

**MOBILE MONEY TRANSACTIONS, THE CASE FOR PROPER LEGAL
FRAMEWORK IN UGANDA.**

BY

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**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF BACHELORS OF
LAWS DEGREE OF KAMPALA INTERNATIONAL UNIVERSITY.**

SEPTEMBER, 2016

DECLARATION

I, hereby declare that this is my original own work at the best of my knowledge and belief. It has never been produced by anyone or institution for any academic award in and outside Kampala International University or diploma of the university or other institute of higher learning, except where due acknowledgment has been made in the text.

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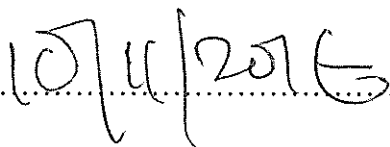
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APPROVAL BY SUPERVISOR

I certify that I have supervised and read this study and that my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelor of Law of Kampala International University.

Signature:

Muhamud Sewaya

Date :

DEDICATION

To my lovely father Mr. Kikwaya Alexander and my uncle Mr. Akankwasa Ronald who have been there for in everything. I can't proceed without mentioning my dear mother, Mrs. Kikwaya Robinh because there is nothing as good as a mother's love.

My brothers Mugisha Andrew, Bymukama Arthur, Musimenta Caleb and Kimuli Richy Paul, my sister Brenda Leroy, my Auntie Nambasa Dorah, my Jajjas Mrs. Wamala Alice and Mrs. Kikwaya Jane and the family at large.

I will remain indebted to you all forever.

ACKNOWLEDGEMENT

First and fore most, I thank the almighty God for seeing me through this course, despite facing a basket of challenges, Glory be to God.

I wish to extend my deepest heartfelt appreciation to my father's Mr. Kikwaya Alexander and Mr. Akankwasa Ronald for the financial and material support without which I would not have been able to attend this programme and even my mother. May God bless you.

I earnestly thank my lecturers at Kampala International University, more especially my supervisor Mr. Sewaya Muhaniud for his constructive comments over my research. May God bless you.

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LEGISLATIONS

The 1995 Constitution of the Republic of Uganda as amended.

Bank of Uganda Act Cap 51

Anti-Money Laundering Act, 2010 of Uganda

Electronic Transactions Act, 2011 of Uganda

Mobile money guidelines of 2013 of Uganda (Bank of Uganda Guidelines)

Banking act of Kenya, Cap 488

LIST OF ACRONYMS

E- banking:	Electronic banking
E-Payments:	Electronic payments.
M-Banking:	Mobile Banking
MDG:	Millennium development Goals
MFI:	Micro finance Institutions.
ATM:	Automatic Teller machines
ICT:	Information and communications technology
CDD:	Consumer Due Diligence
AMLF/CFT:	Anti Money Laundering/combating the financing of terrorism
E U:	European Union.
CBK:	Central Bank of Kenya.
KYC:	Know your client
NPS:	National payment system

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Introduction

Extending the outreach of financial services to the un-banked or lowest socio-economic areas and people belonging mostly to the low income strata of the society- in a cost effective manner is viewed as a big step towards poverty alleviation. Emerging advances in information and communication technologies and their widespread usage offer tremendous opportunity to achieve this much desired goal by making available non- traditional ways of providing financial services. However these alternate delivery channels should be looked into prudently and adopted only after carefully balancing the risks and rewards.

It is at this point that legal regulatory issues of such new technologies arise. It should be noted that the regulators role is not to try to eliminate these new channels but to balance them appropriately with the benefits of using these new channels and to create an enabling regulatory environment where new technologies are put to use on the efficient frontiers of the risk-return trade off.

This Research presents an overview of Mobile banking, an analysis of the legal or regulatory framework and issues arising therein followed by the development impact mobile banking has had since its implementation. It mainly focuses on Mobile Money, together with information from several studies conducted on other countries' experiences with mobile banking and websites of existing mobile banking service providers in those countries,, banking laws, regulation policies and other laws.

Branchless banking represents a new distribution channel that allows financial institutions and other commercial actors to offer financial services outside traditional bank premises. A wide spectrum of branchless banking models is evolving differing primarily on the question of who will establish the relationship account opening, deposit taking, lending etc to the end customer.

Models of branchless banking can be classified into three broad categories: - **Bank Focused, Bank- Led and Nonbank-Led**¹

Bank Focused Model emerges when a traditional bank uses non-traditional low-cost delivery channels to provide banking services to its existing customers. Examples range from use of Automatic Teller Machines (ATMs) to internet banking or mobile phone banking to provide certain limited banking services to bank's customers. This model is additive in nature and can be seen as modest extension of conventional branch-based banking.²

Bank-Led Model offers a distinct alternative to conventional branch-based banking in that it's implemented by either using correspondent arrangements or by creating a JV between Bank and Telco/non-bank. In this model customer account relationship rests with the bank³

Nonbank-Led Model is where bank does not come in the picture except possibly as a safe keeper of surplus funds and the Non-Bank or Telco performs all the functions.⁴

Mobile banking in Uganda falls in the Non-bank Led Model which is the focal point in this research paper. In Uganda, two big players in the mobile service providers; MTN Uganda and Airtel Money got together to develop a mobile phone-based service for sending and storing money. Mobile Money is an e-money account tied to a mobile phone Subscriber Information Module card (SIM'). The account can be loaded and unloaded by depositing or withdrawing cash at a wide range of retail agents and the mobile operator's dealers. Customers can store cash on it in the form of e-money, send funds from person to person, purchase mobile phone airtime and pay bills using the e-money value in their Mobile Money accounts. Customer funds are held in a special trust account at the Commercial Bank of Africa.

Rule 5⁵ define Mobile banking as the use of a mobile phone as a channel to access and conduct financial transactions on one's account held in a licensed institution and mobile money is e-money available to a user to conduct transactions through a mobile phone.

¹ Policy Paper on Regulatory Framework for Mobile Banking hi Pakistan via www.bankab1efrontier.com accessed " October 2009.

² Supra.

³ Supra.

⁴ Supra.

⁵ Mobile Money Guidelines of 2013 of Uganda(Bank of Uganda Guidelines).

1.2 Statement of the problem.

To study the operation of Mobile Money Transactions. Attainment of a regulatory environment to facilitate Mobile banking as a means to extend financial services outreach to poor and underserved strata of the society in an efficient and cost effective method.

1.3 Objectives of the study.

- a. To examine how Mobile money is currently regulated in Uganda.
- b. To show the legal ripples caused by the Mobile banking;
- c. To show the developments Mobile banking has impacted on the public;
- d. To come up with recommendations for modifications in the regulatory framework to facilitate mobile banking to extend financial services to poor and lowest socio-economic strata of the society.
- e. To assess the efficiency of Mobile Money Guidelines of 2013 of Uganda.

1.4 Significance of the study.

- a. The study will be used as a source of information to other researchers in the next generation.
- b. The study will be a reference to students and researchers.
- c. To identify problems that consumers face in the absence of proper legal framework.
- d. To make a legal appraisal on the need of an independent Act governing Mobile money translations.

1.5 Scope of the study.

This study will consider the extent to which there is a conflict between the current banking laws and mobile banking in Uganda. It focuses on the current challenges to incorporate mobile banking as a legally acceptable form of banking hence changing the traditional perception of banking. The paper will also look at experiences other countries have had with mobile banking and how mobile banking has been incorporated in those countries, in terms of legal regulation and social development.

1.6. Hypothesis.

The hypothesis of the study considers the regulatory framework of mobile banking and the social developments that have come with it.

1.7. Methodology

Due to geographical limitations and financial resources, the field research will not be possible, meaning the research will be qualitative and dependent on published documents, secondary data, newspapers, textbooks, reports libraries and Internet materials.

1.8 Literature Review

The rapid spread of mobile phones means that the number of mobile users may already exceed the number of banked people in many low income countries. Mobile phones can also offer a communications channel for initiating and executing on-line financial transactions. This channel may not only reduce the cost of financial transactions for provider and customer, but also allow w entrants to the financial sector, and new relationships to be formed for distributing services. These changes hold the prospect of accelerating access to financial services on the back of the mobile infrastructure.⁶

This research investigates the extent to which the expansion of mobile telephony is likely to lead to the expansion of access to appropriate financial services in developing countries, especially Africa. In particular, it seeks to answer two main questions:

Which models of mobile banking are emerging globally, and especially in Africa, and are they likely to be accelerate access?

Will it happen spontaneously or is enablement required for this to happen? If so, what forms of enablement?

To answer these questions, this research paper investigates emerging models and trajectories of development in m-payments and m-banking through interviews with emerging African providers

⁶ <http://www.deve1oprnents.org.uk>accesse on 16th October2009.

and the use of secondary material it assesses the policy and regulatory elements of an enabling environment for this sector based in part on the analysis of circumstances in Kenya.

M -payments are financial transactions undertaken using Mobile device such as a mobile phone. M-banking includes m-payments but involves access by mobile device to the broader range of banking services, such as account based or transactions products offered by banks. M-payments and M-banking are themselves subsets of the broader domains of e-payments and e-banking respectively.

