Enabling Financial Inclusion for the unbanked; In Pursuit of a Regulatory Framework for Mobile Money in Uganda.

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Joanita Nampewo

Faculty of Law, University of Pretoria

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Declaration.

I declare that this Mini- Dissertation titled **"Enabling Financial Inclusion for the unbanked; In pursuit of a Regulatory Framework for Mobile Money in Uganda"** hereby submitted for the award of the LLM in International Trade and Investment Law in Africa, is my original work and has not been previously submitted for the award of a degree at this or any other Tertiary Institution.

Signed ……………………………………….Joanita Nampewo

Signed…………………………………………Dr. Femi Oluyeju

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List of Acronyms

AML	Anti-Money Laundering
ATM	Automated Teller Machine
BOT	Bank of Tanzania
BOU	Bank of Uganda
CAK	Communications Authority of Kenya
CCK	Competition Commission of Kenya
CBA	Commercial Bank of Africa
CBK	Central Bank of Kenya
CGAP	Consultative Group to Assist the Poor
DFS	Digital Financial Services
EU	European Union
GSMA	GSM Association
ICT	Information and Communications Technology
ICCPR	International Covenant on Civil and Political Rights
ITU	International Telecommunications Union
KYC	Know Your Customer
MNO	Mobile Network Operator
MOU	Memorandum of Understanding
MTN	Mobile Telecommunications Network
MVNO	Mobile Virtual Network Operator
NPS	National Payment System
P2G	Person-To-Government
P2B	Person-To-Business
P2P	Person-To-Person
PDAs	Personal Digital Assistants
PIN	Personal Identification Number
SACCO	Savings and Credit Cooperatives
SADC	South African Development Community
SIM	Subscriber Identity Module
SMP	Significant Market Power
SMEs	Small Market Enterprise
SMS	Short Message Service

TCRA	Tanzania Communications Regulatory Authority
USSD	Unstructured Supplementary Service Data

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Abstract

The expanding capabilities of the mobile phone have ushered in new and innovative products such as mobile money, a ubiquitous tool that allows individuals to transact money without formal bank accounts. With potential to reach millions of customers even in the remotest areas, mobile money is playing a pivotal role in promoting financial inclusion, an important policy issue that continues to attract global interest since it is perceived as a reliable tool for poverty alleviation and economic development. This research has revealed that mobile money has brought immense benefits, but has arisen with several challenges that are not adequately addressed by the current legislation in Uganda. The absence of coherent policy and regulation for mobile money in Uganda may be an impediment to further growth of mobile money if it is to deliver on its promises for financial inclusion. The study thus undertook a comparative study to draw from experiences in more mature markets that have established legal frameworks, making recommendations for an overarching framework for mobile money in Uganda.

CHAPTER 1

1.1 Background

Mobile phones have transformed lives in the poor world. Mobile money could have just as big an impact.[1]

The banking and financial industry has been reshaped by technological waves leading to a breed of new and innovative products which have created new trends albeit with significant challenges and regulatory hurdles for the various players in the industry. The biggest shift in he banking industry is a result of the ubiquitous penetration of the mobile phone and its inventive applications that are powering money transfer, a service previously unique to only the banking sector. The mobile phone, though originally used for only voice and transmission of text messages, has undergone explosive transformation to embrace a broader scope of services beyond the norm and is especially successful in reaching the low-income masses through its extensive coverage enabled by a host of mobile money agents. This extension of financial services through the mobile phone to a large proportion of the population is driving economic and social growth in reaching out to the unbanked[2] and tackling financial exclusion, a challenge that is widely evident in developing economies.

Financial exclusion limits wealth creation as it excludes the masses from the formal financial sector benefits such as account ownership, money transmission, making payments for recurrent expenses, savings and investments, among others, which improve overall welfare by eradicating poverty and supporting economic growth. While account ownership is wide ranging in high-income countries, the disparity between the prevalence of accounts in such countries and developing countries is significant with statistics showing that only about 54% of the adults in developing economies have an account with a bank or financial institution.[3] According to the World Bank's database on global financial inclusion, about 2.5 billion people globally lack access to a financial institution,[4] a factor that excludes them from the formal

[1] 'The Power of Mobile Money,' The Economist, 24 September 2009 Available at http://www.economist.com/node/14505519. (accessed on 24 April 2017).

[2] The unbanked are defined as people without formal bank accounts who operate in a cash economy; they are limited in their ability to take out loans, maintain savings, or make remote payments, and these constraints can inhibit their economic opportunities (As defined by the Consultancy Group to Assist the Poor (CGAP),of the World Bank Washington, D.C.).

[3] Demiric-Kunt et al, 'The Global Findex Database 2014: Measuring Financial Inclusion around the World' (2015). Policy Research Working Paper 7255, World Bank, Washington, DC. http://documents.worldbank.org/curated/en/187761468179367706/The-Global-Findex-Database-2014-measuring-financial-inclusion-around-the-world

[4] Beck, T & Maimbo, S. M. 'Financial Sector Development in Africa: Opportunities and Challenges' (2013). https://openknowledge.worldbank.org/bitstream/handle/10986/11881/9780821396285.pdf?sequence=2

financial system.[5] In Sub- Saharan Africa alone, available data shows that only about 34% of the population above 15 years of age had accounts in 2014.[6] This inability to open accounts is driven by a multitude of factors such as accessibility, affordability, the cost – benefit implication in expanding the brick and mortar bank branches to the underserved economically unviable areas and a host of other social factors such as the literacy levels of the masses. This in turn limits investments and results into slow economic growth enhancing diverse income disparity.

According to the Consultancy Group to Assist the Poor (CGAP), a global partnership of several leading organisations that seek to advance financial inclusion, the use of technology can radically enhance access to financial services, with mobile money being one such avenue through which financial inclusion can be attained.[7] Documented as one of the main pillars of the global agenda,[8] financial inclusion is an important factor in reducing poverty and inequality while boosting productivity and growth in developing countries.[9] The term financial inclusion has lately become a subject of a myriad of discussions and reports and a topical issue for many international organisations and governments. Defined as accessibility to useful and affordable financial products and services delivered in a sustainable way that meets household needs,[10] financial inclusion seeks to ensure that families, regardless of income levels have access and can effectively utilize the available financial services in order to improve their wellbeing. This resultantly improves the overall welfare of not only individuals, but also economies as well whose growth plays a pertinent role in poverty reduction.

The Mobile money revolution is playing an immense role in improving the state of financial inclusion in many countries, and where there is ubiquitous penetration of mobile money services, increase in financial inclusion has been reported. In Uganda for instance, when mobile money was first introduced in 2009, non- bank formal financial inclusion grew from 7% in

[5] The Mobile Money Revolution. Part 2: Financial Inclusion Enabler. ITU – T Technology Watch Report, (2013). http://www.int.int/techwatch (accessed on 1 June 2017)

[6] Global Findex Data: Sub-Saharan Africa (World Bank 2015) Available at http://datatopics.worldbank.org/financialinclusion/region/sub-saharan-africa. (accessed on 7 May 2017)

[7] Alex Bara, 'Mobile Money for Financial Inclusion: Policy and Regulatory Perspective in Zimbabwe.' African Journal of Science, Technology, Innovation and Development, 2013 Vol. 5, No 5, 345-354

[8] Consultancy Group to Assist the Poor (CGAP), 'Advancing financial inclusion to improve the lives of the poor, Available at http://www.cgap.org/about/faq/what-financial-inclusion-and-why-it-important.

[9] Global Partnership for Financial inclusion Available at http://www.gpfi.org/about-gpfi/countries/global-partnership-financial-inclusion.

[10] Financial Inclusion as defined by the World Bank at www.worldbank.or/en/topic/financialinclusion/ overview

2009 to 34% in 2013.[11] Relatedly, in Zimbabwe, the growth of financial inclusion from 60% to 77% between 2011 and 2014 is largely attributed to mobile money penetration.[12]

The exponential growth of mobile money in developing economies is causing a shift from a primarily cash-based unbanked economy towards a refined financial system where people of different social-economic backgrounds have access to appropriate and affordable financial services leading to financial inclusion.[13] Mobile money is predominantly taking over the financial sectors of developing economies with subscribers now able to transfer money, check their balances, open accounts, pay their bills and buy basic everyday items, all using their mobile phones. Moreover, all the said services are cheaper in comparison to the services offered by traditional banks, are convenient, technologically safe and fast for conducting both personal and business transactions. The greater advantage is that the only investment one requires is a simple handset to execute the transactions.

Globally, the number of mobile market players has increased over the years with over 255 mobile money services operating across 90 countries in 2014.[14] In Africa alone, the mobile money subscribers are said to outnumber those with bank accounts[15] and by December 2015, the number of mobile money accounts still maintained dominance over accounts held with formal financial institutions.[16] Similarly, the number of transactions being processed per day rose to an average of 33 million transactions over the same period.[17]

Across Africa alone, there are over 557 million unique mobile subscribers making the continent the second-largest, but least infused mobile market in the world.[18] This growth has impacted the lives of a number of people signalling a new era of financial services where banking is no longer a licence of small upper class.[19]

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[11]Economic Policy Research Centre, Uganda 2013 FinScope III Survey Report Findings- Unlocking Barriers to Financial Inclusion. Available at https://www.bou.or.ug/opencms/bou/bou-downloads/Financial_Inclusion/Finscope-Report-2013.pdf

[12] FinMark Trust, Annual Report (2015). Available at https://www.finmark.org.za/annual-report-2015-2/

[13]Centre for Financial Inclusion, 'Financial Inclusion Glossary' Available at http://www.centerforfinancialinclusion.org/publications-a-resources/financial-inclusion-glossary.

[14]Global Mobile Systems Association State of the Industry Report, Mobile Financial Services for the unbanked (2014). Available at www.gsma.com/mmu

[15]Aginam, E. 'Nigeria: Active Mobile Money Customers Hit 61 Million in 2013, GSMA Report' (2014). GSMA Report. Vanguard. The nine countries include Kenya, Uganda, Tanzania, Cameroon, Madagascar, Gabon, Congo, Zambia and Zimbabwe

[16]Groupe Special Mobile Association (GSMA) State of the Industry Report (2015)

[17]GSMA n 16 above

[18]GSMA Report, 'Mobile Money for Development' Available at http://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/02/GSMA State of the Industry Report- on- Mobile Money – 2017

[19] Mobile money: A game changer for financial inclusion. Available at http://voices.mckinseyonsociety.com/mobile-money-a-game-changer-for-financial-inclusion/

In Uganda, the introduction of mobile Money has recorded tremendous growth, delivering financial services at affordable cost to sections of the unbanked.[20] According to the Bank of Uganda (BOU), the registered number of mobile money customers has continued to rise tremendously with an average monthly value of transactions recorded at Uganda Shillings 2.1 trillion over a two years period since its introduction.[21] Between 2011 and 2012 alone, the mobile money subscriptions increased from 2.9 million to 8.9 million, outstripping the number of bank account holders that stood at 4.9 million.[22] To date, mobile money subscribers stand at 21.5 million with the value of transactions amounting to UGX 13 trillion and the balance of customer accounts standing at UGX 354 Billion ($98m).[23] This increase in the number of accounts and the growth in the value of the transaction is a clear indicator that the mobile money has changed the Uganda financial landscape generating important gains in financial inclusion.

1.2 Research problem

It is undisputed that access to financial services is a key to economic growth and contributes to achieving financial inclusion. In Uganda however, a small proportion of individuals, households, and firms have embraced the formal financial system and services due to several factors such as the low levels of public trust in the formal financial institutions ensuing from historical experiences related to a series of crises and upheavals in the financial system, among others. Resultantly, many Ugandans prefer to keep their savings in the form of cash, livestock, gold or other similar assets.[24] The uptake of mobile money as a channel for transfer and safe custody of money has been embraced due to its extensive market reach, cost effectiveness and user friendliness that is way beyond that provided by the known banking networks.

Albeit the large consumer base it commands, the sector remains largely unregulated due to its cross cutting nature raising concerns that its continued growth without effective regulation can be detrimental to the integrity of the financial system. This is due to the risk factors associated with mobile money such as susceptibility to fraud, anti-money laundering and has lately emerged as a medium for breeding criminality. Indeed, in Uganda, several cases of fraudulent

[20] MTN Uganda was the first Mobile Operator to introduce Mobile Money into the Uganda Market in 2009
[21] The Annual Supervision Report-Bank Of Uganda, December 2015, Available at www.bou.org
[22] Oketch, M. L. 'Uganda Mobile Money Users hit 9m' (4 May 2013). The East African.
[23] Source - Bank of Uganda – Mobile Money Statistics as at December 2016
[24] These issues were the focus of the World Bank's eighth Uganda Economic Update, entitled "Step by step – Let's solve the finance puzzle to accelerate growth and shared prosperity"

mobile money schemes have been referred to police and to the Anti-Corruption Court.[25] Additionally, a myriad of concerns arise as to who regulates the mobile money tariffs, how funds remitted to a wrong number are reimbursed and which party bears the cost of internal and external fraud. As Mobile money continues to evolve, its potential for financial inclusion is evident but its demand and adoption is driven by several factors such as proper policy and regulation, consumer attitude, the level of trust and confidence, among others, which unfortunately are areas that remain unsettled. Without an umbrella legislation for mobile money, a data protection law to guard against the abuse of personal data, a competition law to seal with anti-competitive practices within the sector and a proper mechanism for coordination of the various provisions in the different regulatory frameworks that relate to mobile money, it is indeed questionable whether the sector can reach its full market potential and provide the much needed investor confidence and inclusive finance.

1.3 Research questions

The broad question this research attempts to address is how an overarching legal framework can be created for the regulation of mobile money services in Uganda. Following are the three sub -research questions that this study will seek to explore and provide answers to in order to effectively tackle the broad research question;

i. What is the impact of the regulation of mobile money as an enabler for financial inclusion?
ii. What are the laws that relate to the regulation of mobile money in Uganda and what are the loopholes as regards their efficacy?
iii. How is mobile money regulated in some selected countries?

1.4 Thesis Statement

The pivotal role played by mobile money in promoting economic development and fostering financial inclusion in Uganda calls for enactment of an enabling legislation to regulate the fast growing sector while addressing the emerging challenges.

[25] High Court Anti-Corruption Division Criminal Session Case No. 123 of 2012 – Uganda v Patrick Ssentongo & others. Court heard that the accused while employed by MTN Uganda Limited, conspired and stole money from MTN mobile money system by creating fictitious journals and exiting the money through the MTN public access shop and created 17 fake subscribers to receive funds.

1.5. Significance of the study

The increased importance of mobile money and its contribution to deepening financial inclusion through raising living standards cannot be underestimated. While a host of literature by several scholars on the subject of mobile money is available, research pertaining to proposal of a legislative framework for its regulation in Uganda has not been undertaken. This study will therefore address this lacuna and propose ways in which an overarching framework for the regulation of mobile money can be created. The study will therefore analyse the mobile money sector in Uganda, the various legislations that have a nexus to mobile money and whether they can adequately address the challenges, undertake a comparative study of mature markets in other jurisdictions and propose recommendations on how the gaps can be bridged.

1.6. Review of Literature

The concept of the mobile money has attracted a lot of interest since its inception thus a number of studies have been carried out within this domain. The majority of literature however relates to the success factors of mobile money, its adoption by households, its impact to the banking sector and its role in financial inclusions. Claire Alexandre et al[26] discuss mobile money as an engine of financial inclusion while George William SSonko et al[27] examine the role of mobile money in determining private sector credit in Uganda. The review by Jonathan et al[28] relates to the impact of mobile money on economic development while Kevin Donovan talks about mobile money and financial inclusion.[29] While this expanding literature has tested the efficacy of mobile money in a number of important areas such as welfare improvement, its influence to the banking sectors and the impact on household development, the gap this research seeks to fill is the pursuit of a regulatory framework for mobile money in Uganda. This research therefore seeks to add a block to the body of knowledge in respect of mobile money but specifically as regards its regulatory stance.

[26] Claire Alexandre and Lynn Chang Eisenhart, 'Mobile Money as an Engine of Financial Inclusion and lynchpin of Financial Integrity'(2013) Washington Journal of Law, Technology & Arts, Vol.8, Issue 3, Mobile Money Symposium 2013

[27] Dorothy Nampewo, Grace Ainomugisha Tinyinondi, Duncan Roy Kawooya and George Wilson Ssonko, 'Determinants of private sector credit in Uganda: the role of mobile money' (2016) Nampewo et al. Financial Innovation

[28] Donner, Jonathan and Tellez, Camilo, 'Mobile banking and economic development: Linking adoption, impact, and use' (2008) Asian Journal of Communication, 18(4), 318-322.

