



CONSTITUTION OF THE PAYMENTS ASSOCIATION OF NAMIBIA

As defined by The Payment System Management Act, 2003 [Act No. 18 of 2003]

Handwritten signatures and initials:
S.K.
B.H.
B.
P.
23

TABLE OF CONTENTS

1. NAME AND CAPACITY.....	3
2. INTERPRETATION OF TERMS.....	3
3. RECORDAL.....	5
4. REGISTERED ADDRESS.....	6
5. OBJECTIVES.....	7
6. POWERS OF PAN.....	7
7. OBLIGATIONS OF PAN.....	10
8. MEMBERSHIP OF PAN.....	11
9. MEMBERS' OBLIGATIONS.....	11
10. MEMBERS.....	13
11. PROVISIONAL MEMBERS.....	13
12. MEMBERS NOT IN GOOD STANDING.....	14
13. CESSATION OF MEMBERSHIP.....	14
14. FORMATION AND FUNCTION OF PAYMENT CLEARING HOUSE PARTICIPATING GROUPS.....	14
15. MEMBERSHIP OF PAYMENT CLEARING HOUSES.....	15
16. ANNUAL GENERAL MEETINGS OF PAN COUNCIL.....	16
17. EXTRAORDINARY MEETINGS.....	17
18. VOTING AT MEETINGS OF THE ASSOCIATION.....	17
19. PAN MANAGEMENT COUNCIL.....	19

3/11
18
19

20.	APPOINTMENT OF INDEPENDENT CHAIRPERSON FOR PAN MANAGEMENT COUNCIL.....	21
21.	RESIGNATION AND REMOVAL OF THE INDEPENDENT CHAIRPERSON.....	22
22.	PAN STRUCTURES.....	23
23.	THE CHIEF OPERATING OFFICER.....	23
24.	REPRESENTATION AT PAN MANAGEMENT COUNCIL MEETINGS.....	24
25.	RIGHT OF APPEAL TO BON.....	25
26.	ADMINISTRATION OF PAN.....	26
27.	ANNUAL REPORT AND ACCOUNTS.....	27
28.	FINANCIAL YEAR.....	27
29.	AUDITORS.....	27
30.	INCOME AND ASSETS.....	27
31.	PAYMENTS.....	27
32.	SUBSCRIPTIONS OF MEMBERS.....	28
33.	LIABILITY OF MEMBERS LIMITED.....	29
34.	AMENDMENTS OF CONSTITUTION.....	29
35.	WINDING UP.....	29
36.	SIGNATURES.....	30
37.	ANNEXURE.....	31







1. NAME AND CAPACITY

An association to be known as the Payment Association of Namibia (PAN) is hereby constituted as a legal entity, distinct and separate from its members, with the capacity to conduct all administration and judicial acts in its own name.

2. INTERPRETATION OF TERMS

Unless the context otherwise requires, the following terms shall have the following meanings:

- 2.1 **"Act"** means the Payment System Management Act No. 18 of 2003, as amended, or any re-enactment or substitution thereof.
- 2.2 **"PAN"** means the Payments Association of Namibia. PAN is recognised as a Payment System Management Body (PSMB) in terms of the Act.
- 2.3 **"Bank of Namibia (BoN)"** means the Bank of Namibia established in terms of the Bank of Namibia Act, No. 15 of 1997.
- 2.4 **"Banking Institution"** means a banking institution authorized to conduct banking business under the Banking Institutions Act 2 of 1998, as amended;
- 2.5 **"Determination"** means a determination issued in terms of section 14 of the Act;
- 2.6 **"Directives"** means such directives, instructions, requirements, rules and procedures which may be approved by a PCH Participant Group (PG) as binding upon all members of that PCH and ratified by PAN, or issued by PAN or BoN;
- 2.7 **"Direct Participant"** means participants that provides all or some of the payment services and which participates in the NPS in its own right.
- 2.8 **"Indirect Participant"** means participant that provides all or some of the payment services by virtue of an agreement with a direct participant, in terms of which agreement the indirect or sponsored participant's settlement and clearing

G.K. 1/11 3
R.K. 8 2

obligations are fulfilled by the direct participant on behalf of the indirect or sponsored participant;

- 2.9 **"Provisional Member"** means an institution or body who has been granted provisional membership by PAN as contemplated in clause 11.1
- 2.10 **"Founding date"** means the date on which BoN signs a certificate of commencement of business in respect of the creation of PAN as required by section 3(7)(a) of the Act;
- 2.11 **"Membership"** criteria means such membership criteria as may be adopted by PAN Council for admittance of any banking institution as a member of that PCH.
- 2.12 **"Operator or Payment Clearing House (PCH) System Operator"** means a person established or authorised and certified by PAN to perform operational services for PCHs or clearing houses;
- 2.13 **"Payment stream"** means a category of payment instruments with its own distinguishable clearance procedures or requirements, as determined by PAN.
- 2.14 **"National Payments System"** means the payment system as a whole, and includes any payment system, settlement system, clearing system and payment system arrangement used in the process of effecting payment between payers and beneficiaries;
- 2.15 **"Payment System"** means a system that enables payments to be effected between a payor and a beneficiary;
- 2.16 **"PCH or Payment Clearing House"** means an arrangement between two or more system participants governing the clearing of payment instructions between those system participants;
- 2.17 **"Payment Clearing House Participating Group (PCH PG)"** means a payment clearing house participant group governing the affairs of the participants in one or more payment clearing houses and constituted by PAN.

