

## **FKE CONSTITUTION AND BY-LAWS**

(As amended on the 27<sup>th</sup> day of May, 2015)

### **PREAMBLE**

**PURSUANT** to a **SPECIAL RESOLUTION** of the Management Board which is attached to this Constitution, **AND**

**IN ACCORDANCE** with the requirements of the Act, **AND**

**DESIROUS** of aligning this constitution with the national Constitution on matters of industrial and labour relations which are provided in the national Constitution; **AND**

**COGNISANT** of the FKE's patriotic duty of rallying its members and fraternity to embrace the spirit of national values and the principles of accountable rendition of service to its members as well as to the people of Kenya in general, also contained in the national Constitution; **AND**

**DETERMINED** to address operational inadequacies in the form and substance of the current constitution through, among other measures, the incorporation into this constitution of international best practices now obtaining in the field of labour and industrial relations as championed by the ILO, **AND**

**DRIVEN** by the desire to restructure the governance structure of the Federation and then thereafter to re-energize the management thrust of the Federation in order to serve our members more effectively and to add value to their *investment* in the Federation...

**NOW THEREFORE, WE THE BOARD**, with the full endorsement and approval of the membership and stakeholder fraternity of the Federation, **DO HEREBY AMEND** the current constitution of the Federation of Kenya Employers, also known in short as the **FKE**, last amended on the 29<sup>th</sup> day of June, 2005, **AS FOLLOWS-**

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## **PART I – PRELIMINARY**

### **1. Name, registered office and juristic status of the Federation**

1(a) The name of the Federation remains the **Federation of Kenya Employers**. In the alternative the Federation may, without prejudice to its full name, be addressed in the acronym the **“FKE.”**

(b) Unless otherwise determined by the Board, the office and address of the Federation shall be in Kenya as follows-

Waajiri House, Argwings Kodhek Road, Mlimani, Post Office Box Number 48311-00100, Nairobi, plus any electronic address as may be specified from time to time, as well as branch offices and their several addresses, as contained in the **Appendix I** hereto. The said office off Argwings Kodhek Road, in Nairobi, is the Federation’s headquarters and place for business meetings and process service unless the Board decides otherwise.

(c) The legal status of the Federation is that the Federation is -

- (i) a **juristic or corporate person** and the consequences thereof ensue in accordance with the provisions of section 21 of the Act; and
- (ii) a **not-for-profit** members’ organization.

### **2. Construction**

2(1) The clauses into which this constitution is divided shall be referred to as **“Articles”** and not sections; and the sub-parts thereof shall be construed as **“sub-articles”** and *et cetera*.

(2) The words and phrases contained in this Article shall govern the construction of this constitution. Accordingly, in this constitution unless the context requires otherwise-

**“Act”** means the Labour Relations Act [Cap. 234];

**“Article”** means Article of this Constitution;

**“Board”** means the Management Board established under Article 13(1)

**“Board Member (or member of the Board)”** means a person elected pursuant to Article 14(1) to be Member of the Board and includes a person authorised by this Constitution to represent member of the Board;

**“by-laws” or “regulations”** means rules made by the Executive Directorate and approved by the Board from time to time pursuant to this constitution for effective implementation of this constitution;

**“President or President”** means the National President of the Board and Vice President shall be construed accordingly;

**“Chief Executive Officer”** means the **Chief Executive Officer/Executive Director** of the Federation appointed under Article 23(1) and may also be referred to by the acronym **“CEO”**;

**“Executive Division”** means the Executive Division or the Secretariat of the Federation established by the Board pursuant to Article 22(1) for purposes of running the day to day affairs of the Federation;

**“Federation”** means the **Federation of Kenya Employers** as duly registered under the Act and may also be referred to by the acronym **“FKE”**;

**“Government”** means the Government of the Republic of Kenya;

**“ILO”** means the International Labour Organization;

**“member”** means member of the Federation and includes a representative or alternate of such member nominated or appointed pursuant to Article 7;

**“ national Constitution”** means the Constitution of the Republic of Kenya, 2010;

**“previous constitution”** means the constitution which is the subject of amendments herein contained and which is now replaced in its entirety under Article 44;

**“Registrar”** means Registrar as defined under the Act;

**“trade union”** has the meaning assigned to it under the Act;

**“tripartite agreement”** has the meaning assigned to it under the Act;

“Trustee” means a person appointed by the Board pursuant to Article 35(1) to serve as trustee of the Federation.

## PART II – OBJECTS OF THE FEDERATION

### 3. Primary object

3(1) The primary object of the Federation is to win, bring together, co-ordinate, speak in any relevant forum for, or otherwise articulate, make known, champion, advance and or defend the rights and interests of members; and in that respect advise, assist or support the members of the Federation to realize, in accordance with the national Constitution and other written laws and this constitution, all their rights, legitimate quests and the value for their investment in the Federation as circumstances may demand and or permit from time to time.

(2) Without prejudice to the generality of sub-article (1) and pursuant to the substratum of the primary object, **the other objects of the Federation** are to-

(a) encourage the members to develop, uphold, and practise **the principle of maintenance of good relations** between employers and employees and to further promote sound management practices amongst employers through the application of principles of and best practices in **good corporate governance** in the stewardship of their business enterprises for the sake of fostering sustainable industrial and labour relations in contribution to national economic development;

(b) promote and encourage consultations or dialogue on matters of mutual interest between or amongst members, which matters are affecting or are likely to affect members’ interests or any other matters related thereto;

(c) collect, collate, analyze relevant data of interest to members and circulate amongst members statistics and information relating to or affecting common interests or otherwise share any other relevant information for the benefit of members;

(d) enjoin all its members to **observe**, when dealing with their employees in various employment categories or situations, the **Bill of Rights** under Chapter 4, Part 2 of the national Constitution in regard to the rights of workers. But in turn, articulate and defend their own rights as employers which are subsumed in the said Bill of Right or those which are provided in any other written law. Such rights include the right to seek to be consulted by the Government on all major policy or legislative decisions touching on labour and industrial relations

pursuant to the principle of public participation contained in the said national Constitution.

(e) secure a position on or a working or associate relationship or status with the **Salaries and Remuneration Commission** established pursuant to Article 230 of the national Constitution or any other national organisation whose mandate is related to any or all of these objects or is otherwise of interest to the Federation.

(f) appeal to the members who are in the public service to also obey and enforce on their staff the provisions of Chapters 6 and 13 of the national Constitution in the rendition of their services to their employees as well as the general public; and, for those not in public service, to reasonably observe the spirit of the said provisions; as well as that of the **national values** provided under Article 10 of the national Constitution;

(g) foster cordial and consultative relations with ILO, AU, International Employers' Organization (IOE) and Business Africa, and promote/sustain the tripartite nature of labour relations in Kenya;

(h) encourage the observance by employers of fair conditions of employment;

(i) advocate, promote, and defend the interests of employers generally;

(j) promote and encourage consultations between and amongst members on matters connected with, relating to, affecting or likely to affect such interests;

(k) provide information and advice on all matters relating to such interests;

(l) initiate, promote, support or approve legislative and other measures affecting or likely to affect such interests;

(m) seek, collate and articulate members' views on general economic and social issues both to the public and to the relevant authorities as appropriate;

(n) represent and advocate the views and policies of the Federation to Governments and other authorities;

(o) collect and collate views of members on general taxation and levies and to submit proposals to the relevant tax authorities;

(p) amalgamate, affiliate or co-ordinate with any other organizations, or subscribe to or become a member of any organizations the objects of which are altogether or in part similar to those of the Federation;



(q) form such branches, local committees or other bodies as may be deemed desirable;

(r) borrow or raise or secure the payment of money by mortgage or charge over the assets of the Federation or in such manner as the Board may think fit;

(s) acquire by application, licence or otherwise use and register patents, trademarks, trade names, registered or other designs, rights of copyrights or privileges in relation to any of the activities for the time being carried on by the Federation;

(t) purchase, take on lease or in exchange, hire or otherwise obtain any movable or immovable property which may be necessary for the furtherance of the objects of the Federation;

(u) invest monies of the Federation not immediately required in such manner as the Federation thinks fit;

(v) lend money and or guarantee the performance of contracts or obligations to third parties;

(w) sell, improve, manage, develop, lease, mortgage, charge, exchange, dispose of, turn to account or otherwise deal with all or any part of the property, rights and assets of the Federation as may be deemed expedient with a view to the promotion of the objects of the Federation; and

(x) do all such things and other acts as are or may be conducive or incidental to the attainment of all of these objects or any one of them.

