

**THE CONSTITUTION
OF
THE PAYMENT DISTRIBUTION ASSOCIATION
OF SOUTH AFRICA**

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CONSTITUTION

PAYMENT DISTRIBUTION ASSOCIATION of SOUTH AFRICA

PREAMBLE

WHEREAS it is expedient to provide and amend when appropriate a Constitution for the Payment Distribution Association of South Africa while having cognisance of relevant legislation.

NOW THEREFORE it is agreed that the following shall be the Constitution of the Payment Distribution Associations of South Africa.

1. THE ASSOCIATION

1.1 The name of the Association shall be the PAYMENT DISTRIBUTION ASSOCIATION of SOUTH AFRICA (PDASA) – hereafter called “The Association”

1.2 The Association’s registered address will be

2. LEGAL STATUS

2.1 The Association is and shall continue to be a distinct and separate legal entity and body corporate, with the power to acquire, to hold and to alienate property of every description whatsoever, and with the capacity to acquire rights and obligations and having perpetual succession and shall be capable in law of suing and being sued in its own name.

The Association will consist of PDA’s registered and accredited with the National Credit Regulator (NCR) as per par.8. of this constitution document

2.2 All actions or suits, proceedings at law or any arbitration shall be brought by or against the Association in the name of the Association and the Board / Executive Committee may authorise any person or persons to act on behalf of the Association by means of a proper mandate and to sign all such documents and to take all such steps as may be necessary in connection with any such proceedings.

3. **NON-PROFIT ASSOCIATION**

Notwithstanding anything to the contrary herein contained:

- 3.1 The Association is not formed and does not exist for a purpose of carrying on any business that has for its object the acquisition of gain by the Association or its individual members.
- 3.2 The income and assets of the Association shall be applied solely for investment and for the promotion of the objects for which it is established.
 - 3.2.1 No part of the income or assets of the Association shall be paid, directly or indirectly, by way of dividend, donation or otherwise, to any person. The Association will be a not for profit body.
 - 3.2.2 Provide any of its member's financial assistance or any premises or continuous services or facilities for the purpose of carrying on any business, profession or occupation.

4. **OBJECTS AND POWERS OF THE ASSOCIATION**

- 4.1 The objectives of the Association shall be:
 - 4.1.1 To advance and promote the science and practise of Payment Distribution Agencies and uphold the good standing of the industry as a whole, thus working closely with other bodies and associations with the same objectives
 - 4.1.2 To uphold the dignity of and to stop illegal practices by members by means of aligning them with the code of conduct through disciplinary action and or penalties
 - 4.1.3 To watch over, promote and protect the common interest of its members;
 - 4.1.4 To afford the opportunity for the interchange and sharing of knowledge and experience between PDA's
 - 4.1.5 To promote high standards of professional competence and integrity;
 - 4.1.6 To establish and promote industry rules and governance within the PDA fraternity and to develop a sound working relationship between all industry stakeholders in a collaborative effort to enhance the PDA effectiveness.
 - 4.1.7 To promote, co-ordinate and drive initiatives to

enhance the efficiency of the payment distribution process;

- 4.1.8 To promote one industry voice for engagement with other stakeholders and bodies / associations with similar objectives for the benefit of the Debt Counselling industry as a whole.

To scrutinize the relevant sections of the NCA with the objective to safeguard both the Interest of the PDA's, the consumers and the Debt Counsellor's but at the same time assist Credit Providers in gearing up their systems via proper pro-active reporting.