The field of m-payments and m-banking is not only new and fast evolving but also sits at the overlap of several regulatory domains-those of banking, telco and payment system supervisors, and anti-money laundering agencies. The overlap substantially raises the risk of coordination failure, where legislation or regulatory approaches are inconsistent or contradictory. In such environments, it is likely that m-banking may simply be an added channel for already banked customers. A comprehensive vision for market development between policy makers, regulators and industry players can help to define obstacles and calibrate proportionate responses to risk at appropriate times.

The UNICT Task Force⁷ has defined m-banking as “Investment, innovation and entrepreneurship” which will build the private sector. However policy makers and regulators in the financial sector usually seek an enabling environment with certain key outcomes such as financial stability, economic efficiency, and access to financial services, financial integrity and consumer protection.

The premise of this research paper is that the explosive growth of mobile communications can be a powerful tool for addressing some of the most critical challenges of the 21st century, such as promoting vibrant democracies, fostering inclusive economic growth, and reducing the huge inequities in life expectancy between rich and poor nations. The benefits of mobile communications are particularly profound for developing countries, many of which are “leapfrogging” the traditional fixed telecommunications infrastructure. As a result, billions of people in developing countries are gaining access to modern communications of any sort for the

⁷ UN ICT Task Force is now defunct but due to be replaced by a Global Alliance for ICT Policy and Development. See it.unictaskforce.org accessed on 9th July 2016.

first time. There is no doubt that mobile communications are having a significant impact on the way the world will live, work and communicate with each other.

According to the most recent Committee on Payment and Settlement Systems (CPSS) survey, (2004)⁸, a regular Survey of E-Money and Internet and mobile banking, which scans developments in this sector, it was reported that payments using the internet and mobile phones have advanced rapidly in recent years, compared to the usage of c-money which has lagged, at least in e-purse form.

However, certain regulatory and policy issues emerge from such new technologies due to lack of solid precedents. In regards to mobile banking, each issue is complex in its own right, and is often associated with a different regulatory domain for instance bank supervisor, payment regulator, telco regulator, competition regulator; Anti-money laundering authority may be involved in crafting policy and regulations which affect this sector. The complex overlap of issues creates the very real risk of coordination failure across regulators. This failure may be one of the biggest impediments to the growth of m-banking, at least of the transformational sort. However, even without the additional complexity introduced by m-banking, many of these issues require coordinated attention anyway in order to expand access. It is possible; however, that m-banking may be useful because the prospect of leapfrogging may help to galvanize, the energy required among policy makers for the necessary coordination to happen.

It is for this reason that a well balanced enabling environment must be established if it is intended that mobile banking be taken to the next level. Before developing the requirements in this area further, it is worth acknowledging that there are other aspects of the broader environment which may have a significant impact on whether m-banking can or will take off in a particular country.

The Money Forum⁹ based in Europe and consisting largely of major European banking groups and hardware providers like Nokia came up with certain principles for a successful enabling environment for instance, first, m-banking requires that clients have access to mobile phones; countries where network coverage and usage is growing strongly are more likely to develop

⁸ CPSS (2004) available 'via [j/rwww.bssort](http://www.bssort) accessed 6th may 2016.

⁹ Mbcy Lcnm Wht Pct,per; /i'.im qv\$S,Q cc 9" 9th June 2016.

widespread m-banking applications. The potential for rapid growth may be highest in countries where levels of usage have already reached critical mass, and where increasing inter-network competition and lack of effective retail banking competition in e-payments creates both the push and the pull to consider additional product offerings.

Second, m-banking clearly benefits from having a wider pool of informed, literate potential customers. Greater literacy may speed adoption, and may reduce the risks of abuse. However, greater literacy is also correlated with other factors which may inhibit take-up: there are more financially literate, informed customers in developed countries, but these customers also have more existing options, and less reason to change, than customers in poorer countries with few or no alternatives.

Third, because of the ongoing need for access to cash, M-banking. Benefits from the existence of an accessible existing E-payment infrastructure which allows cash withdrawal. Until e-money transfers are widely accepted at first, cash out functionality enhances the initial value of an M-banking offering. If new cash-back networks must be built from scratch, this may take too long. However, in many countries, even where there is very limited ATM or Point of Sale (POS) networks, airtime vendors are widespread: with an existing business relationship to the mobile operator, they may quickly become agents for encashment if this is allowed. Again, the relationship is non-linear: the more pervasive the existing infrastructure, the higher its functionality to users, hence the harder it may be to persuade them to switch to a new payment instrument. Equally, the greater the existing investment in other acquiring infrastructure, the harder it may be for entrants with new modes of payment to gain access to this infrastructure, unless it is required by law.

However, due to the virginity of Mobile banking, there exists the unfortunate lack of extensive literal materials and texts, thus a higher reliance on internet articles and blogs has been used in regards to research. Uganda and Kenya has reports on mobile money which are basic source of information regarding this research paper.

1.9 CHAPTERIZATION

The research is comprised of five chapters, of which the first section of dissertation contains, general introduction, statement of the problem, objectives of the study, scope, hypothesis and significance of the Study, methodology, literature review and chapterization. Chapter one discusses the concepts which are at the heart of the report: what is an enabling environment; and how does it change as markets grow and develop? It also introduces the concepts of additive versus transformational mobile banking, as a way of distinguishing those offerings which are likely to change the banking, market fundamentally, rather than simply adding on a channel for existing bank customers. Chapter Two discusses m-payment and m-banking approaches in Uganda compared to the rest of Africa and the World, in order to map the emerging landscape and developmental impacts therein. Chapter Three overviews the range of policy issues involved and considers the regulatory stances emerging especially in developed countries and the results of a legislative and regulatory scan in the pilot country, and of the current obstacles encountered by the providers of m-banking. Chapter Four Emerging experiences of Mobile Money payments and Chapter five provides the Conclusions and Recommendations.

CHAPTER TWO

2.1.0 EMERGING EXPERIENCES OF M-PAYMENTS

2.1.1 Developed countries.

In Europe and the United States of America (USA), other than for the purchase of Premium Rate Service (PRS), there has been limited use of mobile payments to date, despite earlier expectations to the contrary. Expressing widely held frustration, *The Banker* magazine recently carried an article entitled: "When will mobile get". The slower pace of adoption in these countries is perhaps no surprise, however: banked customers have had little reason to move from accessible, trusted electronic channels such as internet or use of card at point of sale, to a new approach which is not yet stable or persuasive.

In Western Europe, in particular, there have been a number of attempts to create m-payment platforms and products. In October 2002, the Joint Vienna Institute identified no fewer than 30 operators offering m-payment solutions of different kinds. There has been limited success to date: several major collaborative m-payment platform ventures such as Simpay, a consortium of four major European mobile operators, have failed to get sufficient critical mass to succeed. Fragmentation of the European market into unviable proprietary platforms has been described as one of the biggest risks to the development of the sector here.

In the USA, outside of the transport sector, there have been few major m-payments products offered, at least until recently. PayPal's launch of an m-payment offering in March 2006 in the USA and Canada is a significant development which could accelerate take-up due to its critical mass of 100 million clients.⁸ Although these clients are mainly in the USA, PayPal has clients in 54 other countries, suggesting that diffusion of the service even for international remittances may be rapid once proven and as regulations allow.

M-payments are far more pervasive in parts of Asia than in Europe and the US, reaching early 'break out' stage in Japan and Korea.

2.1 General Enabling Environment

This report has focused on the policy and regulatory environment for M-banking. Developing the requirements in this area further, it is worth acknowledging that there are other aspects of the broader environment which may have a significant impact on whether Mobile-banking can or will take off in a particular country.

First, M-banking requires that clients have access to mobile phones; countries where network coverage and usage is growing strongly are more likely to develop widespread m-banking applications. The relationship is not linear however in countries with low levels but rapid rates of growth, as in much of Africa, network capacity may be overstretched, network operators are often pre-occupied with voice rollout, and therefore less interested in the addition of complex and unproven products. The potential for rapid growth may be highest in countries where levels of usage have already reached critical mass, and where increasing inter-network competition and lack of effective retail banking competition in c-payments creates both the push and the pull to consider additional product offerings.

Second, M-banking clearly benefits from having a wider pool of informed, literate potential customers. Greater literacy may speed adoption, and may reduce the risks of abuse. However, greater literacy is also correlated with other factors which may inhibit take-up: there are more financially literate, informed customers in developed countries, but these customers also have more existing options, and less reason to change, than customers in poorer countries with few or no alternatives.

Third, because of the ongoing need for access to cash, m-banking benefits from the existence of an accessible existing e-payment infrastructure which allows cash withdrawal. Until e-money transfers are widely accepted at first, cash out functionality enhances the initial value of an m-banking offering. If new cash-back networks must be built from scratch, this may take too long. However, in many countries, even where there are very limited ATM or POS networks, airtime vendors are widespread: with an existing business relationship to the mobile operator, they may quickly become agents for encashment if this is allowed. Again, the relationship is non-linear: the more pervasive the existing infrastructure, the higher its functionality to users, hence the harder it may be to persuade them to switch to a new payment instrument. Equally, the greater

the existing investment in other acquiring infrastructure, the harder it may be for entrants with new modes of payment to gain access to this infrastructure, unless it is required by law.