(3) For the avoidance of any doubt, none of the objects stated in this article shall empower the Federation to regulate the relations between the employers and employees or between employers and employers or between employees and employees.

### **PART III – MEMBERSHIP OF THE FEDERATION**

#### **4. Qualification for membership generally**

4(1) A person qualifies to become a member of the Federation if the person ~

(a) is in the first instance constituted as a corporate person or entity by whatever law applicable and is additionally duly registered under the Act as an employer;

(b) has submitted a written application, in a form prescribed by the Board, to the Chief Executive Officer, which application shall be processed by the Chief Executive Officer and an appropriate recommendation for membership or otherwise forwarded to the Board for approval or otherwise;

(c) has undertaken in writing to be bound by this constitution and any terms and conditions which may, under this constitution, be attached to its membership; and

(d) has paid membership fee prescribed by the Board for that purpose and undertaken to, thereafter, pay annual or other subscriptions, fees, charges or levies stipulated under or pursuant to this constitution.

(2) The requirements of sub-article (1) shall apply to admission of a person to any category of membership under this constitution unless the Board directs otherwise.

(3) Within 14 days from the date the Board approves the application, the Chief Executive Officer must-

(a) in writing, notify the applicant of the Board's decision; and

(b) the applicant must, within 30 days from the date of receipt of notification, pay the admission fee and the annual subscription for the year in question.

(4)(a) The CEO shall immediately the admission is effected and membership fee and annual subscription are paid, enter or cause to be entered the person's name in the **register of members** and, on the date the name of the person is so entered, the person shall become a member of the Federation.

(b) Upon the registration of the applicant into the Register, the CEO shall issue a **membership certificate**, duly serialized and signed by the National President of the Board and counter-signed by the National Vice President.

(c) A member shall display or cause to be displayed in a conspicuous place in the member's official business premises, the certificate issued under paragraph (b).

(5) Every person duly admitted to membership of the Federation under this Article is deemed to have accepted to be bound by the provisions of this constitution, resolutions and or regulations of the Board taken or made prior to becoming member or thereafter from time to time, as the case may be.

## 5. Categories of members

5(1) The Federation has three categories of members, namely-

(a) The **Ordinary Member**, being a corporate person recruited by the Board or who, of its own volition, joins the Federation upon being registered as an employer under the Act. The ordinary member is to be regarded as the residual member or equity-holder in the Federation; or

(b) **Associate Member**; or

(c) **Honorary Member**, being a person admitted to membership of the Federation as an affiliate, fellow, life, professional or foreign member from industrial and labour fraternity.

(2)(a) A person is eligible for **Associate Membership** if the person is a corporation established by statute or is a similar body, its activities are carried on in a manner similar to that of an industry, trade or business and it maintains a separate account not forming part of the general budget of the corporation.

(b) Associate Member-

(i) has the right to speak at meetings of the Federation or its organs unless the Board directs otherwise;

(ii) has no right to vote thereat;

(iii) may not engage in any activities of the Federation which the Board considers inappropriate to the status of such member; and

(iv) except as provided under paragraph (iii), has all other rights and privileges of member under this constitution.

(c) Associate Member must pay such subscriptions or make such donations to the funds of the Federation as the Board may decide from time to time.

(3) A person admitted to **Honorary Membership** under this Article-

(a) is not liable to pay any annual subscription but may be required to pay an admission fee;

(b) is not eligible to hold any office in any establishment of the Federation;

(c) is not entitled to vote at any meeting of the Federation, but may speak thereat; and

(d) shall have the same rights and privileges of member as other members except as prohibited under this sub-article.

(4) The Board may vary categories of membership in any manner justified by circumstances. The Board may, if it considers it appropriate so to do, delegate to the Chief Executive Officer the task of considering admission of persons to various categories of memberships and the Chief Executive Officer shall, after deliberating on the matter, make appropriate recommendations to the Board for their final decision.

## **PART IV: RIGHTS, PRIVILEGES AND OBLIGATIONS OF MEMBERS**

### **6. Prescription of rights, privileges and obligations**

6(1) The Board shall have power to prescribe such general or specific rights, privileges or obligations to be attached to all or different categories of membership of the Federation as it may consider beneficial to the Federation.

#### **6(2) Rights and privileges**

(2) Every member has the right to:

(a) access and use all the facilities and services of the Federation subject to payment of a nominal fee or charge or conditions that may be prescribed;

(b) participate in such activities, functions and programs of the Federation as may suit its interests subject to payment of nominal fee or charge and any other conditions that may be prescribed;

(c) enjoy, without any form of discrimination, any privileges of membership;

(d) receive relevant notices, information or written materials from the Federation on any activity, programme or arrangement envisaged by the Federation;

(e) raise any issue of merit or concern for consideration and or discussion by any organ of the Federation and take any position on a given issue or matter put to a discussion and or vote;

(f) enjoy and fully utilize his membership without undue hindrance or restrictions;

(g) subject to any provision of this constitution to the contrary, attend meetings of the Federation, those of its committees and speak and vote thereat;

(h) be enabled and accorded audience by officers and officials of the Federation in the actualization of its rights under this Article; **AND**

(i) enjoy any other right or privilege which the Board may grant from time to time.

(3) A right or privilege which a person has by reason of being a member of the Federation is not transferrable or transmissible to another person, and terminates on cessation of the person's membership.

(4) The Board in its sole discretion, may decide to honour in any manner, the Founding Members of the Federation, if any, or any other person the Board determines to be of historic or iconic importance in the past service of the Federation and may honour such person by-

(a) inclusion of his name or image in the Hall of Fame created for such purpose;

(b) creation of insignia or badge of honour to be awarded in memory of such person to the staff or member of the Federation, or any other deserving person, in recognition of rare and exemplary services to the Federation by the recipient; or

(c) establish in the name of that person commemorative lectures or events designed to advance the objects of the Federation.

#### **6(5) Obligations of Member**

(5) Subject to any variations by the Board, every member is obligated to-

(a) observe all the terms and conditions attached to its membership;

(b) pay membership fees, annual subscriptions and any levies or fines that may be imposed on him by the Federation under this constitution unless otherwise exempt or remitted;

(c) promote good corporate governance, the good image, name, objects, goals and activities of the Federation in its employment establishment and to desist absolutely from acting in competition with or in any manner inimical to the activities and objects of the Federation;

(d) desist from aiding and or abetting any attempt by any person or group of persons seeking to undermine or discredit the Federation in any way;

(e) bring to the notice of the Federation any things, whether actions or information, that may actually or potentially undermine, impair or otherwise make it difficult or impossible for the Federation to attain any or all of its objects;

(f) not to acquire the membership of or to affiliate with any institution or organization that is rival to the Federation or one that has and undertakes activities similar to the Federation while his membership of the Federation still subsists.