4.2 **The Powers of the Association shall be:**

- 4.2.1 Generally to take such action and to do what may be required for the achievement of its objects as defined in this Constitution.
- 4.2.2 to enter into an alliance or co-operate with any organisation having objectives similar to those of the Association.
- 4.2.3 to nominate, appoint and dismiss Office Bearers to represent the Association.
- 4.2.4 to promote the education, training and continuing professional development of members and to assist and co-operate with any statutory or other body concerned herewith.
- 4.2.5 to draw up a code of professional conduct and to investigate any case of alleged unprofessional misconduct. The findings of any proceedings may be reported to NCR and appropriate sanction may be imposed.
- 4.2.6 to acquire by lease, purchase or otherwise, and hold or exchange, sell, alienate or otherwise dispose of property, movable or immovable.
- 4.2.7 to receive, hold and administer any donations, bequests or endowments of any description which may be given to it for the furtherance of any of the objects of the Association.
- 4.2.8 to open an account(s) with any registered financial institution
- 4.2.9 to invest any moneys of the Association not immediately required in traditional banking money market instrument with the approval of the PDASA members.
- 4.2.10 to arrange for such insurance as may be necessary for the protection of the Association's property and other interests.

- 4.2.11 to charge an enrolment fee, annual subscription and such other fees or levies as budgeted for by the Association.
 - 4.2.12 to pay reasonable travelling expenses and subsistence allowances which are not inconsistent with the industry norms and which arise from members performing any pre agreed PDASA business.
 - 4.2.13 to establish and disband chapters of the Association and to prescribe for the control, management, financing, administration and regulation of such chapters and their affairs.
 - 4.2.14 to establish and disband committees within the Association comprising of members and to prescribe for the control, management, financing, administration and regulation of such committees and their affairs.
 - 4.2.15 to make and from time to time alter, amend or rescind rules and/or By-laws for the carrying out of the objects of the Association and to provide for all other matters which may be prescribed in terms of this Constitution.
 - 4.2.16 to engage any arrangement with any party, corporation or person to obtain from such party, corporation or person all subventions, rights, treaties, concessions, charters, franchises, delegations authorities and privileges which may seem conducive to the achievement of the Association's objects or any one of them.
 - 4.2.17 to take all such steps as may be necessary to be or to be deemed to be, or to continue to be recognised as a voluntary association.
- 4.3 The income and profit of the Association from whatever source derived shall be applied solely towards the promotion of the objects of the Association as set forth in this Constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise or by way of profit to the persons who at any time are or have been members of the Association or to any person claiming through any of them : Provided that nothing herein shall prevent the payment in good faith or remuneration to any officers or servants of the Association or to any member of the Association or other person in return for services actually rendered to the Association, provided that such remuneration is reasonable in relation to the services rendered.

5. **DATE OF ESTABLISHMENT**

The effective date on which the Payment Distribution Association of South Africa comes into operation is the 1 September 2009

6. **INTERPRETATION**

The headings contained in the Constitution are intended for reference purposes only and shall not be taken into account in the interpretation thereof. In the interpretation of the Constitution the words contained in the first column of the table set out below shall bear the meaning set out opposite each of them in the second column thereof, unless the contents or context otherwise requires.

<u>Words</u>	<u>Meanings</u>
"the Association"	Payment Distribution Association of South Africa (PDASA) as represented by accredited members of the NCR
"the Chairman"	the Chairman elected by Members
"the Code of Good Conduct"	the Code of Good Conduct adopted by the Association as per Annexure A
"the Constitution"	this Constitution as now formed or as amended from time to time by special resolution
"member"	a member of the Association accredited by the NCR
"the rules"	the rules made by the Association in terms of policy documents

Unless the context otherwise requires:

- (a) Words importing the singular shall include the plural number and vice versa;
- (b) Words importing the masculine gender shall include the feminine gender;
- (c) Words importing natural persons shall include juristic persons, firms and corporate bodies;
- (d) The word "meeting" shall include an adjourned meeting;

7. **MEMBERSHIP**

ADMISSION OF MEMBERSHIP

7.1 The following persons or entities may become members of the

Association:

