

AFOR04: Code of Conduct & Disciplinary Code

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Maintaining our reputation and sustaining public trust starts with you

Our profession is built on the principles of integrity and quality. Steadfast adherence to high ethical principles, professional standards and professional excellence are fundamental to the delivery of professional services to our clients. The trust placed in us by our clients and the public at large is the foundation on which our services are based and must never be taken for granted.

In current times where our clients and the public, government, private sector, media and regulators, place ever more importance and emphasis on ethical behaviour and professional conduct in accordance with applicable professional standards, we are committed to upholding and maintaining our profession's reputation so as to sustain public trust and maintain confidence in both our companies and the profession.

Your commitment to uphold the reputation of our profession starts with you. Achieving this goal requires each and every one of us to make the right choices every single day. This includes conducting business honourably and ethically as well as treating our clients and colleagues with utmost respect, fairness and professionalism. You will make decisions every day in your work – decisions that have wide-ranging implications on how our society transforms. Your decisions hold economic, legal, ethical and social

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implications and you are expected to act with complete integrity at all times whether vis-à-vis our clients or your colleagues.

Ethical behaviour in relation to the B-BBEE Act and the B-BBEE Codes is an integral part of your profession.

This Code of Ethics and Professional Conduct provides guidance to help you make the right decisions on a daily basis and empower you to apply your best judgement at all times whether professional or inter-personal. You are expected to use these policies and practices as a means to discuss your responsibilities openly and honestly with your clients, with our regulators, and with each other. It is our expectation that after reading and understanding this Code, you will have a better understanding of your vital role, the tools available to assist you with questions or problems and the broad support you have from **ABP**.

Together, our commitment to do the right thing will maintain and protect the reputation of our profession and contribute towards sustaining public trust and discharging our social responsibilities in journey of transformation of our country, asking each of you to incorporate this Code into your daily activities and interactions to create an environment where ethics are truly in action.

CODE OF CONDUCT, DISCIPLINARY CODE & DISCIPLINARY
COMMITTEES

1. PROFESSIONAL CONDUCT

1.1. Interpretation

- 1.1.1. **“ABP”** means the Association of B-BBEE Professionals;
- 1.1.2. **“Accredited”** means the qualification status accorded to an Agency by SANAS in terms of the SANAS guidelines for the Accreditation of BEE Verification Agencies;
- 1.1.3. **“accredited Member”** means a Member that has been accredited by SANAS in terms of SANAS’ guidelines for the Accreditation of B-BBEE Professionals;
- 1.1.4. **“the Act”** means the Broad-Based Black Economic Empowerment Act, Act 46 of 2013;
- 1.1.5. **“Agency”** means a private sector-based B-BBEE Verification Agency;
- 1.1.6. **“B-BBEE Verification Professional”** means a person who performs any work in connection with rating the status of enterprises in terms

of broad-based black economic empowerment compliance on the authority of, or for a rating agency accredited by, a B-BBEE Verification Professional Regulator;

- 1.1.7. **“B-BBEE Verification Professional Regulator”** means a body appointed by the Minister for the accreditation of rating agencies or the authorisation of B-BBEE verification professionals;
- 1.1.8. **“Board of Directors”** means the Board of Directors of ABP appointed in terms of ABP’s Constitution;
- 1.1.9. **“the Codes”** means the Codes of Good Practice issued under section 9(1) of the Act;
- 1.1.10. **“the Constitution”** means ABP’s Constitution;
- 1.1.11. **“Consultants and Advisors”** means those suitably qualified individuals or organisations, who are responsible for advising measured enterprises on how to comply with the legislation, how to fulfil the requirements of an element of the legislation and/or defining the strategy for the organisation;
- 1.1.12. **“Consulting Services”** means consulting services as defined in SANAS R47, as amended from time to time;
- 1.1.13. **“the dtic”** means the Department of Trade, Industry and Commerce;