These three factors all suggest that the potential for take-off of m-banking may be highest in middle or low income markets which have limited safe, accessible c-payment alternatives. However, predicting take-off in a particular market is inherently uncertain, since it will depend on particular conditions there. More important for now, is to ask whether the policy and regulatory soil is fertile enough to enable the startup and development of m-banking models with transformational potential.¹⁰

2.2 Proposed enabling principles

This section lays out six core principles which together may help to create an enabling policy and regulatory environment for m-banking. These principles define further the basic components which provide sufficient openness and certainty for the long term development of m-banking. As such, while they are likely to be necessary, they are not sufficient conditions for take-off. In addition, the impact of some extends well beyond m-banking alone, to banking more generally.

Several major industry fore, set up by their members to promote mobile payments, have produced their own blueprints for the development of the sector in the form of White Papers for the Mobile Payments sector:

- The Mobey Forum, based in Europe and consisting largely of major European banking groups and hardware providers like Nokia¹¹ and
- The Mobile Payment Forum, based in the US and consisting of card associations, First Data (owner of MTO Western Union) and major telcos like Vodafone¹².

Similarly, in line with the Europe 2005 policy agenda, the European Commission produced for discussion a Blue Print on Mobile Payments which required progress towards interoperability by

¹⁰ note that a proposed anti-crime law in South Africa would similarly require the identity and address of all mobile users to be identified

¹¹ Mobey forum White paper: <http://www.mobeyforum.org/public/material/mobey> accessed on 6th June 2016.

¹² Mobile payment Forum, White paper: <http://www.mobilepaymentforum.org/pdfs/impf-whitepaperpdf> accessed on 6th June 2016.

end of 2003.¹³ Some of the principles set out in this chapter for example around consumer protection and competition are drawn in part from these sources. However, the focus of the White Papers is more on developing the technical standards necessary for interoperability among providers. By contrast, the principles enunciated here pertain particularly to developing economies; are more focused on regulatory issues; and seek to achieve maximum enablement of transformational m-banking.

There are two tiers to the principles:

First, those principles necessary for there to be m-banking at all;

Second, those necessary if m-banking is to be transformational, rather than merely additive.

In the following section, the options and recommended approach to the implementation of each are explained.

2.3 Approaches to implementing the principles

This section sets out options for implementing each principle and, where appropriate and possible at this level of generality, makes recommendations.¹⁴

2.3.1 Principle 1. There should be sufficient legal certainty around the status of electronic contracting

This principle can be fully affected only through the passage of suitable legislation which provides the necessary clarity. Fortunately, there are clear examples of laws which adequately address this principle. The **United Nations General Assembly Resolution 56/80 adopted¹⁵ on Electronic Signatures in 2002 and Electronic transactions Act**. However, only three countries have adopted the Model Law: Thailand, Mexico, and China.

Electronic signature legislation has also been drafted or adopted in several Latin American countries, including Argentina, Colombia, Chile, Ecuador and Peru. In Africa, Egypt is the only

¹³ <http://mellonrd.com> accessed on 24th June 2016.

¹⁴ See for example, BIS{2001}

¹⁵ the United Nations Commission on International Trade Law (UNCITRAL) Model Law

country other than South Africa to have drafted electronic signature legislation and Uganda ratified the same.¹⁶ Whereas in Uganda it is called the Electronic Signature Act.

2.3.2 Principle 2. Customers should be adequately protected against fraud and abuse.

Typical spectrum of approach to consumer protection. As one moves from left to right, the extent of regulatory involvement increases. Hence, on the left, a minimalist position would require adequate disclosure of terms and fees, and leave the buyer to beware. On the opposite extreme, regulators may closely regulate the way in which a product is marketed, sold and supported. This may include prescribing or limiting the words of advertisement, and requiring that provider staff have minimum training or experience.

Neither extreme approach seems suitable in most developing countries: disclosure alone is not adequate to protect large numbers of first time Consumers of a product who do not understand it and the prescriptive regulations will likely discourage innovation in product offerings, while probably proving unenforceable.

Certain regimes arguably take a middle ground approach: in the US, the Electronic Funds Transfer Act and accompanying Regulation E¹⁷ and in the EU, the proposed Payments directive¹⁸. In addition to requiring appropriate disclosure, there are two key features in these approaches which provide a basis for better consumer protection:

a). A legal limit is set for the maximum liability of the customer in the case of unauthorized transactions: in the US, this is \$50 or \$500, depending on when the consumer notifies the bank of the unauthorized transaction; and €150 in the proposed EU law. This approach caps the loss to a consumer, and places greater responsibility on the provider to have in place adequate safeguards to manage its own liability. Since most are large entities like banks, this is a reasonable balance of responsibility.

b). A procedure is created for the rapid resolution of complaints or disputes between client and provider, so that recourse to a court system is avoided. Timelines are established in terms of

¹⁶ See website of law firm Mc Bride, Bakker and Cole's <http://www.mbc.com/ecommerce> access on 26th June 2016.

¹⁷ Regulation E, <http://www.Federalreserve.gov/regulations> accessed on 15th June 2016.

¹⁸ Available via http://europa.eu.int/comm/internal_market/payment_work accessed on 12th June 2016.

which the provider must respond: for example, within ten working days of receipt of a complaint in the US.

As with other principles, the full protective framework is not necessary in the early stages of a market, but it is helpful for providers to have a sense of which type of regime policy makers are likely to adopt as market scale increases.

Even though legislated and regulated consumer protection may be unnecessary and even unhelpful early on, providers may agree appropriate principles of consumer practice. Regulators could encourage such moves; and endorse an appropriate list. In most cases, at least the two issues highlighted above should be addressed, namely the limited liability of the customer; and a timely, fair dispute resolution mechanism.

Early self-regulation may help to promote customer trust in m-banking. The principles may over time be amended to allow for market evolution and eventually, become codified. While voluntary codes of practice may be sufficient in the early stages of market development, they will not be sufficient to discipline or stop reckless operators who do not subscribe. Less reputable providers may enter an industry which has benefited from establishing an early trusted reputation and undermine it¹⁹. Therefore, at some stage, probably during or after the breakout phase when new providers are attracted to the market, legislation or regulations will be necessary which compels adherence to a common standard.

2.3.3 Principle 3. Regulators should encourage inter-operability, through ensuring (i) providers have access to payment systems and (ii) consumers are able to switch financial providers

There is limited precedent to date of competition authorities applying, general principles like these to the mobile payment environment, although there are increasing cases of regulatory attention to potential anti-competitive practices in the payment sector, especially the card payment associations.

¹⁹ For a general discussion of a balanced approach to consumer protection, industry codes, see for example Porteous and Helms, 'Protecting Microfinance Borrowers' CGAP Focus Note No27

One notable case is that of Movilpago, now Mobipay. Mobipay was originally a joint venture between Spain's largest Telco and Telefonica to create a mobile payments platform. Required to approve the inception of the proposed joint venture, the Spanish Competition Authority Spanish Competition Authority (SDC) considered "that m-payments affected not only the market for e-payments, into which there was relatively free entry, but also the market for mobile telephony, where there are important barriers to entry. The barriers to entry can come from a combination of: large subscriber bases, large capital bases, large established distribution networks, no open standards and patents on technology. The SDC considered that a unified and widely used m-payment system is in the interests of the consumer.

Because of concerns that the Joint Venture (JV) could raise barriers to entry, the SDC approved the joint venture on the basis that:

Other mobile operators must be allowed to participate;

It must be technically possible to use the system with any mobile operator and any financial institution;

Contracts with the m-payments provider may not limit customers in their freedom to choose other operators or financial service providers; and

Interchange fees must be approved by the SDC.

This finding resulted in delay in the launch of Movilpago (flow Mobipay) until 2002 as the decisions were implemented. In August 2004, Mobipay was still lamenting that "it has not caught on as a popular means of payment" although it was then live in 3000 stores and 2500 taxis in Spain. Mobipay International, wholly owned by BBVA,, is being taken to Mexico & North Africa in 2005.

Movilpago is therefore an example where competition authorities enforced the implementation of inter-operability early on. This may be unnecessary or even undesirable in countries with fewer existing systems or providers with which to inter-operate. However, it may be important to enshrine the principle of inter-operability upfront; and for regulators to have the power, in terms of payments legislation, to require it when necessary.

The EU proposed Payments Directive, not yet in force, moves in this direction by stating:

“Payments systems may not impose.... -

- a). A ban on participation in other payments systems;
- b). A rule which discriminates between authorized service providers,
- c). Any restriction based on institutional status²⁰.

Where other retail payment systems exist, payment regulators and/or competition regulators need to consider carefully the basis under which they allow access to new players; and the extent to which this basis promotes or restricts the desired market development trajectory.

Where such systems do not yet exist, the role of regulators is more to monitor the emergence of models or product which may in future unfairly lock out other entrants or lock in customers.

2.3.4 Principle 4. Account opening CDD procedures should be risk-based, and not unduly prejudice account remote account openings by small customers

A risk-based approach to customer due diligence is clearly preferable to one with inflexible and inappropriate rules. However, as argued earlier, in the absence of clear guidance, a risk-based approach may leave too much uncertainty for providers, who will adopt a conservative approach to CDD in response. In order for this issue not to block transformational models, regulators must either create a clear exemption from the usual CDD requirements for a defined category of low risk accounts, or provide or encourage suitable guidance to be developed.

2.3.4.1 CDD exemptions for small value accounts

Several countries have exempted small value accounts of individuals from all or some of the usual CDD requirements. Small value is defined relative to a maximum transaction volume and account balance, as shown in the table below.

