



**Constitution
Of
The Payments Association of Namibia**

Document type: Constitution
Version number: 0124
Document Owner: PAN Executive Office
Document Custodian: Compliance Officer
Document Approver: Independent Chairperson of PAN
Date of approval:
Effective date:
Review frequency: Annually
Next review date:

Approval:

Signature/Signed on behalf of the Document Approver:


_____ (sign here)

Adrianus Vugs

Name

Independent Chairperson

Designation

16 July 2024

Date

VERSION CONTROL AND CHANGE HISTORY

Version number	Approval date	Changes approved by	Adoption / Amendment / Maintenance	Author
1803	28032018	Koos Keyser	Amendment	Manager: Regulatory and Compliance
1905	22052019	Koos Keyser	Amendments	Industry / Manager Regulatory and Compliance
1123	24112023	Annette Rathenam	Revision in accordance with Act 14 of 2023	L Sartorius von Bach
0124		Adrianus Vugs	Amendments	PAN Independent Chairperson

Table of Contents

1.	Name and Capacity	5
2.	Interpretations and Definitions	5
3.	Recordal	7
4.	Legal Status.....	7
5.	Mandate and objectives.....	7
6.	Powers and Obligations	8
7.	Membership of PAN	10
8.	Governance Model.....	11
9.	Rights and Obligations of Members	12
10.	Members not in good standing.....	13
11.	Membership termination.....	13
12.	Formation and function of Forums	14
13.	Annual General Meetings of PAN	14
14.	PMB Meetings	14
15.	Extra-ordinary Meetings	14
16.	PAN Management Board.....	15
17.	PAN Executive Office and Chief Executive Officer	15
18.	Dispute Resolution amongst Members	15
19.	Settlement of disputes with the Bank.....	16
20.	PAN Funding Model.....	17
21.	Liability of Members	17
22.	Amendment of Constitution.....	17
23.	Winding Up.....	17

1. Name and Capacity

- 1.1. The Payments Association of Namibia (PAN) is established in terms of Section 5 of the Payment System Management Act, 2023 (Act No. 14 of 2023).
- 1.2. PAN is 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.
- 1.3. The registered address of PAN shall be as determined by the PMB from time-to-time.

2. Interpretations and Definitions

- 2.1. The headings of the articles in this Constitution are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify, nor amplify the terms of this Constitution nor any article hereof.
- 2.2. Unless a contrary interpretation clearly appears, words importing:
 - 2.2.1. Any one gender includes the other;
 - 2.2.2. The singular includes the plural and vice versa; and
 - 2.2.3. Persons include natural persons, created entities, whether corporate or unincorporated, and the state.
- 2.3. Unless the context otherwise requires, the following terms shall have the following meanings:

“Act” means the Payment System Management Act, (Act No. 14 of 2023);

“Bank” means the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020);

“Banking institution” as defined in section 1 of the Banking Institutions Act, means a public company authorised under the Banking Institutions Act (Act No. 13 of 2023) to conduct banking business, or deemed to be so authorised;

“Chairperson” means the Independent non-executive Chairperson appointed in terms of section 7, subsection 2 of the Act;

“Chief Executive Officer (CEO)” means the person who is the executive officer of PAN, appointed as contemplated in article 15;

“Constitution” means this document, including all annexures hereto;

“Day” means a calendar day;

“Forum” means collaborative platform designed to facilitate communication and cooperation among its members within the national payment system. These forums also actively engage in regional and international initiatives to promote payment system integration and are required to report through the Payments Management Board (the PMB) on matters affecting the national payment system to Bank of Namibia;

“General Meeting” means the meeting convened by PAN as contemplated in article 12 below;

“Member” means an entity that satisfies the requirements of Section 8(1) and 8(2) of the Act and as contemplated under Article 8 of this Constitution;

“Membership Entry and Participation Criteria” means the requirements for membership to PAN as contemplated in article 7 below;

“National Payment System” or “NPS” means the entire payments ecosystem and includes all the payment systems, clearing systems, settlement systems and the rules, standards, arrangements, procedures, laws, agreements, technologies, payment instruments and institutions that are used in the processing and transferring of funds and securities;