- 1.1.14. **“fronting practice”** means a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act or the implementation of any of the provisions of the BEE Act;
- 1.1.15. **“Member”** means a Member of ABP, in their capacity as Verification Agencies or Auditors, Consultants and Advisors and the Practitioners, and also includes all categories of Members defined as such in the rules and any firm, partnership, professional company, association or corporation in which a Member is involved in;
- 1.1.16. **“Practitioners”** means those individuals who work for a measured enterprise and are responsible for implementation of one or all of the transformation imperatives within that organization;
- 1.1.17. **“Publicise”** has a corresponding meaning as Publicity;
- 1.1.18. **“Publicity”** shall include any direct or indirect reference to a Member, published or disseminated by any written, pictorial or oral means, in any medium (including the electronic media), irrespective of whether such publicity and or reference —
- 1.1.18.1. is made in connection with any sponsorship, patronage, welfare activity, or other similar benevolent purpose or supports in any cause;
or
- 1.1.18.2. is made, or is paid for, at the instance, or with the knowledge and

or consent of the Member; or

1.1.18.3. appears, or is contained, in any editorial, advertorial or advertisement;

1.1.19. **“R47”** means the verification standards issued by SANAS from time to time;

1.1.20. **“SANAS”** means South African National Accreditation System;

1.1.21. **“Services”** means the BEE Verification services that Members provide which excludes BEE Consulting Services;

1.1.22. **“Verification Agencies and Auditors”** means those individuals or organizations, recognized by the **dtic**, who are responsible for validation and measurement of B-BBEE performance on an annual basis;

1.1.23. **“Verification Manual”** means the Verification Manual gazetted on 18 July 2008, Government Gazette number 31255.

1.2. Charge

1.2.1. Members shall comply with all the rules of the Code of Conduct set out below.

1.2.2. Members shall at all times show a commitment towards achieving the

objectives of the Act and the Codes.

- 1.2.3. Members shall always demonstrate commitment and proven consistent progress towards compliance with the criteria for accreditation set out in SANAS R47, as amended.
- 1.2.4. Members shall always demonstrate commitment and proven progress towards compliance with the criteria for accreditation set out in SANAS R47, as amended.
- 1.2.5. Members shall comply with the ethical requirements set out in SANAS R47 and the Code of Conduct as contained herein.
- 1.2.6. Members shall apply the Verification Manual as gazetted when performing B-BBEE Verifications.
- 1.2.7. Members shall always demonstrate honesty and integrity when dealing with its clients and performing its function.
- 1.2.8. A Member who fails to comply with this Code of Conduct shall be guilty of violating this Code of Conduct and/or any conduct which may be deemed to be improper by the ABP Disciplinary Committee.
- 1.2.9. Should a Member be in breach of this Code of Conduct, such a Member has a duty to proactively inform ABP of such a breach, any action taken to remedy the breach and regularly update ABP of the process of such remedy.

1.3. General Principles

Members shall at all times —

- 1.3.1. maintain the highest standards of honesty and integrity;
- 1.3.2. act as independent service providers when performing their duties as BEE Verification Agencies/ Professionals;
- 1.3.3. ensure that no conflict of interest is created between their activities as Verification Professionals/Agencies and any Consulting Services they may directly or indirectly also provide;
- 1.3.4. desist and report to the relevant authority including ABP, any intention of indirect or indirect influence by its client/s to commit an offence as prescribed in S130 (1) of the BEE ACT;
- 1.3.5. treat the interest of their clients as paramount, provided that their conduct shall be subject always to —
 - 1.3.5.1. their duty to the **dtic** and SANAS;
 - 1.3.5.2. the observation of R47 and other verification standards issued by SANAS and other regulatory bodies from time to time;

- 1.3.5.3. the observation of the Verification Manual and other methodology guidelines issued by the **dtic** and or SANAS and other regulatory bodies from time to time;
- 1.3.5.4. the maintenance of the ethical standards prescribed by this Code of Conduct and generally recognized in the Verification Agencies/Professionals Industry.
- 1.3.6. The criteria for ABP Membership is as set out in the Constitution, and includes:
- 1.3.6.1. honour any undertaking given in the course of their practice unless prohibited by law;
- 1.3.6.2. refrain from doing anything, which places or could place them in a position in which a client's interest conflicts with their own or those of other clients;
- 1.3.6.3. maintain confidentiality regarding the affairs of present or former clients, unless otherwise required by law;
- 1.3.6.4. respect the freedom of clients to be verified by the verification professional of their choice;
- 1.3.6.5. retain the independence necessary to enable them to give their client fair, unbiased and objective BEE Verification results;