Provided that for the purposes of this paragraph “*rival organization*” shall mean an organization that attempts to engage in activities similar to the objects of the Federation by seeking to recruit within it ranks persons who are for the time being members of the Federation; **AND**

(g) contribute towards the payment of the debts and liabilities of the Federation or the costs, charges and expenses of the winding up of the Federation if the same cannot be fully satisfied from the assets and monies of the Federation at the material time. However, the liability of a member under this paragraph is limited to the amount, if any, unpaid by the member in respect of membership of the Federation or on any other account.

(6) The liability or obligation which a person has by virtue of membership of the Federation is not extinguished by reason of cessation of membership but by full satisfaction thereof.

## 7. Representation of members

7. Every member shall register with the Chief Executive Officer the name of one person, who may be a director, partner, manager or officer of the member or any person approved by the Board, to be the member’s **representative** in activities of the Federation. The representative shall cease to operate pursuant to this article by the operation of law or if and when removed by written notice addressed to the Chief Executive Officer by the member. A member may also appoint, in a written notice addressed to the Chief Executive Officer, **an alternate** to act whenever the representative is unable to act for whatever reason.

## 8. Cessation of membership

8(1) A person shall cease to be a member of the Federation if the person-

(a) is declared insolvent by order of a competent court or enters into arrangement with its creditors or is ultimately liquidated, or

(b) resigns membership by giving a six months' written notice to that effect to the Chief Executive Officer or by delivering it at the registered office of the Federation or at a branch office thereof, or

(c) fails to pay any subscription or levy or other sum of money whatsoever due from the member for a period of four calendar months and appears to have rejected, ignored, refused or to have been negligent in responding to written reminders to pay. However, a member whose membership is terminated pursuant to this paragraph may be reinstated on such terms and conditions as the Board may determine, upon payment of all outstanding dues;

(d) is convicted by a competent court of any offence concerning or suggesting impropriety, dishonesty or corruption; or

(e) is expelled from the Federation on account of any plausible reason having failed to show cause why it should not be expelled before a Special Meeting of the Board convened pursuant to sub article (2)(a) of this Article.

(2)(a) Whenever expulsion of a member arises or is contemplated, a special meeting of the Board shall be convened to consider expulsion and at that meeting, a special resolution shall be required to expel a member. The member shall be entitled to a fair hearing during which it may be represented by legal Counsel. The Board may take an interim decision to suspend the member on any terms and conditions as the circumstances may warrant, while the issue of expulsion is still under determination. The Board shall expedite the process of adjudication hereunder so as to avoid undue delay;

(b) Reasons for expulsion may include an allegation that the member has-

(i) compromised the position of the Federation; or

(ii) brought the Federation into disrepute in terms of this constitution; or

(iii) has breached any code of conduct or ethics published by the Federation.

(3) A member whose membership ceases in any manner remains liable to the Federation for all subscriptions, levies and other moneys whatsoever due prior to the termination of membership including the subscription payable in respect of the period current at the date of such termination and for all loss of or damage to

the Federation's property or facility attributed to the member or its agent and is not entitled to any refund of subscription or any part thereof.

(4) The Chief Executive Officer shall make an appropriate entry in the register of members recording the date on which the member ceased to be a member, the reason therefor and any such other particulars pertaining to the cessation as circumstances may require.

## **9. Register of members**

9(1) The Chief Executive Officer shall maintain a register of members of the Federation in which, in respect of each member, he shall enter the-

- (a) name, and all forms of the member's addresses;
- (b) date on which the person became a member;
- (c) category of membership;
- (d) occupation or main business carried out by the member as an employer;
- (e) date on which the person ceases to be member, if at all; and
- (f) any other particulars as the Board may direct from time to time.

(2) The original copy of the Register shall be maintained at the Nairobi office and certified copies thereof at the branch offices of the Federation. The Register shall be open for inspection, free of charge, by any member of the Federation at any reasonable hour during the business hours of the Federation and during inspection a member may make a copy of any part of the Register on payment of such nominal fee as the Board may determine from time to time.

(3) A member must not use information about a person obtained from the Register for any sinister or improper purposes. If a member requests in writing that any information contained on the register about the member be not subject to inspection by a person who is not a member, the request shall be complied with unless the Chief Executive Officer advises otherwise.

## **10. Member subscriptions, other levies and penalties**

10(1) The Board may from time to time determine the levels of membership fees, annual and other subscriptions, levies and penalties to be paid by members under this Constitution.



(2)(a) Annual subscriptions are payable in full on or before 1<sup>st</sup> January of each calendar year and, at any rate, payment must be completed on or before 31<sup>st</sup> day of March of that year.

(b)The Chief Executive Officer shall compile names of all members whose subscriptions stand unpaid by 31<sup>st</sup> March and submit the names by way of a report to the next meeting of the Board and the Board may-

(i) direct that any member in default must pay the outstanding subscription plus interest at a rate determined by the Board, such interest covering the entire period the subscription has remained unpaid and within a specified time;

(ii) add the interest to the subscription of the succeeding year and collect the same as such;

(iii) where the subscription of a member is more than thirteen weeks in arrears, disqualify such member from voting at any meeting of the Federation;

(iv) waive the entire amount of the interest or part thereof if the Board is, on written appeal by the member, satisfied that the member is faced with exceptional or impossible hardship of law or fact such that circumstances justify such accommodation; or

(v) take any other action the Board deems appropriate against the member.

(3)(a) If the date of admission of a member falls between 31<sup>st</sup> March and 31<sup>st</sup> December of the same year, the member shall pay an annual subscription proportionate to the number of days he has been a member in that year;

(b) On cessation of membership, the provisions of Article 8(3) shall apply to all matters relating to subscriptions by that member.

(4) Any subscription, fees, penalties or other moneys due from a member is a debt due and owing to the Federation and the same may be recovered from a member in the event of default summarily or in such a manner as the Board may determine.

(5) The Board has a right to and may charge a member an amount to be determined on a cost-basis in regard with-

(a) the expenses incurred by the Federation on its staff involved in work outside the Federation's staff duty station in respect of transport, accommodation and subsistence; or

(b) an amount in respect of representation by the Federation in trade dispute matters concerning the interests of any particular member or a group of members in a particular area or industry as shall be determined and advised by the Chief Executive Officer.

(6) All members shall, upon admission to membership or on demand by the Chief Executive Officer, pay a building levy at such level as the Board may determine from time to time.

## **PART V: GOVERNANCE OF THE FEDERATION**

### **11. The Governance Structure**

11(1) In a hierarchical order, the governance structure of the Federation and the organs thereof shall be the-

(a) The Federation in Assembly;

(b) Management Board;

(c) The Chief Executive Officer

(d) Policy Working Groups; and

(e) any other unit, organ or structure of the Federation the Board may establish from time to time for the effective governance of the Federation.

(2) The Federation may at any time, in consultation with the Board, vary the governance structure and organs established under this Article or the mandate thereof as circumstances may require.

### **12. The Federation in Assembly**

12(1) **The Federation in assembly** shall be the supreme organ of the Federation and shall in that capacity-

(a) elect and or appoint members of the Board in accordance with this constitution;

(b) approve such decisions and actions of the Board taken pursuant to this constitution which require approval;

- (c) approve and adopt this constitution or otherwise;
- (d) amend this constitution as and when circumstances require;
- (e) approve the appointment and remuneration of the external auditors;
- (f) give general direction and guidance to the Board on such issues as circumstances may require; and
- (g) perform all other functions assigned to them under this constitution or those that are traditional to their position.

