution as that of the headquarters with the following exceptions:
 - (i) The aims and objects shall not include the formation of branches;
 - (ii) Amendments to the constitution may only be made by the headquarters in accordance with this Constitution; and
 - (iii) Branches shall not be dissolved without consultation with the headquarters.
- r) To carry on any other activities directly or indirectly related to CIS which will further the interests of the members, the consumers and the economy.

3.0 PART III – MEMBERSHIP AND GOVERNANCE

3.1 Article IV – Membership

Membership of the Association shall be open to all providers of credit be they companies, Non-Governmental Organizations (NGOs), corporations, associations, partnerships, sole traders or any other entities, who, in the course of business, lend money or grant credit in any form to individual consumers and commercial organisations, or who have other direct or related business interests in lending money or granting credit. Membership of the Association shall also be open to other Credit and Consumer service providers subject to approval by the Governing Council, provided that a member shall cease to be a member if:

- a) He gives one month's notice in writing to the Governing Council through the Secretary of his intention to resign from membership, which shall take effect from the date of receipt by the Secretary of such notice but such member shall be liable for subscription for the balance of the financial year in which he resigns;
- b) If following the recommendation of the Governing Council a member is removed from membership by the vote of not less than two-thirds (2/3rds) majority of the members of the Association present at an Extraordinary General Meeting of the Association specially convened for that purpose or at the annual general meeting at which the concerned member has been given a reasonable opportunity of attending and being heard for reasons, inter alia, that the conduct of the member has adversely affected the reputation or the dignity of the Association, or that the member has contravened any of the provisions of this Constitution or the code of conduct or the by-laws of the Association, or for any other reason or reasons that the Association may deem sufficient to warrant the removal of a member; or
- c) In any other manner provided by this Constitution.

Provided that any member who resigns or is removed from membership of the Association shall not be entitled to a refund of his subscription or any part thereof or any moneys contributed by such member at any time.

There shall be the following classes of membership-

3.1.1 Full Membership

- a) Available to credit grantors, lenders and organisations which undertake transactions with members of the public in terms of which regular payments are required to be made and who share or intend to share full repayment history of all trading divisions of such entities and who are

accepted by the Governing Council subject to the payment of the prevailing entrance fee and the subsequent subscriptions.

- b) Full membership shall also be open to market associations that represent lenders. Such associations shall only become full members on behalf of all their members.
- c) Full membership shall not be granted to selected subsidiaries or divisions of a member while excluding other credit granting subsidiaries or divisions of that member. Any exception to the provisions of this clause is to be agreed thereto by the Governing Council in writing.
- d) Only representatives of full members shall be elected to the Governing Council

3.1.2 Associate Membership

- a) Available to licensed Credit Reference Bureaus that process full members' consumer and commercial credit and payment information.
- b) This is a participatory membership aligned with the Association's objects and supports the objects and activities of the Association and assists in any way to achieve such objects. This category of membership has no voting rights.
- c) Any entrance fee or subscription fee, which may be applied to this class of membership, shall be set at a general meeting.

3.1.3 Affiliate Membership

- a) Available to other operators in the consumer and commercial credit granting market, lending or related fields that have no intention to share credit information but who have an interest in CIS.
- b) Affiliate membership is also open to the following:-
 - (i) A member with no intention to submit or receive data but who wishes to align with the objectives of CIS;

- (ii) "Secondary Service Provider." This is not credit bureau per se, but performs the function of accessing data from and/or submitting data to, a credit bureau on behalf of a credit provider;
 - (iii) Third Party Service Provider. This type of member shall access data on behalf of a credit provider such as to develop scorecards;
 - (iv) Data Providers who are willing to submit data, but not receive data, that is, do not wish to be Full Members under a data reciprocity arrangement;
 - (v) Insurance Broker/Underwriter accessing summarised data, score or premium on behalf of a Full member underwriting insurer; and
 - (vi) Regulators who may wish to have an observer role in the Association.
- c) Also available to other persons/bodies who carry on business, professions or associations which have a close association with and/or vital interest in the objects and activities of the Association.
 - d) This membership is granted at the discretion and approval of the Governing Council.
 - e) The type of reports that such associate members can receive from the bureaus, if any, shall be approved by the Governing Council on recommendation from a technical committee.
 - f) This category of membership may, at the discretion of the Governing Council and after recommendations by a technical committee, pay a subscription / membership fee.
 - g) This is passive membership that receives routine communication from the Association and has no voting rights or right of access to the database of the Association.

3.1.4 Matters Related to Membership

- a) No member shall, by virtue of payment of his membership fee or subscription fee or by virtue of his membership, acquire or be deemed to have acquired at any time any proprietary rights or interest whatsoever in the Association, property of the Association or its management or affairs.
- b) Each member of the Association shall nominate not only a representative but also an alternate for their organization. Such representatives shall be fully briefed on and competent to address the affairs of their own organisations relating to the aims and activities of the Association, including voting at such meetings.
- c) Members shall be entitled to change their nominees and any changes to such nominations shall be communicated to the Association in writing.