- 1.3.6.6. inform their clients prior to the conduction of a BEE Verification of the verification processes involved and not generate unnecessary work nor involve their clients in unnecessary expense;
 - 1.3.6.7. explain prior to the conducting of the BEE Verification the likely costs involved in the BEE Verification;
 - 1.3.6.8. use their best efforts to carry out work in a competent and timely manner and not take on work which they do not reasonably believe they will be able to carry out in that manner;
 - 1.3.6.9. be entitled to a reasonable fee for their work provided that no Member shall fail or refuse to carry out, or continue, a mandate on the ground of non-payment of fees and disbursements (or provision of advance cover therefore) if demand for such payment or provision is made at an unreasonable time or in an unreasonable manner;
 - 1.3.6.10. behave towards their colleagues with integrity, fairness and respect;
 - 1.3.6.11. refrain from claiming specialization or expertise in any aspect of BEE Verifications, unless such claim is justifiable;
 - 1.3.6.12. refrain from doing anything which could or might bring the verification analysts profession into disrepute.
- 1.3.7. a BEE Professional shall not provide BEE verification to an enterprise

that has received BEE consulting from that Verification Agency /professional or from any related party. A minimum of two (2) years needs to elapse following the end of such a BEE Consultancy.

1.4. Approaches and Publicity

1.4.1. Members shall ensure that all written or oral communication with clients, or potential clients, and all Publicity, including the offering of Services by Publicity, made or published by or on behalf of a Member —

1.4.1.1. are made in a manner which does not bring the BEE profession into disrepute;

1.4.1.2. are not offensive, inappropriate or made for the purpose of procuring work in respect of which another verification analyst/ agency/ professional has already received instructions;

1.4.1.3. do not misrepresent the nature of the service offered;

1.4.1.4. accord in every respect with the requirements of this Code of Conduct;

1.4.1.5. do not misrepresent, disparage, compare, criticize the quality of or claim to be superior to, the service provider by any other Member, whether or not such other Member is identified herein;

1.4.1.6. do not refer to a Member's success in practice;

- 1.4.1.7. do not refer to a client by name in any advertisement, published by or on behalf of a Member, unless the prior written consent of the client had been obtained;
- 1.4.1.8. A BEE Verification Agency/EE professional shall take measures to prevent a consultancy body from stating or implying that BEE Verification would be simpler, faster or less expensive if a specified BEE Verification Agency is used. Similarly, a BEE Verification Agency/EE professional shall not state or imply that BEE Verification would be simpler, faster or less expensive if a specified consultancy body is used.
- 1.4.2. Members' responsibility set out in 1.4 cannot be delegated. Where a Member becomes aware of publicity referring to him or her, which is in conflict with or infringes this rule, he or she shall immediately take appropriate steps to have the publicity rectified or withdrawn.

1.5. Specialization and expertise

If a Member claims specialisation or expertise in any branch of BEE Verification, the Board of Directors / Council may —

- 1.5.1. require a Member to show good cause, by a specific date, why he or she should not be ordered by the Board of Directors to cease to hold himself

/ herself out as a specialist or as expert in any branch of BEE Verification;

- 1.5.2. order the Member to cease holding him/herself out as a specialist or expert in the branch of BEE Verification concerned if it is the opinion of the Board of Directors that the Member's claim is not justified; and
- 1.5.3. declare that such order shall serve as a notice in terms of rule 1.10.4 without in any way limiting the Board of Directors powers in terms of sub-rule 1.1.

1.6. Sharing of fees and Payment of a Referral Commission

- 1.6.1. Members shall be allowed to share fees with other EE professionals, for example in circumstances where the Member makes use of external verification professionals;
- 1.6.2. Members may pay a portion of his or her fee to another EE professional as a referral fee if that third party refers work to that Member, provided -
 - 1.6.2.1. that the payment of the referral fees does not jeopardize a Member's impartiality or objectivity in respect of client's BEE Verification;
 - 1.6.2.2. the Member does not give any guarantees regarding the outcome of the BEE Verification to the referring party and or the client referred to him or her by the referring party;

- 1.6.2.3. Members shall disclose to its clients any referral commission payable to any referring party;
- 1.6.2.4. Upon request by ABP, Members shall disclose referral fees and commissions paid by the Member to referring EE professional;
- 1.6.2.5. Referring commission shall not be more than 10% of the total verification fee payable by the client to the Member;

1.7. Naming of partners and practice

- 1.7.1. A Member shall disclose his/her name on any letterhead used for the practice and, in the case of —
 - 1.7.1.1. a partnership, the names of all the partners; or
 - 1.7.1.2. a professional company or close corporation, the names of all the directors.
- 1.7.2. A Member who discloses in his/her letterhead the name of any Member employed by him/her in any capacity shall clearly indicate that such employed Member is not his/her partner or fellow director, such indication shall be made by using one or more of the following words and no others —“consultant”, “associate” “professional assistant”, “assisted by”.