(2) The Federation shall transact their business at the Annual General Meetings of the Federation or at any other meetings as is provided in this constitution.

(3) The Federation in assembly shall consist of delegates drawn from various member- constituencies, categories and regions of the Federation.

### **13. The Management Board**

13(1) There is established a board to be known as the Management Board whose members shall be elected, nominated or co-opted, as the case may be, as is provided under this constitution.

(2) To qualify for election, appointment or nomination as a board member, a person shall-

(a) be of high integrity and moral standing and appreciates the spirit of Chapters Six and Thirteen of the national Constitution as adapted to the circumstances of the Federation,

(b) have proven record of commitment to the promotion of good labour and industrial relations and support for the Federation,

(c) undertake in writing that he will abide by this constitution, any codes of conduct or ethics developed by the Federation, and resolutions or decisions of the Federation as well as those of the Board,

(d) be proficient in either English or Kiswahili language, and

(e) be a fully paid-up member of the Federation.

(3) Qualification requirements provided in sub article (2) shall, with necessary modification, apply to persons to be co-opted into the Board under this constitution

(4) The Board, with the approval of the Federation, may prescribe from time to time, any other qualification requirements under this sub article as circumstances may dictate.

(5) In constituting the Board membership every effort shall be made to achieve gender balance. In addition, election, appointments or co-option of board members shall reflect a well balanced geographical as well as sectoral spread of the Federation.

#### **14. Composition of the Board**

14 (1) The Board shall comprise-

(a) a National President elected by board members from among themselves and approved by the Federation at the next Annual General Meeting following the election;

(b) two Vice Presidents to be designated respectively as the First and Second National Vice President, elected by the board members from among themselves and approved by the Federation in the same manner as that of the President;

(c) the immediate past President;

(d) three persons who, for the time being, are Regional Branch Presidents of the Federation;

(e) persons not exceeding eight elected by members from among the members of the Federation to represent key sectors of the Federation

(f) persons co-opted into the board pursuant to sub article (2) of this Article; and

(g) the Chief Executive Officer who shall be *ex officio* member of and secretary to the Board.

(2)(a) The Board may by ordinary resolution, co-opt from time to time such number of persons not exceeding three, as circumstances may require, to serve as co-opted members of the Board. Such persons may or may not be members of the Federation. Co-opted members shall not be substantive board members and shall serve on such terms and conditions of co-option as the Board shall determine. The terms and conditions of co-option shall be specified in the instrument of co-option of each co-opted member.

(b) Co-opted members may speak but shall not vote at any Board meeting.

(3)(a) The Board shall appoint persons not exceeding 15 who are members of the Federation to constitute such **Policy Working Groups** which the Board may establish from time to time.

(b) Persons appointed pursuant to paragraph (a) shall not be members of the Board but shall serve the Board as a technical support team and they may, in that capacity, undertake and or advise the Board on such matters as may be specified by the Board from time to time.

(c) Without prejudice to the generality of the provisions of paragraph (b), matters which for the time being the **Policy Working Groups** may undertake and or advise the Board on are those specified in **Schedule 1** to this Constitution.

(d) In appointing persons for the purposes of this sub article, the Board shall-

(i) require relevant qualifications from each person nominated for appointment showing that the person has capacity to perform the mandate assigned to the Policy Working Group to which he is being considered for appointment,

(ii) set other terms and conditions of service under which the persons eventually appointed shall serve, and

(iii) take into account thematic and regional profiles of the Federation in the creation of the Groups and the making of the appointments thereto.

(4) For purposes of this Article, the Chief executive Officer shall make by-laws to provide for the procedures of electing persons to represent key sectors of the Federation, co-option of persons to the Board and appointments to the Policy Working Groups, as the case may be. The by-laws made pursuant to this sub article shall be subject to the approval of the Board.

(5) No person who while serving as a Board member may serve in any other capacity in the management of the Federation.

## **15. Powers and duties of the Board**

**15(1) The Board shall have power to-**

(a) appoint the Chief Executive Officer, establish the Executive Division or Secretariat of the Federation and approve appointments of all top management

officers thereto appointed by the Chief Executive Officer to assist in the running of the day to day affairs of the Federation;

(b) offer strategic leadership to the Management in the performance of their mandate under this constitution and put in place such policies, internal controls and guidelines as may be necessary for the proper management of the Federation;

(c) set criteria for the location of the Federation's regional offices in a manner conducive to the effective and smooth co-ordination, oversight of and feed-back from those offices;

(d) approve any borrowing to be undertaken by the Chief Executive Officer for purposes of the Federation and of matters connected therewith, determine levels of fees, levies or charges imposed under this constitution and, in consultation with the Trustees, approve the Federation's investment plans;

(e) approve any pension or superannuation scheme established by the Management for the benefit of the Federation's employees;

(f) exercise any other powers given to the Board under this Constitution and such other powers which a Management Board of an employers' federation may lawfully and as a best practice in the Labour relations exercise.

**(2) The responsibilities of the Board shall be to -**

(a) ensure that every board member appreciates the spirit of Chapters 6 and 13 of the national Constitution in the performance of its duties under this constitution; acts in the best interests of the Federation by, *inter alia*, avoiding situations of conflict of interest, exercises care and skill and due diligence in the conduct of the affairs of the Board and demonstrates commitment in serving the Board.

(b) ensure adherence to the provisions of the national Constitution in respect with the Bill of Rights in so far as the same relates to labour and industrial relations;

(c) put in place ways and means of bringing into the membership of the Federation all employers or employer organizations that are not yet members, including the Small and Medium Enterprises (SMEs);

(d) protect the funds, property and assets of the Federation;

(e) enforce the effective implementation of this constitution;

(f) do all other things as are necessary for the attainment of all or any of the objects of the Federation and generally to give effect to the provisions of this constitution.

## **16. Tenure, vacation and removal from office**

16(1)(a) The National President as well as a National Vice President elected under Article 14 (1) (a) and (b) shall hold office for a term of two years and are eligible, unless otherwise disqualified for underperformance or some other plausible reason, for re-election for a further but final similar term.

(b) A President who has completed his tenure or has prematurely retired, shall automatically become a board member but in the capacity of **an Immediate Past President** in terms of Article 14 (1) (c). A President who has served for only two years or shorter period and is unwilling or unable to serve for his full term under this constitution shall, for the purposes of this Article, be considered to have completed his tenure of office and shall qualify, unless he declines the offer or he is disqualified under this constitution, to become Immediate Past President.

(c) If a President is removed from office for any reason he shall automatically cease to be director and shall not qualify to serve as Immediate Past President. This disqualification shall also apply where a President retires or leaves office in circumstances which the Board considers to be controversial or inimical to the interests of the Federation.

(d) An Immediate Past President shall serve as a board member for a period of one year and shall not be eligible for re-appointment.

(e) Where a President becomes an Immediate Past President while his predecessor is still serving as Immediate Past President, the Board shall take appropriate steps to resolve the issue of who between the two qualifies to serve as a board member.

(2) (a) Any person who is a board member by virtue of Article 14 (d) and (e) shall serve as a board member for three years and is eligible for re-election for one more similar and final term.