“PAN” means the Payments Association of Namibia in terms of Section 5 of the Act;

“PAN Policies” means all operational and technical policies, principles, position papers, instructions, requirements, rules, agreements, schedules, processes, procedures and the like, prescribed and issued by PAN from time-to-time;

“PAN Management Board” or “PMB” means the governing body of PAN as required in terms of section 7(2) of the Act and as more fully described in article 13 below;

“Payment stream” means a category of payment instruments with its own distinguishable clearance procedures or requirements, as determined by PAN;

“Payment Services” means services relating to the facilitation of payment instructions, the issuance and acquiring of payment instruments or electronic money and any other services incidental to executing payments or transferring of funds, as specified under the Schedule of the Act;

“Payment Service Provider” means a person, including a banking institution, licensed under Act to provide Payment Services as specified under the Schedule to the Act;

“Provisional Member” means an institution or body who has been granted provisional membership status by the Bank; and

“System Participant” means a member of a payment system that is authorised and recognised in the rules of that payment system or is otherwise recognised by the operator of that payment system.

2.4. In this Constitution, unless the context requires otherwise:

2.4.1. Where there is a conflict between this Constitution and any PAN policies or annexures to this Constitution, the Constitution shall prevail;

2.4.2. When any number of days is prescribed in this Constitution it shall refer to working days and exclude Saturdays, Sundays and public holidays;

2.4.3. An approval or notice in terms of this Constitution, must be in writing, unless otherwise specified;

2.4.4. All words and expressions not defined herein but otherwise defined in the Act, shall bear the same meaning in this Constitution; and

2.4.5. In the event of conflict between this Constitution and the Act, the Act shall prevail.

3. Recordal

- 3.1. The PAN was duly constituted on 12 August 2005 and registered as an association not for gain and continues to exist as a juristic person in terms of section 5(1)(a) of the Act.
- 3.2. This Constitution replaces and supersedes all previously adopted constitutions and sets out the mandate, powers, functions, duties and obligations of PAN, and the rights and obligations of Members and Provisional Members.
- 3.3. This Constitution also serves to:
 - 3.3.1. ensure compliance of PAN's obligations as the PAN;
 - 3.3.2. enables the Bank to effectively perform its oversight function as contemplated in section 3 of the Act;
 - 3.3.3. ensure that each Member's representative, in discharging his/her duties, shall:
 - (a) act in the best interest of the NPS; and
 - (b) exercise necessary care, skill, and diligence in handling the affairs of the NPS.
- 3.4. Except to the extent provided for in this Constitution, no person other than a Member shall have any rights under this Constitution or enforce any provision of this Constitution.

4. Legal Status

- 4.1. PAN is a juristic person under the name Payments Association of Namibia with its own legal identity which is separate from its Members. PAN shall continue to exist, despite changes in its Membership from time-to-time.
- 4.2. No Member shall be liable in any way for loss and/or damage that may be suffered by PAN through any act or omission of any other Members and/or PAN or any of its agents and/or employees in the execution of any duty, unless such loss or damage is the result of the Member's negligence, wilful misconduct, or fraud.
- 4.3. No Member shall have any right to and/or interest in any of the property or funds of PAN.
- 4.4. PAN shall apply its surplus and/or income in promoting its objectives and shall not at any time, make any distribution or pay any dividend and/or surplus to any of its Members.