[29] Kevin Donovan, " Mobile Money for Financial Inclusion" – IC4D, Cap 4 – siteresources.worldbank.org

According to studies, mobile money is said to be an engine of financial inclusion due to its ability to reach millions of the unbanked members of society even at the lowest pyramids.[30] However, several other factors such as unstable political and social conditions, lack of cooperation between related stakeholders, weak institutions and poor infrastructure can negatively impact financial inclusion.[31] Mobile money has several definitions depending on the jurisdiction of use. Kevin Donovan[32] has defined mobile money as a facilitator of financial amenities through a mobile device. Tobbin's[33]definition is however based on its functionality, use and envisioned purpose, asserting that mobile money includes all the various initiatives aimed at bringing financial services to the unbanked using mobile technology. On the other hand, the International Telecommunications Union (ITU),[34] defines mobile money as the use of information and communication technologies (ICTs) and other non-bank retail networks intended to extend financial services to clients that would not be easily and profitably accessible through the traditional based financial services.

While mobile money and mobile banking[35] are sometimes used synonymously as supported by some scholars, Paul Makin[36] avers that mobile banking or mobile money transfer or 2G banking are all synonymous with branchless banking and the use of each of the terms depends on the audience. However, the two terms are clearly distinguishable and as put forward by other scholars, mobile banking envisions financial services that are associated with a bank account such as deposits, withdrawals or bill payments.[37] This assertion seems to prevail and is supported by other scholars that any mobile money transaction without a bank account does not amount to mobile banking. Accordingly, Tobbin's[38] view of mobile banking involves banking transactions using a mobile device such as cell phones, PDAs (Personal Digital Assistants) and any other devices excluding laptops.

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[30]Alexander C, n 26 above

[31] Financial Regulations for improving financial inclusion by the CGP Task force on regulatory standards (2016). Available at http://www.cgdev.org/publication/financial-regulations-improving-financial-inclusion-brief.

[32] Kevin Donovan, 'Information and Communication for Development- Mobile money for Financial inclusion' (2012)

[33]Peter Tobbin, 'Understanding the Mobile money eco system: Roles, Structures and Strategies' (2011) 10th International conference on mobile systems

[34]GSMA, 'Mobile Money Regulation: is more regulation better?' ITU Regional Economic and Financial Forum of Telecommunications/ ICT for Africa. 19 January 2016

[35] The definition of Mobile banking by the International Finance Corporation is further given below in note 94.

[36]Paul Makin, 'Regulatory issues Around Branchless Banking – New initiatives to bank the poor are straining the world's financial regulatory systems' Organisation for Economic Cooperation and Development (OECD).

[37] Donovan, n 32 above.

[38] Peter Tobin, 'Towards a model of adoption in mobile banking by the unbanked: a qualitative study' info, vol1.14 issue 5, pp 74-88.

While the definition of mobile money may have been established, many countries still struggle with establishing a framework for its regulation. The main problem herein lies with the crosscutting nature of mobile money spanning across two unrelated sectors. In this respect, the World Bank has accordingly referred to mobile money not just as a success story but also a regulatory ordeal.[39] Goswami et al[40] are in agreement that the merging of the giants sectors generates challenges as the telecom and banking sectors work together in the provision of mobile financial services. Ross Buckley et al[41] also uphold that mobile money poses new regulatory challenges as non-banks are presently performing functions that were traditionally performed by banks, yet regulation is generally intended for traditional brick and motor banks and not easily applicable to non-banks. Similarly, Porteus[42]contends that mobile money spans across spheres that are separately regulated and sits at the overlap of several regulatory domains of banking, telecommunications, anti-money laundering and payments systems. This overlap raises the risk of regulatory failure where legislation or regulatory approaches are inconsistent or contradictory. The regulation of mobile money therefore demands expertise and as Vleck[43] asserts, the difficulty with regulating mobile money is based on the fact that it operates outside the formal financial system, to some degree. In agreement with Vleck, Joshi Sujata et al[44] assert that the necessity and difficulty to comply with set regulations hinders non-financial service providers to provide mobile money related services. Ultimately, the common stance is the onset of challenges emanating from close fusion and convergence of the previously unrelated banking and the telecoms industry to form a new entity.[45]

Due to these regulatory hurdles therefore, Central banks worldwide have become mindful of challenges posed by the emerging technologies. According to Vivienne Lawack- Davids,[46] the South African regulatory position is thus based on electronic money, considered a subset of

[39]World Bank, World Development Report (2016), Available at http://documents.worldbank.org/curated/en/896971468194972881/pdf/102725-PUB-Replacement-PUBLIC.pdf

[40]Divakar Goswami, Satish Raghavendran, 'Mobile-banking: can elephants and hippos tango?' (2009), Journal of Business Strategy.

[41] Ross Buckley et al. 'The Regulation of Mobile Money in Malawi' (2015) The Washington University Studies Law Review Vol. 14 Issue 13 2015 –2015.

[42] Porteus D, 'The enabling environment for mobile Banking in Africa.' Commissioned by the DFID, Available at http://www.cab.org.in/ICTPortal/Lists/Knowledge Bank/Attachments/14/Enabling Environment banking for M-Banking -Porteous_16_12_200749.pdf (2006)

[43] William Vleck, 'Global Anti- Money Laundering Standards and Developing Economies: The Regulation of Mobile Money.' Development Policy Review, 2011, 29(4): 415-431.

[44]Joshi Sujata et al, 'Mobile Money: Concept, Ecosystem, Benefits and Challenges associated with Mobile Money' – International Journal of Applied Business and Economic Research ISSN: 0972 -7302 Available at http://www.serialsjournals.com Vol. 15. No.2. 2017

[45]Alex Bara, 'Mobile Money for Financial inclusion: Policy and Regulatory perspective in Zimbabwe.' African Journal of Science, Technology, Innovation and Development 2013, Vol. 5, No.5, 345-354.

[46] Vivienne Lawack – Davids, 'The Legal and Regulatory Frameworks of Mobile payments in South Africa: A Trade off?' Nelson Mandela Metropolitan University – 2012 Mercantile Law Journal 77.

electronic banking and not mobile money. Therefore, the legal and regulatory frameworks of such as the South African Reserve Bank Act,[47]the National Payments Systems Act[48] and the Banks Act apply to mobile banking and not mobile money. In the said jurisdiction therefore, only a registered bank may conduct the business of deposit acceptance,[49] and any acceptance of deposits from a person is regulated by the Central Bank, thus acceptance of deposits through mobile money would constitute a contravention of the Banks Act.

MD Tuba[50]notes that despite the rapid developments in the payments systems, the attitude adopted by regulatory agencies for years is that of uncertainty and fear that regulation will stifle development. This uncertainty he acknowledges, poses regulatory challenges one of which is whether issuers of electronic money are deposit-taking institutions and should thus be subjected to the stiff regulatory frameworks applicable to banks. He thus reiterates that the regulatory landscape in many jurisdictions did not envisage the rapid developments and evolution in the payment systems hence the numerous frameworks lag behind with regard to regulation in payments systems. He intimates a regulator "wait and see" approach in many SADC countries but also outlines the steps the EU has undertaken to address these challenges.[51]

1.7 Research methodology

The point of departure for this thesis will be the pursuit of a regulatory framework for mobile money in Uganda. The thesis will make a comparative study of Kenya and Tanzania, countries with mature mobile money markets that have also enacted supporting legislations. The research is mainly library based done with a focus on laws, regulations and non-binding instruments from other jurisdictions. The research will further look at textbooks, published articles, journals, newspapers, magazines and internet sources. The opinions, working documents and reports of International organisations such as ITU and World Bank that relate to mobile money will also be looked at.

[47]The South African Reserve Bank Act 89 of 1990, Available at https://www.resbank.co.za/AboutUs/Legislation/Pages/default.aspx.

[48]The South African National Payments Systems Act 78 of 1998 Available at https://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Legal/Documents/NPS%20Act.pdf.

[49] S.11 of the Act, n 47 above.

[50] Tuba, MD, 'The Regulation of Electronic Money Institutions in the SADC Region: some lessons from the EU.' (2014) vol.17, no.6, pp. 2269-2312. ISSN 1727-3781. http://dx.doi.org/10/4314/pelj v1716.02.

[51] Tuba n 50 above.

1.8 Limitations

Just like every research, this one has limitations too. First, there is a lack of sufficient prior studies in relation to this subject. While several reviews and studies have been undertaken on the broad aspect of mobile money, scholar, policy makers and regulators still grapple with the legal and regulatory aspects of mobile money. This aspect limits the available literature, as it is mainly comprised in journals and working papers with a scarcity of printed textbooks. In a similar vein, the concept is still revolving due to the daily technological innovations thus a wait and see attitude has been a common and preferred approach in order to avoid constant legislative amendments. Additionally, the legislative gaps in the Ugandan laws such as the absence of a Competition Act, adequate data and consumer protection laws have negatively affected my research. Furthermore, In addition, the time to effectively and satisfactorily carry out the research and deeply delve into the various resources has been limited due to the nature of the course.

1.9 Chapter Outline

The entire research work will run into five chapters. Chapter 1 gives the background information, gives the background information, the problem statement, specific objectives, justification, limitations of the study and a review of the literature of some of the work done related to this study. The chapter also spells out the questions this research attempts to address. Chapter 2 will introduce the theoretical concepts of mobile money and financial inclusion underpinning the importance of the regulation of mobile money in deepening financial inclusion for the unbanked. Chapter 3 will delve into the current legislative framework in place that has an affiliation to mobile money services citing the gaps and shortcomings as well as the attempts that have lately been made to address some of the challenges. The absence of some pertinent legislations such as competition act, among others, is area upon which emphasis is laid in this chapter. Chapter 4 is a comparative study of the regulation of mobile money in selected countries. The mobile money legislations in Kenya and Tanzania will be analysed and lessons drawn therefrom, in support of the enactment of a legislation in Uganda. Chapter 5 will encapsulate the findings from the respective chapters and make recommendations for an overarching framework for the regulation of mobile money in Uganda. The conclusion will also be contained in this chapter.

CHAPTER 2:

MOBILE MONEY AS A PLATFORM FOR FINANCIAL INCLUSION

2.1 Introduction

The mobile money boom over the past decade has created significant potential to allow unbanked people to access financial services for the first time. Mobile money has grown particularly rapidly in developing countries where it functions as a key driver to financial inclusion. This chapter will therefore seek to address the concepts of mobile money as a tool for financial inclusion examining the underpinning theories as well as the global efforts aimed at increasing financial inclusion. The uptake of mobile money is without challenges thus the chapter will further address these challenges, the key regulatory areas for inclusive finance and how regulation can impact financial inclusion.

2.2 Financial Inclusion; setting the stage

Despite the massive strides made by financial institutions in the provision of a wide range of financial products over the last two decades, concerns remain about the vast segments of the underprivileged outside the fold of the formal financial sector. According to statistics by the Consultative Group to assist the poor (CGAP), nearly 3 billion people in developing countries cannot access the basic financial services needed to help them manage their uncertain lives.[52] While reports indicate that the number of savings account exceed the global population, 2.5 billion of the world's population remains financially excluded and without access to the formal financial services.[53] Financial inclusion has a nexus to poverty reduction and achieving inclusive economic growth with studies showing that when people participate in the formal financial system, they are able to absorb financial shocks. The link between poverty and financial exclusion gained recognition in the early 2000s, and since, there is a global call for action against financial exclusion, which has become a topical issue amongst stakeholders in many developing economies.[54] This is reiterated in the United Nations Secretary General's statement:

> *The stark reality is that poorest people in the world still lack access to sustainable financial services, whether it is savings, credit or insurance. The great challenge before*

[52]Consultative Group to assist the poor Annual Report (CGAP 2009), Available at http://www.cgap.org/publications/cgap-annual-report-2009
[53]Global Financial Development Report 2014. Available at http://siteresources.worldbank.org/EXTGLOBALFINREPORT/Resources/2014_Complete_Report.pdf.
[54]Beck Torsten, de la Torre Augusto, The Basic analytics of access to Financial Services, Policy research Working Paper WPS4026 accessible at www.documents.worldbank.org

us is to address the constraints that exclude people from full participation in the financial sector. Together, we can and must build inclusive financial sectors that help people improve their lives.[55]

Financial Inclusion is an important pillar of the global development agenda and its promotion continues to receive global attention, placing it at the forefront of important policy objectives across the globe. A number of international bodies have formed coalitions geared towards supporting the agenda of financial inclusion. In 2009, the Alliance for Financial Inclusion (AFI), an international network that brings together monetary policy makers and regulators from developed and developing nations across the globe was established, with the purpose of promoting inclusive finance. Further, the launch of the Maya Declaration,[56] and the creation of the G-20 global Partnership for Financial Inclusion in 2010,[57] emphasize the importance of financial inclusion in improving people's lives. The G-20 is an organisation committed to measuring and tracking data on financial inclusion through its financial inclusion action plan and has endorsed the High-Level Principles for Digital Financial Inclusion with a focus on leveraging digital technologies to increase financial inclusion.

Additional support towards financial inclusion is accentuated through the Bill and Melinda Gates Foundation, which creates global partnerships in support of financial inclusion initiatives, envisioned through the various funding support accorded to projects aimed at deepening Financial Inclusion. One such donation is the 2014 $11million grant to support initiatives aimed at building up cost effective tools that expand access to financial services for millions of people in East Africa and help people lift themselves out of hunger and extreme poverty.[58] The World Bank Group has also taken keen interest in Financial Inclusion and is committed to accord assistance to countries interested in National Strategies on financial inclusion and crafting financial inclusion friendly laws. The World Bank has further pronounced a vision for Universal Financial Access (UFA) by 2020, which calls for universal ownership of a transaction account by the majority of individuals to enable them receive

[55]United Nations Secretary General Kofi Annan's remarks on 29 December 2003 Announcing 2005 as the International year for Microcredit at the UN General Assembly.

[56]The Maya Declaration is a global set of measurable commitments by developing and emerging country policy makers to unlock the potential of the poor through greater financial inclusion. Institutions from, more than 80 countries. Uganda endorsed the Maya Declaration.

[57]The G-20 Principles for innovative financial inclusion were developed in 2010 through the innovative subgroup of the G-20 financial inclusion experts (FIEG). They were endorsed at the Toronto summit in May 2010.

[58]Melinda Gates Foundation Blog Post 12/03/2014. 'New Innovation Lab in East Africa to Expand Digital Financial Services.'

payments and store money.[59] A horde of other global bodies such as the Financial Action Task Force (FATF) and the Basel Committee on Banking Supervision continue to support the financial inclusion agenda. However, there is general acceptance that more can be done to achieve deeper inclusive finance.

However, despite these global efforts and tremendous progress made towards financial inclusion, the majority of the world poor remain unserved by formal financial institutions despite data that the number of savings accounts worldwide exceeds the global population.[60] Such exclusion is prevalent in developing countries with World Bank data showing the prevalence of financial exclusion in developing countries with only 54 percent of adults having a bank account.[61]

2.2.1 Financial inclusion and exclusion: Concepts and theories

The term Financial Exclusion came into the limelight in 1993. Some proponents believe that exclusion is limited accessibility to bank branches within the financial sector,[62] but over the years, others widened the scope of the meaning to encompass not just geographical location of banks but inaccessibility to the mainstream financial services and products.[63] Kempson and Whyley[64] define exclusion beyond geographical access to encompass the inability to acquire the necessary information about a desired financial product due to the availability of such information for a targeted market, the lack of confidence to apply for such product from banks and affordability of certain products. In this regard, the people that were unable to obtain services from the mainstream financial products irrespective of the reasons cited above, were regarded as financially excluded thus social outcasts within the societies they lived.[65] The definitions seem to focus on similar problems all having a common feature that a bank account is deemed to be the basic gateway to the mainstream financial services without which, one was deemed financially excluded or unbanked or under banked.

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[59] The Universal Fund Access goal provides that by the year 2020, adults that are not part of the formal financial system have access to a transaction account to receive payment, store money and send payments in a bid to improve their social and economic lives. –www.worldbank.org/en/topic/financial inclusion – accessed on the 14th August 2017

[60] Alfred Hanning et al, 'Financial Inclusion and Financial stability: Current Policy Issues' (2010). Available at https://www.adb.org/sites/default/files/publication/156114/adbi-wp259.pdf

[61] Demuric – Kunt et al n 3 above.

[62] Andrew Leyshon and Nigel Thrift, Geographies of Financial Exclusion: Financial abandonment in Britain and the United States (1995) 20 Transactions of the Institute of British Geographers, New Series 312.

[63] Anand S. Kodan & Kuldip S. Chhikara - A theoretical and quantitative analysis of Financial Inclusion and economic growth, SAGE Journals, Management and Labour Studies, 38, 1&2 (2013): 103–133.

[64] Elaine Kempson and Claire Whyley, 'Kept out or opted out? Understanding and Combating Financial Exclusion.' (1999) The Policy Press. http://www.pfrc.bris.ac.uk/Reports/Kept_out_opted_out.pdf

[65] Kempson, E, n 64 above.