(b) Notwithstanding any provisions in this constitution to the contrary, at every Annual General Meeting, one-third of board members (excepting the National President and the national Vice Presidents), and if their number is not a

multiple of three, then the number nearest to one-third, shall retire from office. Where those retiring were institutional representatives, those institutions shall nominate other representatives for election to the Board.

(c) The Board shall, after this constitution has come into effect, determine the time when retirement by rotation shall commence despite the provisions of paragraph (b).

(3) The members of the Board to retire in each year shall be those who have been longest in office. As between two or more who have been in office for an equal length of time the member or members to retire shall, in default of agreement between them, be determined by lot. The length of time a member has been in office shall be computed from his last election or appointment where he has previously vacated office. A retiring member shall, subject to this constitution, be eligible for re-election for a second and final term and shall act as a member of the Board throughout the meeting at which he retires.

(4) If, at any meeting at which an election of the members of the Board ought to take place, the places of those retiring or some of them are not filled up, any of those retiring may, if willing to act, continue to act until replaced.

(5) No office of board member is to remain vacant at any time, reason wherefore an incumbent is to remain in office serving until a proper replacement has been effected. However, the incumbent is to remain serving for the remainder of his tenure except where the remaining term exceeds one year.

(6) Any person who has completed his term on the Board or retires from the same shall continue to hold any other office or position he holds elsewhere in the Federation.

(7) A Board Member may **vacate office** upon-

(a) death;

(b) completion of his term as is provided under this constitution;

(c) retirement before end of his term; and

(d) resignation.

(8) A Member may retire or resign his position on any personal ground by giving written notice to that effect addressed to the President and from the date of that notice, the person shall cease to be a Board Member.



(9) A Board Member may **be removed from office** prematurely by the Board if the Member—

(a) has been absent from three consecutive meetings of the Board without the permission of the President and is unable or has neglected to furnish a plausible or any reason at all for his absence;

(b) is adjudged bankrupt or insolvent or enters into a composition or arrangement with his creditors;

(c) is disqualified under any provision of the national Constitution or any other written law from remaining a Board Member;

(d) is convicted of a criminal offence which brings to question his capacity or integrity to serve as a Board Member;

(e) is incapacitated by prolonged physical or mental illness or other hardship; or is otherwise unable or unfit to discharge his duties under this constitution; or

(f) places himself in a situation of conflict of interest or refuses or neglects to comply with any provision of this constitution.

(10)(a) Before a Board Member is prematurely removed from office, and if the Member is not the President, the President shall by written notice prepared by the Chief Executive Officer, inform the Member affected of the intention to remove the Member and that the Member has a right to make a written representation addressed to the President in his defence.

(b) The President shall next convene a Board meeting to consider the removal at which meeting the Member affected shall be invited to make a defence, if he so wishes. The Board shall, after hearing the Member, take a resolution on the matter. If the resolution is not in favour of the Member the Chief Executive Officer shall present the resolution, together with the Member's representation, at the next general meeting of the Federation for confirmation of removal or otherwise.

(c) Before the Board determines the fate of the member, the member shall stand suspended from serving the Board. If the board decides in favour of the member, the Member may be reinstated subject to any such terms and conditions of reinstatement as the Federation may deem fit

(d) The Board may not determine the question of removal if the reason of removal is based on any of the grounds provided in sub-article (5) (b), (c) and (d).

(11) If the question of removal relates to the President, it shall be referred by the Chief Executive Officer, by way of a written notice, to the Federation in a general meeting convened for that purpose and the Federation shall by a special resolution determine the question.

## **17. Filling of casual vacancy**

17. Subject to Article 16(2), whenever the office of President and a Member appointed under Article 14 prematurely falls vacant, the casual vacancy thereby resulting shall be filled in the same manner specified under this Constitution and the person thereby appointed shall be similarly qualified to fill the vacant position and shall serve for the remainder of the term.

## **18. Meetings of the Management Board**

18(1) The Board shall hold not less than four meetings in every financial year for the conduct of its business and not more than four months shall elapse between the date of one meeting and that of the next meeting.

(2) The quorum for the conduct of the meetings of the Board shall be seven members of the Board present in person.

(3) Decisions at Board meetings should be by unanimous consensus and if not, by a simple majority of the votes of the members present and voting, and in the case of an equality of votes the President or a person presiding in that capacity shall have a casting vote.

(4) Subject to any advance notice given in a Calendar of Board Meetings, notice of a meeting of the Board shall be seven days from the date the notice is dully sent out unless three quarters of the total number of members of the Board otherwise agree and, a meeting of the Board or deliberations thereof or decisions or resolutions taken thereat shall not be invalid by reason only of misdirection of notice or failure by a board member to receive notice.

(5) The President is to preside at every meeting of the Board and in the absence of the President or incapacity to preside, the Vice President shall preside. If both the President and his Vice are absent or unable for whatever reason to preside, the

Second Vice President is to preside. If none of the three is present nor able to preside, members present may elect one of themselves to preside and the person so elected shall have all the powers of the President with respect to that meeting and the business transacted thereat.

(6) The Board may if it deems appropriate and for reasons stated in the minutes of the meeting in question, invite any person to attend deliberations of the Board and the person so invited may speak but not vote at the meeting or otherwise participate in the deliberations of the meeting subject to terms and conditions under which he was invited.

(7) Subject to this constitution, the Board may regulate its own procedures.

## **19. Remuneration of Board Members**

19. Members of the Management Board serve *ex gratia*. However, the Federation may pay for them such expenses as circumstances may warrant.

## **20. Indemnity of Board Member**

20. The Federation shall, out of its funds, indemnify any board member for any expenses, damages, hardship or liability incurred in defending any proceedings, whether civil or criminal, in which judgment is given against him for any act or omission he perpetrated in good faith and in the course of the performance of his duties as such.

## **21. Committees of the Management Board**

21(1) The Management Board may, for purposes of effective execution of its powers and responsibilities under this constitution, establish such number of committees of the Board, whether *ad hock* or otherwise, as circumstances may require and may, on terms and conditions of delegation as they may deem fit, delegate to any such committees such of its powers and or responsibilities under this constitution as they may consider appropriate. In establishing Committees, the Board shall, among other considerations, take into account regional and special interests represented in the Federation.

(2) The board committees shall be, for the time being, those specified in Schedule 2 to this Constitution.

(3) The Board may appoint persons, not exceeding the number of members of the

Board assigned to any committee, who are not members of the Board, to any of its committee and such persons shall serve on such terms and conditions of service as the Board shall specify.

(4) The Chief Executive Officer shall be the facilitator of all the operations of the Committees and, subject to terms of reference imposed on committees by the Board, committees may regulate their own affairs including co-option of outside members.

## **22. The Chief Executive Officer: tenure and other terms of service**

22(1) The Chief Executive Officer appointed pursuant to Article 15(1) (a) shall serve on such terms and conditions of service as the Board shall determine and such terms and conditions shall be specified in the instrument of appointment.

(2) The appointment of the Chief Executive Officer shall be on a competitive basis.