GK P 30
AK 8⁴ 4

- 2.18 *"Throughput in terms of volume"* means the quantity of all transactions, which by way of payments and collections have passed through all clearing houses in the preceding calendar year.
- 2.19 *"Throughput in terms of value"* means the value of all transactions, which by way of payments and collections have passed through all clearing houses in the preceding calendar year.
- 2.20 *"Special majority"* means an instance where 75% of the members of PAN having voting rights having voted in favour of proposition being voted on. A member subject to a vote under section 9 below may not participate in a vote, which concerns him/her. If less than 75% of the eligible voting members are present at a meeting where a special majority is required, the Chairperson as independent person shall have a casting vote.

3. RECORDAL

- 3.1 PAN was duly constituted on 12 August 2005 as an association not for gain recognised by BoN as payment system management body as contemplated in section 2 (2) of the Act. A copy of the "Certificate of Commencement of Business" of PAN is attached hereto as Annexure 1
- 3.2 PAN is empowered and mandated by BoN to:
- 3.2.1 grant membership in accordance with entry and participation criteria approved by BoN; and
- 3.2.2 Authorise any person to act as system operator or PCH system operator in accordance with entry and participation criteria approved by BoN
- 3.3 This Constitution replaces and supersedes all previously adopted constitutions and sets out:
- 3.3.1 powers and duties of PAN as payment system management body established with the object of managing the national payment system and organising, setting technical standards, regulating the participation of its members in the national

G.K
R.K
5
8

payment system and all matters affecting payment obligations and the clearing and netting of payment obligations; and

3.3.2 the rights and obligations of members and provisional members.

3.4 This Constitution and any amendment thereto, binds every member in its capacity as Member of PAN. Further members agree to be bound by PAN Policies as if included in this Constitution. In the event of conflict between the provisions of this Constitution and any PAN Policies, this Constitution shall prevail.

3.5 This Constitution also serves to:

3.5.1 assist PAN in maintaining its recognition by BoN as payment system management body;

3.5.2 ensure compliance by PAN of its obligations as payment system management body;

3.6 It enables BoN to effectively perform its oversight function as contemplated in section 2 of the Act;

3.7 The Constitution seeks to ensure that each member's representative (Councillor) in discharging his duties, shall:

3.7.1 act in the best interest of the National Payment System, and

3.7.2 exercise discretion and good judgement on matters that come before PAN Management Council.

4. REGISTERED ADDRESS

The registered address of PAN shall be as determined by PAN Management Council from time to time.

9/10
H
6
S
S

5. OBJECTIVES

5.1 The objectives of PAN are to manage, control and organise all matters affecting interbank payments, payment clearing and netting of interbank obligations within the payment system and, in connection with these objectives:

5.1.1 to provide a forum for the consideration of matters of policy and mutual interest concerning members;

5.1.2 to act as a medium for communications with BoN, other regulatory agencies, any financial or other exchange, other public bodies, authorities and officials, the media, the general public and other private associations and institutions;

5.1.3 to deal with and promote any other matters of interest to members and to foster co-operation between them and

5.1.4 to fairly represent and promote the technical and related interest of all banking institutions.

6. POWERS OF PAN

6.1 In pursuance of the objectives set out in paragraph 5, PAN will have the following powers:

6.1.1 to elect a person not in any way connected to any of PAN members to act as the independent Chairperson (‘the Chairperson’);

6.1.2 to appoint employees of PAN to assist in performance of its functions, to determine their conditions of employment, duties and authorities and to terminate the employment of any such employees in accordance with prevailing law;

6.1.3 with respect to the powers of PAN listed under this paragraph 6, other than those to be exercised by a general meeting of PAN, to exercise those powers and to do all things incidental or conducive to the attainment of the objectives of PAN.

Handwritten signatures and initials at the bottom right of the page.

- 6.1.4 to appoint one or more members of PAN, inclusive at all times of a representative of any minority view acceptable to the holders of that view, to meet with any authority;
- 6.1.5 to take disciplinary action against any PAN member;
- 6.1.6 to authorise any person nominated by a PCH PG to act as an operator or clearing house;
- 6.1.7 to sponsor, oppose, support, procure amendment of, or make representations with regard to any legislation, official regulations, directives or circulars as proposed or issued by BoN or other regulatory agencies, deemed capable of affecting members directly or indirectly;
- 6.1.8 to accept members and to regulate control and terminate membership;
- 6.1.9 to constitute, establish or disband any interbank body, committee, sub-committee or forum comprising members which has an impact on, interfaces with, has access to, or makes use of the payment system;
- 6.1.10 to define policies, strategies, powers, rules and regulations in terms of which PCHs may be formed and in terms of which PCH policies, rules and regulations must be established;
- 6.1.11 to approve the formation of PCHs, to recognise any pre-existing entity as a PCH, and to dissolve any PCH and revoke any recognition given;
- 6.1.12 to predetermine the criteria on which service providers are to be authorised as operators and, in accordance with such criteria, to authorise service providers as operators within the payment system to provide services to members or act on behalf of members;
- 6.1.13 to become a member of, or to support, promote, join or enter into any association or similar body;