5. Mandate and objectives

- 5.1. The mandate of the PAN is to:

- 5.1.1. act as a collaborative platform for its members;
 - 5.1.2. subject to the approval of the Bank, set standards for member participation in payment systems and forums;
 - 5.1.3. participate in relevant regional and international initiatives and platforms in the promotion of regional and international integration of payment systems;
 - 5.1.4. report to the Bank on matters affecting the national payment system; and
 - 5.1.5. perform such further functions relating to payment, clearing or settlement system as the Bank may assign to it.
- 5.2. The objectives of the PAN are to:
- 5.2.1. with the approval of the Bank, make and administer technical rules relating to payment instructions and payment instruments;
 - 5.2.2. to enhance stakeholder collaboration and support regional initiatives to ensure access to a safe, efficient, and cost-effective regional payments system.
 - 5.2.3. to deal with and promote co-operation among members, facilitate collaborative efforts by its members and any other matters of interest to Members and key stakeholders to foster co-operation between them;
 - 5.2.4. to adopt and maintain appropriate structures and frameworks for purposes of monitoring and governance;
 - 5.2.5. to promote, propose, support, or oppose, as may be deemed appropriate, any proposed legislative changes or other measures affecting the interests of the Members and/or the NPS;
 - 5.2.6. to fairly represent and promote the technical and related interest of all Members;
 - 5.2.7. to strengthen the human capital of the NPS;
 - 5.2.8. to facilitate and coordinate domestic interoperable projects; and
 - 5.2.9. to do such other things in the interest of PAN, the NPS, its Members and stakeholders whilst acting within the regulatory framework of the NPS and which are not inconsistent with the objectives, or any other matter explicitly provided for in this Constitution.

6. Powers and Obligations

- 6.1. Subject to the Act and this Constitution, PAN shall have all the powers which are necessary, conducive, or incidental to the achievement or furtherance of its mandate and objectives as set out in article 5.

6.2. PAN shall:

6.2.1. Establish the PAN Management Board consisting of:

- (a) an independent non-executive Chairperson (“the Chairperson”);
- (b) at least two independent non-executive directors;
- (c) the deputy director of the National Payment System Department of the Bank (ex officio); and
- (d) any other such executive directors and non-executive directors as determined and stipulated in the Governance Policy of PAN.

6.2.2. 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;

6.2.3. appoint one or more Members of PAN, inclusive of Members with dissenting views on a particular subject matter, to meet with any authority, in relation to the subject matter;

6.2.4. sponsor, oppose, support, or make representations regarding any legislation, regulations, directives, or circulars as proposed or issued by the Bank or other regulatory agencies,

6.2.5. accept Members and with the approval of the Bank, terminate membership;

6.2.6. constitute, establish, or dissolve any PAN structure comprising of its Members, and which has an impact on, interacts with, has access to or makes use of the payment, clearing or settlement systems or operations;

6.2.7. define policies, strategies, powers, rules, and standards in terms of which Forums may be formed and in terms of which Forum policies, rules and standards must be established;

6.2.8. approve the formation of Forums, to recognise any pre-existing entity as a /Forum, and to dissolve any Forum and revoke any recognition given;

6.2.9. become a Member of, or support, promote, join, or enter any association or similar body;

6.2.10. institute or defend any legal proceedings in respect of any cause or matter affecting Members;

6.2.11. acquire, sell, and dispose of property or other assets, and invest in the name of PAN any monies not immediately required for PAN;

6.2.12. open and operate bank accounts in the name of PAN subject to approval by the PMB;

6.2.13. appoint auditors and determine their remuneration;

6.2.14. hire, acquire or lease any premises, equipment or vehicles;

- 6.2.15. make donations to such persons and in such cases as PAN may consider directly or indirectly conducive to the attainment of any of its objectives;
 - 6.2.16. approve annual budgets and to receive from Members or others, fees, subscriptions, levies, donations, and grants to be utilised for the objectives of PAN;
 - 6.2.17. 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;
 - 6.2.18. insure against losses, damages, risks, and liabilities of all kinds, which may affect PAN or its employees;
 - 6.2.19. disseminate information in accordance with relevant rules and confidentiality requirements to Members on matters of common interest;
 - 6.2.20. promote fair access to payment system services;
 - 6.2.21. promote competition in the provision of payment system services in line with the applicable domestic competition laws; and
 - 6.2.22. perform any functions necessary to discharge its mandate.
- 6.3. In executing its functions, PAN shall:
- 6.3.1. Always act in a responsible and professional manner and ensure that its decisions are made in accordance with applicable legislation and national policies and strategies.
 - 6.3.2. Report to the Bank on all matters affecting the NPS.
 - 6.3.3. Ensure that all standards, criteria and conditions determined by it:
 - (a) comply with section 6(2) of the Act; and
 - (b) are submitted to the Bank for approval, including all information which can reasonably be considered pertinent to the execution of its role as custodian of the NPS.
 - 6.3.4. Involve the Bank in discussions amongst members as might be necessary from time-to-time.
- 6.4. In accordance with the Funding Model, PAN shall, with the approval of the Bank, determine or amend the annual subscription fees payable by its Members.