1.8. Replying to communications

A Member shall, within **48 hours**, reply to all communications which require an answer unless good cause for refusing an answer exists.

1.9. Recruiting - Non-solicitation

- 1.9.1. A Member shall not, directly or indirectly, offer employment to an employee of a fellow ABP Member without first informing the latter.
- 1.9.2. However, an employee of a fellow ABP Member, who in response to an advertisement or of his own initiative, applies to a Member for employment may be engaged subject to the Member informing the applicant's employer.

1.10. Responsibilities to other ABP Members

- 1.10.1. A Member shall conduct himself in a manner which will promote the co-operation and good relations between ABP Members and within the BEE profession.
- 1.10.2. A Member should assist other fellow ABP Members in complying with this code and shall co-operate with the appropriate authorities in applying the Code.
- 1.10.3. In conducting his business, a Member shall not act in any way that reflects negatively on fellow ABP Members.

- 1.10.4. A Member shall not solicit confidential information, from a fellow Member's employees or any other related parties, for personal gain.
- 1.10.5. If a Member, comes across information that would be detrimental to another fellow Members' business or professional ability, then he must report such information to the latter or the ABP Board dependent on the sensitivity of the information.
- 1.10.6. A Member shall extend the same professional considerations and courtesies to any non-Member with whom he/she may a professional relationship.

ABP'S DISCIPLINARY CODE

Level A: Very serious misconduct	First Offence	Second Offence	Third Offence
Dishonesty	Immediate termination of ABP membership for a period of 24 months	N/A	N/A
Gross Misrepresentation, including misrepresentations defined in Sec 13O(1) of the B-BBEE Act	Publication of such termination on ABP's website for a period of 24 months		
Involvement in a fronting practice	Report to the relevant stakeholder: dtic, SANAS or the B-BBEE Commission		
Fraud			
Gross Negligence			
Disclosing Confidential Information of a current or former client			
Non-members representing themselves as members of ABP			
Non-members or members without a professional designation claiming to have such designation			
Conflict of interest: Conducting a verification of a client who consultation has been provided to within the previous 24 months			
Level B: Serious misconduct	First Offence	Second Offence	Third Offence
Failure to adhere to best practices issued from time to time	Final written warning + a fine of 30% of membership fees	Membership suspension for a period of 12 months + a fine of 50% of membership fees	Immediate termination of membership for a period of 24 months
Bringing ABP of the profession in disrepute	Final written warning + a fine of 30% of membership fees	Membership suspension for a period of 12 months + a fine of 50% of membership fees	Immediate termination of membership for a period of 24 months + publication of termination will be published on ABP's website
Misrepresentation of the nature of the verification services offered	Final written warning + a fine of 30% of membership fees	Immediate termination of membership for a period of 12 months + publication of termination will be published on ABP's website	Report to the dtic and SANAS. Termination of Membership for a period of 24 months + publication of termination will be published on ABP's website
Level C: Less serious misconduct	First Offence	Second Offence	Third Offence
Failure to honour any undertaking given in the course of their practice	Written Warning	Final Written Warning	Suspension of membership for a period of 12 months
Generate unnecessary work that results in unnecessary expenses for the client			
Referring to a client by name without the consent of the client			
Misrepresent, disparage, compare or criticise the quality or claim to be superior to any other member			
Level D: Other	First Offence	Second Offence	Third Offence
Disrespect towards other members or stakeholders	Written Warning	Final Written Warning	Suspension of membership for a period of 6 months
Claiming specialisation in an area of the scorecard without the required expertise and experience			