3.1.4.1 Admission to Membership

- a) Any applicant for membership shall apply in writing by filling the Association's Application Form and shall at the discretion of the Governing Council, be admitted as a member;
- b) An applicant may be required by the Governing Council to supply such particulars and information as the Governing Council may deem necessary;
- c) Every application for membership shall be placed before the Governing Council at its meeting or circulated among the members of the Governing Council for consideration;
- d) The Governing Council may admit the applicant as a Member or may, without assigning any reason, reject the application;

- e) An applicant being admitted as a Member shall, within 30 days from the date of receipt of intimation regarding its admission, pay the membership and subscription fees as required under this Constitution; and
- f) Upon admission to Membership, the Member shall be bound by this Constitution, the code of conduct and any bye-laws and resolutions of the Association.

3.1.4.2 Register of Members

- a) The Association shall maintain a Register of Members.
- b) The following particulars shall be entered in the Register of Members:-
 - i) Name and address of each Member and the date of commencement of its membership;
 - ii) Names of not more than two (2) Authorized Representatives of each member who are entitled or empowered to act and vote on behalf of the member or otherwise represent the member for the purpose of this Constitution or for any other purpose of the Association;
- c) Every member shall furnish the names of its Authorized Representatives to be entered in the Register within one (1) month of its admission as a member,
- d) Any change in the names of Authorized Representatives shall be notified by every member in writing to the Association as and when such change occurs;
- e) Every member shall be entitled to be represented at any General Meeting through its Chief Executive Officer or, in his absence, through any one of its duly Authorized representatives; and

- f) The name of a member and its Authorized Representatives shall be removed from the Register of Members in the event of its ceasing to be a member in pursuance to this Constitution.

3.1.4.3 Privileges of Members

Subject to such conditions as may from time to time be prescribed by the Governing Council, every member shall be eligible to:-

- a) Obtain the guidance and advice of the Association on CIS issues;
- b) Obtain all circulars and publications of the Association; and
- c) Receive the benefits pursuant to the objects of the Association as set out in this Constitution.

3.1.5 Subscription and Entrance Fees

- a) Every member admitted or re-admitted as a member of the Association shall pay a nominal entrance fee of Kenya Shillings One Thousand (KShs. 1,000.00) only and a nominal annual subscription fee of Kenya Shillings One Thousand (KShs. 1,000.00) only. The fee shall be reviewable by the Governing Council from time to time and ratified at the next Annual General Meeting. The fee shall be due on every 1st day of January of each year.
- b) Should membership commence on a date other than the date referred to above, a pro-rata subscription shall be payable in respect of the unexpired period ending on the 31st day of December of that year.
- c) A member, whose subscription is more than two (2) months in arrears, shall be suspended until payment of such subscription and access to the shared database of the Association shall be withheld during the

period of suspension. The Governing Council may at its discretion terminate the membership of such suspended member.

- d) Any Member who ceases to be a Member of the Association shall pay fresh entrance fees if it is admitted as a Member once again.

3.2 Article V – The Governing Council

- a) The Governing Council shall be the policy-making organ of the Association and shall be made up of fully paid-up full members of the Association.
- b) The Governing Council shall be responsible for the management of the Association and for giving directions to the office bearers as to the manner in which, within the law, they shall perform their duties; and
- c) To authorize the disbursement of moneys on behalf of the Association.

3.3 Article VI – The Management Structure

- a) The day-to-day affairs of the Association shall be managed by the Chief Executive Officer and his officers.
- b) The Chief Executive Officer shall be appointed by the Governing Council of the Association on such terms and conditions as are mutually agreed.
- c) The Chief Executive Officer shall present a job description to the Governing Council for ratification, which job description may be amended by the Governing Council as and when necessary to cater for changing circumstances.
- d) The management may pay all expenses incurred in setting up and registering the Association and may exercise such powers of the

Association as are not required by this Constitution to be exercised by a General Meeting, to achieve the objectives of the Association.

- e) No regulations made by the Association in a General Meeting shall invalidate any prior act of the management which would have been valid if such regulations had not been made.

3.4 Article VII - First Appointment to the Governing Council

- a) The first members of the Governing Council shall be appointed in writing by the subscribers to this Constitution, and shall include three (3) persons who shall act respectively as the Chairperson, the Deputy Chairperson and the Treasurer of the Association until the conclusion of the first Annual General Meeting PROVIDED THAT to qualify for the such appointment to the Governing Council as a first member, one shall be or shall represent a full member of the Association.
- b) In addition, there shall be appointed a Secretary, who shall be the Chief Executive Officer of the Association and an ex-officio member of the Governing Council, and an Assistant Secretary for such term and on such conditions as the Governing Council shall determine.