3.10 VP 8
B R M 7

- 6.1.14 to institute or defend, either in its own name or in the name of another party, any legal proceedings in respect of any cause or matter affecting members;
- 6.1.15 to acquire, sell and dispose of property or other assets, movable or immovable, corporeal or incorporeal and to invest in the name of PAN any monies not immediately required for the purpose of PAN;
- 6.1.16 to open and operate banking accounts in the name of PAN subject to approval by Council;
- 6.1.17 to appoint auditors and to determine their remuneration;
- 6.1.18 to procure the registration or recognition of PAN in any country or place, including registration under the laws of the Republic of Namibia;
- 6.1.19 to hire, acquire or lease any premises, equipment or vehicles;
- 6.1.20 to employ and remunerate staff and to grant pensions, allowances, credits and bonuses to past or present employees or their relations or dependants provided full accounting transparency is ensured and appropriate corporate governance measures are applied;
- 6.1.21 to make donations by means acceptable to BoN to such persons and in such cases as PAN may consider directly or indirectly conducive to the attainment of any of its objectives;
- 6.1.22 to approve annual budgets and to receive from members or others absolutely or in trust, fees, subscriptions, levies, donations and grants to be utilised for the objectives of PAN;
- 6.1.23 to raise or borrow or to secure the payment of money or the performance of any obligation in such manner and on such terms as may seem expedient;
- 6.1.24 to insure against losses, damages, risks and liabilities of all kinds, which may affect PAN or its staff;



6.1.25 to disseminate information to members on matters of common interest, and

6.1.26 to do all such things as is incidental or conducive to the attainment of any of the objectives.

6.2 PAN may form any number of committees deemed necessary or expedient for the attainment of the objectives of PAN.

6.3 The committees shall be made up of such persons or categories of persons as PAN may determine from time to time and such persons need not be members of PAN or representatives of such members.

6.4 PAN may delegate any of its powers and/or functions to committees formed in terms of paragraph 26.2, subject to adequate controls and accountability.

7. OBLIGATIONS OF PAN

PAN will:

7.1 from time to time, certify to BoN that payment system, clearing systems and payment system services, and their providers meet all the standards, criteria and conditions determined in terms of section 3(4)(a) of the Act;

7.2 act at all times in a responsible and professional manner and ensure that its decisions are made in accordance with the prevailing supervisory and oversight requirements of BoN, other regulatory authorities, the Ministry of Finance or any other Ministries of the Central or Regional Government having at that time the powers to oversee or supervise activities of the banking industry;

7.3 submit prior to their promulgation all significant changes to PAN rules and regulations or those pertaining to PCH operations to BoN acting in its role as Overseer of National Payment System;

7.4 provide, upon request by BoN, all information which can reasonably be considered pertinent to the execution of its role as overseer of the NPS, and, in particular, information concerning Core Principles for Systemically Important Payment Systems (CPSIPS)

2/10/2010
10
B. A. S. S.

compliance of PCHs operated or licensed by PAN, membership criteria, financial reporting, risk management and internal oversight and audit procedures;

7.5 provide BoN with its criteria for evaluating PCH Systems Operators prior to authorisation for providing services to PAN members in particular where some or all of these services may be provided on a cross-border basis;

7.6 Involve BON in all discussions amongst members concerning the following:

7.6.1 operations and technical policies;

7.6.2 operational and technical criteria, conditions and standards;

7.6.3 payment instrument standards;

7.6.4 electronic notification and message standards; and

7.6.5 formats for electronic files and associated cryptographic technologies.

8. MEMBERSHIP OF PAN

8.1 All members of PAN as defined by the Act and who participate directly in at least one payment stream shall have voting rights on PAN;

8.2 The following shall be non-voting members of PAN:

8.1.1 BoN (as the overseer);

8.1.2 Indirect or Sponsored Participants;

8.1.3 Provisional Members; and

8.1.4 Representative of the Payment System Stakeholders Forum.

9. MEMBERS' OBLIGATIONS

9.1 Subject to Applicable Laws, the Regulatory Frameworks of the NPS and this Constitution, all PAN members shall:

- 9.1.1 Observe and be bound by PAN Policies and all resolutions and decisions of PAN Management Council;
- 9.1.2 Conduct their business at all times to
 - 9.1.2.1 Enable PAN to execute its mandate in terms of this Constitution in order to;
 - 9.1.2.2 Minimise risk in the NPS; and
 - 9.1.2.3 Achieve its objectives.
- 9.1.3 Foster co-operation between themselves and PAN;
- 9.1.4 Foster trust in them, the NPS and PAN as the Payment System Management Body;
- 9.1.5 Preserve the integrity of the NPS and refrain from acts which are detrimental to PAN or the NPS;
- 9.1.6 Participate in the NPS with due skills, care and diligence;
- 9.1.7 Act as responsible custodians of their payment system in the NPS;
- 9.1.8 As participants in the NPS, pursue the objectives of PAN;
- 9.1.9 Inform PAN immediately of becoming aware of any other Member failing to fulfil its on-going obligations in terms of this Constitution and any PAN policy;
- 9.1.10 Protect themselves, other members and PAN, against risks emanating from within their payment system, as well as from other participants or stakeholders in and/or users of the NPS;
- 9.1.11 Assist PAN in enabling BoN to adequately oversee the affairs of PAN and its Members in the discharging of BoN's responsibilities regarding the monitoring, regulation, supervision of payment, clearing and settlement systems.