Insights into the foundations of financial exclusion reveal that it is grounded on two theories. The Asymmetric Information theory and the Free Market Model theory. The Asymmetric Information Theory proposes that an imbalance of information between the parties to a product can lead to inefficient outcomes in the market.[66] This alludes to the fact that insufficient information or uneven exchange of information between parties to a financial product may affect the economic exchange of such product and eventually lead to denial of the financial products to certain groups of people. Similarly, disproportionate Information such as the potential borrower's credit worthiness may raise the loan default rates leading to extra vigilance on the part of financial institutions resulting into less lending. Accordingly, this lopsided information, said to be persistent in developing economies, blocks accessibility to financial products, making the underserved resort to informal financial sources, thus financial exclusion.[67]

Proponents of the Free Market Model Theory on the other hand argue that government regulations, trade barriers and other laws distort the market, which would otherwise function efficiently and effectively if governments played a limited role.[68] According to this theory, market players operating in their own self-interest dispense with the available information pricing goods and services in an efficiently way.[69] This maximizes the economic situation of society as if guided by a single hand.[70] Relating this theory to financial institutions, deregulated institutions are deemed to indulge in various market activities such as stock market operations to raise funds and abstain from risky lending and only capitalise on more valuable customers, financially excluding the less privileged. This difference in customer valuation widens the gap of access to financial services by the poor and disadvantaged, financially excluding them.

2.2.2 Financial Inclusion defined

Having established the theories upon which financial exclusion is grounded, it is questionable whether the free flow of information or non-interference by governments in financial markets can indeed promote financial inclusion. With no generally established definitions for financial

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[66] George Akerlof, Micheal Spence and Joseph Stiglitz were all influential in developing and writing about this theory and they all shared the 2001 Nobel Prize in Economics.

[67] Adele Atkinson, Flore-Anne Messy, 'Promoting Financial Inclusion through Financial Education' (2013) OECD Working paper on Finance, Insurance and Private Pensions No. 34. http://www.oecd.org/finance/financial-markets/oecdworkingpapersonfinanceinsuranceandprivatepensions.htm.

[68] Adam Smith (1723-1790); The theory of the invisible hand, liberalism and Capitalism. He invented the concept of the market, the theory of the invisible hand and the division of work the division of work. According to Smith, laissez- faire is the best option since the market knows its interests better than State.

[69] Adam Smith, n 68 above.

[70] Smith, n 68 above.

inclusion and exclusion, several definitions have evolved over the years by scholars and policy makers.

Financial inclusion, according to the United Nations (UN) is universal access to a wide range of financial services, provided by a variety of sound and sustainable institutions at a reasonable cost.[71] While this definition is silent about the nature of the target group as it is silent on whether it includes individuals and Small Market Enterprises (SMEs), the definition of financial inclusion by the World Bank takes into account accessibility by individuals and businesses to useful and reasonably priced financial products and services that meet their transaction and payments needs, such needs delivered in a sustainable way.[72] The Focus Group on Digital Financial Services[73] also defines financial inclusion as the accessibility by the broad masses to quality financial services and products at affordable rates.[74]

Despite these respective definitions, it is opined that the definitions and measures of financial inclusion have evolved from a classification of individuals and enterprises as either included or not, to a multi-dimensional approach. Accordingly, the Financial Inclusion Data Working Group of the Alliance for Financial Inclusion (FIDWG)[75] agreed that an inclusive understanding of financial inclusion should encompass the availability and accessibility of services, quality of such financial services and their suitability for all income levels.[76]

2.2.3 State of financial inclusion in Uganda.

The financial sector in Uganda is noted as having one of the lowest savings to gross domestic product (GDP) ratio in Sub-Saharan Africa,[77] despite the rapid growing population currently standing at 39 570 125 (thirty nine million, five hundred and seventy one hundred twenty five) by July 2017.[78] This has been largely due to a non-existent savings culture largely attributed to the low income population, inaccessibility to formal savings products, ignorance of the

[71] www.un.org/esa/ffd/topics/inclusive-finance.

[72] www.worldbank.og/en/topic/finacialinclusion.

[73] The ITU-T Focus Group on Digital Financial Services is an open forum for digital financial services stakeholders. Available at http://www.itu.int/en/ITU-T/focusgroups/dfs/Pages/default.aspx.

[74]ITU–T Focus Group Digital Financial Services, 'The Digital Financial Services Ecosystem' http://www.itu.int/en/ITU-T/focusgroups/dfs/Pages/default.aspx.

[75]Financial Inclusion Data Working Group (FIDWG) was formed in 2009 by the Alliance for Financial Inclusion and aims to develop a framework for measuring financial inclusion to be used by all AFI members, and to create a forum for sharing information by member countries.

[76]Alliance for Financial Inclusion in Africa. Available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Financial_Inclusion_in_Africa.pdf

[77] Odongo, Albert. (2012). Why Uganda Banks Should Start Promoting a Savings Culture. Africa Uganda Business.

[78]Central Intelligence Agency, Uganda*:* The World Factbook (23rd August 2017) https://www.cia.gov/library/publications/the-world-factbook/geos/mi.html

potential impact the deployment of financial services can have on the family and the lack of confidence in the formal financial systems.[79] These, among other factors remain major constraints to the adoption of financial products and services, which frustrate the broad objectives of financial inclusion. A large proportion of the Ugandan population still lack access to reasonable and cost effective savings and credit schemes, resulting into low bank usage with only 11 out of 100 adults having an account with a financial institution.[80]

With the advent of mobile money in Uganda, there is greater access to simple and reliable financial services, supporting scholars' contention that mobile money can contribute to future revenue growth and transform developing countries into middle-income nations.[81] Mobile money has however brought about a progressive increase in the use of financial services with statistics showing an increase from 28% in 2009 to 54% in 2013.[82] There is similarly an incremental increase in mobile money account holders at 35% in comparison to the banks accounts standing at 11%.[83] It is therefore patent that significant progress has been made in deepening financial inclusion over the last decade, but as opined by the Bank of Uganda Governor, the state of financial inclusion remains at low levels with significant discrepancies between the rural and urban segments.[84]

In its efforts to enhance financial inclusion, the Government of Uganda as a signatory to the Maya Declaration through the Bank of Uganda, established an Inter- Institutional Committee on Financial Inclusion (IICFI) in 2005, to spearhead the implementation of the National Financial Inclusion Strategy that runs from 2017- 2021. The major areas the Strategy seeks to address are accessibility to credit infrastructure, financial services and their digitisation, appropriate and innovative financial products and consumer protection. These and other efforts go a long way to show commitment towards expanding financial inclusion.[85]

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[79]Dorothy Nampewo et al. Financial Innovation (2016) "Determinants of private sector credit in Uganda: the role of mobile money" – Research, Open access Available at https://link.springer.com/article/10.1186/s40854-016-0033-x

[80] Financial Inclusion Insights Survey, 2015 Available at http://finclusion.org/country/africa/uganda.html

[81]Claire Pénicaud &Arunjay Katakam, GSMA State of the Industry Report (2013) Mobile Financial Services for the unbanked. At https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/02/SOTIR_2013.pdf

[82]2013 Finscope Survey on Uganda's financial sector. At http://www.eprcug.org/research/education/365-uganda-2013-finscope

[83] Financial inclusion insights Uganda (2016) Wave 4 Report F 11 Tracker Survey. Available at http://finclusion.org/uploads/file/reports/Uganda%20Wave%204%20Report_20-June-2017.pdf

[84] Emmanuel Tumusiime - Mutebile, Governor, Bank of Uganda: Financial Inclusion in a Regulated Environment in the East African Community" at the National Microfinance Conference 2015 held at Kampala, 29 January 2015

[85] The 2017- 2018 Government of Uganda Budget Speech delivered on the 8 June 2017. Available at http://budget.go.ug/budget/taxonomy/term/542

Further to the aforesaid, the Government has committed adequate financial and operational resources and partnered with both public and private sector stakeholders to ensure efficient coordination and realisation of the financial inclusion. To this end, the exemption from taxation of the Savings and Credit Cooperatives Organisations (SACCOS) by the Parliament of Uganda will go long way to increase the return on savings and bring members into the fold of formal financial services.[86] While these government initiatives geared towards the improvement of financial inclusion are extolled, the role played by mobile money cannot be disregarded.

2.3 The concept of Mobile Money

The permeating coverage of Mobile Network Operators infrastructure in developing economies has enabled a mobile phone become a branchless bank. The ability of the mobile phone to penetrate the underserved areas, to store monetary value and to be used as a means of transfer of money presents a high opportunity of serving the unbanked in developing economies.[87] Mobile money has become an integral part of the payments system bringing the unbanked masses into the fold of the formal financial sector. The ability to remit money to relatives and friends, pay for bills, retain any outstanding in the mobile accounts, obtain account information and perform several other services has extended financial services beyond ways that were only unique to the traditional brick and motor banks.

2.3.1 Mobile money defined

A broad range of mobile money applications have evolved over the years and continue to so therefore the definition covers a wide scope of overlapping functions. While there is no standard definition for mobile money[88] certain terms and meanings have been attributed to it across different jurisdictions.[89] The Alliance for Financial Inclusion[90] refers to mobile money as any mobile-based transactional service transferred electronically using a mobile phone. Other scholars define mobile money as the execution of financial transactions over the mobile

[86] During the 2017 Budget presentation by the Minister of Finance Matia Kasaija, SACCOS are exempted from paying taxes on their incomes until June 30th 2027. n 80 above

[87] GSMA State of the Industry Report (2014). 'Mobile Financial Services for the unbanked.' Available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/03/SOTIR_2014.pdf

[88] According to the GSMA Report of 2013, there is no common definition hence respective jurisdictions have developed their own albeit they all have certain common elements. GSMA has a definition for mobile money.

[89] In Kenya, it is referred to as M- Pesa (Pesa means money in the Swahili language. In Uganda, it is referred to as mobile money or M-sente or Airtel Money depending on which network the transaction is being effected. Sente means money in Luganda, a language commonly used in central Uganda.

[90] Alliance For Financial Inclusion(AFI) 2012 AFI Global Policy Form Report: Making Financial Inclusion Real accessible at www.afi-global.org

phone[91], while others still opine it as a form of electronic financial service for consumers via the mobile phone. It thus allows the banked or unbanked users to deposit a value into their mobile account by use of a simple handset, send that value or turn such value back into cash easily.[92] The services can be person-to-person transfer (P2P), person-to-business (P2B), payments for a broad range of government services (P2G) and a range of other services that have continued to evolve such as customers withdraw and deposit of funds to and from banks.[93] There is however a seeming connection in all the definitions of mobile money. In certain jurisdictions, mobile money is synonymous with e-money, an electronic alternative to cash and thus defined as such in the respective legislation.[94] In effect, mobile money is only a subset of a larger concept such as electronic money, which in turn fall under the broader concept of payment systems. It therefore follows that while some regulations are specific to mobile money, others are electronic money regulations and yet others still target payment systems.

2.3.2 Terms associated with mobile money

Due to its evolving nature and its use in various jurisdictions that are both developing and developed, mobile money is known by various terms but for purposes of this research, mobile money shall be used widely. However, other terms that are commonly used and may be inherent herein include Digital Financial Service (DFS), a concept that encompasses a whole range of mobile financial services such as payments, remittances, and savings and insurance accessed and delivered via digital means. The term therefore embodies mobile money and mobile financial services. According to statistics, over 95% of DFS accounts in Latin America are card based while in Sub-Saharan Africa, 90% of DFS accounts are mobile.[95] The term Mobile Financial services relates to mobile money, mobile payments and mobile banking thus is a less component of DFS. The use of terms mobile transactions/ mobile payments/mobile commerce still relates to transactions made using a mobile phone without visiting a bank as such

[91]International Finance Corporation, 'Mobile money study 2011' Available at https://www.ifc.org/wps/wcm/connect/fad057004a052eb88b23ffdd29332b51/MobileMoneyReport-Summary.pdf

[92]GSMA, 'Mobile Money for the unbanked' (2010) - Mobile Money definitions https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/06/mobilemoneydefinitionsnomarks56.pdf

[93] Dolan, Jonathan, 'Mobile Money Summit 2009: accelerating the development of mobile money ecosystems.' Washington, DC: World Bank. http://documents.worldbank.org

[94]Directive 2009/110/EC of the European Article 2(2) thereof defines "electronic money" as "electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions…, and which is accepted by a natural or legal person other than the electronic money issuer"

[95] GSMA State of the Industry Report (2015) Available at https://www.gsma.com/mobilefordevelopment/programme/mobile-money/2015-state-of-the-industry-report-on-mobile-money

transactions may be peer to peer remittances or payments made for services or goods.[96] Mobile banking on the other hand refers to the use of a mobile phone to remotely access a bank account. Such transaction may be solely for account balance check-up, transfer of money from the bank to the mobile wallet or bill payment services. This service however requires an interconnection between the mobile network operator and the envisaged financial Institution in order to provide access to the bank account.[97] The Mobile wallet is the equivalent of an individual bank account into which the deposits or withdrawals are made but is accessed via the mobile network and enables the owner to transfer make payments for goods or services such as water bills and even receive wages. The mobile wallet supplements the other mobile money services.

2.3.3 Mobile money facets in correlation with financial inclusion

Mobile money is seen as an effective tool of access to finance to millions of people around the globe as it improves productivity by increasing efficiency and lowering transaction costs, improves security, generates employment opportunities and creates a platform for the growth of other businesses. Perceived as an effective channel for improving financial inclusion in emerging markets and countries that lack physical and technological infrastructure, mobile money meets the facets that are recognised as profoundly promoting financial inclusion, which include availability and accessibility of services, frequency of use, the suitability and the quality of financial options adapted to the needs of the population.[98]

Accessibility

The location of mobile money agents in the remotest economically unviable locations has allowed the extension of mobile money services to these areas. Thus the sole key to accessibility for mobile money is the widespread distribution of agent networks, whose dispersal helps access to rural populations where a large proportion of low-income people reside. The presence of agents allows accessibility to customers who would otherwise have to travel long distances to send and receive money or pay bills. A recent study by the Consultative Group to Assist the Poor (CGAP) reveals that many poor without access to financial services always first gain access to such services through electronic payment tools like mobile money,[99]

[96]Johan Hellström, 2010 – The innovative use of mobile applications in East Africa – Sida Review 2010:12 www.sida.se

[97]IFC (2014) 'Mobile Financial Services; Its role in banks and in the market.' Available at https://www.ifc.org/wps/wcm/connect/

[98] Peter O. Ondiege Peter O. Ondiege (2015) Regulatory Impact on Mobile Money and Financial Inclusion in African Countries - Kenya, Nigeria, Tanzania and Uganda, Center for Global Development (CGD); Available at https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf .

[99] Mark Pickens, David Porteous, and Sarah Rotman, 'Scenarios for branchless banking in 2020' (CGAP, November 2009), Available at http://www.cgap.org/gm/document.

through which households are able to receive remittances and social grants encouraging them to save and be financially included.

Affordability

Once a telecommunications network is established in an area, there is no required capital costs for the operation of mobile money as would be required for the establishment of traditional banks. This makes mobile money cheaper than other financial services,[100] as the transaction charges are lower than those ordinarily levied by traditional banks. Similarly, mobile transactions are less costly in terms of time as one does not need to travel to a bank. This confirms the Group Special Mobile Association (GSMA) observation that mobile money has made a great achievement in expanding the reach of financial services in the last decade than the known mortar and bricks banks have in the last century.[101]Mobile money has thus made affordable account ownership and embraced the millions of people excluded from the formal financial sector as they can carry out transactions in a relatively cheap, secure, reliable and efficient manner. Similarly, those excluded from the formal banking system due to the lengthy distances that bar them from accessing the commercial banking system or lack adequate funds to meet the minimum deposit requirements for opening a bank account are now financially included through mobile money.

Acceptance

Mobile money is widely accepted as it can be operated with the most basic handset by even the illiterate masses. Additionally, the process of account registration is neither lengthy nor involving like the cumbersome formalities of opening a bank account which makes mobile money more acceptable easing its uptake for the benefit of financial inclusion. Mobile money has further reduced the reliance on cash thereby reducing the risks of theft and insecurity borne out of handling large cash amounts. The acceptance of mobile money is further ascertained from its deployment for business transactions with statistics showing that in Tanzania, nearly 20 percent of mobile money users use it for trade transactions between suppliers and buyers.[102] Mobile money has thus been widely acceptance further grounded by research that 85 percent

[100] Claudia Mackay and Mark Pickens, 'Branchless Banking 2010: Who is served? At What Price? What is next?' CGAP, Advancing financial inclusion to improve the lives of the poor. Available at http://www.cgap.org/publications/branchless-banking-2010.

[101] GSMA (2015) State of the Industry report, n 95 above.

[102]The Financial Inclusion Tracker Surveys Project, (February 2013) Intermedia. Available at http://www.intermedia.org/wp-content/uploads/FITS_Tanzania_FullReport_final.pdf (Accessed on 23/9/17)

of women in East Africa receive income by way of mobile money and it accounts for 33 percent of their income.[103]

2.3.4 History of mobile money

Reports show that as early as 2001, SMART money was being operated by SMART Communications in Philippines and its success was driven by the flexibility of the regulator to allow non-banks to offer financial services and the rules, which allowed agents to carry out cash in and cash out functions.[104]

In Sub Saharan Africa, mobile money begun in Kenya as a pilot project for a micro finance tool by Vodafone, a British Telecom Company in partnership with Safaricom, a Mobile Network Operators (MNO).[105] The attempts to increase financial access for micro credit lenders and their clients revealed that users often changed their airtime credit into cash. This gap led to studies which revealed that an application can be designed that coverts airtime to cash, to enable transfer of money (M-pesa) between the Safaricom network mobile phone.[106] When the technology's abilities for such transfer was tested and proved effective, M-Pesa requested approval from the Central Bank of Kenya (CBK) to provide the mobile money service.[107] In 2007, mobile money was launched in Kenya and was subsequently adopted in other African Countries like Tanzania and Uganda.