DISCIPLINARY COMMITTEES RULE 1

- 1.11. The Board of Directors may appoint committees in terms of ABP'S Constitution to assist it in the carrying out, performance and exercise of the disciplinary duties, functions and powers vested in it in terms of ABP'S Constitution. Such committees shall have the duties, functions and powers prescribed under this Rule 1, subject to such further limitations as may from time to time be prescribed by resolution of the Board of Directors and provided that the Board of Directors shall itself have the same duties, functions and powers mutatis mutandis, which it may, in its discretion and at any time, carry out, perform and exercise on the part of any such committees.
- 1.12. The Board of Directors may from time to time and either annually or on an ad hoc basis, appoint committees for the purpose specified in sub-rule 1.1 with such duties, functions and powers and subject to such limitations as it may from time to time prescribe. In particular, the Board of Directors may appoint -
- 1.12.1. annually, a Disciplinary Committee with duties, functions and powers of investigation specified in sub-rule 1.8;
- 1.12.2. annually, or from time to time on an ad hoc basis, a Disciplinary Enquiry Committee with duties, functions and powers of enquiry specified in sub-rule 1.13.

1.13. Both the Disciplinary Committee and a Disciplinary Enquiry Committee shall consist of a minimum of 5 (five) Members, which the Board will appoint from amongst its Members and which will be accountable to the Board.

1.13.1. at least 2 (two) of the Members of the Disciplinary Committee shall also be a Member of the Board of Directors.

1.13.2. No Member of the Board of Directors who shall have considered any compliant against a Member in terms of sub-clause 1.8.10 may be a Member of any Disciplinary Enquiry Committee to which the same compliant is referred under sub-rule 1.8.10.2 for the purpose of holding a formal enquiry.

1.13.3. The Board of Directors shall appoint the Members of both such committees and may fill any vacancy on, and, subject to the prescribed maximum number of each committee for the time being, may appoint any additional Member to, either of such committees. The Board of Directors may also from time to time appoint alternatives to such committee Members provided, always, that an alternate to a Disciplinary Committee Member need not be a Member of the Board of Directors.

1.14. The office of each Member and of each alternate Member of each of such committees shall terminate —

1.14.1. at the end of the first Board meeting held after ABP'S Annual General

Meeting following his/her appointment;

- 1.14.2. upon his/her removal from office by resolution of the Board of Directors;
- 1.14.3. in the case of an ad hoc appointment to a Disciplinary Enquiry Committee, on completion of the enquiry to which such appointment relates;
- 1.14.4. in the case of an alternate Member, upon the termination of the office of the Member for whom he or she is acting as an alternate.
- 1.15. The Board of Directors shall from time to time prescribe such quorum for the meetings of Members of either such committees, as it shall, in its discretion, determine.
- 1.16. Subject to the provisions of these Rules, each committee chairman shall determine the times and places at which, and where, committee meetings shall be held and the manner in which the Committee's Members shall discharge their duties, functions and powers.
- 1.17. Any committee appointed by the Board of Directors prior to the date upon which this Rule 1 shall come into force and effect, with the duties, functions and powers specified in sub-rule 1.8, shall be deemed, without further act on the part of the Board of Directors, to have been appointed in terms of sub-rule 1.2.

- 1.18. Subject to any limitations prescribed hereunder and subject to any further limitations as may from time to time be prescribed by the Board of Directors and subject always to the provisions of the Code of Conduct, a Disciplinary Committee shall have the following duties, functions and powers, namely —
- 1.18.1. to consider and investigate any complaint made against any Member at the instance of whomsoever, including any complaint made at the instance of the Board of Directors *mero motu*; and to authorise the Chairman of the Disciplinary Committee to render to any complainant such assistance in connection with the lodgment of his complaint as may be reasonably necessary or desirable;
- 1.18.2. at any time before or during its investigation of any complaint, to require a complainant to lodge his complaint in writing within 7 working days after having been requested to do so, and to verify the complaint by way of affidavit and to furnish such further evidence, oral or otherwise, in substantiation of any such complaint as it may require and as is available;
- 1.18.3. within 7 working days after having received the affidavit and supporting documentation referred to in clause 1.8.2, to dismiss a complaint where it is of the opinion that the complaint does not disclose a *prima facie* case of unprofessional or dishonourable or unworthy conduct on the part of a Member or where a complainant neglects or refuses to comply with any requirements of which he

shall have been notified pursuant to sub-rule 1.8.2 and to notify the complainant accordingly;