- 9.1.12 Have at their disposal knowledgeable staff, infrastructure and support structures required and necessary for their participation in the NPS;
- 9.1.13 Accept overall responsibility for the settlement of its payments obligations within the payment system, and in doing so, assumes all settlement risk;
- 9.1.14 Have in place appropriate and legally sound structures that will assist in fulfilling its obligations;
- 9.1.15 Provide to PAN (and/or allow any appointed PCH System Operator and/or system operator to provide) payments information volumes and values, of all payments being processed on an on-going basis in a format acceptable to PAN;
- 9.1.16 Provide adequate resources and funding to allow PAN to actively fulfil its roles, pursue its objectives and to implement decisions of PAN Management Council;
- 9.1.17 Use all reasonable endeavours to ensure that Members comply with their obligations set out in this Constitution; and
- 9.1.18 Act honestly and ethically when interacting with PAN.

10. MEMBERS

All members as defined by the Act shall become members of PAN.

11. PROVISIONAL MEMBERS

- 11.1 Upon receipt of an application for membership of a PCH, or pending the formation of any PCH, PAN may admit any banking institution as a provisional member of PAN.
- 11.2 The provisional membership of a banking institution shall terminate on the expiry of the provisional license, either when that banking institution becomes a voting member of the Association or when the Association withdraws its provisional membership.
- 11.3 Provisional members may participate in the activities of PAN, but shall not vote at any general meeting or other meeting of PAN.

12. MEMBERS NOT IN GOOD STANDING

12.1 A member of PAN shall be regarded as "not in good standing" if decided by a special majority of the Association as a result of such member:

12.1.1 being in arrears or default regarding payment of subscriptions;

12.1.2 acting in a manner, which is contrary to the objectives of PAN;

12.1.3 bringing PAN or any other member of PAN into disrepute;

12.1.4 not adhering to policies, rules and regulations of PAN; or

12.1.5 causing unacceptable risk to PAN or its members.

13. CESSATION OF MEMBERSHIP

13.1 banking institution shall cease to be a member of PAN if:

13.1.1 it is no licensed by BoN; or;

13.1.2 it is not in good standing and PAN, by a special majority, decides to terminate such institutions' membership.

13.2 Any unpaid subscriptions of a banking institution, which ceases to be a member of PAN, shall be immediately due and payable.

14. FORMATION AND FUNCTION OF PAYMENT CLEARING HOUSE PARTICIPATING GROUPS

14.1 A PCH PG will come into existence once BoN and PAN approve or endorse the constitution of the PCH PG and the membership criteria of the PCHs under control of the PCH PG have been met.



14.2 Each PCH PG will be responsible for pursuing the objectives of PAN as they relate to its particular payment stream. In particular, each PCH PG will compile its own:

14.2.1 membership criteria relative to the respective PCHs under its control;

14.2.1 directives;

14.2.3 research and recommendations;

14.2.4 and will appoint its own operator(s) and establish clearing house(s).

14.3 The membership criteria and policy directives or other operational or business decisions liable to affect the stability of the PCH from time to time of any PCH will not be effective until approved by BoN and hence by a special majority of PAN.

15. MEMBERSHIP OF PAYMENT CLEARING HOUSES

15.1 Any banking institution, which complies with membership criteria, may apply to become a member of any one or more PCHs.

15.2 Applications shall be accepted or declined within a reasonable time not exceeding six (6) months as PAN may determine from time to time and reasons shall be stated for any declined application.

15.3 A banking institution shall cease to be a member of a PCH if:

15.3.1 it ceases to be a banking institution;

15.3.2 it fails to comply with the membership criteria approved by PAN from time to time with respect to that PCH;

15.3.3 it gives written notice of resignation from that PCH, to take effect 30 days after its delivery, unless it is withdrawn before that date; or

15.3.4 it is a member not in good standing and PAN, by a special majority, decides to terminate its membership.

5/12/15
15
[Handwritten signatures and initials]

15.4 If any banking institution, which is a member of a PCH, merges or is amalgamated with another entity or changes its legal status or corporate identity in any other way, or if there is a change in the controlling shareholder of that banking institution, that banking institution shall notify PAN within 7 days of such merger, amalgamation or other change, and PAN may

15.4.1 condone such change;

15.4.2 terminate membership in terms of paragraph 15.3.4; and/or

15.4.3 require the member to reapply for membership of the PCH; and/or

15.4.4 take or require such other action, as it may deem necessary.

15.5 The obligations of a banking institution that ceases to be a member of a PCH remain due as concerns the remaining members of that PCH regardless of that banking institution's membership status within PAN.