²⁰ Available via <http://europa.eu.in\comm\internal market\payments\framework> accessed on 12th June 2016.

Enforcing these limits requires that the systems of the financial institutions monitor the limits and freeze accounts of individuals which exceed the limits, until they come into complete the standard CDD procedure. FATF has criticized some exemptions as creating vulnerability, since small size alone may not reduce to the risk that terrorism is being financed.

2.3.4.2 Guidance for Risk based CDD

While industry bodies may develop their own guidance, as in the UK, it may be necessary for regulators in developing countries to initiate this process; or even issue guidance themselves. For example, the former approach has been adopted in South Africa, allowing banks to develop their own risk-basis for the re-identification of existing clients. In the guidance note setting this out, an example was given of a simple risk matrix, in which account of natural persons were given low risk weighting.²¹

2.3.5 Principle 5: Customers should at least be able to make deposits and withdraw cash through agents and remote points outside of bank branches

Where banks are prohibited from appointing agent for deposit taking, this prohibition should be revoked in favor of an enabling framework which regulates the bank-agent relationship appropriately. Where there is no prohibition, banks could proceed to experiment with such relationships on a commercial basis. However, they may be reluctant to do so without clarity from the regulators. In addition, if agency relationships become as pervasive as in Brazil, regulators may require powers of greater oversight of agents than existing law gives to them.

Therefore, in either case, it is recommended that specific regulations or guidance be promulgated to address the creation of bank agency relationships for withdrawals and deposit at least.²² However, the principles do require that regulators take into account outsourcing activities as an integral part of their ongoing assessment of the regulated entity, and ensure that any outsourcing arrangements do not hamper the ability of the regulated entity to meet its regulatory requirements.

²¹ The Enabling Environment of Mobile Banking in Africa by Porteous D. available via www.bankablefrontier.com accessed on 10th June 2016.

²² Supra

Therefore, in line with these principles, enabling regulations would enable the appointment of agents to handle specific banking functions on specific conditions these conditions would include:

Requiring a written contract between bank and agent which addresses explicitly identified areas or risk, for example, giving bank supervisors direct access to agent records where necessary;

Placing strict responsibility on the bank to ensure that the agent performs all the functions required by law, such as AML/CFT adherence.

2.3.6 Principle 6: Adequate provision must be made for the issuance of e-money by appropriately capitalized and supervised entities which are not necessarily banks

The ability to issue and transfer e-money is at the heart of emerging m-banking models. Given the weakness of the retail banking sector in many developing countries, it is important that non-bank players, in particular telcos with their strong retail brands and established networks, may also be able to issue e-money. Even if they choose not to, the threat of entry in this form may galvanize a response from banks.

Earlier sections of this report have shown the different approaches to the regulation of e-money issuance, for example between the US and Europe. 'Appropriate provision' does not necessarily mean legislation at the outset, therefore; but neither does it mean ignoring the prudential risks of widespread e-money issuance by non-banks. As already pointed out, these risks may be higher for entities other than Telco's.

A more appropriate response may be to allow certain non-bank players to issue e-money, perhaps on prescribed terms which limit the volume and the risk per customer and then monitor the transaction volumes and outstanding balances. This may be possible by a guidance note, which sets out the conditions on which this will be allowed, including reporting the necessary data. At a defined trigger levels, there may be a need to move to appropriate prudential legislation or regulations under an existing framework like the Banks Act.

There are few suitable templates for e-money legislation presently available: the EU Directive, while best known as designed in a developed country context; and even there, it has not

succeeded in enabling innovation and growth hilly, as the recent review pointed out. There may therefore be value in encouraging discussions among bank regulators as to the elements of suitable e-money legislation in developing countries, so that when it is needed, it is available.

In Creating an Enabling Environment: towards the Millennium Development Goals (MDGs), the United Nation Information and Communications technology (UN ICT) Task Force defines them as “Investment, innovation and entrepreneurship” which build the private sector.²³ More specifically, policy makers and regulators in the financial sector usually seek the following key outcomes:

- (a). Financial stability: That the safety and soundness of the banking and payments system is not compromised;
- (b). Economic efficiency: That the efficiency of the financial system as payments mechanism and intermediation system is maximized and in turn, contribute towards overall economic growth;
- (c). Access to financial services: That broader access to appropriate, affordable financial services is promoted;
- (d). financial integrity: That the financial system is not compromised by its abuse for criminal or terrorist financing purposes;
- (e). Consumer protection: That consumer, especially vulnerable consumers, is adequately protected against abuse and loss.

Mobile banking offers the prospect of increasing efficiency of the payments system; and potentially, expanding access to financial services. However, these objectives may be in tension with existing approaches which target other objectives, such as financial integrity or consumer protection. While market enablement is often understood as the process of simply identifying and removing regulatory and legal barriers to growth, in fact, it requires the managing these complex trade-offs overtime.

²³ UN ICT Task Force is now dehtnct but due to be replaced by a Global Alliance for ICT Policy and Development Via accessed on 26/5/ 2016.

2.4.1 Openness and certainty at the early stage

In the early stages of a new market, two dimensions in particular affect the market development trajectory²⁴

- a). Openness: does the policy, legal and regulatory environment allow for (or better encourage) the entry of new providers and approaches? If not, there is little room for innovation to come to market.
- b). Certainty: does the policy, legal and regulatory environment provide sufficient certainty that there will not be arbitrary changes in future which may prejudice the prospects of entrants? If not, entrants (at least those with a longer term horizon) will be discouraged from incurring the cost and risk of entry.

Ideally, therefore, an enabling environment is one which is sufficiently open and sufficiently certain; but in reality, there may well be trade-offs between these two dimensions. It is often the case for new markets that one or other dimension is neglected: for example, countries with few laws or regulations and with limited regulatory capacity may be very open to new developments, but, if there is a high level of uncertainty, for example, as result of the possibility of arbitrary action in vague areas of the law, there still may be little market development. This position is represented in Figure 1 below. Equally, regimes with more certainty are likely to have better defined laws, but the wider coverage may well restrict new entry.

Enabling a new market may be therefore understood as moving in the direction of the arrows from the starting point, towards greater openness and certainty. To be sure, openness and certainty remain important in later phases of market development too, but are crucial if a market is to develop at all.

Later in this report, we will attempt to apply these concepts to mobile banking by asking what constitutes sufficient openness and sufficient certainty for it to develop from the early stage.

²⁴ The New Micropayments Threshold, CPSS (2004) available via <http://www.bis.org> last visited may 2016.

2.4.2 Additive and transformational approaches to banking

Mobile banking holds out the prospect of increasing access to appropriate formal financial services by those who presently lack it. It could also make banking more convenient, possibly even cheaper, for those who already have financial services. The two approaches are not necessarily exclusive-greater convenience for existing clients could also lead more accessible products for current non-clients-but neither are they necessarily linked.

This report distinguishes between:

- A). Additive approaches, which primarily target existing banked customers, and which offer the mobile channel as an additional channel, alongside or as part of others (such as Internet); and
- B). Transformational approaches, which intentionally reach out to markets beyond the existing banked groups, through a product offering which meets the known needs of the unbanked groups.

Unbanked people, by far the majority in most developing countries, are in fact a heterogeneous group, including people who may have adequate incomes but from an informal source, as well as poor, rural dwellers. As the result of ongoing research in the field of microfinance, we now have a better sense of the elements required for a basic financial service to meet the needs of unbanked people, and in that sense, to be transformational. A recent Micro Save briefing note²⁵ lists the elements of transaction banking which constitute a suitable value proposition for poor customers:

- (a). A safe place to keep money
- (b). The ability to cash in and cash out at convenient locations (since cash is still pervasive) at a reasonable fee; and
- (c). The ability to transfer money, both to make payments and to remit money to friends and relatives.

²⁵ Wright et al 2006

In conclusion the above literature review of literature provides and stipulates how mobile money payments, transactions initiated in different countries globally looking at the historical perspective, present and different dynamic as literally provided above basically on Uganda.

CHAPTER THREE

REGULATORY & POLICY ISSUES

3.1 MOBILE MONEY REGULATIONS.

Mobile money payments require the accepted use of electronic signatures, such as a Personal Identification Number (PIN) but also including biometric identifiers, to authorize transactions. If the e-signature is not legally valid, the transaction could be subject to challenge, exposing payment agents and payees to the risk of repudiation. There is therefore a need at least to provide status to electronic transactions equivalent to that achieved by physical signature.

PIN numbers are already in widespread use in developing countries—for example, as a security feature on mobile phones—but not yet as e-signatures. Many developing countries have yet to adopt legislation enabling e-commerce. It is unlikely that individuals will accept the risk of accepting or making larger e-payments, or build new business cases on the receipt of e-payments, if their validity may be challenged. Establishing the legal validity of e-signatures is therefore a need for the m-payment or m-banking market to grow to scale.

3.2 Review of Bank of Uganda's Guidelines on mobile money

3.2.1 Are consumers adequately protected?

Consumer protection is a traditional concern of policy makers and of most financial regulators. In developing countries, the enforcement of consumer protection measures is often ineffective or lacking. However; in societies with low financial literacy or large numbers of first time customers, the vulnerability to abuse is higher.