## **23. The Chief Executive Officer: Responsibilities**

23(1) The responsibilities of the Chief Executive Officer shall be to-

(a) put together and manage the Federation's Management Division or Secretariat; administer the finances and accounts of the Federation; protect the assets and resources of the Federation, advise the Board on matters relating to fees, subscriptions, levies and charges payable by members under this constitutions and assess and enforce payment of the same; receive and process all applications for membership of the Federation and make appropriate recommendations to the Board concerning admission, categorization, suspension, expulsion or reinstatement of members of the Federation;

(b) exercise general superintendence over and supervision and guidance of all the staff of the Federation in the performance of their duties AND shall in particular-

(i) facilitate the preparation of the budgets, strategies, operational proposals, annual plans and corporate policies for discussion by the Board and implement those adopted by the Board together with all other Board decisions and resolutions and give feedback to the Board as appropriate;

- (ii) consistently strive to achieve the objects of the Federation as well as the financial and operating goals of the Federation;
- (c) ensure that there is effective communication between the Board and the Federation's members and stakeholders such as the employees of the Federation, the Registrar, and the Government and concerns of the stakeholders are addressed as and when they arise;
- (d) further ensure that the Federation has an effective management team and structures including effective management succession and exit plans and that on the whole the state of industrial relations in the Federation is stable;
- (e) foster a conducive corporate culture that promotes ethical practices, adherence to high and acceptable standards in labour relations and adherence to core values, conventions and traditions of the Federation;
- (f) settle any disputes between or among members or refer the same to the Board as circumstances may dictate;
- (g) make or amend any by-laws for the effective management of the Federation;
- (h) be the accounting officer of the Federation and, in that capacity, keep proper books of account and cause, under the general guidance of the Board, the annual accounts of the Federation to be prepared and laid before the Federation's Annual General Meeting,
- (i) be answerable in the performance of all his duties and functions to the Board and exercise his duties and powers subject to and in accordance with the law of the land, provisions of this constitution and the directives or guidance of the Board given to him from time to time;
- (j) keep abreast with any legal, economic, political and social developments in the country and elsewhere that may have actual or potential impact on the Federation's position in its industrial and labour relations in Kenya and keep the Board posted on the same;
- (k) foster and maintain good working relations with the tripartite partners here in Kenya, the ILO, partners, and networks outside the tripartite structure, and any other labour fraternity, whether local or international, for the benefit of the Federation; and
- (l) do any other thing that can be done under this constitution for the attainment of all or any of the objects of the Federation.

## **PART VI: MEETINGS OF THE FEDERATION**

### **Part A: Types of meetings of the Federation**

#### **24. Types**

24. In addition to the Annual General Meeting, the Federation may hold any other types of meetings in the course of its financial year as is provided in this constitution. Meetings of the Federation other than the Annual General Meetings and requisitioned meetings are to be known as **general meetings**. Meetings of the Federation are to be convened by the Chief Executive Officer on the authority of the Management Board.

#### **25. Consolidated Annual General Meeting**

25(1) The Federation shall hold a Consolidated Annual General Meeting once in every financial year. The Meeting shall be held within six months after the end of the Federation's financial year or such longer period as the Federation may approve.

(2) Without prejudice to the provisions of sub-article (1), branches of the Federation may hold their separate annual general meetings within the first four months following the end of the Federation's financial year so that the Consolidated Annual General Meeting of the Federation is held in the 6<sup>th</sup> month or thereabout.

(3) The notice on which a Consolidated Annual General Meeting is to be convened is 21 days and is to specify the date and place of convening the meeting as determined by the Board. If no place is so determined then the Consolidated Annual General Meeting shall be held at the registered office of the Federation.

(4) In addition to any other business which may be transacted at an annual general meeting, the business of the Consolidated Annual General Meeting of the Federation shall be to-

(a) confirm the minutes of the last Consolidated Annual General Meeting,

(b) receive and consolidate reports from the separate branch annual general meetings for discussion and adoption or otherwise, and at the same time, receive from the Board reports on the activities of the Federation since the last preceding financial year and future plans of the Federation,

(c) confirm or deny confirmation of persons nominated by the Board pursuant to Article 17 to fill casual vacancies on the Board, or board

decisions which, under this constitution, require confirmation or approval, as the case may be, and

(d) to receive and consider any financial statements or reports connected therewith required to be submitted to members at an annual general meeting pursuant to this constitution or in accordance with corporate governance best practices.

(5) The President of the Management Board shall chair Annual General Meetings and shall exercise all the powers of President as if he was chairing a Board meeting but with such exceptions as circumstances may warrant. If the President is for any reason unable to chair, the provisions of Article 18(5) shall, with necessary modifications, apply.

## **26. Requisitioned Meetings**

26(1) A meeting of the Federation may be requisitioned if-

(a) the members (requisitionists) show that the Management Board is unable to convene the meeting in question against circumstances that urgently require the meeting to be convened;

(b) the requisitionists are, as at the time of making the requisition, fully paid-up members of the Federation;

(c) the requisitionists are not less than  $\frac{1}{4}$  of the current members of the Federation,

(d) the requisition is made in writing, is dully signed by the requisitionists and lodged with the Chief Executive Officer. If the requisition paper consists of several papers or documents in a similar form, each is signed by one or more of the members making the requisition;

(e) have given 21 days' written notice of the meeting at the expiry of which they may proceed to hold the meeting if the Management Board has not taken any step on the requisition. The meeting shall not be held if at the expiry of the notice the requisitionists fail, for whatever reason, to convene the meeting; and

(f) they undertake to fully meet all the costs of the requisitioned meeting in the event that they lose the matter for which they requisitioned the meeting.

(2) Decisions taken at a requisitioned meeting shall be valid and binding unless they are contrary to any written law or this constitution.

## **27. General Meetings of the Federation**

27(1) A general meeting may be convened on any ground including the reason that-

(a) circumstances warrant the convening of a general meeting, or

(b) the members have made a request or demand for such a meeting, or

(c) such a meeting is necessary pursuant to any of the provisions of this constitution; or

(d) an order or directive made by the court or Registrar pursuant to the Act requires or has necessitated the holding of a general meeting.

(2) Any business, other than business set aside by this constitution for the Annual General Meeting, may be transacted at a general meeting of the Federation.

## **Part B: Operational aspects of meetings**

### **28. Notice**

28(1) The length of notice for holding an Annual General Meeting is as specified in Article 25(3).

(2) In the case of general meetings-

(a) the length of the notice shall be 14 days (exclusive of the day on which the notice is served or communicated or deemed to be served or communicated) if no special resolution is to be proposed at the meeting for purposes of dealing with any business thereat. The notice is to specify the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.

(b) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Federation, a notice of 21 days shall be given.

(3) A general meeting of the Federation may, however, be convened by a shorter notice in circumstances of extreme urgency and such notice may be as short as 48 (forty eight) hours and despite such short notice, the meeting convened



thereupon shall be deemed to have been duly called unless traversed by the members present at the start of the meeting.

(4) Notice may be sent through courier service, e-mail, registered or by hand delivery post, by fax or may be advertised in one or more of the daily newspapers with ordinary and wide circulation in Kenya or by a broadcast through electronic mass media.

(5) No business other than that which is specified in the notice convening a general meeting is to be transacted at the meeting except matters which can be discussed as *any other business or preliminary* matters connected with those which are in the agenda paper whose discussion is a must in order to conclude a matter that is in the agenda paper, or if the members present demand otherwise.

(6) A member desiring to bring any business before a general meeting may do so by giving notice in writing of that business to the Chief Executive Officer who, in consultation with the President, shall include that business in the next notice calling a general meeting.

(7) The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at that meeting or decisions taken thereat.

## **29. Presiding at meetings**

29. The President of the Federation is to preside at every general meeting of the Federation, or if there is no such President, the provisions of Article 18(5) shall, with necessary modifications, apply.

## **30. Quorum**

30(1) No business on the agenda paper is to be transacted at any meeting of the Board or Federation unless a quorum of members specified under this Article is present at the time the meeting proceeds to business. The quorum for a Board meeting shall be as stipulated under Article 18(2), for a general meeting of the Federation shall be not less than fifty members of the Federation present in person or by representation (such as proxies or alternates) and entitled to vote thereat.