2.3.5 How does mobile money function?

A mobile phone subscriber with a compatible SIM card creates an account in which to deposit money into on their phone, and which he can use to send funds into another registered mobile subscriber account or turn the value back into cash easily thus making payments and money transfers easy and cheap.[108] Such account owner can cash-in and cash-out money from the account using the local agents who serve as Automated Teller Machines (ATMs). The account

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[103]GSMA (2015) State of the Industry report. Available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/03/SOTIR_2014.pdf (Accessed on 23/9/17)

[104]GSMA, Mobile Money in the Philippines – The Market, the Models and Regulation. Available at http://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/06/Philippines-Case-Study-v-X21-21.pdf

[105]Alliance for Financial Inclusion (AFI), 'Enabling mobile money transfer, the Central Bank of Kenya's treatment of M-pesa.'Available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/09/enablingmobilemoneytransfer92.

[106]AFI, n 105 above

[107]di Castri et al, 'The Kenyan Journal of Digital Financial Inclusion' (2014) Available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/09/MMU_2014_Kenya-Pathway_infographic_web.pdf.

[108]GSMA Annual Report (2010), 'Mobile money for the Unbanked.' Available at http://www. gsmworld.com/documents/mmu_2009_annual_report.pdf

either is an electronic one which receives electronic value after the holder deposits cash via an agent or receives a payment from elsewhere.[109] Once created, the account user can pay for a good or services with their mobile phone to another subscriber and a text message is confirmation of the operation. The recipient can then cash this money with an agent or keep their money in the account. Each Telecommunication company has a network of agents who sell airtime and carry out the mobile money transactions which are protected with a PIN that authenticates the customers and every transaction attracts a percentage of the withdrawn amount.

2.3.6 The mobile money ecosystem

The proliferation of mobile money and its success as a financial service is dependent upon the interconnectedness of several players. These players are categorised into users who have the needs for the financial products and include consumers, government agencies, businesses and other groups. The infrastructure providers like the Mobile network Operators (MNOs) that make the provision of such services possible, others include banks and financial institutions that supply the services through digital means and the government through the established regulatory institutions that create an enabling environment for the provision of these services.[110] Although each of the players have respective concerns that range from liquidity issues for Cash in cash out (CICO), cross border policies, technology standard and increased mobile penetration, the single biggest challenge stems from the importance of an enabling regulatory environment for all the players.

2.3.7 Challenges for mobile money adoption

Mobile money as an enabler for financial inclusion is not without challenges, which may be at an individual or macro level. While some are old and familiar to telecoms or banking, many have evolved because of the overlap between the telecommunications networks and the banking sector. The inherent challenges that can resultantly affect financial inclusion negatively

[109] International Finance Corporations (2011) - The study was developed to increase understanding of mobile money and address key issues that would assist in scaling up its uptake and developing the mobile money ecosystems globally. n 91 above

[110] Inter-Agency Task Force on financing for development- Digital Financial Inclusion- ITU July 2016 – http://www.un.org/esa/ffd/wp-content/uploads/2016/01/Digital-Financial-Inclusion_ITU_IATF-Issue-Brief.pdf

Poor network connectivity and unreliable services

A ubiquitous and reliable network is one of the most important contributor to effective mobile money adoption. Often times, the mobile networks in developing economies are plagued with power failure leading to unreliability not only in the voice and data segment, but in the mobile money service as well. The risks associated with a network failure are several such as time wastage, loss of cash loss, loss of customer goodwill in respect of the concerned network operator among others. One of the most challenging problems is to provide reliable services to large population of customers in a cost effective and timely manner thus poor connectivity can have a negative effect for not only the users and agents, but also the overall economy due to its undesirable effect on inclusive finance.

Fraud and money laundering

In 1986, money laundering was recognised as a domestic felony in the United States and in 1989, the Financial Action Task Force (FATF)was created as a policy making body that sets standard to promote the effective execution of measures aimed at combating money laundering, terrorist financing and other threats related to the integrity of the international financial system. The increased mobile money remittances over the past decade have created a fear of enhancing fraud, money laundering and terrorist financing,[111] because the majority of mobile money remittances fall outside the ambit of the traditional banking transfer channels. Thus the UN Security Council Resolution[112] implores member states to design systems that are unsuitable for operations outside the formal financial sector.

Identity and authentication

The broader adoption of mobile money as a financial service calls for the creation of a mode of identification through a variety of ways in order to be able identify, authorise and authenticate payments. While there are well-established formal processes of identification across the industrialised world, the situation is different with emerging economies.[113] The registration process is not only difficult and limited, but has vast inaccuracies and discrepancies regarding dates of birth, proper spelling of names thus giving rise to problems in the later years.

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[111] William Vleck, 'Global Anti- Money Laundering Standards and developing Economies: The Regulation of Mobile Money' Development Policy Review, 2011, 29(4): 415-431.

[112] United Nations Security Council Resolution 1617 adopted on 29th July 2005. It calls upon members to implement the Financial Action Task Force (FATF) recommendations on Money Laundering and Terrorist Finance.

[113]Identity and Authentication – ITU Focus Group on Digital Finance, 01/2017 www.itu.int/ITU-T/focus groups/dfs/default.aspx.

It is thus imperative to create formal national identity programs as a commitment to Goal 16 of the UN Sustainable Development Goals.[114]

Privacy and security concerns

While mobile money enables financial Inclusion and can improve the physical security of its users, the emerging threats to the security of the system can compromise stakeholders' uptake within the ecosystem. Though viewed as an improvement to security because masses no longer have to carry large quantities of money while travelling long distances, there are emerging threats within the digital financial ecosystem that require the management of such security issues from multiple layers. The critical issues identified as addressing any particular network security include access control, data confidentiality, data integrity, privacy, authentication and non-repudiation.[115]

Sound regulatory frameworks

The fast growing wave of technological innovations resulting into mobile money have outpaced the legal and regulatory regimes in various jurisdictions creating regulatory uncertainty, which affects consumer adoption and market. Globally, there seems to be no agreement as to how mobile money should be regulated, with most countries having patched provisions in several legislations, which does not solve the regulatory uncertainty. While some proponents observe that mobile money should be regulated by the Central Banks, others yet urge that the telecommunications regulator should oversee it. Yet others still propose that neither a financial nor a telecoms regulator should oversee the regulation of mobile money and related services.

Competition related aspects

The mobile money ecosystem is comprised of regulators, financial service providers, network operators and other stakeholders who are all affected by the challenges that stem from access and use of the technology. One of such challenges is the competitive nature of the system due to the massive capital investment injected into the establishment of mobile telecommunications networks. This therefore creates market imbalances which sometimes yield unequal regulatory policies, manifest in such areas as quality of service (QOS), discriminatory pricing, restricted access, cross subsidisation and limited infrastructure access by competitors. Thus in the absence of regulatory intervention, anti-competitive practices undertaken by a player with

[114]By 2030, provide legal identity for all, including birth registration". - UN Summit on 25th September 2015 by world leaders of the 17 SDGs of the 2030 Agenda for Sustainable Development, Available at http://www.un.org/sustainabledevelopment (accessed on 12 August 2017)

[115]Security Aspects of Digital Financial Services - ITU Focus Group on Digital Finance, 01/2017 www.itu.int/ITU-T/focus groups/dfs/default.aspx.

significant market power may cause complexities that can affect the growth of mobile money.[116]

Lack of industry collaboration and interoperability

One of the characteristics of mobile money crucial to fostering financial inclusion is collaboration and interoperability amongst industry players.[117] Industry collaboration is required for interoperability but is always a challenge in competitive markets as operators always strive to grow networks through increased subscriptions by customers. The deployment of mobile money services is on individual mobile network platforms thus on net and off net charges differ and without effective industry collaboration, customers are prompted to stick with the networks that have more accounts as they are charged on transactions over the same platform. It is therefore important to induce interoperability amongst players although the time for intervention is also a critical aspect as it may adversely affect market development by raising entry barriers or make competition difficult.

Consumer protection

Consumer protection is a critical issue that needs to be thoroughly addressed in the mobile money market as banks and telecommunications companies operating mobile money sometimes disclaim liability when transactions fail or money is lost due to factors such as criminal activities or network failure. Such missed payments can occur when a phone is operated in a no signal zone and the customer's payment instructions are not processed although instruction fees are incurred. The issue of liability remains unresolved placing the burden on the customer, which has a negative effect on uptake of financial services hence negatively affecting financial inclusion. This, among other factors make the consumer vulnerable and without ample protection by way of regulation, services and uptake may be negatively affected.

2.4 The regulation of mobile money

As the mobile money industry continues to expand and competition heats up markets, regulators are recognising the roles performed by different players such as the non- bank institutions and the need to address the challenges in order to ensure healthy service provision.

[116]Competition aspects of Digital Financial Services - ITU Focus Group on Digital Finance, 01/2017 www.itu.int/ITU-T/focus groups/dfs/default.aspx.

[117]According to the ITU Digital Financial Services Focus Group's glossary, interoperability is "the ability to exchange payments transactions between and among providers. This can be done by providers through a variety of ways including bilateral or multilateral arrangements. When payment systems are interoperable, they allow two or more proprietary platforms or even different products to interact seamlessly.

Regulators are also cognisant of the fact that regulatory barriers can slow down market uptake and customer adoption, leading to a negative impact on financial inclusion. This section seeks to tackle the theories underpinning regulation and the mobile money regulatory factors taking into account the aspects that impact financial inclusion.

2.4.1 Theories underpinning regulation

Stiglitz, a famous Economist questions why regulation is needed and whether markets would not suffice without regulation.[118] He further questions why government intervention should always take the form of regulations though he does not disputable that regulation is necessary. While without a fixed definition as proposed by some scholars,[119] regulation is the use of various instruments or any government action that places conditions on providers of services and goods in specific areas of economic enterprise for purposes of preventing abuse by private individuals. Badwin et al[120] agree with several scholars that while there is no standard definition of what constitutes regulation, there are three notions to regulation; the promulgation of a set of rules coupled with monitoring and ensuring compliance with the same, the actions by the state to steer an economy into the right direction and all other mechanisms of social control. This definition seems to be in line with Selznick's[121] definition that regulation is the directed and unrelenting action exercised by a government agency over activities that are beneficial to society, which in the absence of regulatory oversight would be subjected to abuse. Julia Black[122] on the other hand defines regulation as an unceasing and focussed attempt to change in accordance with defined standards for purposes of achieving certain outcomes. This is a widely cited reference in scholarly articles. An analysis of the various definitions reveals common elements of the unceasing regulatory oversight by a government agency, controlling social and economic behaviour in respect of activities that are beneficial to society.

There are two alternative and contending theories that underpin regulation; the Public Interest Theory and the Chicago theory. According to the public interest theory, regulation strives to protect and benefit the public at large and assumes that markets are delicate and if left alone,

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[118]Joseph E. Stiglitz, 2008, Government Failure vs. Market Failure: Principles of Regulation, Columbia University Academic Commons, Available at https://doi.org/10.7916/D82F7V5C.

[119]Johan den Hertog "Review of Economic Theories of Regulation" Discussion Paper Series No. 10-18 (2010) Tjalling C. Koopmans Research Institute.

[120] Robert Baldwin, Martin Cave and Martin Lodge, Understanding Regulation- Theory, Strategy and Practice, 2nd Edition – Oxford University Press. Pages 2-4.

[121] Phillip Selznick, Focusing Organizational Research on Regulation. Regulatory Policy and the Social Sciences, pp.363–367. University of California Press, Berkeley

[122] Black, Julia (2001) Decentring regulation: understanding the role of regulation and self-regulation in a "post-regulatory" world. Current Legal Problems, 54 (1). pp. 103-146. ISSN 0070-1998

are capable of inefficiency and hence government must act as a neutral arbiter and establish a regulatory body to oversee the interest of the society in which it operates.[123] In other words, government regulation exists to correct some of the failures of a free market economy and ensure stability, promote competition and promote social objectives. The Chicago theory on the other hand, proposes that regulation protects the interests of small groups only and assumes that regulators cannot ensure public interest as they lack sufficient information with respect to market operations such as cost, demand and quality and hence regulation may not necessarily promote the interest of the public. In fact, certain other players such as legislators, economic agents and politicians fall within the Chicago theory cycle as their interests may not necessarily reflect public interests.

There is a growing body of evidence that financial regulation falls under the public interest theory, as it is not only a delicate market, but seeks to accord the users of the financial products a degree of protection. Goodhart[124] asserts that protecting the customer against monopolistic exploitation is a key objective of financial regulation. However, certain financial innovations and information technology infrastructures such as the mobile phone and mobile money have leapt faster than regulations, circumventing applicable laws. It would thus be imperative to ensure that while accommodating such innovations, the regulatory system is designed to safeguard customer interests and ensure systemic stability, although this would be an arduous task in the absence of holistic collaboration among the regulated entities.

2.4.2 Regulating for financial inclusion

Over two decades ago, financial regulation revolved around financial institutions but lately, technological innovations have driven non-bank institutions into the purview of financial regulation. Such innovations have presented regulatory challenges that blur and distort the known sectors, merging them with others, therefore creating complexities within the prevailing regulatory oversight.[125]

The impact of the 2008 financial crisis caused policy makers to rethink the regulatory landscape of the financial sector across the globe, resulting into vast measures that brought about changes in the regulatory infrastructures. Such changes encompass the development of macro prudential

[123] Richard A. Posner, Theories of Economic Regulation, The Bell Journal of Economics and Management Science, Vol. 5, No. 2 (Autumn, 1974), pp. 335-358

[124]Charles Goodhart (2009), the Continuing Muddles of Monetary Theory: A Steadfast Refusal to Face Facts', 76(1) Economica, 821-830, available at http://goo.gl/ab0bp

[125] Barnaba Andiva - Mobile Financial Services and Regulation in Kenya- Competition Authority of Kenya

regulatory frameworks, the adoption of the Basel III capital requirements,[126] and the introduction of special resolution regimes for financial institutions, among others, all geared towards guarding against unforeseen financial predicaments. Resultantly, any risks and perils that may arise out of mobile money as a sector that revolves around financial services would have a bearing on the financial sector due to the close interconnectedness with telecoms, and hence the need to guard against any crises.

While regulation for financial inclusion involves several players, those at the helm include the financial regulator and the ministries of finance whose work is directly correlated with the development and stability of the financial sector. Legislative proposals for mobile money as a driver for financial inclusion should therefore underscore the importance of its contribution to the improvement of individual socioeconomic development, increase stability in the financial sector, and increase efficiency within the government itself. Thus in regulating for financial inclusion, the following need to be taken into account;

- Appropriate Regulation

Appropriate regulation plays an important role in the success of mobile money as revealed by the 2015 empirical study of 22 countries[127] whose findings indicated that in countries with minimal regulatory requirements such as light KYC obligations, the mobile money sector experienced exponential growth. However, in those countries where there was heavy regulation or regulation inappropriate to mobile money with banks taking the lead role without the involvement of MNOs, and an imposition of stringent KYC requirements, the sector failed to take off. Thus in regulating for financial inclusion, a right regulatory model has to be sought that takes into account the challenges imposed due to the interplay between telecommunications and financial services. Important to note is that some of the regulatory issues such as prudential regulation fall under the purview of the financial services regulator while others such as network access fall within the sphere of the telecommunications regulator and yet others still fall within the purview of both. Thus when considering regulating for financial inclusion, a balance has to be sought, hence services such as mobile money that are distinct from deposit taking institutions, the prudential regulatory requirements should be less

[126]Basel III is a set of reform measures that were developed by the Basel Committee on Banking Supervision aimed at strengthening the regulation, supervision and risk management of the banking sector in order to absorb shocks arising from financial and economic stress, improve risk management and improve banks' transparency and disclosure procedures.

[127] Evans& Pirchio (2015), An Empirical Examination of Why Mobile Money Schemes Ignite in Some Developing Countries but Flounder in Most. University of Chicago (Coase-Sandor Institute for Law & Economics Research Paper No. 723). Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2578312.

as opposed to those required of banks. Similarly effective coordination between the requisite regulators as well as the regulated entities is essential in regulating for inclusive finance.

Risk management

In designing a regulatory framework, that supports financial inclusion, both prudential and market conduct regulations have to be taken into account. While prudential regulation is intended to ensure the integrity of the financial system, and encompasses capital requirements, among others,[128] market conduct regulation is geared towards consumer protection through transparency and disclosure requirements and may require a light regulatory regime. This is ideal for the regulation of mobile money as an enabler for financial inclusion, as excessive regulation may act as a barrier to further growth. Thus in managing risk, it is imperative that the regulatory requirements are designed in accordance with the type of service offered.