3.2.2 Regulation 12²⁶ provide for Consumer Protection and Recourse.

The Mobile money service being relatively new and involving several players (licensed institutions, mobile money service providers, mobile money agents, goods and services providers) has had customer confidence built on trust. The following consumer protection measures are intended to further this customer trust and ensure protection of customers against abusive practices.

²⁶ See of Bank of Uganda Guidelines on Mobile money

Mobile money is a financial service provided by supervised and licensed institutions in partnership with mobile money service providers. *Therefore, the provisions of the Bank of Uganda Financial Consumer Protection Guidelines shall apply.*

In addition, mobile money service providers shall ensure the following:

(a) Transactions

- (i) A mobile money agent shall carry out transactions only when the mobile money system is up and running and transactions should be in real-time.
- (ii) Every transaction shall require authentication by a customer's PIN. At the time of opening mobile money accounts, mobile money agents should sensitize customers not to disclose their PINs to any other person. This is aimed at protection of consumers so that their transactions are not interfered with or the not hacked into.
- (iii) There must be a mechanism for the customer to verify the name and number of the funds' recipient for confirmation before a transaction is completed.
- (iv) The customer shall immediately receive written confirmation of execution of a transaction, including the fee charged.
- (v) In case of mobile money sent to unregistered users, the sender must receive a message confirming encashment by the recipient. All funds sent to unregistered users and are not cashed out within two weeks must be returned to the sender.
- (vi) The mobile money platform shall be secured through security of data measures including end to end encryption of all messages containing information related to mobile money transactions.
- (vii) The Mobile money service provider shall provide in writing the balance remaining in the customer's mobile wallet as well as a statement on previous transactions, including hard copies if requested by customers.

Conclusively Regulation 12 (a) aims at protection of Mobile money users and Mobile money transactions in a bid to avoid fraud among others thus regulatory policy to protect the Mobile Money corporations and consumers.

(b) Transparency

At mobile money account opening, the consumer shall obtain a copy of the agreement with the service provider. The agreement shall be explained by the agent clearly and in plain language. The terms and conditions provided by the mobile money service provider shall highlight to the consumer the relevant fees, charges, penalties and any other consumer liabilities or obligations in the use of mobile money services. The mobile money customers should be able to access the service fees chargeable from their phones. The terms and conditions shall also include an indemnity clause in case the customer is defrauded. The licensed institution keeping the escrow account shall also be stated. The consumer shall be given at least 30 days notice, including by SMS, of any changes in terms and conditions (including fees and charges) of the mobile money service.

The agent shall clearly display in a conspicuous place:

- (i) The identity of the mobile money service provider(s) for whom he/she operates as an agent.
This portrays that the agent must clearly show that he or she is operating on behalf of mobile money service provider to avoid fraud hence protecting consumers.
- (ii) The agent's unique identification number provided by the mobile money service provider;
- (iii). All applicable charges and fees for the mobile money service;
- (iv). A written notice that no charges or fees are levied at the agent location;
- (v) The dedicated telephone line through which customers can contact the mobile money service provider, including the contact in case the consumer has a complaint about the service; and
- (vi). A statement that the agent does not carry out transactions on behalf of customers.

Where a consumer is unable to understand English, the agent shall provide an oral explanation in a language the consumer understands. Where a consumer is unable to understand written information, the agent shall orally explain to the consumer the written information.

Conclusively this regulation is a regulatory policy basically aims at protecting the consumers to satisfy the regulation 3(d)²⁷ which provide for objective of the guidelines which is to foster the consumer protection of mobile money customers.

(c) Data protection

- (i) A Mobile money service provider, as well as its agents, shall uphold privacy and confidentiality of customer information and data;
- (ii) The conditions under which customer information and data will be kept shall be disclosed before the customer enters into agreement with the mobile money service provider; and
- (iii) Provisions of data protection including confidentiality shall be in tandem with all relevant laws.

This regulation clearly and entirely provide for the **right to privacy** which is enshrined in grand norm of the land **Article 27(2)**²⁸ provide that No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

Further this particular regulation provide for the duty of secrecy, **Section 45**²⁹ provide that the members of the board and officers and employees of the bank shall be bound by a declaration of secrecy and shall not, except as may reasonably be in the performance of their functions, disclose to any person any material information acquired in the performance of their functions unless called upon to give evidence in a court of competent jurisdiction or to fulfill other obligations imposed by law.

This regulation gets its effect from the Bank of Uganda Act which establishes the Bank of Uganda. **Section 2 (1)**³⁰ provide that The Bank of Uganda established under the Bank of Uganda

²⁷ Ibid.

²⁸ of the 1995 Constitution of Uganda as amended

²⁹ Bank of Uganda Act Cap 51

³⁰ of Bank of Uganda Act Cap 51

Act, 1966, shall continue as the Central Bank of Uganda with its function in **section 4(1)**³¹ shall be to formulate and implement monetary policy directed to economic objectives of achieving and maintaining economic stability.

(d) Complaints handling and consumer recourse

Mobile money service providers shall ensure that appropriate and effective procedures for receiving, considering and responding to complaints are put in place. The complaints handling procedure shall ensure that:

- (i) Information about procedures for handling complaints is easily available at any channel used in the provision of mobile money services;
- (ii) Agents are trained on receiving complaints and handling their resolution or escalation;
- (iii) A dedicated toll free telephone line for complaint resolution is provided; and
- (iv) Records are kept for all complaints lodged.

Customers have a right to contact Bank of Uganda in case they are dissatisfied with the way their complaints are being handled by the mobile money service provider.

Customers who may be dissatisfied with the manner in which the complaints have been handled may resort to alternative legal procedures for redress.

The issue for m-banking goes beyond traditional concerns about abuse of consumers. However, in new markets especially, customer adoption depends on growing trust. The experience of consumers at the hands of a few reckless providers may cause them to distrust all similar offerings in the market. Providers may therefore enjoy positive externalities from creating appropriate levels of consumer protection which help create trust, leading to more rapid adoption.

However, there may also be negative externalities from inappropriate protection. By imposing higher costs on providers, certain protective measures may result in small balance accounts

³¹ Ibid.

protected by these measures; but those who cannot qualify as a result are without access to the product, and may be forced to use unregulated alternatives. A balance must be struck on this issue, therefore.

The starting point is to identify the risks to which consumers are exposed. In M-payments, these typically include fraud, loss as the result of unauthorized transactions, loss of privacy through inadequate data protection and even loss of service. The levels of risks involved vary with the nature of the product offering, and have been analyzed in detail by the Mobile Payment Forum.³² The security issues involved in customer authentication and authorization through all the stages of wireless transmission have been considered in some depth by the main industry fora. These are complex and fast changing.

The aim of regulation in this context arises from consumers' inability to judge the safety of their funds and the need to ensure that operations have proper incentives to request contracts and consumer interests. But instruments of consumer protection can sometimes limit service and product innovations. Standardization can enhance transparency, the capacity for consumers to compare offers and enforce minimum levels of quality. Caps are sometimes placed on interest rates, restrictions on product cross-subsidization, and pricing policies may be regulated. These kinds of measures can be useful in certain circumstances. But when applied to other market environments for which they were not conceived, they can easily inhibit innovations made possible by mobile entry. Operators and regulators together need to review limitations that may cause unnecessary constraints. Incomplete contracting standards can also be a problem for the development of new service models. For example, agents may be required to validate the authenticity of documents or signatures.

3.3 MOBILE MONEY AGENTS.

The legal status of agents in this context may be ambiguous. Authorization or validation of payments via remote mobile tools may not be recognized by existing laws. And legal frameworks applicable to mobile telephone payments may be insufficiently defined to allocate rights and obligations clearly between clients and their mobile operator/bank in the event of

³² See for example, the publication on the best practice in managing security risks available via <http://www.mobilepaymentforum.org/pdfs> accessed on 24h September 2009.

becoming unviable and therefore not offered. Those already holding accounts may be better

operational errors, incidents of theft or fraud or other unforeseen problems. Moreover, poor and remote clients are likely to be at a disadvantage if they want to identify, communicate and pursue incidents for which their mobile operator may have responsibility. The level at which laws and guidelines may need to be amended to provide a more stable legal framework will inevitably vary according to the specific legal and regulatory structure in any one jurisdiction.

It should be noted, though, that consumer protection will be a key component of any commercial strategy to build confidence in mobile payments services. This is especially the case where consumers have entrenched reservations about banks in their country. Surveys have suggested that many in developing countries have a strong distrust of banks and are likely to be skeptical at first about giving up physical bank notes for electronic based accounts. Regulators and mobile operators alike have an interest in strengthening consumer confidence³³

The challenge is particularly important for early innovators. If consumer protection measures are too weak, potential first stage entrants may be dissuaded from investing in the market at all, as changing Consumer habits and perceptions can be very expensive. And as the market develops, it is inevitable that there will be some dishonest entrants, with the result not only that some potential clients will become victims of fraud but that these firms' activities may damage confidence in honest firms. So it is essential that regulators and operators work together on consumer protection³⁴.

A promising avenue for developing consumer confidence may be to build on the structure of remittance services. This market provides a natural bridge between different social and economic zones, both of which can be used to promote confidence, enforce standards and educate consumers. For example, if regulators work effectively with each other across borders, recipient countries may be able to enhance local consumer Protection by acting through supervisory structures in sending countries. Migrant workers may also be one of the more effective channels for educating consumers of financial services back home. In both cases, national regulators will need to enhance cooperation with other authorities at different levels of government local and international.