3.5 Article VIII - Other Appointments to the Governing Council

- a) The Governing Council shall be elected by voting members or their Proxies present at the Annual General Meeting and it shall consist of all the office bearers of the Association (excluding the Secretary and the Assistant Secretary) and other members elected at the Annual General Meeting PROVIDED THAT the minimum number of members shall not be less than nine (9) members and shall not exceed twelve (12) members - representing different credit sectors. All Governing Council Members elected must belong to the category of full members.
- b) Elected members must attend at least seventy-five percent (75%) of total meetings of the Governing Council in a financial year. Reasons for

absence by a member or a member's representative from the meetings of the Governing Council must be forwarded to the Governing Council to establish the validity thereof and, if the reasons are judged not to be valid, the subject member or representative shall not be voted in again. However, the affected member may be voted in again with a new representative.

- c) The Chief Executive Officer shall be an ex-officio member of the Governing Council but shall have no vote nor shall he serve as a Chairperson or a Deputy-Chairperson.
- d) Immediately after the Annual General Meeting, a newly elected Governing Council shall convene to elect a Chairperson, a Deputy Chairperson, a Treasurer and an Assistant Treasurer. The Chief Executive Officer shall act as the secretary to the Governing Council.
- e) The Governing Council, under the direction of the Chairperson, shall meet as and when necessary but shall meet at least once every three (3) months (that is, quarterly in a year) at such times and places as it shall resolve to conduct the business of the Association.
- f) Full members of the Association who have representation in the Governing Council shall be entitled to change such representatives subject to the provisions of this Constitution and provided that any such change is communicated to the Association in writing and that the new representatives have the requisite authority to bind the relevant Full Member of the Association.
- g) The Governing Council may co-opt further representatives of full members of the Association who shall serve until the next Annual General Meeting. The Governing Council may, as required, set up working Sub-Committees to address specific issues in detail and to make reports to the Governing Council upon which such action shall be taken as seems to the Governing Council desirable. Each Sub-Committee shall

operate for a specified duration and under the guidance of a definite brief. The Governing Council may co-opt both members of the Association and non-member specialists to participate in any working Sub-Committees.

- h) The Governing Council members shall serve for a term of 2 years and shall retire at the Annual General Meeting. Retiring members may put themselves forward for re-election.
- i) Retirement of Governing Council members shall be on a rotational basis and shall ensure that at least one-third (1/3rd) of the previous Governing Council members is retained.
- j) Any representative of a member who is suspended by the Association, or resigns, shall automatically retire himself from the Governing Council.
- k) The quorum for the Governing Council meetings shall be Two-Thirds (2/3^{rds}) of the members.
- l) The Governing Council may from time to time appoint any full member or a representative of any full member of the Association in case of a vacancy, by way of addition, to the Governing Council until the next annual general meeting of the Association PROVIDED THAT the prescribed maximum is not thereby exceeded and PROVIDED ALSO THAT the proposal to appoint any new member of the Governing Council under this section shall be set out in a formal resolution forming part of the notice convening the Governing Council Meeting.

3.6 Article IX – Alternates

Any member of the Governing Council may appoint another member to be his alternate to act in his place at any meetings of the Governing Council at which he is unable to be present. Such appointees shall be entitled to exercise all the rights and powers of a member of the Governing Council and, where they are

members of the Governing Council, shall have a separate vote on behalf of their appointers in addition to their own votes. A member of the Governing Council may at any time, revoke the appointment of an alternate. Such appointment shall be revoked ipso facto, if his appointer ceases to be a member of the Governing Council. Every appointment and revocation under this paragraph shall be effected by notice in writing under the hand of the appointer served on the Association and such alternate.

3.7 Article X – Office Bearers

- (a) The office bearers of the Association shall be:-
 - (i) The Chairperson
 - (ii) The Deputy Chairperson
 - (iii) The Secretary
 - (iv) The Assistant Secretary (appointed in the same manner as the Secretary)
 - (v) The Treasurer
 - (vi) The Assistant Treasurer

- (b) All office bearers (except the Secretary and the Assistant Secretary) shall be fully paid-up members and must belong to the category of “full Members”.

- (c) All office bearers (except the Secretary and the Assistant Secretary) shall hold office for a term of two (2) years from the date of their election but shall be eligible for re-election.

- (d) The Chief Executive Officer and all other officers and staff of the Association shall be paid their remuneration out of the funds of the Association;

- (e) Any office bearer who having been a full member ceases to be a full member of the Association shall automatically cease to be an office bearer of the Association;

- (f) Office bearers may be removed from office in the same way as is laid down for the removal of members in this Constitution and vacancies thus created shall be filled as is provided for in this Constitution;
- (g) If the Chairperson, during his term of office, should cease to be a member of the Association, resigns from office or dies, the other officials shall elect one of them (except the Secretary and the Assistant Secretary) to hold office until the next elections when a new Chairperson shall be elected; and
- (h) The procedure for filling the vacancy of the office of the Chairperson applies in filling any vacancies to the office of the Deputy Chairperson, the Treasurer and the Assistant Treasurer.