7. Membership of PAN

- 7.1. Membership is compulsory for:
 - 7.1.1. Payment Service Providers;

- 7.1.2. System Participants; and
- 7.1.3. Other relevant stakeholders as may be determined by the Bank.
- 7.2. Membership to PAN may, with approval by the Bank, be extended to such other third parties as may be considered necessary by PAN on account that such third parties meet any of the following criteria:
 - 7.2.1. have an influence or bearing on the business activity of the Payment Service Provider in rendering Payment Services;
 - 7.2.2. have direct or substantial interest in the mandate or objectives of PAN;
 - 7.2.3. leverage on or make use of Payment Services offered by Payment Service Providers, in executing their business activity; or
 - 7.2.4. any other criteria PAN deems relevant to admit Members to PAN, subject to approval by the Bank.
- 7.3. To maintain membership of PAN, Members admitted in terms of article 7.2 must continue to comply on an ongoing basis with the criteria set out in that article.
- 7.4. Any Payment Service Provider, System Participant or relevant stakeholder which received a provisional authorisation from the Bank will automatically become a Provisional Member of PAN.
- 7.5. Any Provisional Membership of PAN shall terminate on the expiry of the provisional license or authorisation from the Bank.
- 7.6. Provisional Members through a Non – Disclosure agreement shall be entitled to all the rights of Members as contemplated in article 9 below but shall not vote at any general meeting or any other meetings of PAN.
- 7.7. Provisional Members shall be subjected to all obligations of Members as contemplated in article 9 below.
- 7.8. PAN shall maintain a complete register of all Members and Provisional Members.

8. Governance Model

- 8.1. PAN must, with the approval of the Bank, adopt a Governance Model for the operations of PAN.
- 8.2. The PAN Governance Model must include the following provisions:
 - 8.2.1. PAN governance structures;

- 8.2.2. PMB composition and appointment;
- 8.2.3. the appointment, resignation and removal of the Independent Chairperson for PMB;
- 8.2.4. the Chief Executive Officer's function;
- 8.2.5. the auditors of PAN; and
- 8.2.6. Any other matter as the Bank may determine.

9. Rights and Obligations of Members

9.1. Members shall have the right to:

- 9.1.1. View and access the Annual Financial Statements of PAN;
- 9.1.2. Access the services and support of PAN, including requesting PAN to conduct research on specific subject matters;
- 9.1.3. Have access to research conducted by PAN which does not breach confidentiality requirements or expose member specific information; and
- 9.1.4. Timeously receive adequate notification, agendas and minutes, table matters for discussion and to address other Members on any relevant matter tabled for discussion and decision at a General Meeting or any other PAN structures.

9.2. Members are obligated to:

- 9.2.1. Observe and be bound by the Act, this Constitution and PAN Policies;
- 9.2.2. Be liable for payment of annual subscription fees in terms the PAN Funding Model;
- 9.2.3. Conduct their business in such a manner to at all times to:
 - (a) Enable PAN to execute its mandate and achieve its vision, mission and objectives;
 - (b) At all times act in the interest of the NPS and must exercise the necessary care, skill, and diligence in handling the affairs of the NPS;
 - (c) Foster collaboration with PAN and within the NPS;
 - (d) Preserve the integrity of the NPS and refrain from acts which are detrimental to PAN or the NPS;
 - (e) Inform PAN immediately when becoming aware of any risk related to the NPS;
 - (f) Protect themselves, other Members and PAN, against risks emanating from within their payment systems; and

(g) Assist PAN in enabling the Bank to adequately regulate and supervise the NPS.