³³ Rhys Bollen *Journal of International Banking law and Regulations* 2009.

³⁴ Ibid.

Since its inception in 2008, Mobile money has rapidly developed to become one of the most dynamic innovations for delivery of financial services using modern [CT. To appreciate its rapid growth in popularity, it is important to note that the number of registered Ugandans using the Mobile money service regularly has grown rapidly to reach close to 5 million persons last year.³⁵

However, the adoption and growth of Mobile money services has not only continued to draw public attention but has also generated a lot of debate as to the safety and reliability of these kinds of payments and transfer systems and what the government is doing about it. Among the questions in the minds of many Ugandans are: How does the Mobile money transfer service really operate and is it safe and reliable? Is the consumer adequately protected? Should it be regulated?

Section 4(2)(j)³⁶ stipulate for one of the function of the central bank to Supervise, regulate, control and discipline all financial institutions which is the bank of Uganda.

Regulation 13(a) of³⁷ provide for the role of bank of Uganda as the **Bank of Uganda shall have the powers to supervise mobile money services** and can co-opt other persons including other regulators to do so. An inspection report may be issued to the partnering licensed institution and the mobile money service provider.

(b) The partnering licensed institution and the mobile money service provider shall provide periodic reports to Bank of Uganda on their mobile money operations, as specified in the Appendix. Bank of Uganda may at any time request for any information from any licensed institution, mobile money service provider or mobile money agent.

(c) The mobile money service provider shall submit annual audited financial statements to Bank of Uganda.

(d) Bank of Uganda may appoint an appropriate professional to conduct a special audit on the operations of a mobile money service provider. The cost of the audit shall be met by the mobile money service provider.

³⁵<http://www.safaricom.co.ke> Visited on 15th June 2016.

³⁶ Bank of Uganda Act Cap 54

³⁷ Bank of Uganda mobile money guidelines 2013

- (e) The licensed institution shall maintain accurate and complete records of the aggregate e-float and the amount in the escrow account. These records shall be kept for a period of at least ten years.
- (f) The mobile money service provider shall maintain accurate and complete records of mobile money accounts opened, the identity of mobile money customers, agents, transactions undertaken by mobile money customers, the individual balances held by mobile money customers, the aggregate e-float and the amount in the escrow account. These records shall be kept for a period of at least ten years.
- (g) If the Bank of Uganda has reason to believe that the operations of the mobile money service are being conducted in a manner that is detrimental to the interest of the mobile money customers or in contravention of the terms and conditions imposed, it may take any of the following courses of action:
 - (i) Issue directions regarding measures to be taken to improve the management and provision of the mobile money services;
 - (ii) Suspend or cancel the approval/no-objection;
 - (iii) Impose any other conditions as it may consider appropriate.

3.4 MONEY LAUNDERING VIZ VIA MOBILE MONEY.

Section 3³⁸ Provides that It is prohibited for any person to intentionally convert, transfer, transport or transmit property, knowing or suspecting that such property to be the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his or her actions.

Regulation 11³⁹ provides that the mobile money service providers shall have measures in place to prevent money laundering and terrorist financing. The mobile money IT system shall have inbuilt mechanisms to identify suspicious transactions. The following measures shall be in place:

³⁸ Anti Money Laundering Act of 2010 of Uganda
³⁹ Bank of Uganda Mobile Money Guidelines of 2013

(a) Adhere to international Know Your Customer (KYC) standards at account opening by carrying out Customer Due Diligence (CDD). The entity conducting customer verification should require at least one of the following documents to verify the identity of the customer: a valid passport, driving permit, identity card, voter's card, financial card, and local administration letter or business registration certificates.

(b) Limits should be set for frequency, volume and value of transactions; and these limits, as well as any revisions thereof, shall be sent to Bank of Uganda for approval.

(c) Suspicious transactions and large cash transactions should be reported to the

Partnering licensed institution which should in turn report them appropriately.

Regulation 14 mobile money Guidelines⁴⁰ These Guidelines are an interim measure for enabling the operation of the mobile money service. The Bank of Uganda in conjunction with other stakeholders will create a comprehensive regulatory framework over time through the necessary legal and regulatory changes.

3.5 ELECTRONIC TRANSACTIONS ACT of 2011 VIZ VIA MOBILE MONEY.

Section 2⁴¹ define "electronic transaction" to mean the exchange of information or data, the sale or purchase of goods or services, between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks. Mobile money transactions are examples of electronic transactions.

Section 2⁴² define "automated transaction" as an electronic transaction conducted or performed, in whole or in part, by means of a data message in which the conduct or data messages of one or both parties is not reviewed by a natural person in the ordinary course of the natural person's business or employment. Mobile money transactions are done using phones among others thus an automated transaction.

⁴⁰ Bank of Uganda Mobile Money guidelines.

⁴¹ Electronic Transactions Act of 2011.

⁴² Ibid.

It protects the consumers who use electronic transactions in transferring and dealing with goods and services. **Section 24 (2)**⁴³ provide that a person offering goods or services for sale, hire or exchange through an electronic transaction shall also provide a consumer with an opportunity to review the entire electronic transaction, to correct any mistakes and to withdraw from the transaction before placing an order. This is often seen at the time of sending or withdrawing money where the opportunity to review the transaction to the consumer is given thus protecting the consumers.

Section 26 (1)⁴⁴ provide that a person who sends an unsolicited commercial communication to a consumer shall provide it at no cost and the consumer with the option to cancel his or her subscription to the mailing list of that person at no cost. This is commonly seen but there are instances where sender provides such communication at a cost even where the consumer did not authorize them.

Section 26 (3)⁴⁵ provide that a person who sends an unsolicited commercial communication to a person who has advised the sender that he or she should not send the communication , commits an offence and is liable on conviction, to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both. The law is so clear but the enforcement of this provision is literally hard.

3.6 Conclusion

In conclusion therefore, different laws and regulations on mobile money have been enacted which have stipulated how it protects consumers and this has been fully discussed above.

⁴³ Electronic transactions Act of Uganda of 2011

⁴⁴ Ibid.

⁴⁵ Ibid.

CHAPTER FOUR

4.1 EMERGING EXPERIENCES OF MOBILE MONEY PAYMENTS

4.2 Developed countries

In Europe and the United States of America (USA), other than for the purchase of Premium Rate Service (PRS), there has been limited use of mobile payments to date, despite earlier expectations to the contrary. Expressing widely held frustration, The Banker magazine recently carried an article entitled: “.When will mobile get moving?”⁴⁶ The slower pace of adoption on in these countries is perhaps no surprise, however: banked customers have had little reason to move from accessible, trusted electronic channels such as internet or use of card at point of sale, to a new approach which is not yet stable or pervasive.

In Western Europe, in particular, there have been a number of attempts to create m-payment platforms and products. In October 2002, the Joint Vienna Institute identified no fewer than 30 operators offering m-payment solutions of different kinds.⁴⁷ There has been limited success to date: several major collaborative m-payment platform ventures such as Simpay, a consortium of four major European mobile operators, have failed to get sufficient critical mass to succeed. Fragmentation of the European market into unviable proprietary platforms has been described as one of the biggest risks to the development of the sector here.

In the USA, outside of the transport sector, there have few major m-payments products offered, at least until recently. PayPal’s launch of an m-payment offering in March 2006 in the USA and Canada is a significant development which could accelerate take-up due to its critical mass of 100 million clients.⁴⁸ Although these clients are mainly in the USA, PayPal has clients in 54 other countries, suggesting that diffusion of the service even for international remittances may be rapid once proven and as regulations allow.⁴⁹

Mobile Money payments are far more pervasive in parts of Asia than in Europe and the US, reaching early ‘break out’ stage in Japan and Korea.

⁴⁶ Available via <http://.thebanker.co.uk/news/thlstoip.php/aidJ2346/Wilmobilegetmoving.html> date visited 7th August 2016.

⁴⁷ See “E=Payment Trends”, Joint Vienna institute, Oct2002, <http://www.oenb.at/de/inrg./epayments021010texnl4-17932.pdf>

⁴⁸ Paypal mobile: <https://www.paypal.com/us/cgi-bin> date visited 6th July 2016.

⁴⁹ <http://www.epublisbingdaily.toz&paypal-reaches-100-million-accounts>. Date visited 6th July 2016.

In Japan, major mobile operator DoCoMo added the functionality of a credit card embedded on the chips of its mobile phones in 2005. Using contactless FeliCa technology, the account represented by the chip in the phone can be charged by waving the phone in close proximity to a FeliCa point of sale device. FeliCa technology is already in use in mass transit systems in Japan. The Economist comments that DoCoMo's ability to integrate the hardware (cell phone) and service offering has enabled it to package its m-banking service in a way which operators elsewhere struggle to emulate, since they control only one of the key pieces but not both.⁵⁰

For M-banking to take off this level of control by one large player may be helpful, but not necessary. Despite a more conventional configuration of operators and banks, Korea has also experienced seen rapid growth in Mobile banking adoption in recent years. Since a cooperative offering across Korean banks was launched: in 2003, more than 10million customers (out of 3m mobile subscribers) have taken up mobile banking. In a recent article, The Korea Times has an upbeat assessment, although sounding a warning: "Although banking-On the-road services clearly have a bright future with exponential growth potential, there remain some barriers such as security concerns and disputes over standards."⁵¹

Japan and Korea are both high income countries with already extensive penetration of both internet and mobile phone. They demonstrate that m-payments and m-banking can flourish even where there are already established payment channels. However, especially since both countries have very high levels of banked population, there is no evidence that the m-banking offerings are transformational, nor do they need to be.