- 1.18.4. within 7 working days after having received the documentation referred to in clause 1.8.2, to furnish a Member, where it is of the opinion that the complainant does disclose a prima facie case of unprofessional or dishonourable or unworthy conduct on the part of such Member, with such particulars of the complaint as it may consider reasonably necessary to enable the Member to appreciate the nature of the complaint made against him and to call on such Member to furnish it with his explanation regarding the complaint and to require the Member furnishing such explanation to verify his explanation by way of affidavit and to furnish such further evidence regarding the complaint as it may require of such Member as may be available within 7 working days after having received such a request to submit his explanation regarding the complaint.
- 1.18.5. Within 7 working days after having received the Member's explanation regarding the complaint against him, to furnish it any additional information which it may require or which the Member may wish to submit with regard to the complaint forming the subject matter of its investigation;
- 1.18.6. to decide, on the basis of the complaint and the Member's explanation, if furnished, and any other evidence available to it, whether or not the complaint establishes a case of unprofessional or dishonourable or unworthy conduct on the part of the Member and

—

- 1.18.6.1. where it is of the opinion that it does not do so, to dismiss the complaint and, in such event, to notify the complainant and the Member accordingly;
- 1.18.6.2. where it is of the opinion that it does so, and after having considered the Member's disciplinary record, to make a recommendation to the Chairman of the Board of Directors to either —
 - 1.18.6.2. determine the complaint summarily, without a hearing, in which
 1. event it shall recommend to the Board of Directors to impose such punishment as it considers appropriate in respect of such determination and as is competent in its Disciplinary Code (which may involve the suspension, alternatively, termination of the said Member's ABP Membership, publication of such suspension on ABP's website and or reporting of the matter to **the dtic** and or SANAS; or
 - 1.18.6.2. to resolve that a formal enquiry shall be held into such a complaint
 2. in which event it shall refer the complaint to the Disciplinary Enquiry Committee, with an instruction to the aforesaid committee to hold a formal enquiry into such a complaint in accordance with the provisions of rule 1.8.10.2. provided that the Disciplinary Committee shall, in making any recommendation to the Board of Directors in terms of sub-rule 1.8.6.2.2 provided that the Disciplinary Committee shall, in making any recommendation to the Board of Directors in

terms of sub-rule 1.8.6.2.2 furnish the Board of Directors with all relevant information in its possession to enable the Board of Directors to consider its said recommendation;

- 1.18.7. mero motu, to treat as a separate complaint of unprofessional or dishonourable or unworthy conduct, any act or omission on the part of a Member which is calculated to interfere with, or which otherwise interferes with, its proper consideration and investigation of a complaint against such Member;
- 1.18.8. to do all things necessary to ensure that all disciplinary proceedings falling within its duties, functions and powers are dealt with justly, expeditiously and in accordance with these Rules;
- 1.18.9. to save the extent set forth in these Rules, to preserve the confidential nature of its proceedings.
- 1.18.10. The Board of Directors shall consider any complaint against a Member forming the subject matter of a Disciplinary Committee's recommendation made to it in terms of sub-rule 1.8.6.2 and either —
 - 1.18.10.1. determine such complaint summarily, without a hearing, in which event it shall impose such punishment as it considers appropriate in respect of any such determination and as is competent in terms of its Disciplinary Code and having regard always as to any recommendation made to it in such regard by the Disciplinary Committee; or

1.18.10. resolve that a formal enquire shall be held into such compliant in
2. which event it shall refer the complaint to a Disciplinary Enquiry Committee, with an instruction that such committee shall hold a formal enquiry into such complaint in accordance with the provisions of sub-rule 1.13;

1.19. The Board of Directors shall notify the complainant of any determination made by it under sub-rule 1.8.11 and shall, at the same time, notify the Member concerned of any such determination and of any punishment imposed by it under the aforesaid sub-rule; provided always that the Member shall, in any notification, be afforded the opportunity to, instead of submitting to any such determination and punishment, to demand, within 7 working days after having received the Boards' determination, that a formal enquiry be conducted into the complaint by the Disciplinary Enquiry Committee in terms of sub-rule 1.8.10.1; provided further that if the Member demands, a formal enquiry shall be conducted under sub-rule 1.13 in which event any determination and punishment made and imposed by the Board of Directors under sub-rule 1.8.10.1 shall be suspended and shall be substituted by any determination and punishment made and imposed at, or in consequence of, any such formal enquiry and failing any such determination and punishment such suspension shall lapse and be of no further force or effect with the consequent reinstatement of the Board of Director's said determination and punishment.