16. ANNUAL GENERAL MEETINGS OF PAN COUNCIL

16.1 PAN shall hold an annual general meeting in March of each year. Further meetings shall be held thereafter once every three months in a calendar year.

16.2 A quorum shall be constituted by the presence of 75% of the voting members of PAN Council members.

16.3 The purpose of the annual general meeting shall be:

16.3.1 by a majority of voting members present, to adopt the annual report of PAN office and statements of account for the preceding financial year and to elect auditors and fix their remuneration;

16.3.2 to confirm existing members and to review the status of provisional members,

16.3.3 to conduct such other business as may be specified in terms of paragraph 16.4. and

SK
16
8
2
2

16.3.4 reconstitute committees affected by the change of composition by PAN

- 16.4 Any member of PAN may introduce special business for discussion at the annual general meeting provided that it gives notice thereof to PAN Office not later than 31 January and such special business shall be included in the agenda, which accompanies the notice of the meeting

17. EXTRAORDINARY MEETINGS

- 17.1 Further extraordinary general meetings may be convened by the Chairperson, or by a special majority of PAN members. Such meetings may be cancelled by the person(s) who convened it.
- 17.2 Members of PAN shall be given at least 21 days' prior written notice of any meeting PAN. The notice will include a copy of the agenda for the meeting. A meeting may be convened on shorter notice if BoN and at least 75% of the voting members of PAN condone a shorter notice period.
- 17.3 The Chairperson of PAN shall preside over the meetings of PAN, and in his or her absence, one of the representatives present at the meeting shall be elected to preside the meeting.
- 17.4 Minutes of all PAN meetings shall be kept and distributed to all PAN members within a reasonable time (defined as 14 days from the date of the meeting) after the meeting.

18. VOTING AT MEETINGS OF THE ASSOCIATION

- 18.1 Each voting member of PAN shall have one vote at a general meeting.
- 18.2 Voting members of PAN shall vote by a show of hands unless any member of PAN object to the result of a vote, before or at the time that the vote is declared, in which case a poll shall be taken immediately in such manner as the Chairperson directs.
- 18.3 The Independent Chairperson shall immediately declare the result of a vote.
- 18.4 Each voting member of PAN shall have the right to vote at PAN meetings.

- 18.5 The Chairperson shall have a casting vote.
- 18.6 Decisions by PAN shall be reached, where possible, by consensus of all PAN members present at a meeting. Where consensus cannot be reached the decision shall be made by voting.
- 18.7 All decisions require at least majority votes, which shall be made
- 18.7.1 if there are no abstentions and all voting members of PAN who are present (or represented) vote in its favour;
- 18.7.2 if one or more voting members of PAN who are present (or represented) abstain from voting and at least one half plus one of the non-abstaining members who are present (or represented) vote in its favour; or
- 18.7.3 if one or more voting members of PAN who are present (or represented) abstain from voting and at least one half of the non-abstaining members who are present (or represented) and the Chairperson vote in its favour.
- 18.8 A decision requiring a special majority of votes shall be acquired according to the terms of 2.17 above.
- 18.9 If a provisional member reasonably considers any decision made by PAN Council (other than a resolution to change the Constitution) to be unfairly prejudicial to its interests, such member may make representations to PAN office within 7 calendar days of such a decision coming to the notice of the member and PAN Council shall not implement or further implement such a decision until that member has been given the opportunity to make such representations.

19. PAN MANAGEMENT COUNCIL

19.1 PAN Management Council shall act as the governing body of PAN and shall be responsible for the management of PAN, for which purpose the Management 19.1 Council may exercise all the powers and functions of PAN, as contemplated in clause 8.

19.2 Management Council is authorised to do all such acts and things as it may consider, at any time or from time to time, necessary or desirable in order to achieve PAN's objectives, subject to the provisions of this Constitution.