3.8 Article XI – Duties of Office Bearers and Officials

a) The Chairperson

The Chairperson shall, unless prevented by illness or other sufficient cause:-

- (i) Preside over all the meetings of the Governing Council and all General Meetings of the Association;
- (ii) Provide general policy guidelines relating to the affairs of the Association as expressly provided for in this Constitution; and
- (iii) In the absence of the Chairperson, the Deputy Chairperson shall chair the meetings.

b) The Deputy Chairperson

- (i) The Deputy Chairperson shall perform any duties of the Chairperson in the absence of the Chairperson including presiding over the meetings of the Governing Council and the General Meetings of the Association.

- (ii) In the absence of both the Chairperson and the Deputy Chairperson, the members of the Governing Council shall elect one of the members of the Governing Council to chair the meetings.

c) The Secretary / the Chief Executive Officer

The Secretary shall be the Chief Executive Officer of the Association and shall be accountable to the General Meetings and the Governing Council and shall:-

- (i) Deal with all the correspondence of the Association under the general supervision of the Governing Council BUT in cases of urgent matters where the Governing Council cannot be consulted, the Secretary shall consult the Chairperson or, if the Chairperson is not available, the Deputy Chairperson PROVIDED THAT all the decisions reached upon such consultation shall be subject to ratification or otherwise at the next meeting of the Governing Council;
- (ii) Represent and act on behalf of the Association generally;
- (iii) Do all such acts as may be necessary for the efficient running of the Association;
- (iv) Keep a full, complete and up-to-date record of the Association's affairs;
- (v) Keep minutes of all meetings of the Governing Council and of the General Meetings of the Association;
- (vi) Preserve all records of proceedings of the Association and of the Governing Council;
- (vii) Carry out all correspondence and publicity on behalf of the Association;

- (viii) Arrange for, and issue notices convening, all meetings of the Governing Council and all general meetings of the Association on the instructions of the Governing Council, or in special circumstances, on the instructions of the General Meetings;
- (ix) Do all such acts as are necessary for the efficient and effective running of the Association's affairs; and
- (x) Execute such powers, authority and functions as the Governing Council may from time to time delegate to, entrust in and confer upon him including but not limited to powers to incur expenditure, sign cheques or deal with the funds and the property of the Association as may be necessary, which powers, authority and functions may be revoked at any time by the Governing Council **PROVIDED THAT** that the powers to incur expenditure, sign cheques or deal with the funds of the Association shall not be delegated by the Chief Executive Officer to, and cannot be exercised by, any other person without the express authority of the Governing Council.

d) The Assistant Secretary

In the absence of the Secretary, the Assistant Secretary shall perform all the duties of the Secretary and such other duties as shall be assigned to him by the Secretary or the Governing Council whether the Secretary is present or not.

e) The Treasurer

The Treasurer shall in general ensure that proper accounting procedures are adhered to, and shall:-

- (i) Receive and disburse on behalf of the Association, under the directions of the Governing Council, all moneys belonging to the Association;

- (ii) Issue receipts for all moneys received by him on behalf of the Association;
- (iv) Keep and preserve vouchers for all moneys paid by him;
- (v) Keep and preserve on a proper accounting basis all the financial records and books of accounts of all moneys received and paid by the Association and avail the same for inspection and scrutiny by the Governing Council, the General Meetings and the Auditors of the Association;
- (vi) Open a bank account or bank accounts in the name of the Association on the advice of the Governing Council;
- (vii) In liaison with the Auditors of the Association, provide reports on the financial statement of the Association and audited accounts to the General Meetings; and
- (viii) Ensure that no payment shall be made out of the bank account or bank accounts of the Association without resolutions of the Governing Council authorizing such payments and all cheques on such bank account or bank accounts shall be signed by the Treasurer and two (2) other office bearers of the Association.

f) The Assistant Treasurer

The Assistant Treasurer shall perform such duties as may be specifically assigned to him by the Treasurer or by the Governing Council and, in the absence of the Treasurer, shall perform the duties of the Treasurer.

3.9 Article XII – Removal of Governing Council Members

The Governing Council may by resolution remove any of its members from office, but if such a member feels aggrieved at his removal, he may appeal to a General Meeting to be called for this purpose. In the meantime, such member

shall cease to act as a member of the Governing Council and to hold any other office in the Association, and members for the time being remaining in the Governing Council may act notwithstanding any vacancy in the Governing Council PROVIDED ALWAYS that in case the members of the Governing Council shall at any time be reduced in number to less than the required quorum, the Governing Council may co-opt any person to advise the Governing Council in any capacity which the Governing Council shall think fit.