4.4.2 Developing countries: Philippines

More relevant to Africa, is the example of Philippines, a middle income developing country. Both of the major mobile network providers in the Philippines, SMART and Globe have developed large scale m-banking offerings. Starting in the year 2000, Smart has offered a range of Smart Money-branded banking products via the mobile phone, in close association with a large bank, BancoD'Oro. A Maestro debit card is also issued to enable Smart clients to use

⁵⁰ Economist 'Pay with a wave of your phone'. July 21st 2016.

⁵¹ See article at <http://times.hankookicoin/service/e/print> accessed on 8th August 2016.

conventional ATMs and POS devices,⁵² Remittances may also be sent from Philippines Overseas, using the Smart Padala product. According to a recent Infodev study (2006), 2.5million people of subscriber base of 20 million now use these Smart money services.⁵³

Competitor Globe entered the m-payments market only in 2004 with its G-Cash offering. Described as a mobile wallet, G-Cash is essentially an e-money product. G Cash can be used to make remittances, transfers and payments, and may be encashed or uploaded at a network of some 3500 agents countrywide. In 2006, less than two years after launch, Globe reports 1.2million banking clients, and this number is expected to double by 2007. Globe is now extending the use of its payment platform, for example, to enable loan disbursements and repayments to rural banks.⁵⁴

Not enough is yet known about the customer base of these two major providers to assess how genuinely transformational the products have been in reaching customers without bank accounts. However, the descriptions of both service offerings generally meet the criteria suggested earlier; and both have the potential to be highly transformational. The numbers alone mean that the example of the two Philippine providers is likely to be transformational in demonstrating the market potential for such products within lower middle income countries,

Apart from the Philippines, there are also reports of recent growth in other middle income regions such as Eastern Europe and Middle East, where VISA Mobile has been active in Jordan since 2004.⁵⁵ However, the Philippines is one of the few developing countries markets where m-payments and m-banking has moved out of the pioneer phase, identified earlier,, to the start of the breakout stage where scale is achieved through rapid growth.

4.4.3 Developing countries: Africa

In sub-Saharan Africa, a number of banks have introduced m-banking products; and a variety of models is now offered. Most are at an early stage, however.

⁵² ITU (2004) Africa Telecom Projections 1995-2005. Available via <http://www.itu.int> accessed on 9th August 2016.

⁵³ Supra.

⁵⁴ Supra.

⁵⁵ Total Telecom 9 Jan 2006

Most of the offerings to date have been additive. In countries With sufficiently large retail banking customer base, such as Kenya inter alia, by Co-operative Bank, Nigeria via GloMobile, South Africa all four major banks and Zimbabwe Kingdom Bank and Econet, banks have added on mobile offerings as additional channels for their existing products. Although accurate numbers do not yet exist at continental level, it is unlikely that there are more than a million m-banking users in early 2006.

There are also emerging models in certain African countries which, though at an early stage, at least have or had the potential to be transformational, Because of the focus of this report, there was farther engagement and interaction with each of these providers to understand their models and the barriers which they face to scale roll out:

Celpay Holdings, originally a subsidiary of network operator Celtel, started offering mobile payment solutions in Zambia in 2002. The Wall Street Journal at the time dubbed this “*Africa’s world first in cell phone banking*”⁵⁶. Although Celpay has retail functionality, enabling funds to be deposited via banks into virtual Celpay accounts from which they can be transferred by mobile phone, the focus of its business model has become business to business payments around the logistics chains of large corporate with far flung distribution, such as breweries and oil companies. It has also extended its coverage to adjacent DRC, where it offers a means of payment for airtime vendors. South Africa’s First Rand Banking Group bought Celpay from Celtel in 2005. It operates using software developed by Fundamo.

4.4.3.1 SOUTH AFRICA

- *MTN Mobile Money*⁵⁷ was launched in South Africa in 2005 as a joint venture between the country’s second largest network operator MIN and large commercial bank, Standard Bank. Mobile Money starter packs are available via MTN agents and bank branches; and account opening takes place remotely through an interactive process during, which voice recordings are taken as biometric identifiers and the Mobile Money menu is downloaded over the air to a SIM

⁵⁶ Wall Street Journal 12 December 2002.

⁵⁷ TMTN Banking of South Africa is a joint venture between Standard Bank and MTN Mobile offering the MobileMoney account which gives customer access to limited banking facilities, using Wap enabled cellphone <http://www.mtnbailcrng.co.za> accessed on 26th July 2016.

card, Like Celpay, *Mobile Money uses Fundamo software, As of April 2005, Mobile Money reported 15 000 clients.*⁵⁸

*Wizzit*⁵⁹ started in 2005 in South Africa, using software jointly developed with Cointel on an Unstructured Supplementary Services Data (USSD) platform. Wizzit is formally a division of the Bank of Athens of SA, which is legally liable for the deposits taken.

However, the brand is owned and the operations are run by a separate entity started by independent entrepreneurs who believed in the market potential for this type of service. The linkage to a clearing bank provides Wizzit account holders with access to the conventional e-payments system of South Africa, including obtaining cash via ATMs using a Maestro branded debit card which is issued as part of the offering. Wizzit bank accounts are opened remotely by commission paid agents called Wizzkids.

4.4.3. KENYA – M-PESA

M-Pesa is an m-payment platform developed by Vodafone Group, with initial support from the Department for International Development's (DFID) Financial Deepening Challenge Fund. M-Pesa was launched on a pilot basis by country operator Safaricom in Kenya in 2005. In the pilot, M-Pesa is used to disburse loans from a microfinance institution such as FAULU to its clients, and then to collect repayments via designated Safaricom airtime agents. Pooled M-Pesa balances are held at a Kenyan bank. In pilot phase, M-Pesa is primarily a payment provider for the Microfinance Institutions (MFI), but the functionality exists, and is being explored, for person-to-person transfers of balances which will move the model into e-money issuance)⁶⁰.

It is for this reason that it has become necessary for the Treasury to provide an audit of the Mobile money system in order to clear any doubts in the minds public regarding its safety and reliability, and provide information about its effectiveness as well as the soundness of the operating platform for M-Pesa and other similar services wishing to enter the market prior to the

⁵⁸ ⁸www.mtnbankdnc.co.yg accessed on 5 July 2016.

⁵⁹ WIZZIT is a cellphone-based banking facility provider as a division of South African Bank of Athens. It does not require users to have a prior bank account and is compatible with early generation cell phones popular in low-income communities. In addition to being able to conduct cellphone-to-cellphone transactions. WIZZIT account holders are issued Maestro debit cards that can be used at any ATM or retailer. There are no transaction limitations-the service is purely pay-as-you-go
via <http://www.nextbillion.net/activitycapsule/wizzit> accessed on 6th June 2016.

⁶⁰ ⁹What you don't know about M-pesa by Olga Morawczynski: Tuesday, July 14, 2009 available via www.cgap.org

launch of M-Pesa services in Kenya, Safaricom sought authorization from the CBK to undertake the money transfer service. In evaluating the proposal, the CBK considered the request on the basis of safety, reliability and efficiency of the service. In addition, precautionary measures were put in place to ensure that the services did not infringe upon the banking services regulatory framework as provided for under **section 2(1) of the Banking Act of Kenya**.⁶¹ The M-Pesa service therefore does not:

Accept from members of the public money or deposits that are repayable on demand or at the expiry of a fixed period or after notice;

Accept from members of the public money for current account purposes that is used for payment and acceptance of cheques; and

Employ money held or any part of the money for purposes of lending and investment or in any other manner for the account and at the risk of the person so employing the money.

In M-Pesa, money collected by agents is deposited in a trust account in one of the leading commercial banks in Kenya. This trust account provides the legal protection for the beneficiaries. The money in this trust account is not under the control of Safaricom and cannot be employed for purposes such as lending, investing or in any other manner for the account and at the risk of Safaricom as **per Section 2(1) of the Banking Act**.⁶² Legal protection of the money in the trust account is provided for in the trustee deed. Various legal instruments pertaining to this service, including the trustee deed have been presented to the Central Bank and reviewed accordingly. Further to this, funds in the trust account deposited in the designated commercial bank are regulated by the Central Bank of Kenya under the Banking Act.

(a). The Trustee holds funds on behalf of all M-Pesa System participants under a Declaration of Trust (the Trust Deed).⁶³ Highlights of the Trust Deed are:

(b). The trustee holds all amounts which constitute the Trust Fund on the trust for the system participants.

⁶¹ Cap 488 Laws of Kenya

⁶² Cap 488 Laws of Kenya

⁶³ www.centralbank.go.ke accessed on 15th May 2016.