Safeguarding user funds

The safeguard of user funds is of paramount importance and involves three dimensions which include risk of loss, protection from creditors and disbursement of interest earned on the stored funds. In mobile money markets, the mobile money provider holds the users balance referred to as the float which should ordinarily be deposited in an account with a prudentially recognised bank. This ensures its safety but it is questionable how accrued interest would be handled in instances where such money is loaned out. Nevertheless, the important factor herein should be the availability of risk free funds to users upon demand. Where the funds are invested however, rules for their distribution should be established, such as giving interest to customers, giving accrued funds to charity or benefitting the MNOs.[129] In Tanzania for instance, interest that accrued on underlying trust accounts was distributed by to its mobile money customers by Tigo –pesa.[130]

Protecting against fraud, terrorism finance and money laundering

The integrity of banks and payments systems is prone to risk factors such as money laundering, fraud and terrorist finance and hence regulation should have the ability to manage such risks through appropriate KYC/AML requirements, amount limitations and customer authentication. In regulating for inclusive finance, regulations should be tailored to the scale of risk as proposed

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[128] Basel Committee on Banking Supervision, 2010, Basel III: A global regulatory framework for more resilient banks and banking systems strengthened regulation in the wake of the 2007 financial crisis.

[129]di Castri, S.(GSMA) 2013, 'Mobile Money: enabling regulatory solutions' https://www.gsma.com/publicpolicy/wp-content/uploads/2013/02/GSMA2013_Report_Mobile-Money-EnablingRegulatorySolutions.pdf.

[130]Financial inclusion in Tanzania; Tigo- Pesa rewards its mobile money customers. Available at https://www.gsma.com/mobilefordevelopment/programme/mobile-money/financial-inclusion-in-tanzania-tigo-rewards-its-mobile-money-customers

by the Financial Action Task Force (FATF).[131] Thus countries should identify and assess the money laundering and terrorist financing risks and accordingly take action, such as the establishment of a mechanism or designation of an authority to coordinate actions aimed at ensuring the mitigation of such risks.

Agent network concerns

In order to have a ubiquitous presence, mobile money requires the presence of agents to interface between the network and the customers. The agents assist with the cash in and out transactions acting as bank ATMs and providing a host of other services for customers upon request. Like branchless banking, agents enable the mobile money providers to operate within a larger coverage than banks, without investing the much capital and operating costs of establishing bank branches.[132] One key aspect that should be taken into account in the deployment of agents is the allocation of liability. The question of whether the MNO or the bank should be held liable for the actions of agents is of paramount consideration as it imparts confidence in consumers and regulators. Thus as countries undertake to fulfil the financial inclusion mandate, the importance of enabling legislation that covers the deployment of agents should be underscored as agents increase geographical coverage of such financial services, at lower costs, driving financial access to the previously unbanked masses.

2.5 Conclusion

This chapter explored the literature that forms the basis for much of discussions that relate to mobile money and its effect on financial inclusion. A definition of the concepts and theories pertaining to the research has been made coupled with a survey of some of the key aspects of financial inclusion, mobile money and its regulation. As seen in the chapter, different scholars have defined the concepts herein in different ways was but the basic components of both mobile money and financial inclusion are reflected in most of the definitions. The chapter captured the pivotal role played by mobile money in financial inclusion indicating that mobile money has the potential to increase financial inclusion due to its ability to extend financial services to individuals in the remotest areas. Mobile money, though not the sole enabler of inclusive finance plays a vast role and together with other factors such as infrastructure, coordination between stakeholders and government support wholly contribute to enabling financial

[131]Financial Action Task Force (FATF) February 2012, International Standards on Combatting Money Laundering and the Financing of Terrorism,

[132] Macmillan R (2016) ITU; Digital Financial Services; Regulating for Financial Inclusion; An ICT Perspective https://www.itu.int/en/ITU-D/Conferences/GSR/Documents/GSR2016/Digital_financial_inclusion_GDDFI.pdf

inclusion. However, as reviewed, the uptake of mobile money is without challenges, broadly spanning between network related challenges to consumer protection issues. Thus related regulations have to address certain facets that have a nexus to its ubiquitous spread resulting into deeper financial penetration. In the ensuing chapter, an in-depth exploration of the state of financial inclusion in Uganda as well as the legal and regulatory landscape of mobile money will be tackled to make an assessment as to whether the legislative framework in place supports inclusive finance through mobile money.

CHAPTER 3

THE MOBILE MONEY REGULATORY LANDSCAPE IN UGANDA

3.1 Introduction

The previous chapter defined the important concepts that addressed in this research, the underpinning theories and the pivotal role played by mobile money in extending financial services to the underserved masses. The current chapter delves into the state of mobile money in Uganda enlisting the operators, the state of the market, the services and transactions and the way mobile money has influenced the economy and contributed to the extension of financial services to the unbanked masses. The chapter further explores the legal and regulatory landscape related to mobile money, enlisting the laws and the provisions that have a nexus to mobile money, but emphasizing the evident absence of legislation specific to mobile money.

3.2 Mobile money in Uganda.

The mobile money landscape in Uganda has been especially successful due to the widespread telecommunications infrastructure, a factor that has enabled deep penetration of the mobile phone into the remotest villages, thus attracting subscribers to the respective networks. According to available data, the mobile subscriptions for all networks were 22 698 037 by December 2016.[133] This is a tremendous growth for Uganda which preceded Kenya in the adoption of the mobile phone in 1993,[134] although Kenya outpaced Uganda in the implementation of the mobile money service.[135] Introduced into the Ugandan market in 2009, the steady growth of mobile money has been embraced by Ugandans and generated unprecedented access to financial services by all people especially the rural poor. The growth of the service has therefore brought order to the domestic transfer environment and has the capacity to improve the national payments system due to the ease of payments for the ordinary people.[136]

The mobile money market is comprised of six players, four of which are network operators[137] and the remaining two, namely M-cash and Eeezy money are mobile Virtual Network

[133]Source: Uganda Communications Commission. http://www.ucc.co.ug/data/pubs/31/Policies-and-Regulations.html

[134] The mobile phone serviced was first introduced in Uganda in 1993 by Celtel, which later rebranded to Zain and subsequently to Airtel Uganda in 2010.

[135] Mobile money was launched in Kenya in 2007, two years before the Uganda adopted the same in 2009.

[136]Ndiwalana"Mobile Money Use in Uganda: A Preliminary Study" http://www.gsmworld.com/mobilefordevelopment/wp-ontent/uploads/2012/06/m4dmobilemoney

[137]MTN mobile money, Airtel money, Uganda Telecom(M-sente) and Africell

Operators.[138] Amongst the players, MTN remains by far the market leader and together with Airtel Uganda, account for 99% of the market presence of mobile money agents standing at 57% and 42% respectively.[139] It has been indicated that Airtel Uganda has the largest number of mobile subscribers due to its acquisition of the Warid Telecom customers,[140] and its policy of automatic registration of customers for the mobile money service upon purchase of an Airtel simcard, as opposed to the MTN mobile money service that has to be specifically requested for and is not automatic upon purchase of a simcard.

Since its inception, the growth of mobile money in Uganda has been phenomenal with statistics showing an increase in the recorded customers from 2.9 million to 8.9 million and an increase in the mobile money transaction amounts from UGX 3.7 trillion to 11.7 trillion between the period 2011 and 2012.[141] By December 2016, the recorded mobile money accounts were 21 585 485, the agent network comprised of 132 937 agents and the recorded transactions were 291 373 524, all valued at UGX 13 trillion.[142] The number of mobile money accounts clearly surpassed the number of bank accounts, a sign that mobile money has taken Uganda's financial sector by storm contributing to welfare improvement and creating employment channels.[143] The growth of these numbers is partly due to the innovative products and services that continue to flood the market.

3.2.1 The Products and services

Mobile money has evolved from the known transfer services to encompass a broad range of other services as indicated in this section. While the models continue to progress, the current offerings on the Ugandan market include;

Money transfers/ remittances

The most familiar use of mobile money in Uganda is the Person-to-Person (P2P) transfer that allows a user to transfer money from a prepaid mobile wallet to another user's mobile account. Normally used for domestic remittances, the P2P transfers is mainly between family and friends but can be used for unregistered users too.

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138 A MVNO is a company that provides mobile telecommunications services without owning any telecommunication infrastructure of its own and leases the same from an existing MNO.

139 Macmillan, R., Paelo, A., & Paremoer, T. (2016). The "evolution" of regulation in Uganda's mobile money sector. The African Journal of Information and Communication (AJIC), 17.

140 Warid Telecom entered the Uganda telecommunications market in 2008 and was acquired by Airtel in 2013

141 Source: Uganda Communications Commission (UCC). (2013, 2014, 2015 and 2016). Industry report. Retrieved from http://www.ucc.co.ug/data/pubs/30/Reports-&-Surveys.html

142 UCC, n 141 above.

143 Neil Davidson $ Paul Leishman, "Building, Incentivizing and Managing a Network of Mobile Money Agents: A Handbook for Mobile Network Operators" available at http://www.gsma.co/development- fund/wp-content/uploads/2012/03/incentivise.pdf

The Business to Person (B2P) service on the other hand allows a government ministry or any other business to make payments into mobile accounts of multiple recipients at one single time. This is a convenient way of effecting payments especially in developing economies and a large portion of temporary workers have benefitted from this model as it ensures timely payment of salaries, while minimizing the risks of theft and corruption that are inherent in transmitting bulk payments.[144] The Person to Business (P2B) service is popular and allows users to pay utility bills, television subscriptions, school fees and others through a mobile money account, hence minimizing the travel inconveniences and long queues. This service is popular with the payment of utility bills, pay television and sometimes school fees and upon completion, a message is transmitted confirming payment.

Although not available at inception, the evolution and growth of mobile money has given rise to an international transfer service which involves a partnership between a MNO and a world money remitter such as Western Union in countries where it has operations. The sender using this service transacts with Western Union either online or physically and executes the transaction which once completed, enables the recipient to either withdraw from a Western Union outlet, or have the value transferred to an individual MTN mobile money account. This service rides on the experience of known remitters and is still only unique to MTN in Uganda. In December 2015, MTN Uganda signed a memorandum with Safaricom Kenya in which MTN subscribers can receive money transfers from M-PESA subscribers in Kenya. Similarly, MTN Uganda subscribers can also receive transfers from MTN Rwanda. While the said transfers were only inbound originally, further developments took effect and by November 2016, MTN Uganda mobile money subscribers were able to send mobile money to MTN Rwanda and M-Pesa customers respectively.

Mobile banking

Mobile banking has swept the Ugandan market as a result of the technological wave complementing the traditional banking services. The service enables the customer to carry out banking activities by interacting with the bank via the mobile phone.[145] With the phone, the customer is able to access their bank account, make balance inquiries and transfer funds from the bank to the phone wallets and vice versa minimizing the use of agents. This linking of regulated financial institutions to the mobile phone to execute financial services has been

[144] Some of the users of the B2P service in Uganda such as World Food Program and British American Tobacco commend the cheaper and flexible option of using mobile money to effect payments.

[145] Barnes s & Corbett B, Mobile Banking: Concept $ Potential. International Journal of Mobile Communication Vol 1, Issue 3 273-288

adopted with keen interest due to the convenience of executing the transactions, its availability, accessibility and the minimal time utilized in executing the transactions.[146]

Two different models of mobile banking are recognised; the bank led or the telecom led models. In the bank led type, the bank is solely the platform for transactions and the telecom operator is an agent of the bank. With the telecom-led model however, the Mobile Network Operators (MNOs) manage the platform, the Agent Network, the Unstructured Supplementary Service Data (USSD) network and offer payment and non-banking products. The MNO has the last mile connection and the value is stored directly with the telecom operator although there may be a requirement to store total value with a bank to respect prudential norms. While the Ugandan banks were not originally active mobile money providers, technological trends demand partnerships between MNOs and banks in order to carry out mobile banking and payments. In this regard MTN Uganda has collaborated with eleven Financial Institutions like the Standard Chartered Bank, while other providers like Airtel are also partnered with several Financial Institutions like the Housing Finance Bank Uganda.

Mobile credit/ loans

Mobile credit allows consumers to apply for loans over mobile devices and enabling the extension of financial services to otherwise unbanked populations, such as smallholder farmers and informal traders.[147] Launched in August 2016 by MTN Uganda a few years after launches in Kenya and Tanzania, the Savings and Credit facilities dubbed mokash is implemented in collaboration with the Commercial Bank of Africa (CBA). The extension of loan facilities to mobile subscribers enables regular savings and advancement of unsecured loans from as low as UGX 3000 ($0.83) to a maximum of UGX 1,000,000($ 278) using the mobile phone. This service transcends the basic sending and receiving functionality and is improving the overall financial inclusion objective[148] as mokash has the ability to reach the unbanked in the remotest areas. It has been reported that close to UGX 30 billion has been released in form of loans to the mobile subscribers.[149]

[146] Gautan Ivatury, Mark Pickens, Mobile Phone Banking & Low Income Customers – Evidence from South Africa. Consultative Group to Assist the Poor (CGAP) 2006 accessible at https://www.cgap.org/sites/default/files/CGAP-2006.pdf

[147] Economic Regulation, Regulatory Performance and Universal Access in the Electronic Communications Sector, Thematic Issue: The African Journal of Information and Communication (AJIC) Issue 17, 2016

[148] Statement by Ms Elsa Muzzolini, the general manager of mobile financial services at MTN Uganda.

[149] Reported in the Uganda daily monitor of 23rd August 2017. Available at http://www.monitor.co.ug/Business/Mobile-money-loans-exceed-Shs30b-mark/688322-4066746-qbx9ce/index.html (Accessed on 29 August 2017).

Mobile insurance

Uganda's insurance penetration remains the lowest standing at 0.9% in comparison to the other East African countries of Rwanda, Kenya and Tanzania whose penetration stands at 2%, 3.8% and 2.3% respectively. This situation is not unique to Uganda but many other sub-Saharan countries and the hindering factors vary between awareness and education regarding insurance to limited disposable income. The move by MTN Uganda in partnership with aYo Uganda to extend insurance services is another of the initiatives to increase financial inclusion in Uganda. Launched January 2017, the insurance service has been embraced with keen interest, due to its user friendliness in comparison to the traditional insurance companies. It is a digital self-service executed via Unstructured Supplementary Service Data (USSD) and does not involve the rigorous paper work and medical check-up requirements required by insurance companies.

These products, all borne out of the mobile money service continue to flourish, bringing the unbanked masses into the fold of formal financial services. Albeit their availability, it is questionable whether the prevailing legal and regulatory environment wholly supports mobile money and all its innovative products that are contributing to the heightening financial inclusion. Hence, the next section is an appraisal of the current legislative framework that relates to mobile money in Uganda.

3.3 Related key legislation in Uganda

The literature in the preceding chapter has revealed that the mobile money ecosystem is comprised of several players thus its influence spans across different legislative frameworks. Due to its nature, it is not possible that one of the current legislations can holistically tackle the regulatory challenges borne out of the fusion of the finance and telecoms sectors. While some scholars have argued that the success of mobile money in Uganda has been partly attributed to the relatively marginal limitations on mobile money operations,[150] such as the limited restrictions on the choice of mobile money agents and light know your customer (KYC) requirements, the situation has since changed. Many countries have since adopted legislations that are specific to mobile money as the regulators and policy makers are realising the major role it plays in fostering financial inclusion and the challenges that may be posed as a result of lack of a legislative framework. Herein below are some of the legislations related to mobile money.

[150] Evans & Pirchio. (2015), n 127 above.

3.3.1 The Bank of Uganda Act[151]

The Act establishes the Bank of Uganda (BOU) and sets out provisions regarding its operations with respect to monetary policy in Uganda. The BOU issues legal tender, maintains external reserves and promotes currency stability. The focus of the Bank's regulation is prudential, which aims to protect and maintain the stability and safety of the financial system that is conducive to a sustainable rate of growth of the economy. Through the BOU, the Government of Uganda has taken considered steps to build an inclusive financial system that responds to the needs of the Ugandans. Lately, the Bank of Uganda, a member of Alliance for Financial Inclusion, has also embarked on the task of extending financial services to the unbanked in order to promote financial inclusion.[152] The BOU thus has a duty to create a licensing regime that allows diverse models to exist in the market, hence the grant of permission through Letters of no objection, to Mobile Network Operators that collaborate with banks for the provision of the mobile money service. The BOU grants such permission although the respective players' licences are granted under different regulatory regimes and the precise roles of each player differs.

3.3.2 The Financial Institutions Act[153]

Under this Act, the regulatory oversight of Financial Institutions FIs is granted to the Bank of Uganda (BOU), with the power to licence, supervise and inspect FIs. The definition of FIs under the Act includes commercial banks, the post office savings bank, credit institutions and a building society among others.[154] The business of accepting deposits and provision of money transmission services, among others, lies with a FI.[155] Drawing from these provisions, the money transmission service would ordinarily fall within the ambit of services provided by FIs as regulated by the BOU. The challenge herein is that mobile money providers are not licensed FIs and are not regulated by the BOU, creating a regulatory gap as regards which regulatory regime should regulate mobile money.