(2) If within half an hour after the appointed time for the commencement of a meeting a quorum is not present, the meeting-

(a) if convened on the requisition of members, is to be dissolved, and

(b) in any other case, is to stand adjourned to the same day in the following week at the same time and, unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned, at the same venue.

(3) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least ten) are to constitute a quorum.

### 31. Voting

31(1) A question at a general meeting of the Federation is to be determined by consensus. If a consensus is not possible, the question may be decided by either-

**31(1) (a) Show of Hands**

(a) a **show of hands** in which case each member, other than an associate member, shall have one vote, or

**31(1) (b) by Card Vote**

(b) by **Card Vote**, if a motion put by the President or by 10 or more members present at the meeting is carried in favour of a Card Vote. In that eventuality each member voting shall indicate his vote by holding up his card upon which shall be shown the number of votes to which he is entitled for each one thousand Kenya shillings or part thereof which the member has paid by way of subscription in the current year of the vote; or

**31(1) (c) by Secret Ballot**

(c) subject to sub-article (2), by **secret ballot**.

(2) A secret ballot may be used if-

(a) the President so orders, or

(b) it is demanded by not less than seven fully paid-up members, and

(c) it is on a motion relating to-

(i) election or re-election of any officer of the Federation

(ii) amalgamation with any other federation or similar organization,

(iii) amendment, in whole or part, of this constitution,

- (iv) strikes or lock-outs,
- (v) dissolution of the Federation,
- (vi) any other matter affecting the members generally.

(3) If the question is to be determined by a show of hands, a declaration by the President that a resolution has, on a show of hands, been carried unanimously or by a particular majority or lost, or an entry to that effect is made in the minute book of the Federation, shall be *prima facie* evidence of the fact of win or loss without proof of the number or proportion of the votes recorded in favour of or against the resolution or decision and shall be entered in the minute book accordingly.

(4) If a matter is to be determined by a secret ballot, the ballot is to be conducted in accordance with the directions of the President.

(5) A member is not entitled to vote at any general meeting of the Federation unless all the money due and payable by the member to the Federation has been fully paid.

(6) In the case of an equality of votes whether on a show of hands, a Card Vote or secret ballot, the President of the meeting at which the show of hands takes place or at which the Vote Card or secrete vote is conducted, shall be entitled to a second or casting vote. However, if the chair considers that ties at voting are occurring rather frequently, he may take such steps as he considers appropriate to establish reason why and remedy therefor.

## **32. Voting by representation**

32(1) A member entitled to vote may do so in person or by proxy and a proxy may be another member of the Federation appointed in that capacity or a person who is not a member. If a member is appointed a proxy, he must himself be a person entitled to attend and vote.

(2) Notice of appointment of a proxy shall be in writing and shall be lodged with the office of the Chief Executive Officer not less than 48 hours before the time fixed for the meeting in respect of which the appointment is made.

(3) The instrument appointing a proxy shall be under the hand of the appointer or his attorney duly authorized in writing or, if the appointer is a corporation, either under the seal or hand of an officer or attorney duly authorized.

(4) A vote in accordance with the terms of an instrument of proxy remains valid despite the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed so long as the information or intimation in writing of such death, insanity or revocation as aforesaid was received after the vote.

(5) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding for a Card Vote or secret ballot.

(6) No objection may be made to the validity of any vote except at the beginning of the voting at the meeting at which the vote was tendered and every vote not disallowed at such meeting shall be deemed valid. In case of any dispute as to the admission or rejection of a vote, the President of the meeting shall determine the same and such determination shall be made in good faith and in the interests of the Federation and shall be final and conclusive.

(7) Any corporate entity which is a member of the Federation may, by resolution of its directors or other governing body, authorize in writing such person as it thinks fit to act as its representative at any meeting of the Federation, and the person so authorized is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Federation.

### **33. Adjournment**

**33(1)** The President of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business on the agenda paper left unfinished at the meeting at which the adjournment took place.

(2) If a general meeting is adjourned for 14 days or more, the Chief Executive Officer shall give written notice of the adjourned meeting to each member of the Federation stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.

### **34. Minutes of meetings of the Federation**

**34(1)** The Chief Executive Officer shall cause proper minutes of all proceedings at all meetings of the Federation, Board and Committees of the Board to be taken and thereafter to be entered, within 30 days after the confirmation of the minutes by the next meeting to which the minutes relate, in a minute book kept for that purpose.

(2) The President must ensure that the minutes taken of all meetings or Committee meetings under sub-article (1) are checked and signed as correct by the President of the respective meeting to which those minutes relate or by the President of the next succeeding meeting or Committee meeting, as the case may be.

(3) When minutes have been entered and signed as correct under this Article, they are, until the contrary is proved, evidence that-

(a) the meeting to which they relate was duly convened and held;

(b) all proceedings recorded as having taken place at the meeting did in fact take place at the meeting; and

(c) all decisions made or resolutions taken, and all appointments or elections purporting to have been made at the meeting, were validly made or taken.

## **PART VII: PROPERTY, FUNDS AND ACCOUNTS OF THE FEDERATION**

### **35. Trustees**

**35(1)** Subject to the provisions of section 36 of the Act, the Management Board may elect not less than three (3) and not more than five (5) persons who are members of the Federation, to be trustees of the Federation on such terms and conditions of service as the Board may deem appropriate. Appointment of any Trustee shall be subject to ratification by the Federation at an Annual General Meeting following the appointment.

(2) The persons elected as trustees under sub article (1), shall constitute a **Board of Trustees of the Federation** and shall be accountable to the Management Board.

(3) To qualify for appointment as trustee of the Federation under this Article, a person must possess sufficient knowledge in any of the following fields-

(a) fund management,

(b) property management,

(c) investment,

(d) law,

(d) insurance; or

(e) any other relevant field, qualification or general experience as the Board may specify from time to time.

(4) The Trustees shall perform such functions and under the terms and conditions of service as are specified under Article 36.

(5) Unless otherwise prematurely terminated, every Trustee shall hold office for a term of ten (10) years at the end of which the Management Board shall decide whether or not to re-appoint.

(6) Without prejudice to the generality of sub article (5), a trustee may be prematurely terminated, with necessary modifications, in accordance with the procedure provided under Article 16(3) for any compelling reason in addition to reasons provided under Article 16(4).

(7) Upon the death, retirement or removal of a Trustee from office, the Management Board shall forthwith appoint another person to temporarily fill the casual vacancy thereby created. A person so appointed shall hold office until the next Annual General Meeting of the Federation at which his appointment may be ratified or cancelled and in the latter case, another person shall forthwith be appointed Trustee in his place.

(8) Except as is otherwise provided in this constitution or by-laws made thereunder, any three (3) Trustees shall be sufficient to exercise any powers or to transact any business of Trustees under this constitution.

### **36. Property of the Federation**

**36(1) All property and assets** of the Federation shall be vested in and under the control of the Trustees as joint tenants. The title to such property and all rights vested in the Trustees as such Trustees shall, in terms of Section 14 of the Trustee Act (Chapter 167), and the Trustees (Perpetual succession) Act (Cap. 164), devolve from time to time upon the persons for the time being holding office as Trustees under this constitution without any conveyance, vesting order, assignment or other assurance otherwise necessary for vesting such property and rights in such persons.

(2) The Board of Trustees **shall not**, notwithstanding the autonomy that may be allowed to them in the management of the property and assets of the Federation by the Management Board, sell or otherwise dispose of the property or assets of Federation without written authority of the Management Board.