19.3 PAN Management Council shall consist of the following:

19.3.1 Independent Chairperson appointed in terms of clause 20;

19.3.2 Principal and alternate representatives of each of the direct participants;

19.3.3 BoN (non-voting);

19.3.4 The Chief Operating Officer (COO) of PAN;

19.3.5 Indirect or Sponsored participants (non-voting);

19.3.6 Representative of Payment System Stakeholders Forum (non-voting); and

19.3.7 Provisional Members (non-voting).

19.4 In addition to powers and duties mentioned in clauses 19.1 and 19.2 PAN Management Council shall:

19.4.1 Adopt and adhere to sound governance processes and meeting procedures;

19.4.2 Determine the strategy of PAN taking into account the objectives of PAN in clause 5 and giving effect thereto;

19.4.3 Take decisions on behalf of PAN and give effect to those decisions;

- 19.4.4 Provide guidance and direction to the Chief Operating Officer
- 19.4.5 Approve PAN policies and ensure that such policies are adopted and enforced
- 19.4.6 Use reasonable efforts to obtain consensus on any matters affecting PAN, its Members and/or other participants or stakeholders in the NPS;
- 19.4.7 Appoint a Chief Operating Officer, in consultation with BoN
- 19.4.8 Appoint Independent Chairperson, in consultation with BoN
- 19.4.9 Review and approve all proposed budgets;
- 19.5 Establish and monitor policies and procedures to safeguard the assets and future viability of PAN; and
- 19.6 Subject to clauses 19.8 and 19.7, PAN Management Council may only delegate its power and assign its duties to a PAN Management Council Subcommittee established by PAN Management Council in relation to such a matter and on such terms and conditions, as it deemed fit, provided that such delegation or assignment is done in writing with clear terms of reference;
- 19.7 PAN Management Council may not delegate its powers and authority to:
 - 19.7.1 Govern PAN;
 - 19.7.2 Amend the Constitution;
 - 19.7.3 Direct PAN to impose a fine on any member;
 - 19.7.4 Dissolve PAN, subject to this Constitution;
 - 19.7.5 Constitute, establish, maintain or dissolve any PAN Structure consisting of Members and which has an impact on, interacts with, has access to, or makes use of payment, clearing or settlement systems or operations as contemplated in the PSM Act; or

- 19.8 Management Council may revoke any delegation in whole or in part, or alter the terms and conditions of such delegation in writing.
- 19.9 PAN Management Council Subcommittee shall consists of:
- 19.9.1 Members of PAN Management Council;
 - 19.9.2 Representative of member banks;
 - 19.9.3 Persons with appropriate knowledge, expertise and experience; and
 - 19.9.4 Employees of PAN.
- 19.10 If PAN Management Council delegated its powers and assigned its duties to a Subcommittee:
- 19.10.1 Any delegated power or duty so exercised is deemed to have been exercised or performed by PAN Management Council; and
 - 19.10.2 PAN Management Council is not absolved from exercising or performing any power or duty so delegated or assigned.
- 20. APPOINTMENT OF INDEPENDENT CHAIRPERSON FOR PAN MANAGEMENT COUNCIL**
- 20.1 There shall be appointed an independent Chairperson (the Chairperson) who is not in any way connected to any of the member banks subjected to approval by BoN.
- 20.2 The Chairperson shall be appointed by PAN Management Council for a period of 3 (three) years.
- 20.3 When appointing the Independent Chairperson, PAN Management Council shall take into account:
- 20.3.1 Fitness and propriety of nominated person to serve in such capacity; and

21



20.3.2 skills, knowledge and sufficient experience to perform in such capacity.

- 20.4 Any person appointed as an Independent Chairperson may not serve as Independent Chairperson, director or ex officio of any entity authorised or registered by PAN (excluding PAN Structures).

21. RESIGNATION AND REMOVAL OF THE INDEPENDENT CHAIRPERSON

- 21.1 The Chairperson may resign from the office after giving three months written notice.

- 21.2 The Chairperson may be removed by a simple majority vote by members of Management Council after a written notice to BoN.

- 21.3 The Chairperson may be removed by the Management Council for any of the following reasons:

21.3.1 Gross violation of any section of this Constitution; or

21.3.2 Lack of interest in the performance of his/her duties and/or promoting the affairs of the Association; or

21.3.3 Gross misconduct, including being convicted of a criminal offence or being declared insolvent or engaging in any conduct that may bring the name of PAN into disrepute or negates on his/her fitness and propriety to serve in such capacity

- 21.4 Before removing the Independent Chairperson from the office in terms of clause 21.3, the Management Council must afford the Chairperson an opportunity to state his/her case at a meeting called by PAN for that purpose.

- 21.5 Any decision by the Management Council to remove the Independent Chairperson may be overruled by the Governor of BoN.

22. PAN STRUCTURES

22.1 The structures established by PAN or by the Chief Operating Officer of PAN as contemplated in clause 23.4.5.4 shall consist of:

22.1.1 Employees of PAN, and/or

22.1.2 Representative of members, and/or

22.1.3 Other persons with appropriate knowledge, expertise and experience; and/or

22.1.4 Members of PAN Management Council, on invitation by PAN, and

22.1.5 Forums as under 22.2 of this Constitution.

22.2 Forums shall primarily be constituted by PAN to consult on matters related to payments National Payment System and on strategies. Forums so constituted shall be entitled to invite participants or stakeholders in the NPS other than members to attend such meetings.

22.3 No binding decisions on PAN or its members shall be taken at PAN Structures.

23. THE CHIEF OPERATING OFFICER

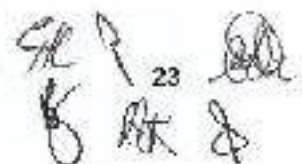
23.1 PAN Management Council subject to the approval of BoN shall appoint the Chief Operating Officer in terms of employment agreement approved by Council and shall ensure that he/she fulfils the duties set out in this clause 23.

23.2 PAN Management Council may terminate the employment of Chief Operating Officer, subject to approval by BoN.

23.3 PAN's day to day business and operations will be under the charge and general management and control of the Chief Operating Officer.