4.0 PART IV – MEETINGS AND QUORUMS

4.1 Article XIII – Proceedings of the Governing Council

The Governing Council may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In case of any equality of votes, the Chairperson shall have a casting or second vote.

4.2 ARTICLE XIV – Calling Meetings

(a) Normal Meetings

All ordinary meetings of the Governing Council shall be summoned by the Secretary, acting in consultation with the Chairman, by giving at least fifteen (15) days' written notice accompanied by the proposed agenda.

(b) Requisitioned Meetings

A member of the Governing Council may request for a meeting, and on the request of at least twenty-one (21) days' written notice served upon members of the Governing Council with an indication of the proposed agenda.

4.3 Article XV – Formation of Committees

(a) The Governing Council may delegate any of its powers to Committees consisting of such members of the Governing Council as it thinks fit,

and any Committee so formed shall, in the exercise of the powers delegated, conform to any regulations prescribed by the Governing Council. The meetings and proceedings of any such Committee shall be governed by the provisions of this Constitution for the time being regulating the meetings and proceedings of the Governing Council so far as applicable and so far as the same shall not be superseded by any rules made by the Governing Council.

- (b) All acts bona-fide done by any meeting of the Governing Council or any Committee of the Governing Council or by any person acting as a member of the Governing Council, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any such member or person acting as aforesaid that they or any of them were disqualified, be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a member of the Governing Council.
- (c) A resolution in writing signed by not less than a majority of members for the time being of the Governing Council or of any Committee of the Governing Council who are duly entitled to receive notice of a meeting of the Governing Council or of such Committees shall be as valid and effectual as if it had been passed at a meeting of the Governing Council or of such Committee duly convened and constituted.

4.4 Article XVI – Disqualification of Members of the Governing Council

The office of a member of the Governing Council shall be vacated:

- (a) If a receiving order is made against him or he makes an arrangement or composition with his creditors;
- (b) If he becomes of unsound mind;

- (c) If he fails to attend the meetings of the Governing Council for a consecutive period of six (6) months, except by special leave of the Governing Council;
- (d) If by notice in writing to the Association through the Secretary he resigns his office, which resignation shall take effect from the date of receipt by the Secretary of such notice;
- (e) If he is removed from office by a resolution duly passed under this Constitution; or
- (f) If he is removed, or the member he represents is removed, from membership of the Association pursuant to a resolution of the Association.

4.5 Article XVII – General Meetings

- (a) There shall be two (2) classes of general meetings; namely - annual general meetings and extraordinary or special general meetings.
- (b) The Agenda for any Annual General Meeting shall consist of the following:-
 - (i) Confirmation of the minutes of the previous Annual General Meeting;
 - (ii) Consideration of the Accounts of the Association;
 - (iii) Election of office bearers, members of the Governing Council and Trustees in accordance with this Constitution (when applicable);
 - (iv) Appointment of Auditors in accordance with this Constitution;
 - (iv) Such other matters as the Governing Council may decide or as to which notice shall have been given in writing by a member or members to the Secretary at least thirty (30) days before the date of the meeting; and

- (vi) Any other business with the approval of the Chairman.

- (c) The Association shall in each year hold an Annual General Meeting not later than 15th day of December each year. Notice in writing of such Annual General Meeting, accompanied by the Annual Statement of Account and the agenda for the meeting shall be sent to all members not less than twenty-one (21) days before the date of the meeting and, where practicable, by press advertisement not less than fourteen (14) days before the date of the meeting.

- (d) The Annual General Meetings shall be called Ordinary General Meetings and all other General Meetings shall be called Extraordinary or Special General Meetings.

- (e) Minutes of all proceedings of every General Meeting of the Association shall be made and shall be entered or caused to be entered by the Chief Executive Officer in the Minute Book kept for that purpose.

- (f) At every General Meeting, the Minutes of the last preceding General Meeting shall be read by the Chief Executive Officer and, if confirmed, signed by the Chairperson.

- (g) The Minute Book shall be open for inspection by any Member at all reasonable times upon notice.

- (h) The quorum for Annual General Meetings shall be not less than two-thirds (2/3rds) of the registered members of the Association.

4.6 Article XVIII – Notice of General Meetings

The Notice of a General Meeting shall be at least twenty-one (21) days (exclusive of the day on which the notice is served or deemed to be served and of the day for which it is given) specifying the place, the day and the hour of the meeting of the Association. A General Meeting shall, notwithstanding that

it is called by shorter notice than that specified in the Constitution, be deemed to have been duly called if it is so agreed by all the members entitled to attend and vote thereat, provided also that any accidental omission to give notice to or the non-receipt of notice of a meeting by any person entitled to receive such notice shall not invalidate the proceedings of that meeting.