[151]The Bank of Uganda Act (Cap 51 Laws of Uganda) of 2000 Available at https://www.bou.or.ug/bou/supervision/supervision_acts_regulations.html.

[152] The 2013 Maya Declaration Progress Report, Alliance for Financial Inclusion 2013: Available at www.fdga.org.dti/content Manager/files/Documenti_microfinanza/Afi-2013-Maya-Progress-Report. Pdf

[153]Financial Institutions Act 2004. Available at https://www.bou.or.ug/bou/supervision/supervision_acts_regulations.html

[154] S.3 of the Financial Institutions Act 2004 n 153 above.

[155] Under 3(f), several financial institution businesses are listed, but for purposes of this research, only the two businesses that have a correlation with mobile money are mentioned.

3.3.3 Financial Institutions (Amendment) Act[156]

In line with the National strategy for financial inclusion, the Government of Uganda amended the 2004 Financial Institutions Act to provide a legal basis for the regulation of agent banking.[157] The Act similarly introduces Islamic banking,[158]and grants the BOU the mandate to establish several credit reference bureaus.[159] This amendment which recognizes the deployment of agents in the provision of banking services is seen as a positive step towards fostering the rapid roll out of financial services especially in the underserved areas. It is believed that the changes will enhance greater competition within the financial services sector and increase the outreach of banking and financial services to the unbanked population, thus deepening financial inclusion.

3.3.4 The Micro Finance Deposit Taking Institutions Act[160]

The Act provides for supervision, regulation and licensing of micro finance business in Uganda which includes the business of taking deposits. MNOs as mobile money operators take deposits but fall outside the provisions of this Act. The Act gives legal authority to the Bank of Uganda to intervene and protect the savers' deposits where it is necessary.

3.3.5 The Anti- Money Laundering Act[161]

The Act provides for the prohibition and prevention of money laundering, laying down stringent know your customer (KYC) obligations to an extensive list of persons including Financial Institutions.[162] Under the Act, the Financial Intelligence Authority is established to oversee the objectives of the Act, such as anti- money laundering and countering of terrorist finance. These are met through the know your customer (KYC) requirements, which require recording and verification of customer information upon registration for services such as mobile money. Accordingly, money laundering is a criminal offence and the transmission of money or property suspected to be a result of proceeds of crime is prohibited. In tandem with this, FIs in Uganda demand that a person depositing large sums of money discloses the source

[156]The Financial Institutions (amendment) Act, No. 2 of 2016 Available at https://www.bou.or.ug/bou/supervision/supervision_acts_regulations.html
[157] S. 2(a) of the Act, n 156 above
[158] S.3 of the Act, n 156 above
[159] S.25 of the Act, n 156 above
[160]The Micro Finance Deposit- Taking Institution Act 5 of 2003 Available at https://www.bou.or.ug/bou/supervision/supervision_acts_regulations.html
[161]Anti-Money Laundering Act 2013 as amended in 2017. Available at https://www.bou.or.ug/bou/supervision/supervision_acts_regulations.html
[162] Schedule 2 of the Anti- Money Laundering Act 2013 as amended in 2017, n 160 above.

of such money with supporting evidence of its supplier. This is line with the provision on exchange of information by competent Authorities.[163]

In order to deepen financial inclusion while maintaining financial integrity in Uganda, it is important to regulate activities relating to AML/CFT and this Act provides the legislative framework in that respect. Vleck[164] emphasizes that the emerging use of the mobile phone to transfer money has created a new route for money laundering and terrorist finance thus any architecture to support the regulation of mobile money requires a component that guards against anti- money laundering. However, there are arguments that the risk of laundering in mobile money is small because the transferrable amounts are capped at relatively low levels and there are records of all transactions. It is nevertheless essential that safeguards be put in place to guard against such risk and the Anti-money laundering Act is in tandem with international standards as required by the Financial Action Task Force,[165] although the task of establishing a national identification database[166] as step towards Know Your Customer (KYC) is still ongoing.[167] Nonetheless, having satisfied the international requirements to guard against money laundering, the effectiveness of this Act in addressing risk measures of money laundering and countering terrorist financing as regards the mobile money transactions is yet to be fully realized.

3.3.6 The Financial Institutions (Anti- Money Laundering) Regulations[168]

Passed prior to the enactment of a primary legislation on money laundering, the Regulations establish policies and procedures aimed at guarding the use of a financial system for the purpose of money laundering. These regulations, together with the Anti- Money Laundering Act[169] impose a number of Know Your Customer requirements to guard against money laundering.

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[163] S.15 of the Anti- Money Laundering (Amendment) Act 2017. Available at https://www.fia.go.ug/sites/default/files/publications/Anti-Money%20Laundering%202017.pdf.

[164] William Vleck, Global Anti- Money Laundering Standards and Developing Economies: The Regulation of Mobile Money, Development Policy Review, 2011, 29(4) 415-431.

[165] FATF, n 131 above.

[166] Process is ongoing by the National Identification Registration Authority under the Registration of Persons Act 2015 Available at https://www.ulii.org/ug/legislation/act/2015/4-6.

[167] The task of establishing a national database lies with the National Identification and Registration Authority under the Registration of Persons Act 2015.

[168] The Financial Institutions (Anti- Money Laundering) Regulations. Available at https://www.bou.or.ug/bou/supervision/supervision_acts_regulations.html.

[169] The Act, n 161 above.

3.3.7 The Uganda Communications Act 2013[170]

The licensing of telecommunications operators fall under the purview of this Act, which provides for the establishment of the Uganda Communications Commission (UCC), a body mandated to undertake a number of functions in relation to telecoms operators such as licensing, network interoperability and the facilitation of entry into markets of value added services among others.[171]Mobile money is a value added service as provided for under the Act and the MNO licences. This connotes that money as a value added service would be overseen by the UCC.

The Communications Act further prohibits activities that may unfairly prevent, limit or distort competition in regard to communication services,[172] the abuse of a dominant position which may deter competition between the operator and any other party,[173] and empowers the regulator to investigate breaches of fair competition and impose fines of up to 10% of an operator's annual turnover.[174]It is however interesting to note that despite the prevailing anti- competitive acts by dominant players, the fines for such breaches as provided for have never been imposed.

3.3.8 The Mobile Money Guidelines[175]

Issued in 2013, these Guidelines are the only established rules that directly relate to mobile money. The main objectives of the Guidelines are to provide clarity on the respective roles of the mobile money players, to foster consumer protections for consumers of the service, enhance competition and promote financial inclusion among others. The Guidelines are a measure set in place to allow transparency between parties by enlisting the roles of various players and encouraging partnerships between stakeholders, thus enhancing the monitoring role of the BOU over the mobile money providers, through its licensed banks, which Staschen[176] construes as partial delegation.

While the Guidelines seem to cater for some of the basic regulatory enablers of the mobile money services such as consumer protection, competition and AML, their legal efficacy is

[170] The Uganda Communications Act, 2013. Available at http://www.ucc.co.ug/data/pubs/31/Policies-and-Regulations.html

[171] S. 5 (n & v) of the Act, n 170 above.

[172] 53(1) n 170 above.

[173] 53(2) n 170 above.

[174] S. 55(7) (b) n 170 above.

[175]Bank of Uganda. 2013. "Mobile Money Guidelines, 2013." Bank of Uganda, Kampala. Available at https://www.bou.or.ug/bou/supervision/supervision_acts_regulations.html

[176] Stefan Staschen, Mobile money moves forward in Uganda despite legal hurdles – Advancing financial inclusion to improve the lives of the poor CGAP 2015 accessed at http://www.cgap.org/blog/mobile-money-moves-forward-uganda-despite-legal-hurdles

questionable and subject to challenge in courts of law. Thus realising their inefficiency, the drafters made provision for future development of a regulatory framework for Mobile Money[177] stating that the Guidelines are only an interim measure to enable the operation of the mobile money service. It is nevertheless interesting to note that over four years have passed since the pronouncement of the interim/short measure Guidelines but there is no legislative framework in place yet, calling for an escalation of efforts to enact the much-awaited legislation on mobile money.

3.3.9 Competition Law[178]

Uganda has neither a policy nor a comprehensive law to regulate competition despite the market oriented reforms that have taken place in the Ugandan economy over the years. Several efforts geared towards the establishment of a competition framework have been ongoing with drafting of a Competition Bill in 2004. Several stakeholder workshops have been held to discuss the draft, without yielding results. The enactment of a Competition Act would be a critical tool to enforcing fair business practices in an economy and would go a long way in addressing some of the issues arising out of the mobile money service.

3.3.10 Privacy and Data Protection Law

While the Ugandan Constitution has a provision on the right to Privacy and calls for its protection,[179] Uganda has still not enacted a law relating to data protection despite being a member of the International Covenant on Civil and Political Rights ('ICCPR') that forbids arbitrary or unlawful interference with one's privacy.[180] While efforts have been made by several Government agencies[181] towards the enactment of a law on privacy, the efforts are yet to come to fruition and in the absence of such a law, the Ugandan citizens' personal data collected as a KYC requirement continues to be a subject of abuse.

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[177] Guideline 14 of the Mobile Money Guidelines 2013, n 175 above

[178] Uganda does not have a competition policy and law and also lacks a law on data protection despite their importance to mobile money for inclusive growth.

[179] Article 27 of the Constitution of the Republic of Uganda. https://www.constituteproject.org/constitution/Uganda_2005.pdf?lang=en

[180] Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Available at https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf

[181] National Information Technology Authority (NITA-U), Ministry of Information Communication and Technology (MoICT) and the Ministry of Justice and Constitutional Affairs (MOJCA) have issued a draft Data Protection and Privacy Bill for public comment.

3.4 Regulating for financial inclusion - Adequacy of the Legislations

While proper policy and sound regulation in financial services geared towards the specific needs of the country is one of the pathways to greater financial inclusion, the evolving nature of the mobile phone applications continues to outpace regulation, leaving regulators and policy makers grappling with a myriad of regulatory challenges.[182] While poor regulation can negatively impact financial inclusion targets, determining the best regulatory approach must be compatible with the traditional financial regulatory mandate of safeguarding the integrity of the financial system and protecting consumers.[183]

In Uganda, the mobile money industry is overseen by two regulatory authorities, the BOU and the UCC. The BOU has taken on the lead role for authorising mobile money by issuing no-objection letters, upon application, to licensed financial institutions that partner with MNOs, as an interim permission to operate. Under the arrangement, the licensed financial institution carries out any due diligence regarding issues such as anti-money laundering, risk management and technology measures and keeps the balances recorded in the mobile wallet in an escrow account,[184] to insure against loss of customer funds.[185] Though the practice of keeping mobile money funds with a FI has taken root in Uganda, it is without any legislative but the practice underpins the importance of the safe custody of customer funds. Such has been and is still the process for approving mobile money operations in Uganda since inception with no clear and holistic legal framework that can be referred to, creating regulatory uncertainty.

The current set up requires fresh application for launch of any new products, which applications are evaluated on a case by case basis.[186] Although this arrangement creates a relationship of indirect regulation of the MNOs by the BOU through the partner banks, whose licence may be withdrawn in case of irregular conduct by the mobile money provider, it can stifle innovation and growth where the approval process is protracted and cumbersome.

Without any legislative backing, non- bank financial institutions have been issuing mobile money by making deposits and withdrawals through agents, albeit issuing of electronic money or receiving deposits by non-banks is a criminal offence in certain jurisdictions.[187] Similarly,

[182]OECD, Reducing the Risk of Policy Failure; Challenges for Regulatory compliance. Available at https://www.oecd.org/gov/regulatory-policy/1910833.pdf

[183] Financial regulations for improving Financial Inclusion, a Centre for Development Global Task Force Report (CDG) 2016. Available at https://www.cgdev.org/sites/default/files/CGD-financial-regulation-task-force-report-2016.pdf (Accessed on 22 September 2017).

[184] Rory Macmillan et al, The "Evolution" of Regulation in Uganda's Mobile Money Sector, The African Journal of Information and Communication (AJIC), Issue 17, 2016.

[185] Simone di Castri, n 129 above.

[186] The Bank of Uganda carries out the evaluation before an approval for such service can be granted.

[187] Bank of South Africa Act, n 47 above.

the deployment of agent networks by MNOs to cash and cash out transactions was until 2016[188] without any legislative backing and would be considered illegal, although the practice was rampant and was seen as the only way of ensuring the presence of mobile money in remote areas, and therefore the oversight of such agents was through partner banks.

Further to the above, while the current arrangement may seem sufficient in the absence of an overarching regulatory framework, the enforcement of the scattered provisions in case of non-compliance may be difficult and inept in the dearth of cooperation by all concerned stakeholders which may lead to ineffectiveness in the mobile money sector. It is therefore important that until legislative measures are in place, mandates related to mobile money should be placed within the domain of the Bank of Uganda.[189]

The current framework is similarly silent on the protection of customers' personal data let alone issues pertaining consumer protection. The BOU financial consumer protection Guidelines[190] only relate to BOU supervised financial institutions and their agents, leaving a lacuna for holistic consumer protection. These inadequacies within the current legislative framework underscore the importance of a specific legislation for mobile money services.

On issues of competition, the absence of a competition framework in Uganda leaves a lot of unresolved issues due to the cross cutting nature of the mobile money sector. MNOs and banks are both in competition for the provision of money services to customers. While such competition fosters financial inclusion as it avails customers a broad range of products and services, lack of regulatory measures deters operations at a level playing field. In the telecoms sector, dominant mobile money players are in position to abuse their dominance by taking part in conduct aimed at preventing entrants in downstream markets,[191] and the only solution in such instances is an overarching legislation to guard against such practices. In Uganda, Courts have intervened in some of the cases that involved acts tantamount to anti-competitive practices in respect to mobile money services. MTN Uganda was fined UGX2.3 Billion (USD662, 000) by a Commercial Court for anti-competitive conduct against a downstream rival, EzeeMoney,[192] whose entry into the mobile payments market was dependent upon the provision of digital transmission by MTN. However, MTN Uganda subsequently cancelled the

[188] The Act, n 156 above.

[189]Digital Financial Services (DFS): Regulating for financial inclusion - An ICT perspective – The Bill & Mellinda Gates Foundation; Available at https://www.itu.int/dms_pub/itu-d/opb/pref/D-PREF-BB.REG_OUT02-2016-PDF-E.pdf.

[190] Financial Consumer Protection Guidelines, 2011. Available at https://www.bou.or.ug/bou/supervision/supervision_acts_regulations.html.

[191] EzeeMoney (U) Limited v. MTN Uganda Limited, High Court (Commercial Court) Civil Suit No. 330 of 2013 where the plaintiff had to challenge the anti- competitive practices of MTN Uganda a dominant player in Court.

[192]EzeeMoney (U) Limited, n 191 above.

contract stating that EzeeMoney was a direct competitor to MTN's own mobile money business. This is a matter that could have fallen under the purview of a Competition Act and goes a long way to show how the mobile legislative gaps are a hindrance to inclusive growth.

Drawing on examples from various country data and experience as well as international best practice, the approach to regulation for financial inclusion must follow certain commonly used principles to guide the regulatory landscapes, accommodating distinct regulatory areas such as competition policy, level playing field, KYC, consumer protection, interoperability and payment systems. However, the legislation presented in the preceding section reveals glaring gaps as regards the required facets in the regulation of mobile money. While the legislation has some provisions on KYC, consumer protection and AML which have a nexus to mobile money, they are fragmented over different legislations and can lead to inept regulatory and enforcement mechanisms.[193] Even the Mobile Money Guidelines which cover aspects of the best practice mobile money regulatory facets and are often referred to are soft law and their legal enforceability is questionable, as they are not borne out of specific legal provisions in the primary legislations of the oversight regulatory bodies.[194]

3.5 Conclusion

This Chapter has captured the mobile money landscape in Uganda and the adequacy of the prevailing legislative framework for mobile money regulation, as a tool for inclusive financial growth. Drawing from the information, it is undeniable that mobile money has made tremendous contribution to banking the unbanked although there are areas for further growth as the range of products and services are still inadequate. The banks as other tools for financial inclusion are also harnessing new technologies to improve services and it is believed that the recent enactment of a law supporting agency banking will go a long way in boosting the much needed financial spread enabling access to the unbanked communities. Despite this, the findings reveal that the current legislative framework is lacking in several aspects such as protection of personal data, redress for anti- competitive issues, electronic money issuing and sound consumer protection strategies, among others. While one may argue that these aspects are catered for in the Mobile money Guidelines, the efficacy of these Guidelines is questionable

[193]The Bank of Uganda has in place "Financial Consumer Protection Guidelines, 2011' and the Uganda Communications Commission issued the Communications (Consumer Protection) Regulations 2005. The framework is only in application to the respective individual sectors.
[194]The Bank of Uganda Act, the Financial Institutions Act and the Uganda Communications Act.

and subject to challenge as they do not have a binding force of law. A legislative framework crafted along regional and international best practice that supports further development of the sector and enhances financial inclusion is long overdue. The good news however, is the mobile money phenomena is global and the challenges borne out of it are not confined to Uganda. A number of countries have enacted legislations in support of the mobile money markets thus the ensuing chapter will make a comparative study of selected countries that have enacted mobile money legislations from which Uganda can derive lessons in a bid to craft a legislation for mobile money.