23.4 The Chief Operating Officer shall be accountable to PAN Management Council and is the Executive officer of PAN. Apart from the above, the Chief Operating Officer:

23



23.4.1 must give effect to PAN strategies and assist BoN in the development of new strategies in order to achieve the objective of PAN;

23.4.2 must establish relationships with participants and stakeholder (other than members) in the National Payment System (NPS); and build trusted relationships with such parties in order to provide guidance on risk reduction measures in the NPS;

23.4.3 authorise a person to act as a system operator or PCH system operator who complies with criteria;

23.4.4 must appoint suitable staff to assist PAN in the performance of its functions and determine the conditions of service, remuneration, allowances and other benefits of such staff, subject to any general or special direction from PAN Management Council;

23.4.5 must actively assist PAN Management Council in co-operation with BoN to influence NPS Policies

23.5 The Chief Operating Officer is responsible for preparation and publication of:

23.5.1 The annual report to be tabled at the General Meeting regarding the activities of PAN; and

23.5.2 The annual financial statements.

23.6 The COO May establish PAN Working Structures and assign duties and function to them.

24. REPRESENTATION AT PAN MANAGEMENT COUNCIL MEETINGS

24.1 PAN members shall appoint principal representatives and alternate representatives who shall have the authority to participate, take binding decisions and, in the case of voting members, vote on behalf of their member. Changes to such appointed representatives must be advised to PAN office and record shall be amended accordingly.

24.2 A PAN member shall be represented by its principal representative and in his or her absence, by the alternate representative who shall give notice of his/her presence and

24
24

capacity at the commencement of the meeting. Should neither the principal nor the alternate representatives be able to attend a meeting, a temporary representative may be appointed under signature and authority of the principal representative, which appointment shall include all rights vested in the principal representative and more specifically the right to vote and the right to be counted as part of the quorum, and which authority shall be handed to the Independent Chairperson at the commencement of the meeting. The temporary representative's appointment shall be for one meeting only. Members shall ensure that temporary representatives are suitably briefed so as not to compromise the effectiveness of the meeting.

- 24.3 Both principal and alternate representatives may attend any meeting, but the alternate may not participate without the Independent Chairperson's approval, in which instance the alternate acts instead of the principal representative for the duration of the alternate's participation.
- 24.4 Any provisional member who is not an PAN member shall have the right to attend PAN Council meetings and to make representations to PAN, provided that the Independent Chairperson is given at least 7 days* prior notice thereof and provided further that the Independent Chairperson may in the Independent Chairperson's sole discretion delay any representation to a subsequent meeting.

25. RIGHT OF APPEAL TO BON

- 25.1 Any PAN member may appeal to BoN against any decision of a meeting of PAN Council if it is the opinion of that member that such decision is contrary to the integrity of the payment system or the interests of PAN members as a whole and provided it has given PAN 7 calendar days' prior notice of its intention to appeal and the grounds for the appeal.
- 25.2 The appeal shall be made in writing, setting out the grounds for the appeal and shall be delivered to BoN within 14 calendar days of the appellant first becoming aware of the decision or proposed decision against which the appeal is directed, or within such longer period as may be condoned by the Independent Chairperson of PAN, and the appellant shall within the same time deliver a copy of its submissions to the Independent Chairperson of PAN.



- 25.3 PAN may submit a written response to the appeal, which shall be delivered, to BoN and the appellant within one week of receiving the appellant's submission.
- 25.4 BoN shall, within 3 weeks of the expiration of the time allowed for PAN's response and having taken all the relevant facts into consideration and stating reasons therefore:
- 25.4.1 decline the appeal; or
 - 25.4.2 refer the matter back to PAN for further consideration; or
 - 25.4.3 if it is satisfied that the integrity of the payment system or the interests of members as a whole have been compromised, uphold the appeal and direct PAN to set aside the decision.
- 25.5 A decision, which is subject to an appeal, shall not be implemented until the appeal has been dealt with by BoN in terms of this Constitution.
- 25.6 The decision of BoN shall be final and subject only to judicial review.
- 25.7 A member of PAN may at any time, appeal to BoN, should it feel that actions or decisions of PAN made outside of PAN's regular meetings fall within the criteria of 26.1 and provided that equivalent notice periods are respected.
- 25.8 BoN may also consider, without intervention of another association member, that a decision of PAN might affect payment system stability. In which case it will inform the Independent Chairperson of PAN that it is evaluating the effects of this decision and in conformity with 26.4 will advise PAN of its evaluation.

26. ADMINISTRATION OF PAN

- 26.1 The administrative functions of PAN arising from decisions made shall be the responsibility of PAN or such other person as PAN may nominate.
- 26.2 Matters of policy and interpretation shall, after consultation with the Independent Chairperson or other office bearer, be referred to PAN, a committee or such other body as may be deemed appropriate.

SK 26
8 BK 7

27. ANNUAL REPORT AND ACCOUNTS

A statement of accounts, duly audited, shall be presented to Management Council within 3 (three) months after the financial year end. A copy thereof, with the annual report of the Chief Operating Officer shall be forwarded to each member of the Association together with notice of the annual general meeting as required in terms of paragraph 16.4.

28. FINANCIAL YEAR

The financial year of PAN shall end on 31 December of each year.

29. AUDITORS

Auditors shall be appointed at the annual general meeting for each successive year.

30. INCOME AND ASSETS

31.1 All income and assets of PAN, however derived, shall be applied wholly towards the promotion of the objectives of PAN.

31.2 No portion of the income and assets shall be paid or transferred, directly or indirectly, by way of bonus or dividend to, or by way of a division of profit amongst Association members save as provided for in this Constitution.