### **37. Funds of the Federation and application thereof**

37(1)(a) All monies received by or in the name of the Federation shall immediately upon receipt, be paid or deposited into an account to be opened in the name of the Federation at a bank to be selected by the Board.

(b) In consultation with the Management Board, the Chief Executive Officer shall determine the authority of signing and counter-signing cheques drawn by the Federation against such accounts.

(2) Without prejudice to the provisions of sub article (1) (b), the execution, signing and counter-signing of any cheque touching on any property and assets of the Federation vested in the Trustees, must involve all the Trustees or any two of them.

(3) The funds of the Federation are subject to-

(a) Section 39 of the Act in terms of the purposes on which such funds may be applied; and

(b) Sections 40, 41, 42 and 47 of the Act on matters thereunder specified and as may be amended from time to time.

### **38. Accounts**

38(1) The Accounts of the Federation shall be prepared and maintained in accordance with the provisions of Section 42 of the Act read together with the *Trade Union (Accounts) Regulations* made under the Act.

(2) Without prejudice to sub article (1), the Accounts of the Federation shall be prepared and maintained by the Chief Executive Officer in such a form as may be prescribed by the Act. A Profit and Loss Account and Balance Sheet shall be prepared as at the thirty first day of December in each year. The Accounts and Balance Sheet shall thereafter be audited by an external Auditor. The Profit and Loss Account for the preceding year and the Balance Sheet as at the thirty-first day of December in the preceding year, together with a Financial Statement and

the Auditor's Certificate shall be submitted to a consolidated Annual General Meeting of the Federation.

(3) The business year of the Federation shall be the Calendar year.

### **39. Annual Return and Inspection**

**39(1)** The Chief Executive Officer or such other officer of the Federation as the Management Board may direct, shall prepare and submit annually to the Registrar Annual Return of the Federation. The Annual Return shall be in a form prescribed by the Act and shall in all respects comply with the requirements of Section 43 thereof. The Return shall be furnished on or before the first day of April in each year.

(2) The books of account and official records of the Federation and its branches shall be open to inspection by the Registrar, members or officials of the Federation during the business hours of the Federation. The inspection is to be conducted at the Registered Office of the Federation or such other places as the Board may authorize. Members may inspect in person or through their representatives duly authorized in writing in a notice addressed to the Chief Executive Officer. A member intending to inspect shall give written notice to the Chief Executive Officer or his authorized agent of his intention to inspect. The Registrar is exempt from any pre-inspection conditions under this Article.

## **PART VIII: MISCELLANEOUS PROVISIONS**

### **40. Members to furnish information**

**40(1)** Unless a member considers that it is prejudicial to its interest to do so, every member may furnish the Board with such information as it may require from time to time for purposes of effectively achieving any or all the objects of the Federation under this Constitution. Such information may concern terms and conditions of employment and scales or ranges or pay of any category or categories of a member's employees or any such other relevant information as circumstances may require.

(2) Information supplied by a member under this Article shall not in any manner or form be divulged to any unauthorized person except with the written permission of the member or under the compulsion of any law or court order.

(3) Any member who has declined or neglected to furnish information is not entitled to any communication from the Federation on a matter covered by or



concerning the information declined or neglected to be given concerning other members.

(4) A member may at any time alter any part of information furnished to the Board. The alteration is to be in written form for which sufficient written notice has been given to the Chief Executive Officer.

(5) Recognising that an important function of the Federation is the dissemination of advice on matters of general policy and being appreciative of the fact that the negotiated terms and conditions for employees have a bearing on the interests of other members of the Federation, the members undertake-

(a) to forward to the Federation copies of all collective agreements entered into between themselves and the trade union representing their employees and any other information which may be requested by the Federation in relation to collective bargaining in which they are engaged;

(b) to forward to the Federation a copy of any demands in respect of wages, terms and conditions of service received from the trade union representing their employees;

(c) to seek the advice of the Federation on the handling of these demands and, bearing in mind the possible effects on other employees, its suggestions as to an acceptable area of settlement;

(d) to take note of such advice and, unless impracticable, not to act contrary to it without further consultation with the Federation;

(e) not to accept from a trade union, during negotiations, the argument that because another member has made an agreement with that trade union upon any particular item in particular terms, they are bound or morally obliged to agree to similar terms; and

(f) in the event of their being unable during the course of negotiations to consult the Federation before committing themselves to a course of action in excess of the Federation's advice, to report the facts to the Federation and outline the circumstances leading to their action.

#### **41. Amendment of this Constitution**

**41.** This Constitution or any part thereof, excepting by-laws thereunder made, may only be amended by a resolution carried by two thirds or more of the total votes cast at a General Meeting of the Federation. No such amendment shall have

effect until the date of registration of the amendment by the Registrar unless some other date has been specified in the notice of amendment to the Registrar.

#### **42. Indemnity of CEO, officer, servant or agent of Federation**

42. If the CEO, officer, servant or agent of the Federation is sued for or a claim is brought against him in any court of law for damages, loss or injury or any other claim arising from *a bona fide* exercise of any power or performance of any function assigned to him under this Constitution, such person shall be defended by the Federation at its own cost and shall similarly be indemnified for any damages, cost or expense incurred by him as a result of the legal action.

#### **43. Dissolution**

43. The Federation may be dissolved by resolution taken by the members at a General Meeting convened on a notice of not less than 14 days. The resolution shall be carried by not less than three quarters of the registered and fully paid-up members present and entitled to vote and the vote shall be by secret ballot. Upon dissolution, all property and assets of the Federation shall be sold and the proceeds therefrom shall be divided among the members in accordance with the proportion of each member's accumulated annual subscriptions.

#### **44. Repeal and Saving [Holding Provision]**

44(1) Subject to the provisions of sub article (2) the previous Constitution of and under which the Federation has operated up to the commencement date of this Constitution, is hereby repealed in its entirety.

(2) For the avoidance of any doubt, and notwithstanding the repeal of the Previous Constitution-

(a) the **Federation of Kenya Employers** still subsists under this constitution in its original name and capacity in which it is registered under the Act,

(b) all other matters, rights, claims, actions, proceedings or issues arising and still subsisting under the repealed constitution are saved to the extent provided for under **Schedule 3** of this constitution.

## **SCHEDULE 1: MATTERS FOR POLICY WORKING GROUPS**

**Article 14 (3) (c): Matters on which Policy Working Groups may advise the Management Board**

- (i) Skills Development and Employment,
- (ii) Industrial Relations and Legal,
- (iii) Occupational safety and Health,
- (iv) Human capital Development, and
- (v) Research on Labour and related issues
- (vi) any other matters determined by the Board.

## **SCHEDULE 2: COMMITTEES OF THE BOARD**

**Article 21(2): Committees of the Board for the time being are-**

1. Finance and Human Resource Committee
2. Risk and Audit Committee
3. Executive Committee
4. Strategy and Development Committee

## **SCHEDULE 3: TRANSITIONAL PROVISIONS**

**TRANSITIONAL PROVISIONS**

**[Article 44(2)]**

1(a) Pursuant to Article 74(2)-

(a) this constitution shall automatically come into effect on the date of its registration under the Act and the Management Board shall from that date continue to operate by exercising its powers and responsibilities under the old constitution as if the same had been contained in this constitution subject to such modifications as are contained in this constitution.

(b) The Board shall take appropriate measures and such steps as are necessary to bring to this constitution into effect and may draw a programme of action to assist stakeholders understand and relate with the new constitution.