CHAPTER 4

COMPARATIVE STUDY OF MOBILE MONEY REGULATORY FRAMEWORKS IN SELECTED COUNTRIES

4.1 Introduction

The previous Chapter made an in-depth exploration of the mobile money landscape in Uganda and the key legislations in place that are associated with it. The chapter made an analysis of the said legislations drawing current legislative framework in place and its inadequacy in addressing the challenges pertaining to the mobile money service. In this Chapter, I will make a comparative study of the mobile money legislative framework in two countries, the choice of which is based on the maturity of the mobile money markets and the enactment of supporting legislations. Kenya is considered the most mature mobile money market in the world, driven by the well-known success of the M-pesa service.[195] While a choice has been made of Kenya and Tanzania, further to the reasons advanced, the two countries are not only common law countries but are within the same trade bloc with Uganda - the East African Community (EAC), which aims to work towards uniform economic policies that support market liberalisation and private sector participation. Globally, Kenya and Tanzania are recognised as very successful mobile money markets with nearly 26 million and 38 million active mobile money accounts respectively[196] and a growing range of products such as credit, insurance and savings.

4.2 Kenya

4.2.1 Mobile money in Kenya

The Kenya financial services sector was greatly altered with the introduction of M-pesa which has no doubt played an instrumental role in bringing the broad masses of the unbanked into the fold of the formal financial sector. Pioneered in 2007 by Safaricom, the person to person (P2P) transfer of money via the platform mainly served the unbanked population in possession of a mobile phone acting as a channel through which the urban and rural communities could gain access to financial services.

Over the span of the years, mobile money in Kenya experienced exponential growth with surveys showing an increase in the use of the service to cover about 32.9% of the population

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[195] Women and Mobile Money – Insights from Kenya – GSMA; Available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/02/Connected-Women-Women-and-Mobile-Money-Insights-from-Kenya-Nov15.pdf

[196] CGAP 2014 Annual Report; Available at http://www.cgap.org/publications/cgap-2014-annual-report

in 2013.[197] Further statistical data shows an increase in subscribers from 16 million in 2010 to about 27 million as at 30th June 2014.[198] The said numbers further skyrocketed to 39 million (about 142%) in 2016 with the total volume of money growing from US$653Million to about US$23 Billion during the said period. Similarly, agent network has rapidly grown from 31 900 to about 120,800 within a period of four years,[199]and no country has statistics that match the massive growth of Kenya mobile money subscribers within so short a period. According to Porteous,[200] the friendly regulatory environment supported this development and positively impacted the country's overall economic growth, directly improving Kenya's economic status and deepening financial inclusion.

The six mobile money operators in Kenya have an uneven share of the market with Safaricom's M- pesa at the realm with 67%, followed by Airtel at 21% and the rest of the operators sharing the remaining 11%.[201] The services have evolved from the P2P transfers to innovations such as M-Shwari, an offering that allows customers to save, earn interest and access loans,[202]and payment of utility bills among others. With six mobile operators, the mobile market seems expansive and continues to grow providing an unmatched opportunity for financial services delivery but the battle for financial inclusion still rages on with the Kenyan policymakers and regulators trying to implement innovative models aimed at deepening financial inclusion. One such model is agent banking that enables banks contract third party agents such as telecommunications companies in order to bring the unbanked segments of the population into the formal financial services sector.

4.2.2 The legal and Regulatory landscape

As revealed in chapter 2 of this research, the global initiatives towards financial inclusion are massive and have been boosted by the policy and legislative efforts of global financial and other institutions such as the G-20 Leaders Forum, the Bill and Mellinda Gates Foundation and

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[197]FinAccess National Survey 2013. Available at http://fsdkenya.org/publication/finaccess-national-survey-2013-profiling-developments-in-financial-access-and-usage-in-kenya/. (Accessed on 4 July 2017)
[198]Source: Central Bank of Kenya (CBK 2016) https://www.centralbank.go.ke/reports/bank-supervision-and-banking-sector-reports/
[199] CBK, n 198 above
[200] David Porteous, n 42 above.
[201]Communications Authority of Kenya statistics; Safaricom's M-Pesa, Airtel Networks Kenya Limited's Airtel Money, Essar Telcoms' yuCash, Telkom Kenya's Orange money, Mobile Pay's Tangaza and Mobikash by Mobikash http://ca.go.ke/images/downloads/STATISTICS/Sector%20Statistics%20Report%20Q2%20FY%202016-17.pdf
[202]Di Castri et al, The Kenyan Journal of Digital Financial Inclusion (2014) Available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/09/MMU_2014_Kenya-Pathway_infographic_web.pdf (Accessed on 4 September 2017.)

the World Bank, among others. On her part, Kenya has made milestones in supporting these global initiatives aimed at supporting financial inclusion, one of which is the creation of a supportive regulatory environment for mobile money. While the sector revolved in a loose regulatory environment which facilitated its growth and development, the game has since changed. Originally, Safaricom was allowed to craft a model that was able to meet the demands of the market and was granted a special licence by the Central Bank of Kenya whose conditions were rather relaxed in comparison with banks and other financial institutions. The CBK conceived the money service as low-risk and appropriate measures were taken to ensure system security as well as limit the value of transactions carried out daily. Prior to establishment of a legislative framework, it was argued that in the absence of a framework to supervise mobile money, the monitoring framework provided by the Central Bank was a gamble that might not pay off.[203] According to Njaramba Gichuki[204], the Safaricom M-Pesa issue left a lot of unregulated issues that affected the success of Mobile money. He notes the absence of laws or provisions providing for mobile money regulation. He asserts that while the mobile phone operations are regulated by the ICT regulator,[205] the mobile money services requires greater expertise because of the banking and financial element. According to Lorretta Michaels,[206] mobile money services in Kenya have developed in a largely indeterminate regulatory space with the CBK only providing oversight and guidance. Eventually, the relationship between the CBK and mobile money service developed to one of voluntary collaboration. Resultantly, emerging challenges were addressed giving birth to a system that has gained worldwide recognition.

The regulation of financial services falls under the purview of the central bank and therefor mobile money services would ordinarily be licensed by such bank but the challenge is that the M-pesa provider is licensed by the Communications Authority of Kenya (CAK).[207] Thus prior

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[203]John Njiraini and James Anyanzwa, Unmasking the storm behind M-PESA, East African Standard 30/12/2008 Available at http://www.standard media.co.ke/articleID=1144002826&story_ Unmasking the storm behind M-PESA.

[204] Njaramba Gichuki (2013), Law of Financial Institutions in Kenya, 2nd edition, Law Africa Publishing (K) Ltd, Nairobi.

[205]CAK is established under the Kenya Information and Communications (amendment) Act. http://www.ca.go.ke/images/downloads/sector_legislation/Kenya%20Information%20and%20Communication%20Amendment%20Act%202013.pdf

[206]Lorreate Michaels, "Better Than Cash: The Kenya Mobile Money Assessment," appendix IV, Kenyan Mobile Money Regulatory Framework." November 2011. This report was prepared by Accenture development partners under the global broadband initiative and produced for review by the United States agency for international development.

[207]CAK is established under the Kenya Information and Communications (amendment) Act. http://www.ca.go.ke/images/downloads/sector_legislation/Kenya%20Information%20and%20Communication%20Amendment%20Act%202013.pdf

to the enactment of an enabling legislation, the convergence challenge called for a close collaboration between the finance and ICT sector regulators in order to ensure clearly defined roles and responsibilities and avoid unnecessary overlap. The financial legislative framework governing the sector at the time was the Central Bank of Kenya Act[208] and the Banking Act,[209] which clearly lacked the mandate to regulate telecoms. Therefore mobile money operations were only permissible upon grant of Letters of No Objection by the Central Bank. This procedure continued to prevail even after the enactment of the National Payment Systems Act in 2011.[210] According to Muthiori,[211] the Central Bank though mandated to regulate and supervise financial services for effective payment and settlement systems was weak and lacked the legislative mandate to issue regulations on payment services generally. Thus the 2011 National Payments Systems Act, which became operational only in 2014,[212] paved way for the issuance of Payments Regulations,[213] to address issues that are critical to the mobile money sector. The said Regulations lay down specific rules for the use of agents by non- bank e-money issuers[214] and other non-bank payment service providers giving legitimacy to the existing business models and the regulatory practices that had been in existence since mobile money was introduced, thus creating the much needed investor and market certainty. The safety of customer funds is assured as the Regulations require funds to safe guarded in strong rated financial institutions[215] and where the balances are in excess of US$ 1.14 million, the funds will have to be placed in at least two strong-rated institutions with a maximum of 25% of the total trust fund balance held in each institution.[216] This requirement mitigates the risk of loss of customer funds in case of insolvency of a MNO or financial institution. The Regulations further prohibit agent exclusivity by a single service provider,[217] permitting agents to contract

[208]The Central Bank Act, Chapter 491 Laws of Kenya. Available at https://centralbank.go.ke/images/docs/The_Central_Bank_of_Kenya_Act_1st_January_2014.pdf

[209] The Banking Act, Chapter 488 Laws of Kenya, (2014 amendment) Available at https://www.centralbank.go.ke/wp-content/uploads/2016/08/BankingActOct2015.pdf

[210]The National Payments Act No. 39 of 2011, Laws of Kenya. http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalPaymentSystemsAct__No39of2011.pdf

[211]Brian Muthiori (2015), Enabling Mobile Money policies in Kenya – Fostering a Digital Financial Revolution https://www.gsma.com/mobilefordevelopment/programme/mobile-money/enabling-mobile-money-policies-in-kenya-fostering-a-digital-financial-revolution

[212]Although the National Payment Services (NPS) Act was passed in Parliament in 2011, it only became operational in 2014 when the date of commencement was officially announced.

[213] The National Payments Regulations issued under the NPS Act were issued vide Legal Notice no. 109 of 2014 https://www.centralbank.go.ke/images/docs/legislation/NPSRegulations2014.pdf

[214] The providers have been using agents based on Letters of letters of no objection from the Central Bank.

[215] 25(4) of the Regulations, n 213 above

[216] https://www.gsma.com/mobilefordevelopment/tag/nps-regulations

[217] Regulation 15(3) n 213 above provides that "An agent and cash merchant may provide services to multiple electronic payment service providers and/or Institutions provided that (a) the agent or cash merchant has separate

with multiple service providers albeit under separate contracts.[218] This measure is intended to encourage the spread of financial services by multiple service providers using a single agent thus deepening financial inclusion. The consumer concerns are also well catered for as the regulations make provision for consumer redress, maintenance of privacy and confidentiality of personal data, disclosure of terms of service and market interoperability among others. Under the Regulations, a payment service provider or his agents is obligated to comply with other legislations such as those relating to money laundering.[219]

Telecommunications is influential in mobile financial services and the Kenya Information and Communications Act[220] provides the framework for the regulation of telecommunications, media and broadcasting subsectors mandating the Communications Authority of Kenya (CAK) to oversee the sector. The Act is supplemented with a range of regulations promulgated by the Minister in Charge of Information and Communications together with CAK, which regulations include quality of service, interconnection, competition and consumer protection among others. Mobile money is classified as a value added service within the telecoms context and therefore subject to regulation by the CAK, as indicated above, the CAK has played a rather passive role in its regulation, letting the Central Bank take the lead. Challenges arising out of competition are critical in the sector thus Kenya like many other countries has a Competition law which establishes and mandates the Competition Authority to regulate competition in the economy.[221] Despite the enabling regulatory environment of mobile money that has contributed to the expansion of financial inclusion in Kenya, a few challenges remain outstanding that can guide the Uganda regulators as they map out a legislative framework. The high taxes on mobile money, a common factor in many jurisdictions, may reduce customer use of the service and diminish the achieved financial inclusion. Similarly, it is questionable how the accrued interest on the trust funds shall be distributed in the long run given that countries like Tanzania have established mechanisms to grant interest to customers account. Similar to the Uganda challenge, these are factors that policy makers and regulators need to consider in support of further sector growth.

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contracts for the provision of such services with each institution and provided that (b) the agent or cash merchant has the capacity to manage the transaction for the different institution."

[218] According to Regulation 15(1) and 15 (3) of Regulations, n 213 above

[219] Among other legislations mentioned in Rule 60 of the Regulations are the Proceeds of Crime and Anti-money Laundering Act (2009) and the Prevention of Terrorism Act (2012) as well as the associated Regulations and Guidelines.

[220]The Act, n 207 above.

[221] The Kenya Competition Act, 12 of 2010. Available at http://www.kenyalaw.org/lex/actview.xql?actid=No.%2012%20of%202010

4.3 Tanzania

4.3.1 Mobile money in Tanzania

Unlike its neighbouring Kenya, mobile financial services in Tanzania commenced at a rather slow pace. Launched in 2008, the service subsequently experienced significant growth with statistical data showing 43% of the adult population benefitting from the service as of September 2013,[222] over 11 million active mobile money accounts and a total record of transactions worth USD 1.8 billion by December 2013.[223] Further statistical data shows that by July 2014, almost 35% of households in Tanzania had at least one mobile money account with 32% of these using the service exclusively as their sole financial services provider.[224] Additionally, there was a 23% increase in active mobile money accounts, a 50% increase in the value of transactions, a 52% increase in the balance on customers' accounts and a 66% increase in the number of mobile money agents between 2011 and 2016.[225]Despite its large rural population, it is indeed remarkable that by 2014, Tanzania exceeded its own financial inclusion set targets[226] and by September 2016, financial inclusion in Tanzania had risen to 86% up from 16% in 2009.[227] This ambitious drive coupled with the mobile money growth may well make Tanzania achieve the Universal Financial Access Initiative commitments by 2020.[228]

The mobile money landscape in Tanzania is comprised of four main mobile money providers. Vodacom was the first to launch its mobile money service termed M -Pesa in 2008[229] followed by Zantel with the launch of Z-pesa in the same year although service was later re-launched as

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[222]According to December 2013 infographic by Simone di Castri and Lara Gidvani (GSMA). Available at http://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/03/Tanzania-Mobile-Money-infographic-GSMA-MMU.pdf.

[223]Source: Bank of Tanzania, (2016) Directorate of Banking Supervision Annual Report 2015.Available at: http://www.bot.go.tz/BankingSupervision/Reports/DBS Annual Report Final.pdf (Accessed: 5 September 2017).

[224] Source: Tanzania – Quicksights Report FII Tracker Survey http://finclusion.org/wp-content/uploads/2014/07/FII-Tanzania-Wave-One-Survey-QuickSights-Report.pdf

[225]Source: Bank of Tanzania, (2016) n 223 above

[226] The Country exceeded its 50% financial inclusion target for 2016. Available at http://www.tanzaniainvest.com/finance/banking/bank-of-tanzania-bot-sets-80-percent-financial-inclusion-for-2017

[227]Finmark Trust (July 2015), 'An Excluded Society? Financial Inclusion in SADC through a FINSCOPE LENS.' Available at http://www.finmark.org.za/wp-content/uploads/2016/02/BROCHURE_FIInclusion_SADC_2015.pdf

[228] World Bank. 2017, 'Tanzania economic update: money within reach - extending financial inclusion in Tanzania. Washington, D.C. World Bank Group. Available at http://documents.worldbank.org/curated/en/340591491579331322/Tanzania-economic-update-money-within-reach-extending-financial-inclusion-in-Tanzania

[229]Simone di Castri and Lara *Gidvani*, (2013a) 'Mobile Money in Tanzania'. Available at: https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/03/Tanzania-MobileMoney-infographic-GSMA-MMU.pdf (Accessed: 8 August 2017).