10. Members not in good standing

10.1. A Members shall not be in good standing if the Bank determines the following:

10.1.1. The Member has not met the requirements of article 9.2.2;

10.1.2. Acting in any manner which is contrary to the objectives of PAN;

10.1.3. Not adhering to this Constitution, Directives, policies, rules, and regulations of PAN;

10.1.4. Causing unacceptable risk to PAN or its Members;

10.1.5. By majority vote of the PMB, the Member is not meeting the obligations in terms of articles 9.2.1 and 9.2.3.

10.2. PAN shall report any Member determined not to be in good standing to the Bank.

11. Membership termination

11.1. PAN may resolve to terminate the membership of any Member if:

11.1.1. The Member's license or authorisation is permanently revoked by the Bank;

11.1.2. Where the Bank has revoked the approval of a Member with membership granted in terms of section 8(1)(c) or 8(2) of the Act;

11.1.3. The Member is placed under curatorship, has a provisional or final winding up order, judicial management order or any other similar order issued against it; or

11.1.4. The Member is not in good standing in terms of article 10, subject to the approval of the Bank.

11.2. Members in terms of article 7.2, may terminate their membership by providing not less than 3 months prior written notice.

11.3. Any subscription fees:

11.3.1. Unpaid by a Member, which ceases to be a member of PAN, shall be immediately due and payable; and

11.3.2. paid by a Member will be non-refundable.

11.4. A Member whose membership has been involuntary terminated may re-apply for membership and may be readmitted on such conditions as may be imposed by the Bank.

12. Formation and function of Forums

- 12.1. A Forum for a specific purpose will come into existence on approval of the terms of reference by PAN and the Bank.
- 12.2. Each Forum will be responsible for pursuing the objectives and mandate of PAN as they relate to its particular payment stream or subject matter.

13. Annual General Meetings of PAN

- 13.1. PAN shall hold an Annual General Meeting within 6 months of its financial year end at a time determined by the PMB.
- 13.2. A quorum shall be constituted by the presence of 75% of PAN Members.
- 13.3. The purpose of the Annual General Meeting shall be:
 - 13.3.1. By a majority of voting Members present, to:
 - (a) Approve the annual financial statements;
 - (b) Approve the annual report;
 - (c) Appoint the auditors and approve their remuneration;
 - 13.3.2. To confirm existing Members and to review the status of Provisional Members;
 - 13.3.3. Reconstitute committees affected by any change; and
 - 13.3.4. To conduct such other business as may be specified.

14. PMB Meetings

- 14.1. PMB meetings shall be held quarterly.
- 14.2. A quorum shall be constituted by the presence of 75% of the PMB Members.
- 14.3. The Chairperson shall preside over the meetings of the PMB, and in his or her absence, one of the independent non-executive directors shall act as Chairperson.
- 14.4. Minutes of all PMB meetings shall be filed.

15. Extra-ordinary Meetings

- 15.1. Extraordinary annual general meetings or PMB meetings may be convened by the Chairperson, or by a majority of PAN Members.

- 15.2. Members of PAN shall be given at least 7 days prior written notice of any meeting which shall include a copy of the agenda for the meeting.
- 15.3. The Chairperson shall preside over the meetings of the PMB, and in his or her absence, one of the independent non-executive directors shall act as Chairperson.
- 15.4. Minutes of the meeting shall be filed.

16. PAN Management Board

- 16.1. The PMB is hereby constituted as the governing body of PAN and shall be responsible for the management of PAN, for which purpose the PMB may exercise all the powers and functions of PAN, as contemplated in article 6 above.
- 16.2. The PMB is authorised to do all such acts and things as it may consider, at any time or from time-to-time, necessary or desirable to achieve PAN's objectives.
- 16.3. PMB representation will be determined as stipulated in the PAN Governance Model but shall consist of an independent non-executive chairperson and at least two independent non-executive directors.
- 16.4. PAN Governance Model will provide for the functions of the PMB; the appointment of the Independent Chairperson for PMB; the resignation and/or removal of the Independent Chairperson; and the Chief Executive Officer's functions.