- 1.20. Once the Board of Director's determination and punishment has been reinstated or has become final in terms of rule 1.12, the Board of Directors shall publish its determination and punishment, provided that in the case of minor offences — namely those where the punishment imposed is a warning or a reprimand —the determination and punishment will not be formally published but the information will be made available to any Member of the public, on enquiry, for a period of 24 months, reckoned from the date on which the determination and punishment was reinstated or became final, as the case may be.
- 1.21. Pursuant to the Disciplinary Code the penalties which may be imposed in respect of a person found guilty of unprofessional or dishonourable or unworthy conduct shall be —
- a) in the case of a first offence —a written warning;
 - b) in the case of a second offence —a final written warning;
 - c) in the case of a third offence —suspension from ABP'S Membership for a period of 12 months, publication of such suspension on ABP'S website and reporting of suspension to SANAS and **the dtic**.
- 1.22. Save where a formal enquiry is called for by the Member under sub-rule1.9, a finding of the Board of Directors of which such Member shall have been notified under such sub-rule shall, save for any error subsequently found therein, be final and, as regards all persons

affected thereby, res judicata.

1.23. Subject to the limitations prescribed hereunder and subject to any further limitations as may from time to time be prescribed by the Board of Directors and subject always to the provisions of the Code of Conduct, a Disciplinary Enquiry Committee shall be charged with the duty, function and power of conducting a formal enquiry, in accordance with the provisions of this sub-rule, into any complaint forming the subject matter of a request for such an enquiry received from the Board of Directors in terms of sub-rule 18.10.2 or received from a Member in terms of the proviso to sub-rule 1.9; and in the conduct of which enquiry the following provisions shall apply, namely —

1.23.1. an enquiry under this sub-rule shall be commenced by way of the service on the Member personally of a summons requiring the attendance of such Member at the enquiry. Such summons shall be issued under the hand of the Chairman of the Board of Directors or the Chairman of the Disciplinary Committee and shall be served not less than 14 (fourteen) days before the date appointed for the hearing, in computation of which period weekends and public holidays shall be excluded.

1.23.2. A Member appearing at an enquiry conducted under this sub-rule shall be entitled —

1.23.2.1. to legal representation;

- 1.23.2.2. to decline to answer any question which may incriminate him in any criminal proceedings which may flow from such enquiry;
- 1.23.3. The duties, functions and powers of the Disciplinary Enquiry Committee relating to its conduct of an enquiry under this sub-rule and as aforementioned shall be the following, namely —
- 1.23.3.1. to determine through its chairman and subject always to the provisions of these Rules and of the Code of Conduct the manner in which the enquiry shall be conducted in which regard such chairman shall, insofar as these Rules and the Code of Conduct do not provide for any matter specifically, be guided by the practice and procedures prevailing in the High Court criminal trails;
- 1.23.3.2. to appoint any practicing Member to act as a pro forma prosecutor in the leading of evidence against, and the presentation of the case against the Member, at the enquiry;
- 1.23.3.3. to dispense with any requirements regarding summonses, notices, affidavits, documents, service or times in any case where it appears to it to be just to do so or to extend the time for doing anything in connection with the conduct of the enquiry;
- 1.23.3.4. mero muto, or upon the application of the affected party, to adjourn the enquiry upon such terms as to costs, or otherwise, as it deems fit;

- 1.23.3.5. to cause the enquiry proceedings to be recorded in such a manner as shall enable a true and correct record of such proceedings to be available and to procure that each of its decisions shall be recorded in writing and be prefaced by a statement of its findings in relation to the facts investigated during the course of the enquiry and shall be signed by the chairman of such committee so authorised; and to procure further, that each such decision shall be filed in the records of ABP;
- 1.23.3.6. mero muto, to treat as a separate complaint of unprofessional or dishonourable or unworthy conduct, any act or omission on the part of a Member attending, or required to attend, an enquiry being conducted under this sub-rule where such act or omission is calculated to interfere with, or otherwise interferes with, its proper consideration, investigation and determination of the complaint forming the subject matter of such enquiry and to refer any such separate complaint to a Disciplinary Committee for consideration and investigation in accordance with the provisions of sub-rule 1.8;
- 1.23.3.7. to exercise such ancillary powers as it shall consider reasonably necessary to enable it to discharge its duties, functions and powers hereunder;
- 1.23.3.8. to do all things necessary to ensure that all disciplinary proceedings falling within its duties, functions and powers are dealt with justly, expeditiously and in accordance with these Rules;

1.23.3.9. at the conclusion of the enquiry, to find the Member not guilty of the charge forming the subject matter of the enquiry or guilty of unprofessional or dishonourable or unworthy conduct in relation to such charge and in the event of a finding of not guilty, to notify the Member and the complainant, if any, accordingly.