Ezy Pesa in 2012. In 2010, Tigo launched Tigo Pesa in 2010. Further to the above providers, the National Microfinance Bank (NMB) offers Pesa Fasta, an application which allows customers to use their mobile phones to send money to persons without a bank account.[230] On market dominance, unlike its neighbouring Kenya and Uganda mobile money market which are dominated by Safaricom and MTN respectively, the market shares in Tanzania are more or less evenly distributed. As at September 2015, Vodacom enjoyed 38% market share, Tigo had 33% market share, Airtel with 27% and 2% share for Zantel.[231] In terms of revenue estimates however, Vodacom had a market share of53%, Tigo's share stood at about 40% and 10% for Airtel.[232]

Mobile services have evolved beyond the known transfer and bill payments services to encompass savings, insurance and loans. In addition, the service has enabled people to store value in their mobile wallets, thus enhancing the potential to transfer the unbanked to the formal banking system. It is argued that other factors may have contributed to the sharp increase in the financial services reach in 2013 with a 76% coverage of the population compared to the 44% coverage in 2009.[233]

4.3.2 The legal and regulatory framework

The regulatory set up of mobile financial services spans across two regulatory regimes comprised of the financial sector overseen by the Bank of Tanzania (BOT)[234] and the telecommunications sector under the Tanzania Communications Regulatory Authority (TCRA).[235] The framework for mobile financial services was set way back at the inception and although much has been achieved presently, it is imperative to look at the dawn of such to understand the process and efforts geared towards achievement of a legislative framework. Since 2012, the Bank of Tanzania (BOT) took a broadminded approach to devising a regulatory framework that aims to ensure that the benefits ushered into the market by mobile financial services are sustained in the long-term through ensuring the safety, integrity of the financial

[230] InterMedia,(2013), 'Mobile Money: Use, Barriers & Opportunities' Available at http://www.intermedia.org/mobile-money-use-barriers-opportunities/

[231] Roberts, S., Blechman, J., & Odhiambo, F. (2016). A comparative study of competition dynamics in mobile money markets across Tanzania, Uganda and Zimbabwe: Tanzania Country Paper. Johannesburg: Centre for Competition, Regulation and Economic Development (CCRED), University of Johannesburg

[232] Source: Tanzania Communications Regulatory Authority Report for Q4 2015. Available at https://www.tcra.go.tz/index.php/quarterly-telecommunications-statistics#2015-quarterly-statistics-reports

[233] Finscope survey (2013) Available at http://www.fsdt.or.tz//wp-content/uploads/2016/05/FinScope-Brochure-2013-Summary.pdf

[234] Bank of Tanzania Act Available at http://www.bot.go.tz/AboutBOT/BOTAct2006.pdf

[235] Tanzania Communications Regulatory Authority. Available at https://www.tcra.go.tz/

products and effective mitigation of inherent risks. The two pieces of legislations governing the Tanzania Banking Industry, namely the Bank of Tanzania Act 2006 and Banking and Financial Institutions Act 2006[236] did not adequately address the challenges that arose out of the mobile money service. The BOT regulates and supervises banks and financial institutions,[237] monitors and supervises the clearing and payment system including all related products. The stability, safety and soundness of the financial system as well as risk reduction to customers' deposits is the duty of the Central Bank. The mandates enumerated above did not cover oversight functions for non-financial institutions such as MNOs thus in 2007, the Bank issued Guidelines for direct and indirect electronic payment schemes and services.[238] Under the said Guidelines, any service provider with intention to offer electronic payment schemes and money transfer services, must submit its application through a bank or a financial institution.[239]This arrangement though temporary, encouraged strong collaboration between MNOs and financial Institutions and a sense of commitments to abide by any requirements set for the MNOs by the BOT through the regulated banks.

The above arrangement was workable but the quest for a sound and binding framework continued until the enactment of the National Payment System Act,[240] a law that governs payment systems in Tanzania. Under the same, banks and non-banks have to first acquire a payment system license from the Central Bank prior to operating a payment system. The Act further set the stage for acquisition of an electronic money approval in case of a bank or an electronic money licence in case of a non-bank prior to issuing electronic money. The Payment System Licensing and Approval Regulations, 2015 and the Electronic Money Regulations, 2015 (EMR) further set out procedures applicable to these new licenses. Upon acquisition of the necessary licences, the operating entities can provide mobile financial services provided they acquire the necessary licences under the said Regulations. The battle for money laundering and terrorist financing, both considered global phenomena falls under the Anti-Money Laundering Act[241] and Regulations whose main aim is the prevention, prohibition of money laundering and disclosure of information on money laundering activities. Under this

[236]Banking and Financial Institutions Act 2006. Available at http://www.bot.go.tz/BankingSupervision/BAFIA2006.
[237] Section 5 (1) of the Act, n 234 above.
[238]Electronic Payment Scheme Guidelines of 2007 (EPSG). Available at http://www.bot.go.tz/PaymentSystem/Docs/e_Schemes%20Guidelines%20June%202007.pdf
[239] Guideline 8.2 n 238 above
[240] National Payment System Act, 2015. Available at http://parliament.go.tz/polis/uploads/bills/acts/1452062539-ActNo-4-2015-Book-1-10.pdf
[241] The Anti-Money Laundering (Amendment) Act, 2012. http://www.lrct.go.tz/download/laws_2012/1-2012_TheAntiMoneyLaunderingAct,ActNo201of2012.pdf

Act, obligations are imposed on banks to take reasonable measures in ensuring the true identity of persons with whom they intend to transact. This therefore calls for close collaboration of regulatory stakeholders. On the side of interoperability, it is notable that Tanzania became the first African country to sign an interoperability agreement and all its mobile operators have implemented bilateral account interoperability promoting interconnection of mobile money services by MNOs with bank networks.[242]

On the telecommunications side, the Tanzania Communications Regulatory Authority (TCRA) established under Act[243] is empowered to regulate and supervise the telecommunications, postal and other services. The TCRA is further mandated to license and regulate electronic communications systems and services under the Electronic and Postal Communications Act,[244] with further powers to regulate competition issues granted under the Regulations,[245] albeit the existence of a Competition Act.[246] Consumers are accorded protection through the Electronic and Postal Communications (Consumer Protection) Regulations which make it mandatory to indicate the price of products or services as well as the applicable terms and conditions.[247]

4.4 General observations from the legislative frameworks in Kenya and Tanzania

A sound regulatory environment is key to the adoption and spread of mobile financial services and depending of financial inclusion. Thus, a necessary condition for the expansion of mobile financial services is the establishment of supportive regulatory regimes by the regulators. According to the CGAP[248] the basic regulatory enablers for mobile financial services include the use of agents, the issuance of electronic money and other stored value accounts, provision of tiered risk based KYC rules and Consumer protection rules tailored to the specific risks of mobile financial services. Thus appropriate regulation must take into account the said factors coupled with an array of others such as completion and data protection, and must also balance the need for deeper financial inclusion.

[242] Odhiambo, S. Roberts (2016), n 231 above.
[243] TCRA, n 235 above.
[244]Electronic and Postal Communications Act, 2010 Available at https://www.tcra.go.tz/images/documents/policies/epoca.pdf
[245]The Electronic and Postal Communications (Competition) Regulations of 2011. Available at https://www.tcra.go.tz/index.php/regulations
[246]The Tanzania Fair Competition Act, 10 of 2010. http://moj.gov.jm/sites/default/files/laws/The%20Fair%20Competition%20Act.pdf
[247]Sect. 7(3) of the Electronic and Postal Communications (Consumer Protection) Regulations, 2011. https://www.tcra.go.tz/index.php/regulations
[248] The CGAP on regulating transformational branchless banking- Emerging Regulatory enablers in Digital Financial services Available at http://www.cgap.org/blog/series/emerging-regulatory-enablers-digital-financial-services

In a bid to promote mobile money services and to foster financial inclusion, Kenya and Tanzania, have instituted a comprehensive framework for mobile financial services. The Countries have made significant strides in creating enabling environments for an array of services that not only promote innovativeness and competition but also foster inclusiveness in the formal financial fold and are committed to further promoting financial inclusion.[249] Going by the basic regulatory enablers, the respective legislations permit non-bank entities to offer payment services in a bid to deepen financial inclusion. The Payment Systems Regulations[250] laid down specific rules for the use of agents by non- bank e-money issuers[251]and the National payments Systems Act of Tanzania provides for issuance of an electronic money licence. The agent banking guidelines and the National Payment Systems legislations in both jurisdictions have provided the much needed clarity for interested parties to enter the mobile financial services arena and seamlessly operate services without the requirement to change their structures. Kenya's Safaricom similarly opened up the agency network of M-pesa to Airtel, relaxing the conditions regarding the exclusivity of agents.[252] The Customer funds are held in held in trust with a reputable banks and investment of the funds is not permissible. Consumer protection and redress have been provided for, adequate KYC standards are in place as well as privacy confidentiality as regards personal data of customers. While some of the legal framework highlighted above can be likened to the Ugandan mobile service regulatory scene, a lot remains outstanding and strides need to be taken by the Ugandan policy makers and regulators to fast track the enactments of enabling legislations. On her part, Uganda has undertaken some measures in respect of the basic regulatory enablers for mobile financial services, however the lack of a National payments system to cater for the issuance of electronic money by non-financial institutions and measures to guard against data confidentiality, among others are lacking. Additionally, competition and consumer protection issues arising from mobile financial services need to be addressed by general legislations other than sector specific regulations that are currently in place. Uganda should thus speed up the process to undertake a

[249] Kenya and Tanzania are signatories to the Maya Declaration and have instituted targets relating to access, usage and quality of financial services. Similarly, Kenya is also a founding member of the Better than Cash Alliance.

[250]The Kenya National Payment Systems Regulations, 2014. https://www.centralbank.go.ke/images/docs/legislation/NPSRegulations2014.pdf

[251] The providers have been using agents based on Letters of letters of no objection from the Central Bank.

[252] Peter Ondiege, Regulatory Impact on Mobile Money and Financial Inclusion in African Countries - Kenya, Nigeria, Tanzania and Uganda, Centre for Global development- Available at https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf.

regulatory framework guided by the legislative provisions as enunciated in the legislative structures of her neighbouring Kenya and Tanzania.

4.5 Conclusion

This chapter has explored the third research question of how mobile financial services are regulated in other jurisdictions. The Chapter analysed the legislative frameworks that supports mobile money in Kenya and Tanzania, highlighting the journey and the temporary measures put in place as further market studies were undertaken until the enactment of the National Payments Systems legislations that together with earlier enacted laws cover broad aspects of mobile money regulation whose impact has been felt across the financial sectors of both countries and its uptake improved the financial experience of previously underserved sections of the population. The journey to achieving the legislative framework involved a lot of stakeholder collaboration and benchmarks, which collaboration is still pertinent in the face of changing technologies. Additionally, it is an important reminder that the mobile money market is very dynamic and competitive, and market shifts should be anticipated with further evolution of technology.

The Kenya and Tanzania regulatory framework for mobile money is commendable as it supports the financial inclusions initiatives and integrates aspects of financial integrity, stability, guards against financial risk and boosts the much needed investor and consumer confidence. Indeed, given the milestones achieved towards creating more enabling legal frameworks for mobile money and financial inclusion in these markets, the template and yardstick been bestowed upon the Ugandan regulators in their efforts to pursue the mobile money framework. Thus the ensuing chapter attempts to address the the broad research question of pursing an overarching framework for the regulation of mobile money in Uganda, making specific recommendations for an appropriate regulatory framework.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This study set out to answer one broad research questions with three sub questions. The first question addressed the concept of mobile money as an enabler for financial inclusion in Uganda. The second question addressed the multi-sector legislations that relate to Mobile Money in Uganda and the loopholes as regards their efficacy in regulation of mobile money. The third question undertook a comparative study of the legislative frameworks for the regulation of mobile money in selected jurisdictions. The all- embracing question this research sought to address therefore is how an overarching legal framework for the regulation of mobile money services in Uganda can be created.

5.2 Summary of the research findings

The examination of these research questions has revealed certain findings as encapsulated below out of which the research concludes and makes recommendations for a regulatory framework for mobile money services that fosters financial inclusion in Uganda.

The positive impact of mobile money on financial inclusion in Uganda is undisputable and the recent enactment of the Financial Institutions (Amendment) Act[253] will go a long way in extending financial services to the underprivileged poor in the remote villages. Mobile money has proved to possess tremendous potential to improve people's lives by bringing financial services closer to them thus improving lives and building an inclusive financial sector.[254] But while mobile money may not be the sole enabler for inclusive finance and works in tandem with other factors like infrastructure, government support and political stability, the growth in financial inclusion over the last decade has been attributed to the use of mobile money. Despite the various global and local initiatives directed towards deepening financial inclusion however, the regime requires the co-ordination and co-operation of the respective regulatory agencies.[255] Such coordination can help overcome certain challenges as the sector operates to a certain degree outside the regulatory protections of the traditional banking and telecoms sectors thus the service is prone to a variety of risks such as fraud, which need to be guarded against through regulation.

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[253] The Act, n 156 above

[254] Financial inclusion insights Uganda (2016) Retrieved from http://finclusion.org/uploads/file/reports/FII-Uganda-Wave-One-Wave-Report.pdf.

[255] ITU (2011b), The Regulatory Landscape for Mobile Banking, ITU, Geneva, Switzerland. Available at https://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR11/documents/04-M-Banking-E.pdf

There is no specific binding legislation that targets the regulation of mobile money in Uganda and the provisions that relate to mobile money are fragmented over different legislations leading to inept coordination, regulation and enforcement. The crafting of the current Ugandan laws that relate to mobile money did not envisage the advent of mobile money thus the provisions are lacking leaving various unaddressed challenges. In addition, the country lacks a sole agent mandated to supervise and regulate the sector in all areas such as consumer protection, anti-competitive practices and personal data protection among others. The Guidelines that are in place address some of the challenges but their legal efficacy is questionable thus the need to have a binding legislation that is specific to mobile money.

The comparative study from selected jurisdictions with mature markets and specific legislations in place for mobile money revealed that the sectors originally thrived in non- regulated environments without specific legislation, just like Uganda. However, as the markets further developed, the challenges presented plus international best practice called for enactment of legislations specific to mobile money, thus the enactment of the National Payments legislations that cover broad aspects of the regulatory elements such as the payments system, electronic money issuing, the licensing of payment providers, the removal of exclusivity on agents,[256]and Competition legislations[257] with tribunals that tackle arising anti- competitive issues. Drawing from the comparative study, it is concluded that Uganda lags behind its East African counterparts as regards the creation of an overarching framework for mobile money.

5.3 Conclusion

The potential of mobile money to provide accessibility to a broad range of financial services to millions of people is immense and with mobile money lies the promise of expanding financial inclusion in underserved areas that were originally out of reach of the traditional providers.

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[256] Peter Ondiege, Regulatory Impact on Mobile Money and Financial Inclusion in African Countries - Kenya, Nigeria, Tanzania and Uganda, Centre for Global development- Available at https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf

[256] The Kenya Competition Act 12 of 2010 and the Fair Competition Act of Tanzania 8 of 2003

Outside of financial inclusion, mobile plays a pertinent role in driving social and economic growth as well as keeping regulators and players alert regarding the amazing possibilities that technologies can present with the passing of time. Uganda, just like many other sub Saharan countries is committed to financial inclusion and has made progress in a number of areas towards enabling policies for financial inclusion such as encouraging a wide array of services offered both by financial and non- financial intermediaries. However, the current regulatory framework in Uganda does not adequately address the challenges that underpin the financial maturity of the sector as it fails to tackle issues like consumer protection, data privacy and interoperability in a holistic manner. Thus without the support of a conducive environment and an enabling legislative framework, further efforts in building inclusive finance through mobile money may come to naught. The findings in the research reveal that several countries have established mobile money legislative frameworks, thus Uganda is privileged as it can draw from the experience in other jurisdictions and need not re-invent the wheel. The research therefore proposes recommendations based on lessons drawn from the comparative study and internationally recognised regulatory standards that can be tailored to suit the Ugandan context. Important among the undertakings is the issue of dialogue and collaboration between all stakeholders in the design of an enabling regulatory framework geared towards deepening financial inclusion. Similarly, a level playing field that allows all interested players to participate, upon satisfactory compliance with the requisite conditions can present a great opportunity for further growth of mobile money. All in all, whatever regulatory arrangements are proposed should be well directed towards the continued progression of mobile money and further advancement of financial inclusion in the country.

5.4 Recommendations

Having discussed the effect of mobile money on financial inclusion and the importance of crafting legislation geared towards expanding financial services to the unbanked masses, the research has indeed confirmed that the current legal framework in Uganda does not address the challenges borne out of the convergence of the finance and telecoms sector to create mobile money. It is thus recommended as follows;

Any mobile money related regulatory policy and framework should be borne out of collaborative efforts by regulators and government institutions as well as industry stakeholders. Similarly, any legislation crafted towards mobile money regulation should be attuned to the adoption of an enabling approach which promotes financial inclusion for the unbanked.

Therefore, any proposed framework should address the payments systems with specificity to mobile money payments, the issuing of mobile money coupled with the licensing of mobile money providers. Additionally, mechanisms should be established to safeguard deposits against those who may misused the funds, thus it should be mandatory for MNOs to deposit customers' money into ring fenced accounts held with prudentially sound commercial banks. Similarly, customers should receive interest on their mobile wallets out of the accrued interest from such accounts, which move will encourage savings and foster financial inclusion.

Further to the above, consumer protection laws should be given priority to ensure consumer confidence and trust as well as a level of transparency in the mobile money service. Fundamental to this is the availability of dispute resolution mechanisms.

In addition, the enactment of a competition law is very critical to the growth of the mobile money sector and efforts should be geared towards enacting the same and establishing a tribunal to handle competition issues. Additionally, the protection and preservation of personal data should be given due weight as regards the mobile money service. Uganda does not a legislation on the protection of personal data thus the need to enact a law that guards against the abuse of privacy and incorporates international best practices on data protection.

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