31. PAYMENTS

Nothing contained in this Constitution shall preclude the payment in good faith of:

31.1 remuneration by way of honorarium, fee or salary to, and refund of authorised expenses incurred by any PAN member, representative, official or person in return for services rendered to PAN – which basis has previously been declared to BoN; and

5/11/2027
SIL
27
BOK

- 31.7 travelling, transport and subsistence expenses incurred by representatives and committee members in attending to the business of PAN, at rates laid down and made available to BoN by PAN from time to time.

32. SUBSCRIPTIONS OF MEMBERS

- 32.1 All members of PAN shall be liable for an annual subscription.
- 32.2 Each member of PAN will be liable for the same annual subscription irrespective of the number of PCHs in which they participate or of their relative throughput in terms of value or volume.
- 32.3 Annual subscriptions shall be paid in advance for each financial year and shall be due and payable on 31 January of each year or in the case of newly admitted voting members, upon admission; provided that a bank admitted to membership after 30 June in any year shall pay one-half of the annual subscription that would otherwise have been payable for that year.
- 32.4 A banking institution ceasing to be a member of PAN, shall be entitled to a reduction of its annual subscription, on condition that it has given notice to PAN of its impending cessation of membership in the (calendar) year preceding the year in which its membership will actually cease. The banking institution giving notice of cessation of membership shall pay one-half of its annual subscription if its membership ceases in the first semester (before 30 June) of the year. Full annual subscriptions shall be payable thereafter by such member, should it fail to cease membership before 30 June of the given year. Extinguishing of a bank's debt to PAN has no effect of its remaining debts to other members of PAN.
- 32.5 If in the opinion of PAN further funds are required for purposes of carrying on the work of PAN, PAN may impose additional levies proportionate to subscriptions, for such additional amount. The additional levy shall be payable within such time as PAN may specify.
- 32.6 So long as any subscription due by any PAN member is in arrears, and provided PAN has given that member notice thereof, that member shall not be in good standing and may not exercise any rights of membership.

- 32.7 PAN may give a rebate in respect of the ~~whole~~ or a portion of subscriptions in any financial year and such a rebate, if any, shall accrue to PAN members on a *pro rata* basis, relative to the percentage of that member's contribution to the total, and shall be applied in reduction of that member's subscriptions for the following year.

33. LIABILITY OF MEMBERS LIMITED

The liability of PAN members to PAN shall be limited to the amount of the annual subscriptions current or in arrears and any additional levy imposed in terms of this Constitution.

34. AMENDMENTS OF CONSTITUTION

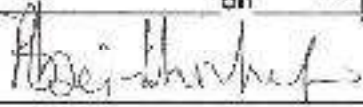
- 34.1 This Constitution shall not be amended unless by a special majority of PAN and after the approval of BoN.
- 34.2 Notice of any proposed amendment to the Constitution shall be sent to each PAN member at least 21 days before the date of the meeting at which the proposed amendment shall be considered.

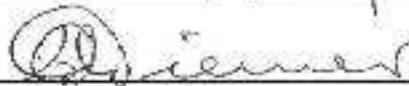
35. WINDING UP

Subject to the approval of BoN PAN may be wound up by a special majority of PAN in which event a liquidator shall be appointed and, after payment of PAN's liabilities, its remaining assets shall be transferred to some other company, society or association with objectives similar to those of PAN. Should no such company, society or association be created the remaining assets will be distributed amongst the paid-up members of the association pro rata to their last membership payments.

5/1/15
29
[Signatures]

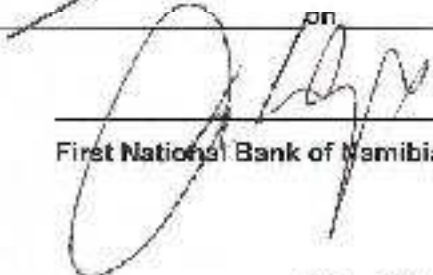
36. SIGNATURES

Signed at Windhoek on 13/9/2011

 BoN (duly authorized)

Signed at Windhoek on 13/09/2011

 Bank Windhoek Ltd (duly authorized)

Signed at Windhoek on 13/09/2011

 Nedbank Namibia Ltd (duly authorized)

Signed at _____ on _____

 First National Bank of Namibia Ltd (duly authorized)

Signed at Windhoek on 13.09.2011

 Standard Bank Namibia Ltd (duly authorized)

Signed at Windhoek on 13/09/2011

 PAN Chairperson (duly authorised)

37. ANNEXURE

Certificate PSMBC/001


BANK OF NAMIBIA

Certificate Of Commencement Of Business
(in terms of Section 2(2)(c) of the Payment System Management Act, 2003 (Act No. 13 of 2003))

This is to certify that the Bank of Namibia hereby recognizes the PAYMENTS ASSOCIATION OF NAMIBIA (PAN) as a payment system management body in terms of Section 2(2)(c) of the Payment System Management Act, 2003 (Act No. 13 of 2003) and is hereby authorized to commence business.

This document is and remains property of the Bank of Namibia and any duplication, copying or reproduction of the whole or part thereof is strictly prohibited.

Given under my hand at Windhoek this 12th day of AUGUST 2005


Governor