- 7.1.1 any person or entity registered and accredited by the National Credit Regulator as a Payment Distribution Agency and with whom the National Credit Regulator has signed a Service Level Agreement (SLA).
 - 7.1.2 A letter issued by the National Credit Regulator that the SLA has been signed must be submitted with the application for membership. The procedure regarding membership will be determined by the executive committee and may be conducted in a manner decided by the Association
- 7.2 No persons other than a person referred to in 7.1 shall be entitled to be a member of the Association and the Association will have the power to either admit or decline admission of the applicant to the Association
- 7.3 A member may resign as a member of the Association by giving written notice of such resignation. Termination of membership may include expulsion due to misconduct as per the code of conduct. Cause of this action is more specifically defined in the Code of Conduct. The Association will determine the procedure for disciplinary action and enquiry into misconduct.
- 7.4 The Association shall keep a register of members at the place and in the manner specified at the first members meeting of the Association.
- 7.5 All registered members shall receive a membership number and will be issued with a membership certificate / card. Membership to the association will be renewable annually by means of a subscription fee and subject to the terms in the constitution
- 7.6 **RIGHTS AND RESPONSIBILITIES OF MEMBERS**
- 7.6.1 Every paid up member shall be entitled –
 - 7.6.1.1 to attend any general meeting or, by invitation, any meeting of a committee as well as to take part in policy formulation discussions, submission of general matters that affect the Association as a whole and to conduct duties when mandated to do so

- 7.6.1.2 to receive, at the discretion of the Association, such assistance in any matter as may be rendered in terms of this Constitution.
 - 7.6.1.3. to nominate and vote for members of the Association. One vote per PDA is allowed.
 - 7.6.1.4. to take part in any discussion on any matter at any meeting.
 - 7.6.1.5 to vote on any resolution put to the membership of the Association or to any meeting.
 - 7.6.1.6 to be nominated and elected as office bearer of the Association or a committee and to hold any office in the Association, or any committee of the Association. All members will be informed of any meeting not less than 21 days in advance by either fax, e-mail or registered mail.
 - 7.6.1.7 it is the duty of the chairman's office to ensure that all meeting requests are delivered and all parties are notified of the meeting.
- All of the above pertaining only to members who have paid their subscription fee.

7.6.2 Every member:

- 7.6.2.1 Will not procure any undue business or other benefits through information obtained directly or indirectly from discussion that is deemed as privileged information not available to any other party outside the structure of the Association.
- 7.6.2.2 will adhere to the Association's Constitution and Code of Conduct
- 7.6.2.3 Notify the Association of any changes in its composition, address, management, Office Bearers etc.

8. **SUBSCRIPTION**

- 8.1 All members will pay a quarterly subscription which will be based on the forecast of the budget. Such subscription will be payable by no later than the 7th day of each quarter.

8.2 No member shall be entitled to any of the privileges of membership unless and until he has paid every subscription and interest thereon, and any other sum, if any, which may be due and payable by the member to the Association, from whatsoever cause arising.

9. **CODE OF GOOD PRACTICE**

9.1 The Association shall have the power to from time to time adopt and amend a Code of Good Conduct to be adhered to by all members;

9.2 The Code of Good Practice shall be in line with the Association's main objective;

9.3 Each member is obliged to comply with its own Service Level Agreement with the NCR.

10. **ACCOUNTING RECORDS AND ADMINISTRATION OF THE ASSOCIATION**

The Association will keep all records including but not limited to financials, all meetings held etc. Records will be kept for 5 (five) years.

11. **NOTICES**

11.1 Any notice or other document may be served by the Association upon any member by :

11.1.1 E-mail which will be sufficient with a positive receipt response from such member;

11.1.2 Personal delivery; or

11.1.3 Sending it by post in a prepaid letter or envelope, addressed to such member at its registered address; or

11.1.4 Placing it in its post box at the property or by means of fax.

11.2 Any notice or other document, if served by post, shall be deemed to have been served at the time when the same was posted, and in proving such service, it shall be sufficient to prove that the notice or document was properly addressed, stamped and posted.

- 11.3 Save as otherwise expressly provided, where a given number of days notice, or notice extending over any period is required to be given, the day of service shall not be counted in the number of days or other period.

12. **INDEMNITY**

- 12.1 Unless through his own dishonesty and provided that the member acted as per his mandate, members shall be indemnified out of the funds of the Association against:

12.1.1 All liabilities incurred by him in that capacity;

12.1.2 Expenditure in defending any proceedings, whether civil or criminal, in which judgement is given in his favour, or in which he is acquitted;

- 12.2 Every Committee member shall be indemnified by the Association and it shall be the duty of the Association to pay all costs, losses and expenses for which any such person may become liable by reason of:

12.2.1 Any contract entered into; or

12.2.2 Any act done by him,

in his capacity as member of the Association or in any way in the discharge of his duties.

- 12.3 No member of the Association shall be liable for :

12.3.1 any act, receipt, neglect or fault of any other such officer or servant of the Association; or

12.3.2 joining in any receipt or other act; or

12.3.3 loss or expense suffered by the Association through the

insufficiency or deficiency of title to any property acquired by order of the Association for and on behalf of the Association; or

12.3.4 the insufficiency or deficiency of any security in or upon which any of the monies of the Association have been invested; or

12.3.5 any loss or damage arising from the insolvency or delict of any person with whom any monies, securities or effects have been deposited; or

12.3.6 any loss or damage occasioned by any error of judgement or oversight on his part; or

12.3.7 any other loss, damage or misfortune whatever which shall happen in the execution of his duties of office or in relation thereto.

13. **AMENDMENTS TO THE CONSTITUTION**

13.1 **General changes to Amendments to constitution.**

The constitution may only be amended at a special or annual general meeting. Notices regarding the proposed change will be forwarded to members as follows:-

13.1.1 special meeting : 10 days' notice to all members;

13.1.2 general meeting : will be held within 3 months after year and with 21 days' notice to all members.

13.2 **Amendments to the Constitution**

All proposals for the amendment of this Constitution shall be addressed in writing to the Chairman.

13.3 The Constitution shall be amended only if not less than 80% of the votes received are in favour of the proposed amendment.

13.4 The terms of any duly approved amendment of the Constitution shall be forwarded to all parties concerned immediately after the amendment was approved.

14. **WINDING-UP**

- 14.1 The Association may be wound up or amalgamated with any similar Association by a resolution of the Association submitted to the members of the Association for decision by postal vote in the manner prescribed : Provided that the Association may not be so wound up or amalgamated unless 80 % of the votes received are in favour of the resolution; and in the event that the Association is winded up all assets will be donated to an association with similar objectives.
- 14.2 The association may only be wound up at a Special Meeting with the objective to specifically address this purpose, alternatively at a annual general meeting as with conditions as per 14.1.

Members will be given 21 calendar days notice in the event that the Association want to pass a resolution to wind up.

15. **TERMINATION**

- 15.1 One quarter notice must be given by any member who wishes to terminate its membership;
- 15.2 Member will still be liable for any actions despite termination of its membership.

Schedule.A – CODE OF CONDUCT

THE PDASA MEMBER SHOULD :

- Recognise the overall interests of PDASA and the wishes of its members
- Conduct all dealings and attend and contribute to PDASA interests in a businesslike and professional manner
- Interact and co-operate with other PDA members on PDASA related matters for the benefit of the Association and the Industry at large
- Abide by the PDASA Constitution and any additional decisions which may be passed by the Executive from time to time
- Comply with the NCA Service Level Agreement in all respects including having the ability and capacity to perform the function of a PDA
- Positively promote the image of PDASA by disclosing membership of PDASA on documents relating to PDA activity
- Provide effective reporting to all stakeholders
- Fully disclose all PDA fees to the Debt Counsellor

Schedule B. The following instances are typical, but not all-inclusive examples where a member's conduct is in conflict with the PDASA Code of Conduct

- Insolvency, liquidation or similar circumstances
- Inability to perform PDA functions for whatever reason
- Fraud and/or theft which is deemed to negatively impact PDASA and its members
- Dishonest conduct by the PDA towards the Debt Counsellor, the NCR, and other stakeholders(Consumers and Credit Providers included)
- Failure to comply with the Code of Conduct of the Association and any other decisions passed by the PDASA Executive from time to time
- Bringing the PDASA into disrepute
- Failure to comply with the NCR Service Level Agreement
- Acting out of the PDASA mandate in dealings with Stakeholders
- Leaking confidential PDASA information