- (c). The beneficial entitlement of each System Participant to the Trust Fund at any time shall be to such amount of the Trust Fund in conventional money as is equal to the amount of e-Money in the M-Pesa Account of such System Participant at such time.
- (d). Safaricom is entitled to levy certain charges on System Participants for the operation of the service. Where it does so, the M-Pesa Account of the relevant System Participant will be indebted by the amount in e-Money of the relevant charge and M-Pesa Account of Safaricom shall be credited with the relevant amount.
- (e). These amounts constituting the Trust Fund shall be held by the Trustee in a reputable commercial bank.
- (f). Safaricom undertakes to the Trustee and to the System Participants that it will not issue any new e-Money other than in return for an equal amount in conventional money being paid to and received by the Trustee.
- (g). Safaricom shall also not affect any transfer of any e-Money from any M-Pesa Account of an amount which exceeds the credit balance of e-Money in the relevant M-Pesa account.

To stress on the importance of consumer protection, a number of critical issues and risks that have been reviewed include: liquidity management, settlement risks, the reliability of the system, the registration of users, system audit trail, anti-money laundering measures and consumer protection issues that could compromise the safety, efficiency, integrity and effectiveness of the M-Pesa system. These risks have been mitigated through a number of measures which the Central Bank and the Communications Commission of Kenya (CCK) monitors regularly.

For example, there is no credit risk because M-Pesa agents prepay before offering services customers. Also, CBK has placed a maximum limit of KShs.50, 000 per M-Pesa account per day and a transaction limit of KShs.35, 000 per day in order to mitigate against settlement risk. Moreover, Safaricom is part of the Vodafone group, an international and reputable multinational in the provision of mobile phone services. The M-Pesa product benefits from the research and development of Vodafone and as such, the operation risks are minimal if not nonexistent.

The central bank of Kenya has continued to oversee the service in line with its oversight policy framework document on payment systems in Kenya which is available at the Bank's website⁶⁴

For instance, whereas the system transacted about Kshs. 17 billion in August 2008, the net deposit or residual value per customer that is deposit less withdrawals was Kshs.203 thus demonstrating that M-Pesa has not been regarded as an alternative bank account with sums of money staying in the system.⁶⁵

To further provide a sound legal basis for payment systems in Kenya, the CBK and the Treasury have been refining several legal and regulatory measures aimed at promoting safety, efficiency and effectiveness of payment systems in Kenya. One such effort is the review of the Central Bank Act in the year 2003 to include **section 4 A1 (U)**⁶⁶ that mandates the CBK to promote such policies as to best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems. Currently, the Bank has proposed and formulated the enactment of the **National Payment System Bill** that will strengthen the above mandate by inter alia expressly providing for the oversight of all Payment systems including money transfer services. This Bill will soon be tabled in Parliament for enactment into Law.

4.5 Conclusion

The rapid growth of mobile money usage in Uganda shows that there is clear need for safe, inexpensive, and efficient ways to send money around the country. Thus far, individuals have been the drivers of this growth, sending money through P2P transfers. As adoption and agent networks expand and mobile money providers work to enhance the solutions offered to corporate clients, the value proposition for organizations to adopt these services for their own needs is increasing.

⁶⁴ www.centralbank.go.ke as visited on 15th June 2016.

⁶⁵ *supra*

⁶⁶ Cap 48 Laws of Kenya

CHAPTER FIVE

RECOMMENDATION AND CONCLUSION

5.1 Introduction

This dissertation set out to answer two main questions:

What is happening in M-banking in general and in particular, in the country case study and is it likely to lead to greater access?

Will it happen spontaneously or is enablement required for this to happen? If so, what forms of enablement?

In answer to the first question, the scan of developed and developing countries in Chapter Two showed that M-banking has been slower to develop than expected. However, the volume of users is now reaching critical mass in parts of Asia, like Japan and Korea. The Philippines offers the most striking demonstration of the potential take up in a developing country. In Africa, m-banking is now being added on to the services offered to existing customers by a number of retail banks and this is likely to continue. In addition, there are several innovative models with the potential to expand access to financial services to customers who are not presently banked; or in the words used in this report, to be transformational.

However, genuinely transformational models of M-banking are few today; and they face numerous obstacles. These include the standard uncertainties about the pace and scale of

Customer adoption, exacerbated by the fact that low end models require higher volumes of transactions to be viable. Importantly, the regulatory and policy environment for M-banking is complex and often ill-defined since it cuts across various regulatory domains. In some countries, the policy regime may not be sufficiently open to allow a range of models to startup and develop; and in others, sufficiently certain to encourage the investment necessary. Of the two countries considered in this report, in which M-banking is still in the early or pioneer stage, South Africa falls more into the former group more certain but less open Kenya and Uganda the latter more open but less certain.

If M-banking is to realize the potential of massively extending access to safe, convenient and affordable financial services to those who today lack it, then enablement is likely to be required.

In its absence, M-banking may simply amount to adding another convenient channel for already banked customers. The consequence will be a market trajectory with much lower ultimate levels of usage and access, as Figure 4 on the below shows⁶⁷.

Enablement in the sense proposed here is not only about clearing regulatory space for the entry of new M-banking models. To be sure, low income countries with limited financial legislation and regulatory capacity may not need much space to be cleared—entry may be easy there and a successful model, likely Telco driven, may well emerge; but uncertainty will affect the development of the market, not least by limiting competition over time. This will affect the pattern of future development. Rather, enablement is about managing the delicate balance between sufficient openness and sufficient certainty, not least in the mind of customers who must entrust money to the entity involved, whether bank Telco or other. Applied at the early stages of market development, enablement means creating conditions favorable to the emergence of sufficient appropriate models to be tried and to the successful ones being scaled up. Applied at later stages, enablement means continuing to ensure openness, while increasing certainty for stable growth.

This approach to enablement may seem to demand more of regulators than they can offer, stretched as they are by many other issues. As the research paper s has shown, developed countries continue to grapple with defining their appropriate role in this area too. This is why the research paper has recommended the set of high level principles as a starting point. They are designed as an indicative road map through some of the complexity in order even to start the process of enabling transformational M-banking Translated into a national setting, and issued or endorsed by policy makers in consultation with regulators and providers, principles like these could help to pinpoint the key aspects of openness while creating greater certainty over the possible trajectories of market development.

⁶⁷ Supra.

5.2 Recommendations

5.2.1 Bank of Uganda to set up a separate body to monitor mobile money

The government and other regulatory bodies should provide an enabling environment for mobile money operators because of the merits. Mobile money operators present a new set of operational challenges for the central bank. The paper would recommend a telecommunications company and Commercial Banks partnership led model which would be easier to regulate.

Telecommunications company– Bank led Model – This is where telecommunications company are actually in mobile money operators and partner banks to carry out the activities. Here, the mobile money operator of the Telco's must be ring fenced from the Mobile Network Operations for taxation and clear business operating line purposes. This model calls for a robust legislative and regulatory framework otherwise the telecommunications company would form an oligopoly because of their subscriber base and would also take advantage to charge higher fees, engage in activities outside the boundaries of Banking and Non-Banking Financial Institutions as players in the financial services industry such as insurance and moving funds around. In effect, the mobile money operator business unit of Telecommunications Company would be duly decoupled from the mobile money operator and operate as either a Banking Institution or Non-Banking Financial Institution, whichever is appropriate. The Uganda communications commission should still remain as the regulator of the core operations of the telecommunications company while the Bank of Uganda takes up the regulatory role of the mobile money and other financial services provided by the telecommunications company.

And here, all the agents would be duly registered by the mobile money operators unit and the Telco shall be held responsible for any lapses caused by the agents. Therefore the Telco's shall strictly monitor and evaluate the mobile money operators' agents on a regular basis to ensure proper record keeping and strict adherence to regulations.

5.2.2 Financial laws should work together with Telecommunication laws

The proliferation of mobile money services does raise the need for banking and telecom regulators to work together to allow these mobile platforms to work. As mobile money services continue to expand more proactive policies are required to ensure that the market can continue to grow and serve local consumers. Getting banking and telecom regulators to coordinate can be

easier said than done, and this hurdle has slowed the adoption of mobile money platforms around the world.

5.2.3 Control of money laundering

Mobile money services are currently being deployed in many markets across the world. There is strong evidence that these services can improve access to formal financial services in developing countries.

However, their rise has prompted concerns that mobile money services will be used for money laundering and terrorist financing. Whilst to date there has been no evidence of money laundering and terrorist financing, mobile money systems could be used for these purposes in the future as other formal financial services are targeted today. This therefore, can be avoided by Understanding the mobile money service, Identify the money laundering and terrorist fund vulnerabilities of the particular service and Identifying how criminals could exploit these vulnerabilities.

5.2.4 Proper Legislation to regulate mobile money transactions

This can be witnessed from an article headed **Central Bank governor wants mobile money business regulated**⁶⁸ where the central Bank governor Tumusiime Mutebile conceded that there was need for a law to streamline the bank's supervisory role over mobile money services operated by telecom companies. Currently, mobile money operations – an e-money financial service has no clear law regulating it. Bank of Uganda relies on its 2013 regulations about the business to keep tabs on it. However, these regulations have no legal effect.

5.3 Conclusion

In conclusion therefore the call in this research paper for the enablement of M-banking markets does create an initial case for donor support, for example, capacitating regulators to adopt an enabling approach. However, any such case needs careful exploration and exposition.

⁶⁸ The New Vision dated 26th February 2015.

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