4.7 Article XIX – Manner of Convening Extraordinary General Meetings

- (a) The Governing Council may, whenever it thinks fit, convene an Extraordinary General Meeting for any specific purpose and notice in writing of such meeting shall be sent to all members not less than seven (7) days before the date thereof and, where practicable, by press advertisement not less than seven (7) days before the date of such meeting;
- (b) The Governing Council shall also, on the requisition of not less than one-third (1/3rd) of the members of the Association, proceed to convene an Extraordinary General Meeting, provided that the requisition must state the specific objects of the meeting and must be signed by the requisitionists and deposited with the Secretary as well as members of the Governing Council and such meeting shall be held within twenty-one (21) days of the date of requisition and notice in writing of such meeting shall be sent to all members not less than seven (7) days before the date thereof and, where practicable, by press advertisement not less than seven (7) days before the date of such meeting;
- (c) No matter shall be discussed at any Extra Ordinary General Meeting other than that stated in the notice calling such a meeting or in the requisition;

PROVIDED that no business shall be transacted at any Annual General Meeting or any Extraordinary General Meeting unless a quorum of members is present at the time when the meeting proceeds to business.

Members present in person or by proxy shall be considered in determining the quorum.

- (d) The quorum for Extra Ordinary General Meetings shall be not less than one-third (1/3rd) of the registered members of the Association;
- (e) The Chairperson of any meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished. When such adjournment extends to more than thirty (30) days since the original scheduled date of the meeting, notice of the adjourned meeting shall be given as in the case of an original meeting.

4.8 Article XX – Voting at General Meetings

Voting

- (a) At all meetings of the Association, the Chairperson, or in his absence, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a member selected by the meeting, shall preside.
- (b) The Chairperson may, at his discretion, limit the number of members allowed to speak in favour of or against any motion.
- (c) At any General Meeting, a resolution put to the vote of the meeting shall be decided by a show of hands unless the decision to be taken is required by law to be taken by secret ballot or unless a poll is demanded by at least 25% of the members entitled to vote. All decisions in respect of election of officers or dissolution of the Association **shall be by secret ballot.**
- (d) Where a secret ballot or poll is to be taken, the Chairperson shall fix the time, place and method of taking the same and recoding votes.

- (e) Every member entitled to vote shall have one vote. Where associations are members of the Association, they shall have votes equivalent to their number of members, provided that their membership and subscription fees shall have been paid on behalf of each member.
- (f) The result of any voting shall be declared by the Chairperson or the Chief Executive Officer and such declaration shall be final.
- (g) No member shall be entitled to vote at any General Meeting or at a secret ballot or upon a poll unless all subscriptions presently payable by such member shall have been paid.
- (h) All resolutions of a General Meeting, except a resolution for amendment of this Constitution and a resolution for dissolution of the Association, shall be declared to have been carried if they receive a simple majority of the votes.
- (i) In case of a tie, the Chairperson of the meeting shall have a casting vote.
- (j) Every resolution which shall have been duly passed according to this Constitution at any General Meeting shall be binding upon all members.

PROVIDED that when a matter affecting a member personally comes before the General Meeting, although he may be present at it, he shall not be entitled to vote on the question and the Chairperson may require him to withdraw during the discussion, and he shall in that case withdraw accordingly.

- (k) On a poll, votes may be cast personally or by proxy, provided that the instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing. A proxy must

be a member of the Association provided that no person shall be entitled to be appointed a proxy of more than two (2) absent members.

- (l) The instrument appointing a proxy and the power of the attorney or other authority, if any, or a notarially certified copy of that power or authority shall be deposited at the office or at such other place convening the meeting, not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in case of a poll, not less than twenty-four (24) hours before the time appointed for taking the poll, and in default the instrument of the proxy shall not be treated as valid after the expiration of twelve (12) months from the date of its execution.

4.9 Article XXI – Corporations or Associations Acting by Representatives at Meetings

Any corporation or association which is a member may, by resolution of its directors or other governing body or by notification in writing under the hand of some officer of such corporation as may be duly authorised in that behalf, authorise such person as it thinks fit to act as its representative at any meeting of the Association, and the person so authorised shall be entitled to exercise the same power on behalf of the corporation or Association which he represents as that corporation or association could exercise if it were an individual member of the Association.

5.0 TRUSTEES

All land, buildings and other immovable property and all investments and securities which shall be acquired by the Association shall be vested in the name of not less than three (3) trustees who shall be members of the Association and shall be appointed at an Annual General Meeting for a period of three (3) years. On retirement, such trustees may be re-elected. A General Meeting shall have the power to remove any of the trustees and all the

vacancies occurring by removal, resignation or death of any trustee(s), shall be filled at the same or future General Meeting.

The trustees shall pay all income received from the property vested in them through 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 Governing Council which shall authorise expenditure of such moneys as it thinks fit.