1.23.3.1 Upon finding of guilty, the Disciplinary Enquiry Committee after
0. having considered the Member's disciplinary record, refers its recommendations to the Board of Directors.

1.23.3.1 On receipt of the recommendation made to it by the Disciplinary
1. Enquiry Committee under sub-rule 1.13.3.10 the Board of Directors shall consider the record of the enquiry and resolve either —

1.23.3.1 to adopt the recommendation of the Disciplinary Enquiry Committee,
1.1. in which event, it shall proceed to take action for the striking off of the Member from ABP'S Membership or for his suspension from ABP'S Membership, as it may consider appropriate; or

1.23.3.1 not to adopt the recommendations of the Disciplinary Enquiry
1.2. Committee, in which event, it shall advise such committee accordingly and shall impose a more appropriate punishment.

1.24. A Member found guilty by a Disciplinary Enquiry Committee under sub-rule 1.13 shall have the right to appeal in accordance with **APOL18: DISCIPLINARY PROCESS & APPEALS.**

- 1.25. Upon a finding of guilty under sub-rule 1.13 the Member shall, unless the Board of Directors waive its rights thereto, be obliged to pay the costs incurred at the instance of the Board of Directors in connection with the enquiry, which costs shall be calculated in accordance with tariff determined by the Board of Directors from time to time;
- 1.26. Without derogating from the generality of the foregoing the aforesaid costs shall include —
- 1.26.2.1. the costs of recording, transcribing and preparing the copies of the enquiry record;
- 1.26.2.2. costs incurred by the Board of Directors in the employment of any pro forma prosecutor;
- 1.26.2.3. costs incurred by the Board of Directors in the employment of any accountant for the investigation of, and report on, the Member's books of account, where applicable;
- 1.26.2.4. costs of procuring the attendance of witnesses at the enquiry and their traveling expenses payable;
- 1.26.2.5. reasonable allowances payable by ABP to the Disciplinary Enquiry Committee Members arising out of the absence of such Members from their offices during the hearing and determination of the

enquiry.

1.27. Subject to the provisions of the Code of Conduct, all applicable provisions of this Rule shall apply mutates mutandi to a verification analyst.

1.27.1. in the case of a complaint against a verification analyst forming the subject matter of an investigation by a Disciplinary Committee —

1.27.1.1. the Disciplinary Committee shall be entitled to furnish the verification manager of the verification analyst with the same information as that furnished to the verification analyst under sub-rule 1.8.4;

1.27.1.2. the Verification Manager of the Verification Analyst shall, if so required by the Disciplinary Committee, verify on affidavit and insofar as his personal knowledge of the circumstances permits him so to do, any explanation furnished to the Disciplinary Committee by his Verification Analyst pursuant to the request for such explanation made under sub-rule 1.8.4;

1.27.1.3. the verification manager shall be entitled to attend, and, if so required by the Disciplinary Committee and save to such extent as he may be excused there from by such committee and subject always to his availability, shall attend, any appearance of his verification analyst before the Disciplinary Committee under sub-rule 1.8.6;

1.27.1.4. the verification manager, if so required by the Disciplinary Committee and subject to his availability, appear before such committee without his verification analyst and, and in such instance, with or without legal representation, as the verification manager may elect, for the purpose of furnishing such committee with any additional information which it may require or which the Member may wish to submit with regard to the complaint being investigated against his verification analyst;

1.27.1.5. in the case of an enquiry being conducted by the Disciplinary Enquiry Committee into a complaint against a verification analyst, the verification manager of such verification analyst shall be entitled to be present, and, if so required by the Disciplinary Enquiry Committee and save to such extent as he may be excused there from by such committee and subject to his availability, shall be present, throughout the enquiry.

THUS DONE and SIGNED aton

this, the.....day of20.....

Applicant:

Name and Surname

INITIALS

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Signature

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Witness:

Name and Surname

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Signature

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INITIALS