17. PAN Executive Office and Chief Executive Officer

- 17.1. The PAN Executive Office is responsible for the day-to-day management of PAN.
- 17.2. The PAN Executive Office will be headed by the CEO.
- 17.3. The PMB, subject to the approval of the Bank and Governance Policy, shall appoint the CEO for a 5-year term and such other conditions as approved by the PMB.
- 17.4. The PAN Governance Model further prescribes the functions and powers of PAN Executive Office and Chief Executive Officer.

18. Dispute Resolution amongst Members

- 18.1. Settlement of disputes amongst Members:
 - 18.1.1. Any dispute arising among payment service providers must be settled in accordance with section 38 of the Act, which provisions are incorporated herein by reference.
 - 18.1.2. Any dispute arising among payment system operators must be settled in accordance with the rules of that payment system, which are incorporated herein by reference.

19. Settlement of disputes with the Bank

- 19.1. If PAN, a Member, Provisional Member, or a payment system operator is aggrieved by a decision taken by the Bank under this Act and a dispute arises between them, the dispute must be settled in accordance with section 39 of Act which provisions are incorporated herein by reference.
- 19.2. Any Member, Provisional Member or the PAN Executive Office may appeal to the Bank against any decision taken by the PMB if it is the opinion of that Member or the PAN Executive Office that such decision is contrary to the integrity of the NPS or the interests of Members/Provisional Member as a whole and that it has exhausted the dispute process in the PAN Dispute Policy.
- 19.3. If they have exhausted the dispute process in terms of the PAN Dispute Policy, they must give PAN 7 (seven) calendar days prior notice of its intention to appeal to the Bank and the grounds for the appeal.
- 19.4. The appeal shall be made in writing, setting out the grounds for the appeal and shall be delivered to the Bank within 14 (fourteen) 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.
- 19.5. PAN may submit a written response to the appeal, which shall be delivered to the Bank and the appellant within 7 (seven) days of receiving the appellant's submission.
- 19.6. The Bank shall, within 30 (thirty) days of the expiration of the time allowed for PAN's response and having taken all the relevant facts into consideration and stating reasons therefore:
 - 19.6.1. Decline the appeal; or
 - 19.6.2. Refer the matter back to PAN for further consideration; or
 - 19.6.3. If it is satisfied that the integrity of the NPS or the interests of Members have been compromised, uphold the appeal and direct PAN to set aside the decision.
- 19.7. A decision, which is subject to an appeal, shall not be implemented until the appeal has been dealt with by the Bank.
- 19.8. The decision of the Bank shall be final and subject only to judicial review.
- 19.9. A Member may at any time, appeal to the Bank, should it feel that actions or decisions of PAN made outside of PAN's regular meetings fall within the criteria of article 18.6 above, provided that the equivalent notice periods are respected.

19.10. The Bank may also consider, without intervention of another association Member, that a decision of PAN might affect the stability of the NPS, in which case, it will inform the Chairperson that it is evaluating the effects of this decision and will advise PAN of its evaluation.

19.11. Nothing contained in this article will preclude Members, provisional members, or PAN from seeking urgent relief from the High Court of Namibia, Windhoek Local Division, or the Bank.

20. PAN Funding Model

20.1. PAN must, with the approval of the Bank, adopt a Funding Model for the operations of PAN.

20.2. The PAN Funding Model must include provisions on the overall funding of PAN inclusive of the member subscription fees; income and assets of PAN; payments; and annual report and accounts of PAN, among other provisions.

21. Liability of Members

The liability of Members to PAN shall be limited to the amount of the annual subscriptions current or in arrears.

22. Amendment of Constitution

22.1. This Constitution shall not be amended unless by a Special Majority (75%) of all Members at an Annual General Meeting and subject to the approval by the Bank.

22.2. Notice of any proposed amendment to the Constitution shall be sent to each Member at least 21 days before the date of the meeting at which the proposed amendment shall be considered.

23. Winding Up

PAN may only be wound up by an Act of Parliament.