6.0 PART V – FUNDS

6.1 Article XXII – Application of Funds and Assets

- (a) The funds and the assets of the Association shall be applied solely towards the following purposes:-
- (i) the promotion of the objects of the Association as set forth in this Constitution;
 - (ii) payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Association or any member or the Association, in return for any services actually rendered to the Association;
 - (iii) Payment of reasonable and proper rent for premises demised or let for use by the Association, the Governing Council or any of its branch or branches;
 - a. Setting up branches of the Association;
 - b. Insuring the personnel and the property of the Association;
 - c. Payment of advertisements necessary under this Constitution;
 - d. Payment of auditors and other professionals engaged by the Association to render professional or technical services to the Association or to any of its branch or branches; and

- e. Payment for any other necessary expenses incurred in the running of the Association or its branch or branches.
- (b) All moneys and funds of the Association shall be received by and paid through the Treasurer and shall be deposited by the Treasurer in any of the Association's bank account or accounts approved by the Governing Council;
- (c) No portion of the Association's moneys shall be paid or transferred directly or indirectly as dividend, gift, bonus or otherwise as profit to the members of the Association;
- (d) No payments shall be made out of the bank account or bank accounts of the Association without a resolution of the Governing Council authorizing such payment and all cheques on such bank account or bank accounts shall be signed by the Treasurer or, in the absence of the Treasurer, by the Assistant Treasurer and two (2) other office bearers of the Association duly appointed in that regard by the Governing Council;
- (e) A sum not exceeding Kenya Shillings Ten Thousand (KShs. 10,000.00) may at any time be kept by the Treasurer for petty disbursements of which proper account shall be kept; and
- (f) The Governing Council shall have power to suspend at any time any office bearer who it has reasonable cause to believe that he is not properly accounting for any of the funds or property of the Association 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 (2) 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.

6.2 Article XXIII – Indemnity of Council Members

Every member of the Governing Council and officers or servants of the Association shall be indemnified against (and it shall be the duty of the Governing Council, out of the funds of the Association, to pay) all costs, losses and expenses which such person may incur or become liable for by reason of any contract entered into, or act or thing done by him in good faith in the capacity aforesaid, in any way in the discharge of his duties, including travelling expenses, and the Governing Council may give to any officer or employee of the Governing Council, such security by way of indemnity as it may think proper.

6.3 Article XXIV – Members’ Contribution to Assets or Debts on Winding Up

The Association may sue or be sued in its own name. Any judgment creditor may attach the property of the Association in execution of a judgement debt. The members shall not, in the event that the Association, be liable to pay its debts, whether during its existence or on dissolution, be liable to contribute towards the payment of such debts.

6.4 Article XXV – Accounts

- (a) It shall be the responsibility of the Treasurer to cause the accounts to be kept and in particular as regards;
 - (i) The sums of money received and expended by the Association and the matters in respect of which such receipts and expenditures take place; and
 - (ii) The assets and liabilities of the Association.
- (b) The books of accounts of the Association shall be kept at the office of the Association or at such other place as the Governing Council thinks fit, and shall always be open to the inspection of the members of the Governing Council during business hours.

- (c) At the Annual General Meeting in every year, the Governing Council shall lay before the members present a proper income and expenditure account for the period since the last preceding account made up to a date more than nine (9) months before such meeting.
- (d) A proper Balance Sheet as at the date on which the income-expenditure account is made up shall be prepared every year, and laid before the members present at the Annual General Meeting. Every such balance sheet shall be accompanied by a proper report of the Governing Council and the Auditors.
- (e) Copies of the income and expenditure account, balance sheet and reports, all of which shall be framed in accordance with any statutory requirements for the time being in force, and of any other documents required by law to be annexed or attached thereto or to accompany the same shall, not less than twenty one (21) clear days before the date of the Annual General Meeting, be sent to the Auditors and all other persons entitled to receive notices, of such meetings in the prescribed manner.

6.5 Article XXVI – Auditors

- (a) The Association shall at each Annual General Meeting appoint an Auditor or Auditors to hold office until the next Annual General Meeting, PROVIDED THAT a member of the Governing Council or other officer of the Association shall not qualify to be appointed as an Auditor of the Association.
- (b) The Governing Council may fill any casual vacancy in the office of the Auditor, but while any such vacancy continues, the serving or continuing Auditor or Auditors, if any, may act.
- (c) The remuneration of the Auditors of the Association shall be fixed at the Annual General Meeting, except that the remuneration of any

auditors appointed to fill any casual vacancy may be fixed by the Governing Council.

- (d) Every Auditor of the Association shall have a right to see all relevant vouchers, and shall be entitled to access at all time the records, books, documents and accounts of the Association that he requires from the Governing Council.
- (e) 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 (6) weeks and not more than three (3) months before the date of the annual general meeting.
- (f) The Auditors shall examine such annual accounts and statements and make a report to the members of the Association of the accounts so examined by them and on every balance sheet laid before the Association at its Annual General Meeting during their tenure of office, and the report shall state:
 - i) Whether or not they have obtained all the information and explanations that they have required;
 - ii) Whether or not the accounts and statements so examined are correct, duly vouched and in accordance with the law or, otherwise, in what respect they are found to be incorrect, unvouched or not in accordance with the law; and
 - iii) Whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the Association's affairs.
- (g) A copy of the Auditor's report on the accounts and statements of the Association 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.

6.6 Article XXVII – Inspection of Books of Accounts and List of Members

The books of accounts and all documents relating thereto and list of members of the Association shall be available for inspection at the registered office by any member of the Association on giving not less than seven (7) days' notice in writing to the Association BUT the same shall always be open for inspection by members of the Governing Council at any time during business hours.

6.7 Article XXVIII DISCIPLINARY PROCEDURES

- (a) Any complaint against a member concerning an alleged breach, non-observance or contravention of the Association's Constitution or Code of Conduct or by-law, by a member of the Association, shall, if found that the complaint cannot be resolved expeditiously or satisfactorily by the Chief Executive Officer, Chairperson and/or Vice-Chairperson of the Governing Council, be referred in writing to a Disciplinary Committee, appointed by the Governing Council (hereinafter referred to as the "DC") and consisting of at least three (3) full members of the Association. Any member who has an interest in the complaint may not be a member of the DC.

- (b) During the course of the enquiry, the DC shall have power to call before it the Complainant or any member for the purposes of conducting the enquiry and investigating the complaint. The member being investigated shall be given notice in writing which notice shall be hand delivered or sent by pre-paid registered post to the member concerned and which notice shall specify the nature of the offence or misconduct alleged against the member and the date, time and venue of the meeting of DC which the member is required to attend.

- (c) If in the opinion of the DC it is necessary for the complainant to attend the meeting, written notice shall be served on him requesting such attendance. The notice periods referred to shall be at least twenty-one

(21) consecutive days from the date of hand delivery or thirty (30) consecutive days from the date of posting (as the case may be). The member being investigated shall be afforded the opportunity of stating his case at the meeting either personally and/or through a legal representative. The member being investigated shall furthermore have the right, but not be obliged, to submit documentary evidence in support of his case.

- (d) Should the member being investigated or his legal representative or the complainant, where applicable, fail to attend the meeting, the DC shall be entitled to draw such reasonable inferences as it considers appropriate in the circumstances on the evidence before it. The DC after hearing the parties and after considering any other reports shall have the power to acquit, caution, suspend or expel the member under investigation on finding, on balance of probability, that he committed or did not commit the alleged offence. Any decisions made by the DC shall be communicated in writing to all members.
- (e) A member who is not satisfied with the decisions given by the DC shall be entitled to appeal in writing to the Governing Council within thirty (30) days from the date of such decision, as per the aforementioned timeliness. The Governing Council, excluding any members who have an interest in the issue, shall consider the decision of the DC, and the Governing Council's decision shall be final and binding.
- (f) The Governing Council may at the mutual request of both disputing parties, intervene in a dispute regarding credit practices between two or more members of the Association or between any of the members of the Association and itself or its office bearers or its officials working on its behalf.

6.8 Article XXIX – Financial Years

The financial years of the Association shall begin on the first day of January and end on the last day of December or at such other time as the Governing Council may from time to time determine.

7.0 PART VI – AMENDMENT TO THE CONSTITUTION

Article XXX – Amendments

The Association may by a resolution of at least two-thirds (2/3rds) passed at an Annual General Meeting amend, modify or repeal this Constitution or adopt a new constitution or change the name of the Association, and shall be subject to the approval of the Registrar of Societies, provided that no such alteration, amendment or modification shall be made which shall impair or prejudice the effectiveness and assets of the Association to the members.

8.0 PART VII - DISSOLUTION

8.1 Article XXXI – Dissolution

(a) The Association shall not be dissolved or wound up except by a resolution passed at a General Meeting by votes of two-thirds (2/3rds) of the members present. The quorum at the meeting shall be at least Seventy-five per cent (75%) of the members of the Association. If no quorum is obtained, the proposal to dissolve or wind up the Association shall be submitted to a further General Meeting which shall be held one (1) month later. Notice of this meeting shall be given to all members of the Association at least fourteen (14) days before the date of the meeting. The quorum for this second meeting shall be the number of the members present.

PROVIDED HOWEVER THAT no dissolution shall be effective without prior permission in writing of the Registrar of Societies, obtained upon an application to him made in writing and signed by three (3) of the office bearers.

- (b) When the dissolution of the Association has been approved by the Registrar of Societies, no further action shall be taken by the Governing Council or any office bearer of the Association in connection with the aims of the Association other than to get in and liquidate for cash all the assets of the Association. Subject to the payment of all the debts of the Association, 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.

SIGNED:

Signature:

Name:

Designation:

Signature:

Name:

Designation:

Signature:

Name:

Designation: