



Title: A comparative analysis of the regulations governing mobile money services in South Africa and Zimbabwe and their impact on sustainable financial inclusion of the poor and vulnerable people

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“Regulation should only exist where the unregulated market will fail to reach the desired outcomes. But historically, governments have perhaps been too ready to embark on regulation without first ascertaining whether the intervention is really necessary. In consequence, it is often difficult to identify the exact reasoning which motivated the intervention”

By Anthony Ogus (2003)

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DEDICATION

To my daughter Alexis Anotida

And

To the poor and vulnerable people who struggle every day to access safe, convenient, affordable and efficient financial services.

ABSTRACT

Mobile money services refer to service where a mobile phone is used to provide banking services with little or no involvement of traditional banks. This service has become a powerful tool for bringing unbanked and underbanked people into the formal financial sector. The roll out and success of the service in question has not been smooth in some countries due to stringent financial regulations. The purpose of this study was to conduct a comparative legal analysis of how financial regulations have enhanced or hindered mobile money services adoption in South Africa and Zimbabwe and the extent to which this has helped to increase financial inclusion. Through a comparative analysis of primary and secondary sources of law, this study observed that South Africa and Zimbabwe have contrasting mobile money services fortunes which can be attributed to the regulatory approaches adopted by the two countries towards the mobile money services. South African adopted a no regulation approach requiring any entity that engages in mobile money services to do so within the confines of existing financial regulations. As a result of this, mobile money services have made little to no contribution to the fight against financial exclusion in South Africa. On the other hand, this research found that Zimbabwe has a thriving mobile money service sector. This can be attributed to the test and learn regulatory approach adopted by the country's regulators.

At the time of writing this thesis, MTN and Vodacom in South Africa are relaunching their mobile money services after discontinuing the services 5 years ago. Rigid financial regulations were fingered as one of the causes of failure of the first attempt. The author hopes in highlighting the regulatory shortfalls of the approach adopted by South Africa in regulating mobile money services, this thesis will help policy makers, regulators and industry players to develop robust and inclusive mobile money regulatory eco-systems which promote financial inclusion as is the case with Zimbabwe.

ABBREVIATIONS AND ACRONYMS

ABC	African Banking Corporation
ABSA	Amalgamated Banks of South Africa
AMCR	Absolute Minimum Capital Requirement
AML	Anti-Money Laundering Laws
ATM	Automated Teller Machine
B2C	Business to Customer
B-BBEE	Broad-Based Black Economic Empowerment
BIS	Bank of International Settlement
BoP	Bottom of the Pyramid
BUPSML	Bank Use Promotion and Suppression of Money Laundering
C2B	Customer to Business
CABS	Central African Building Society
CBD	Central Business District
CBZ	Commercial Bank of Zimbabwe
CDD	Customer Due Diligence
CGAP	Consultative Group for Assisting the Poor
CPA	Consumer Protection Act
CRA	Community Reinvestment Act
CTF	Counter Terrorism Financing
DIS	Deposit Insurance Scheme
DSTV	Digital Satellite Television
DTI	Department of Trade and Industry
ECTA	Electronic Communications and Transactions Act
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
ESAP	Economic Structural Adjustment Programme
E-wallet	Electronic wallet
FATF	Financial Action Task Force
FICA	Financial Intelligence Centre Act
FML	First Mutual Life

FNB	First National Bank
FSLAB	Financial Sector Laws Amendment Bill
FSC	Financial Service Charter
FSRB	FATF-Style Regional Bodies
G-20	Group of 20
GBA	German Bankers Association
GN	Guidance Note
GPFI	Global Partnership for Financial Inclusion
GSMA	Global System for Mobile Communications
ID	Identification Document
IMF	International Monetary Fund
IMTT	Intermediated Money Transfer Tax
IPEC	Insurance and Pensions Commission
M-insurance	Mobile Insurance
MLPC	Money Laundering and Proceeds of Crime Act
MLTFCR	Money Laundering and Terrorist Financing Control Regulations
MMS	Mobile Money Service
MNO	Mobile Network Operators
MTN	Mobile Telephone Network
NEDLAC	National Economic Development and Labour Council
NCR	National Credit Regulation
NDP	National Development Plan
NFIS	National Financial Inclusion Strategy
NLA	Native Land Act
NPSA	National Payment Systems Act
NPSD	National Payment System Division
OECD	Organisation of Economic Cooperation and Development
PA	Prudential Authority
PCH	Payment Clearing House
PASA	Payment Association of South Africa
P2P	Person to Person (peer-to-peer)
PIN	Personal Identification Number
POCA	Prevention of Organised Crime Act
POTRAZ	Postal and Telecommunication Regulatory Authority of Zimbabwe

RBA	Risk-Based Approach
RBZ	Reserve Bank of Zimbabwe
RTGS	Real Time Gross Settlement Dollar
SABS	South African Bureau of Standards
SARB	South Africa Reserve Bank
SAMOS	South African Multiple Options Settlement
SASSA	South Africa Social Security Agency
SI	Statutory Instrument
SIM	Subscriber Identity Module
SMS	Short Message Service
SOV	Store of Value
SSA	Sub Saharan Africa
SVA	Store of Value Account
TSPs	Technical Service Providers
UNDP	United Nations Development Programme
US\$	United States of America Dollar
USA	United States of America
USSD	Unstructured Supplementary Service Data
VPSP	Vodacom Payment Services Pty Ltd
WAP	Wireless Application Protocol
WEF	World Economic Forum
WBG	World Bank Group
Z\$	Zimbabwean dollar
ZAR	South Africa Rand
ZICARP	Zimbabwe Integrated Capital and Risk Programme
ZIPIT	Zimbabwe Instant Payment Interchange Technology

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CHAPTER 1: GENERAL INTRODUCTION

1.1 BACKGROUND

Mobile money services¹ are powerful tools for bringing unbanked and underbanked people into the formal financial sector.² These services fight financial exclusion by offering financial services to poor and vulnerable communities. However, their expansion is restricted by strict statutes and regulations. In South Africa and Zimbabwe, as in many other African countries, high levels of financial exclusion affect poor and vulnerable communities.³ Technological developments in the mobile telecommunications sector brought some hope for the meaningful integration of these groups into the formal economy. Mobile communication technologies revolutionised banking over the last two decades, allowing people in all corners of the world to transact by simply dialling buttons. This made global physical boundaries a thing of the past.⁴ The introduction of mobile money services to deliver basic financial services is a positive move towards improving financial inclusion.⁵ It created opportunities by allowing nearly three billion people worldwide - who otherwise could not have bank accounts - access to financial services.⁶ This significantly reduced the cost of financial transactions and provided an added benefit of convenience.⁷ In countries with underdeveloped financial sectors, mobile phones are

¹ According to the International Monetary Fund, mobile money services are a payment system that makes use of mobile phones as a medium of exchange and storage of value. These services are facilitated by a network of mobile money agents. They are offered to customers by mobile network operators or other entities that partner with mobile network operators independent of the traditional banking network. To use mobile money services, one does not need a bank account. All that one needs is a basic mobile phone.

² Claire Scharwatt, Arunjay Katakam, Jennifer Frydrych, Alix Murphy, & Nika Naghavi. 'GSMA report '2014 State of the Industry Mobile Financial Services for the Unbanked' available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/03/SOTIR_2014.pdf accessed on 27 May 2022. See also, Killian Clifford 'The causes and consequences of mobile money taxation, An examination of mobile money transaction taxes in Sub-Saharan Africa, (2020) GSMA at 8.

³ Sibert Chitokwindo, Stephen Mago (PhD) & Costa Hofisi (PhD) 'Financial inclusion in Zimbabwe: A Contextual Overview' (2014) 5 *Mediterranean Journal of Social Sciences* at 418. See also John P Wentzela, Krishna Sundar Diathab & Venkata Seshachal Sarma Yadavalli An investigation into factors impacting financial exclusion at the bottom of the pyramid in South Africa, available at https://repository.up.ac.za/bitstream/handle/2263/59221/Wentzel_Investigation_2016.pdf?sequence=1 accessed on 29 January 2022.

⁴ Gerald Munyoro, Parker Kutesera, Jacqueline Rumbidzai Tanhara, Phaeton Mazuvawanda & Blessing Mhere Chigunhah 'The significance of mobile money transfer facility to Zimbabwean economy: a case study of Ecocash' (2017) *International Journal of Research in Business Management* at 1.

⁵ Munyoro, G and Matinde, M 'The Significance of Plastic Money to the Hospitality Industry: A Case Study of Rainbow Towers Group of Hotels (RTG)' (2016), *Journal of Economics* at 6; See also Ahmad Hassan Ahmad; Christopher Green & Fei Jiang 'Mobile money, financial inclusion and development: A review with reference to African experience' (2020) 34 *Journal of Economic Surveys* at 753.

⁶ Steven Mago & Sibert Chitokwindo 'The impact of mobile banking on financial inclusion in Zimbabwe. A case study of Masvingo' (2014) 5 *Mediterranean Journal of Social Science* at 221.

⁷ More Chinakidzwa, Pinigas Mbengo and Marcelene Nyatsambo 'Mobile money usage in rural Zimbabwe; Case of Mudzi district' (2015) 6 *International Journal on Scientific and Emergency Research* at 129.

critical for establishing functional financial systems. Across the globe, vulnerable groups, low-income earners and the unemployed lack access to financial services.⁸ The global banking system is structured in a way that makes it difficult for the poor to access banking services. The high cost of establishing and operating brick and motor bank branches make it difficult for providers of financial services to expand their reach to poor, remote and rural areas at an affordable cost.⁹ The lack of access to financial services led to innovations among financial institutions in a variety of ways, including mobile money services.¹⁰

Africans have more access to mobile technology than basic necessities such as clean water, electricity and sanitation.¹¹ Developing countries accounted for 60 percent of all mobile phone subscribers worldwide, making it the first communications technology to have an overwhelmingly greater user base than the developed world. Koech notes that in Sub-Saharan Africa, mobile phones are more popular than bank accounts.¹² Thus, mobile money is increasingly becoming a contributor to social, economic, and environmental transformation. This owes to its universality and widespread use.¹³ Mobile money can reach previously unbanked low-income earners and unemployed people as long as they have access to cell phones.¹⁴ Goldby points out that this system of banking revolutionised the way people manage their finance by giving access to financial services to large populations who do not have access to banks.¹⁵ The 2017 Finmark Report noted that mobile money services have a huge potential to provide a viable alternative to traditional banking.¹⁶ Hence, mobile money services are

⁸ Lydie Louis & Frederic Chartier 'Financial inclusion in South Africa; An integrated framework for financial inclusion of vulnerable communities in South Africa's regulatory system reform' (2017) 1 *Journal of Comparative Urban Law Society* at 170. See also Sibert Chitokwindo, Stephen Mago (PhD) & Costa Hofisi op cit note 3 at 221. See also World Economic Forum 'The mobile financial service report 2011' available at <https://www.weforum.org/reports/mobile-financial-services-development-report-2011> accessed on 27 May 2022.

⁹ Finmark Trust Report 'The role of mobile money in financial inclusion in the SADC region.' (2016) available at (<https://www.finmark.org.za/wp-content/uploads/2016/12/mobile-money-and-financial-inclusion-in-sadc.pdf>) Accessed on 27 May 2022; See also, Aparna Gosavi 'The next frontier of mobile money adoption' (2015) *The International Trade Journal* at 428.

¹⁰ See Chitokwindo, S *et al* op cit note 3 at 221.

¹¹ Bill Maurer, Taylor C. Nelms & Stephen, C. Rea 'Bridges to cash': channelling agency in mobile money' (2013) *The Journal of the Royal Anthropological Institute* at 52. See also Chinakidzwa M *et al* op cit note 7 at 46.

¹² Koech, J 'Bringing banking to the masses, one phone at a time,' (2012) *Economic Letter* at 7.

¹³ See Chinakidzwa M *et al* op cit note 7 at 46

¹⁴ Steven Mago & Sibert Chitokwindo op cite note 6.

¹⁵ Marian Goldby 'Reportiong of suspicious activities by Mobile Money Service providers in accordance with international standards: How does it impact financial inclusion' (2013) 8 *Washington Journal of Law & Arts* at 403.

¹⁶ Finmark Trust 'Research report on mobile money in South Africa' (2016) available at <https://finmark.org.za/system/documents/files/000/000/267/original/Final-Report-on-Mobile-Money-in-South-Africa.pdf?1603094540> accessed on 27 May 2022.

promising to promote financial inclusion.¹⁷

Many African countries adopted mobile money services. Kenya was one of the first countries to embrace mobile money services when Safaricom, a telecommunications company, introduced M-Pesa¹⁸ in 2007.¹⁹ The introduction of M-Pesa drastically reduced financial exclusion and poverty in Kenya.²⁰ M-Pesa and its banking agents led to the financial inclusion of over 86% of adult Kenyans.²¹ Mobile network operators in South Africa and Zimbabwe followed the Kenyan example and introduced mobile money services in 2010 and 2011, respectively.²² However, the Kenyan success story has not been replicated in South Africa.²³ Vodacom and MTN, two of South Africa's leading mobile money providers, terminated their mobile money services within six years of launch.²⁴ However, both mobile network operators recently relaunched mobile money services.²⁵ This contrasts with Zimbabwe, where mobile money services are thriving.²⁶ Research shows that both macro and micro-level factors play fundamental roles in the successful rollout of mobile money services.²⁷ At a macro level, the

¹⁷ See Louis L & Chartier F op cit note 8 at 172.

¹⁸ M-Pesa means mobile money “M” for mobile and “PESA” for money in Swahili.

¹⁹ Ignacio Mas and Dan Radcliffe ‘Mobile payments go viral: M-Pesa in Kenya’ available at https://documents1.worldbank.org/curated/en/304221468001788072/930107812_201408251051724/additional/634310PUB0Yes0061512B09780821387450.pdf accessed on 27 May 2022. For detailed discussion about M-Pesa see Nick Hughes and Susie Lonie ‘M-PESA: Mobile Money for the “Unbanked” Turning Cellphones into 24-Hour Tellers in Kenya’ *Innovations* (2007) *Technology, Governance, Globalization*. See also Joel M. Chigada & Benedikt Hirschfelde ‘Mobile banking in South Africa: A review and directions for future research’ (2017) *South African Journal of Information Management* at 4.

²⁰ Mercy W. Buku & Michael W. Meredith ‘Safaricom and M-Pesa in Kenya Financial inclusion and financial integrity’ (2013) 8 *Washington Journal of Law Technology and Arts* at 376. A CGAP report spearheaded by Stella Dawson found that access to M-PESA increased consumption levels over a six-year period, enabling an estimated 186,000 families, or as many as 2 percent of Kenyan households, to move out of poverty. The impact on female-headed households was more than twice the average measured, the research found.

²¹ Njuguna S. Ndung’u ‘A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study’ available at <https://aercafrica.org/wp-content/uploads/2021/03/AERC-MPesa-Case-Study.pdf> accessed on 28 October 2021.

²² Lance Harris, Mobile banking in South Africa: Can MTN crack the market second time around? available at <https://www.zdnet.com/article/mobile-banking-in-south-africa-can-mtn-crack-the-market-second-time-around/> accessed on 15 October 2018.

²³ See Mercy W. Buku & Michael W. Meredith op cit note 20 at 376.

²⁴ Finmark Trust Research Report op cite note 16. See also TJ Strydom Vodacom pulls plug on mobile money service M-Pesa in South Africa Reuters published on 9 May 2016. See also Lynsey Chutel ‘Vodacom has given up on revolutionary mobile money service M-Pesa, in South Africa’ available at <https://qz.com/africa/679059/vodacom-has-given-up-on-revolutionary-mobile-money-service-m-pesa-in-south-africa/> accessed on 09 May 18.

²⁵ Toby Shapshak ‘MTN “Stubbornly Optimistic” Relaunched Mobile Money Will Work In South Africa, available at <https://www.forbes.com/sites/tobyshapshak/2020/01/31/mtn-stubbornly-optimistic-relaunched-mobile-money-will-work-in-south-africa/?sh=43462127492a> accessed on 27 May 2022. See also Nqobile Dladla MTN bets on mobile money relaunch to reach millions without bank accounts, available at <https://www.iol.co.za/business-report/companies/mtn-bets-on-mobile-money-relaunch-to-reach-millions-without-bank-accounts-41749572> accessed on 11 May 2021.

²⁶ The Herald ‘Zimbabwe’s mobile money services ‘bigger than M-PESA’ (*The Herald* 15 November 2017).

²⁷ See Finmark report op cit note 16. See also Emmanuel Mogaji ‘Consumers’ Financial Vulnerability when accessing Financial Services’ (2020) 3 *Research Agenda Working Papers*.

availability of mobile technology infrastructure, wide access to mobile phones, and the regulatory environment, are important factors for the success of mobile money services.²⁸ The regulatory community is increasingly recognising the significant role that mobile money services can play in promoting financial inclusion. Hence, regulators have been adopting enabling regulatory frameworks to permit their use.²⁹ Kenya, Colombia and the Philippines adopted regulations to pave the way for mobile money services. This thesis aims to provide an insight into factors that affected the adoption of mobile money services in Zimbabwe and South Africa. It pays specific attention to the regulatory environment at a micro-level.

1.2 PROBLEM STATEMENT

Vulnerable groups face many difficulties in accessing financial services.³⁰ This is mostly the case in remote and rural communities in South Africa and Zimbabwe, where formal financial institutions are limited. The people in these communities do not have access to Automated Teller Machines (ATMs) and banks.³¹ They lack of access to financial instruments and means through which they can improve their lives.³² Rural people struggle to survive and to capture the interest of the banking industry to provide them with access to affordable financial services.³³ In general, it is difficult for the poor to access affordable financial services.³⁴ This is one of the obstacles preventing the eradication of poverty.³⁵ The South African government implemented several policies and initiatives to eradicate financial exclusion. The establishment of the Financial Sector Charter is one such initiative.³⁶ Although these measures significantly

²⁸ Finmark report op cit note 16.

²⁹ See Claire Scharwatt et al op cit note 2 at 14.

³⁰ Gloria M. Grandolini 'Five challenges prevent financial access for people in developing countries' available at <https://blogs.worldbank.org/voices/five-challenges-prevent-financial-access-people-developing-countries> accessed on 27 May 2022. See also Mago S & Chitokwindo S op cit note 6 at 1, See also Louis L & Chartier F op cit note 8 at 170.

³¹ Money in South Africa: Banks, ATMs, cards & currency exchange available at <https://wise.com/us/blog/money-and-banks-in-south-africa> accessed on 22 December 2021.

³² Donavan K 'Mobile Money for Financial Inclusion' (2012) *Information and Communications for Development* at 62.

³³ Ibid. See also Gerard van Empel 'Innovations in rural and agriculture finance for food, agriculture, rural banking in Africa: The Rabo bank Approach' available at <http://cdm15738.contentdm.oclc.org/utis/getfile/collection/p15738coll2/id/2607/filename/2608.pdf> accessed on 27 May 2022.

³⁴ World bank website 'Financial Inclusion' available at <https://www.worldbank.org/en/topic/financialinclusion/overview#1> accessed on 27 May 2022. See also World Bank report 'South Africa Focus on Financial Inclusion' available at <https://www.worldbank.org/content/dam/Worldbank/document/Africa/South%20Africa/Report/south-africa-economic-update-2013.05.pdf> accessed 27 May 2022.

³⁵ M Kersop and SF du Toit 'Anti money laundering regulations and the effective use of mobile money in South Africa' (2015) *Potchefstroom Electronic Law Journal* at 1603. see also Donavan K op cit note 32 at 62.

³⁶ The Financial Sector Charter (FSC) is a voluntary agreement by all National Economic Development and Labour Council (NEDLAC) members. It is a multilateral social dialogue forum on social, economic and labour

increased South Africa's financial inclusion level, many poor people do not have access to financial services. Despite the sophisticated levels of banking system, there are gaps in access to financial services.³⁷ Mobile money was viewed as one possible way to solve this problem. The Kenyan experience is living proof of this possibility.

However, mobile money services have not only failed to establish themselves in South Africa but have also failed to reduce the financial exclusion of the poor. This is attributed to several factors, which include South Africa's regulatory system.³⁸ This thesis presents a critical analysis of South Africa's regulatory environment and its impact on the failure of mobile money services, with an aim to outline its effect on financial inclusion. It compares South Africa with Zimbabwe, where mobile money services have been relatively successful. In addition to bringing convenience to millions of Zimbabweans, mobile money platforms have changed the country's financial landscape³⁹ against a backdrop of an economic meltdown that led to the collapse of the banking system. As such, this thesis seeks to outline differences and similarities in the uptake of mobile money services and their impact on financial inclusion in these two countries. It compares regulations that facilitated or hampered the adoption of mobile money services in South Africa and Zimbabwe.

1.3 RESEARCH QUESTION AND HYPOTHESES

The primary research question addressed in this thesis is whether current South African and Zimbabwean regulatory frameworks, as laid out in statutory enactments and regulations, provide for mobile network-operated mobile money services and whether this has any impact on the fight against financial exclusion.

The thesis is premised on the following hypotheses:

- (a) The expansion of access to financial services to impoverished Africans is hindered by rigid statutory regulations which do not embrace technology.

policy. Its members promote social and economic integration and access to the financial services sector. It commits its participants to "actively promoting a transformed, vibrant, and globally competitive financial sector that reflects the demographics of South Africa and contributes to the establishment of an equitable society by effectively providing accessible financial services to black people and by directing investment into targeted sectors of the economy."

³⁷ Rayghana Abrahams 'Financial inclusion in South Africa: a review of the literature' available at http://www.saaa.org.za/Downloads/Publications/MAF003%20Financial%20inclusion%20in%20SA_A%20review%20of%20the%20literature.pdf accessed on 27 May 2022.

³⁸ M Kersop and SF du Toit op cit note 35 at 1644.

³⁹ Alex Bara 'Mobile Money for Financial inclusion; Policy and regulatory perspective in Zimbabwe' (2013) *African Journal of Science, Technology, Innovation and Development* at 349.

- (b) Mobile money services are not a threat to financial integrity but are tools for financial inclusion.
- (c) The adoption of flexible regulatory approaches to mobile money services will significantly reduce financial exclusion.

This study is motivated by the need to understand how regulation affected the adoption of mobile money services in South Africa and Zimbabwe. It also seeks to evaluate the impact of regulation on financial inclusion in both countries. Therefore, the study has three main objectives:

- (a) To identify the rules and regulations governing mobile money services in South Africa and Zimbabwe.
- (b) To critically evaluate and analyse the effectiveness of mobile money and financial regulation in supporting financial inclusion in South Africa and Zimbabwe.
- (c) To examine the extent to which mobile money regulations militate against financial inclusion in South Africa and Zimbabwe.

1.4 PURPOSE AND SIGNIFICANCE OF THE STUDY

This thesis examines mobile money services and the potential of their regulation to promote financial inclusion in South Africa and Zimbabwe. For mobile money to achieve its full potential as a means of promoting financial inclusion, enabling policies and regulations are necessary for the creation of favourable conditions that can scale up the use of mobile money systems. Current banking, insurance, payment systems, consumer protection and Anti-Money Laundering (AML) regulatory regimes, particularly in South Africa, entrench and legitimate the limitation of players in banking and finance to promote financial integrity.⁴⁰ The entrenchment of these limitations created a regulatory environment that does not adequately promote financial inclusion. Accordingly, researchers have noted that these laws have become obstacles to the adoption and promotion of mobile money services and that they indirectly lead to financial exclusion.⁴¹ While other factors militate the adoption of mobile money services and the promotion of financial inclusion, an investigation into the regulatory environment is essential because the law has an unlocking effect on other factors. Insight into the enabling

⁴⁰ World Bank Policy paper 'Economic update, Focus on financial inclusion (issue 4)' available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16563/781620WP0P13140315B00PUBLIC000saeu4.pdf?sequence=1&isAllowed=y> accessed on 27 May 2022. The SARB Position Paper on e-money indicates that e-money is only to be issued by licenced banks.

⁴¹ Leon Joseph Perlman *Legal and regulatory aspects of mobile financial services* (LLM thesis University of Pretoria 2012). See also See M Kersop and SF du Toit op cit note 35.

elements of policy and regulation, particularly on what promotes and what hinders mobile money adoption and usage, can help policy makers, regulators and industry players to develop robust and inclusive mobile money systems.

This thesis is also motivated by the dearth of information around mobile money services in Southern African countries. Literature around this service is mainly limited to East African countries, particularly Kenya.⁴² Researchers have paid little attention to countries that have poor uptake of mobile money services. Hence, there is limited research on mobile money services in countries like South Africa. Moreover, the limited literature and data around the banking practices of Sub-Saharan African countries are largely confined to economic and financial spheres. Very little work has been done on the legal aspect of mobile money services. This creates a gap in the literature and gives credence to the misconception that mobile money is solely a financial issue.

Although financial inclusion is one of the primary benefits of mobile money initiatives, the current regulatory framework is not inclined towards it.⁴³ In part, this is due to the difficulty of balancing financial integrity with the promotion of financial inclusion through mobile money. It is important to note that mobile money services have inherent financial integrity risks such as money laundering and the financing of terrorism.⁴⁴ Several concerns have been raised about the possibility of the abuse of mobile money services for illegal purposes.⁴⁵ Mobile money critics often argue that it cannot deliver on its promise of financial inclusion without compromising financial integrity.⁴⁶ This thesis demonstrates that regulatory environments that are conducive to competition and open markets to non-bank players while maintaining stability and protecting consumer interests are effective in promoting financial inclusion. Consequently, the inclusion of appropriate AML/CFT provisions, which ensure the financial integrity of

⁴² Maelle Della Peruta 'Adoption of mobile money and financial inclusion. A macroeconomics approach through cluster analysis' (2018) 27 *Economics of innovation and new technology* at 155. See also Munacinga Simatele 'E-payment instruments and welfare: The case of Zimbabwe' (2021) *The Journal for Transdisciplinary Research in Southern Africa* at 2.

⁴³ Alex Bara op cit note 39 at 349.

⁴⁴ Pierre-Laurent Chatain, Raúl Hernández-Coss, Kamil Borowik & Andrew Zerzan 'Integrity in Mobile Phone Financial Services Measures for Mitigating Risks from Money Laundering and Terrorist Financing' *World Bank Working Paper No. 146* (2008).

⁴⁵ Pierre-Laurent Chatain, Andrew Zerzan, Wameek Noor, Najah Dannaoui, and Louis de Koker (2011) *Assessment of Potential Money-Laundering and Combating the Financing of Terrorism Risks and Their Potential Mitigation Techniques* at pg 35.

⁴⁶ Kersop M and Du Toit FS op cit note 35 at 1650. See also World Bank report 'Payment aspects of financial inclusion in the fintech era' available at <https://www.bis.org/cpmi/publ/d191.htm> accessed on 27 May 2022.

transactions, is critical to the success of mobile money services.⁴⁷ Therefore, it is imperative to examine the risks of mobile money services to financial integrity and how money laundering rules impact financial inclusion when it comes to mobile money services.

Certainty of the law is a fundamental requirement for a stable and secure banking system.⁴⁸ In South Africa and Zimbabwe, mobile money industry is regulated by a variety of statutes, which include payment system laws, consumer protection laws, banking laws, and anti-money laundering legislation. Therefore, there is a need to investigate how the adoption of mobile money services has been affected by the lack of mobile money-centred regulation, which has been identified as one of the major barriers to effective mobile money implementation. The expansion of financial services to poor and disadvantaged communities is fundamental to the fight against poverty and inequality. Poverty goes beyond just an absence of money. Lack of access to instruments and means that would enable the poor to improve their lives is one component of it. Most poor people lack access to substantial financial resources.⁴⁹ There are many barriers in the banking system that make it difficult for the poor to access financial services.⁵⁰

The introduction of mobile money services was seen as a viable alternative to traditional banking and as a useful way to address this problem.⁵¹ Although the rollout of mobile money services has been successful in other countries, it has struggled to gain a foothold in South Africa. This is because the regulatory environment in South Africa is a barrier to a smooth rollout of mobile money services. Accordingly, this thesis seeks to contribute to a better understanding of current mobile money services regulatory regimes in South Africa and Zimbabwe and their impact on financial inclusion. Since many actors blame the South African government for the failure of mobile money services in the country, this thesis seeks to show that this is only a part of the explanation.

⁴⁷ Finmark Trust 'Report on SADC guideline on Mobile money' available at <https://finmark.org.za/system/documents/files/000/000/158/original/SADC-Mobile-Money-Guidelines-2020.pdf?1597304334> accessed on 27 May 2022.

⁴⁸ South African Reserve Bank 'The National Payment System Framework and Strategy Vision 2025' available at <http://www.pasa.org.za/docs/default-source/default-document-library/the-national-payment-system-framework-and-strategy-vision-2025.pdf?sfvrsn=4> accessed on 14 March 2018 at 1.

⁴⁹ M. Mostak Ahameda, & Sushanta K. Mallick 'Is financial inclusion good for stability? International evidence' (2017) *Journal of Economic Behaviour & Organization* at 1. See also Gerard van Empel op cite note 33.

⁵⁰ World Economic Forum report '6 challenges to financial inclusion in South Africa' available at <https://www.weforum.org/agenda/2017/04/financial-inclusion-south-africa/> accessed on 27 May 2022.

⁵¹ Finmark Trust report op cite note 9 at 11.

1.4.1 The Regulation of Mobile Money Services

The term mobile money service is broad. It encompasses all forms of financial transactions that can be carried out using mobile phones. Mobile money is a form of electronic currency, or electronic money, whose value is either stored on a mobile phone or linked to a mobile phone account that clients receive when they register for the service.⁵² Like bank accounts, mobile money accounts allow users to deposit, store, transfer and withdraw funds.⁵³ However, mobile money services should not be confused with mobile banking, which allows bank customers to manage their bank accounts using their mobile devices. Mobile money services include all sorts of transactions that can be conducted by people using their cell phones. These services do not require one to have a bank account.⁵⁴ Mobile money services are designed to solve the problems of gaining entry to the banking system and the lack of access to banking infrastructure.⁵⁵ Various service providers can offer mobile money services, according to Kersop.⁵⁶ These include banks, mobile network operators, agents, insurers and electronic money issuers.⁵⁷

There are varying mobile money services models offered by these providers. These include the operator-centric model, the bank-centric model and the collaboration model.⁵⁸ In a bank-centric model, banks offer mobile financial services to clients.⁵⁹ Generally, in a bank-centric model, the product or service is driven primarily by the bank. Marketing, branding, and customer relationships are typically the responsibility of banks.⁶⁰ Under this model, clients become

⁵² Tapera Julius 'An analysis of the impact of mobile phone-based products on the provision of financial services to the individual Zimbabwean customer' (2011) 2 *International Journal of Economics, Commerce and Management* at 8. See also Kersop M and Du Toit FS op cit note 35. See also Perlman L J op cit note 41. See also Lorna Katusiime 'Mobile Money Use: The Impact of Macroeconomic Policy and Regulation' (2021) *Economies* at 2.

⁵³ See Ndung'u.N op cit note 21.

⁵⁴ ACP report 'Mobile money services: "A bank in your pocket": An overview of trends and opportunities' available at <https://publications.iom.int/books/mobile-money-services-bank-your-pocket> accessed on 27 May 2022.

⁵⁵ Peruta M D op cit note 42 at 134.

⁵⁶ Kersop M and Du Toit op cit note 35 at 1613.

⁵⁷ Ibid.

⁵⁸ Cynthia Merritt 'Mobile money transfer services (the next phase in the evolution of Person-to-Person payment)' (2011) 2 *Journal of Payments Strategy & Systems* at 150. See also Rajiv Lal and Ishan Sachdev Mobile Money Services - design and development for financial inclusion (2015) available at https://www.hbs.edu/faculty/Publication%20Files/15-083_e7db671b-12b2-47e7-9692-31808ee92bf1.pdf accessed on 27 May 2022. See also M Kersop and SF du Toit op cit note 35 at 1614.

⁵⁹ Guideline Note Mobile Financial Services: Basic Terminology available at <https://www.afi-global.org/sites/default/files/publications/MFSWG%20Guideline%20Note%20on%20Terminology.pdf> accessed on 29 January 2022.

⁶⁰ Guidelines for mobile money services available at http://www.bsl.gov.sl/pdf/Final_Guideline_for_Mobile_Money_Services_3.pdf accessed on 15 February 2022.

account holders of the banks that offer them mobile financial services.⁶¹ The function of mobile network operators under this model is the mere provision of mobile technology, which facilitates the exchange of transactional messages. In an operator-centric model, transactions occur entirely within the mobile network operator's network and do not require subscribers to have bank accounts.⁶² Mobile network operators act autonomously in providing mobile money services. This is often done by means of mobile wallets, which operate separately from the clients' mobile accounts.⁶³ The collaboration model involves collaboration among banks, mobile network operators and third parties connecting banks and mobile network operators. All these actors will be discussed in the following chapter.⁶⁴

This thesis mainly focuses on the operator-centric model, which is led by mobile network operators. The delivery of mobile money services in an operator-centric model relies on technological platforms and mobile phone application standards such as Short Message Service (SMS) and wireless application protocol (WAP).⁶⁵ Mobile money services that are operated by mobile network operators offer a variety of services which include peer-to-peer (P2P) transfers, remittances, mobile payments, salary disbursements, retail payments and money storage.⁶⁶ P2P transfers allow unbanked people to send or receive small sums of money to and from other mobile phone users.⁶⁷ Mobile payments, on the other hand, allow unbanked people to purchase and sell goods and services at merchant shops using their mobile wallets through their mobile phones.⁶⁸ They can equally pay utility bills using their mobile phones.⁶⁹ In practical terms, these services are accessible from electronic accounts linked to SIM cards in mobile phones. These electronic accounts are known as mobile wallets. They are protected by personal identification numbers. Accounts are debited and credited as soon as transactions take place.⁷⁰ Porteous describes this form of mobile money service as a transformational service because it

⁶¹ Godfried B Adaba and Daniel Azerikaha 'The development of mobile money service. An exploratory actor – network study' (2017) 23 *Information technology for development* at 270.

⁶² Laetitia Chaix and Dominique Torre 'Four models for mobile payments' available at <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.460.10> accessed on 27 May 2022. See also Kersop M and Du Toit FS op cit note 35 at 1614.

⁶³ Kersop M and Du Toit SF op cit note 35 at 1614.

⁶⁴ Ibid, See also Guideline Note Mobile Financial Services: Basic Terminology op cite note 58.

⁶⁵ Chinakidzwa M et al op cit note 7 at 10.

⁶⁶ See Lal R & Sachdev I op cit note 58.

⁶⁷ ACP Report op cite note 54 at 7.

⁶⁸ Ibid.

⁶⁹ ACP Report op cite note 54. See also UNCTAD report 'Mobile money for business development in the East Africa Community (2012) available at http://unctad.org/en/PublicationsLibrary/dtlstict2012d2_en.pdf at 13 accessed on 27 May 2022.

⁷⁰ GSMA Report 'Mobile money transaction fees and utility bill payments in emerging markets' available at <https://www.gsma.com/mobilefordevelopment/programme/m4dutilities/mobile-money-transaction-fees-and-utility-bill-payments-in-emerging-markets/> accessed on 27 May 2022.

allows people to obtain financial services such as credit and insurance through cell phones without the need for bank accounts.⁷¹

A conducive regulatory environment is critical for the growth of mobile money services as it affects their design and viability.⁷² Conducive regulation protects investors, consumers and governments. Actors must ensure a competitive environment for the development of efficient, quality, and diverse financial products.⁷³ In this thesis, the regulatory structure refers to the regulatory regime established by regulators and central banks related to mobile money.⁷⁴ Mobile money is governed by a variety of regulations, the most common of which are financial and telecommunication regulations.⁷⁵ It traverses previously distinct and independent areas of regulation and often involves multiple ministries and government agents, resulting in complexity.⁷⁶ This creates conditions for regulator bias, which is manifested in regulations that keep new financial transactions within the institutions (banks) over which regulators have oversight. This presents challenges to companies that need to enter this area of business. Financial regulation must be efficient and relevant for dynamic and sustainable financial services.⁷⁷ Lal and Sachdev identify three main approaches to mobile money regulation.⁷⁸ These are prescriptive, test and learn, and no-specific regulation.⁷⁹ The no-specific regulation approach applies in situations where there is no specific new regulation, and any company which wants to venture into mobile money services needs to find a way to operate within the existing law.⁸⁰ Under the prescriptive approach, regulators adopt specific rules that specify how and by whom mobile money services may be operated. The test and learn approach provides an initial framework for mobile money operators to experiment while waiting for more specific

⁷¹ David Porteous 'Just how transformational is m-banking' available at <https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-paper-just-how-transformational-is-m-banking-feb-2007.pdf> accessed on 27 May 2022.

⁷² Janine Aron 'Leapfrogging': a Survey of the Nature and Economic Implications of Mobile Money' available at <https://silo.tips/download/leapfrogging-a-survey-of-the-nature-and-economic-implications-of-mobile-money> accessed on 27 May 2022.

⁷³ Mazer R and Rowan P 'Competition in mobile financial services: Lessons from Kenya and Tanzania' (2016) *The African Journal of Information and Communication* at 40.

⁷⁴ Madise Sunduzwayo *The Regulation of Mobile Money Law and Practice in Sub-Saharan Africa* (2019) 5. See also See Lal R & Sachdev I op cit note 58 at 13.

⁷⁵ See Lal R & Sachdev I op cit note 58 at 5.

⁷⁶ UNCTAD report op cit note 69 at 13.

⁷⁷ See Munacinga S op cit note 42 at 1.

⁷⁸ See Lal R & Sachdev I op cit note 58 at 13.

⁷⁹ Ibid.

⁸⁰ Ibid.

regulations to be developed.⁸¹ Regulators will be better positioned to issue more detailed and effective regulations after a given time of observation.

South Africa adopted the no-specific regulation approach. Hence, there is no specific regulation governing mobile money services in South Africa. A mixture of legislation regulates the industry. Laws governing credit, banking, payments, telecommunications and consumer protection regulate mobile money services. This regulatory approach created a challenging environment for mobile network operators who want to enter the mobile money market. South Africa has rigid Anti-Money Laundering Laws (AML). The Prevention of Organised Crime Act (POCA) and the Financial Intelligence Centre Act (FICA) impose Customer Due Diligence (CDD) requirements that hamper the development and acceptance of mobile money services. The Banks Act, Consumer Protection Act (CPA), Competition Act and the Electronic Communications and Transactions Act (ECTA) also impact mobile network operators who want to venture into mobile money services. The same can also be said of the National Payment Systems Act (NPS Act), which gives the South African Reserve Bank wide regulatory powers to regulate institutions that conduct the business of a bank in South Africa. It is equally important to note that mobile money services are also offering both credit and insurance. Thus, the National Credit Regulation (NCR) and insurance regulation have a bearing on the rollout of mobile money services. This thesis provides a critical analysis of how these pieces of legislation impact mobile money services in South Africa.

In Zimbabwe, on the other hand, the mobile money industry is thriving. In 2016, the Reserve Bank of Zimbabwe (RBZ) revealed that mobile money payments accounted for 81.2% of all electronic payments made in the country.⁸² All mobile network operators offer mobile money services. Econet's mobile money service is called Ecocash. NetOne offers OneMoney, while Telecel offers Telecash. All mobile network operators provide their clients with credit, insurance and banking services. This phenomenal growth of mobile payment services is paradoxical since Zimbabwe has been faulted for lagging in technological developments, as

⁸¹ Michael Tarazi 'Branchless Banking: The Test and See Approach' available at <https://www.cgap.org/blog/branchless-banking-test-and-see-approach> accessed on 27 May 2022. See also Max Mattern & Claudia McKay 'Building inclusive payment ecosystem in Tanzania and Ghana' available at <https://www.cgap.org/research/publication/building-inclusive-payment-ecosystems-tanzania-and-ghana> accessed on 27 May 2022.

⁸² The Reserve Bank of Zimbabwe 'Monetary policy statement 2017' available at <https://www.rbz.co.zw/documents/mps/mpsjan2017.pdf> accessed on 27 May 2022.

evidenced by the limited number of patents it has filed.⁸³ The success of mobile money services is attributed to the country's regulatory approach. The regulation of mobile money services in Zimbabwe is based on a test and learn approach. It is important to note that Zimbabwe's financial regulation resembles that of South Africa. Its banking, payment systems, AML/CFT and credit regulations equally limit the participation of mobile network operators in the financial sector. Despite operating in a somewhat similar regulatory environment, Zimbabwe's mobile money services are thriving when compared to South Africa. This thesis compares and analyses the regulations of the two countries and illustrates how they have contributed to either success or failure of mobile money services.

1.5 RESEARCH METHODOLOGY

The primary method of research used in the preparation of this thesis is doctrinal legal research. This method of research relies extensively on the use of legislation and judicial precedents to explain the law.⁸⁴ This method also makes use of secondary sources such as journal articles, policy documents and other written commentaries on the law.⁸⁵ Pradeep notes that this research method "proposes identical solutions to most of the problems connected to law with minimum expenditure and time".⁸⁶ This is because a doctrinal legal researcher merely has to find and analyse well-established doctrines, policies and court decisions through scientific and efficient methodology.⁸⁷ In addition, doctrinal legal research allows scholars to undertake comparative studies with broader abstractions over the legal problems in question.⁸⁸

This thesis is a two-stage enquiry. The first stage entails the identification and location of relevant documents to determine the statement of law, found in legislation and court judgments, that affect mobile money services.⁸⁹ The second stage involves the synthesis and analysis of the law. Techniques that are used at this stage include deductive logic, inductive reasoning and analogy. This entails that the position of both Zimbabwe and South Africa on mobile money services and financial inclusion is gathered from analysing statutes, legal commentaries and

⁸³ Bonnie Batsirai Mtengwa, Agripah Kandiero & Stanislas Bigirimana 'Drivers of Mobile Money Services Development in Zimbabwe: The Case of EcoCash' (2021) 7 *International Journal of E-Business Research* at 43.

⁸⁴ Mike Mc Canville and Wing Hang Chui *Research methods for law* (2007) at 4.

⁸⁵ *Ibid* at 18.

⁸⁶ Pradeep M. D. 'Legal Research- Descriptive Analysis on Doctrinal Methodology' (2019) 4 *International Journal of Management, Technology, and Social* at 97.

⁸⁷ *Ibid*

⁸⁸ *Ibid*.

⁸⁹ Terry Hutchinson & Nigel Duncan 'Defining and describing what we do: Doctrinal legal research' (2012) *Deakin Law Review* at 110.

court decisions. Policy documents give insights into difficulties faced by policymakers in regulating mobile money services. They also show the regulatory challenges faced by companies that invest in mobile money services.

Comparative legal research⁹⁰ is also employed in this thesis. Comparative analysis reveals similarities and differences.⁹¹ This method of research compares and contrasts legal structures, jurisprudence and outcomes of different legal regimes⁹² – in this case, South Africa and Zimbabwe. The rationale behind employing a comparative approach is that comparing domestic laws in one or more countries is an integral part of doctrinal legal research.⁹³ Zweigert and Kötz observe that legal science is not limited to the technique of interpretation of texts, rules and standards but also the discovery of models for preventing and resolving social problems.⁹⁴ Thus, comparative legal research provides a richer range of model solutions than legal science devoted to a single nation.⁹⁵ De Cruz points out that the function of comparative jurisprudence is to facilitate practical improvements of the law.⁹⁶ It provides access to legal knowledge which can be used for law reform.⁹⁷ It can be used to provide a comprehensive and in-depth knowledge of legal systems and their interaction in society. Thus, the hypothesis outlined above is tested through a comparative study.

Comparability among legal systems depends on whether they share common elements that make legal phenomena comparable. Hyland argues that considering families of law remains the dominant method of classifying diverse systems for the purpose of comparison.⁹⁸ In light of this, it is worth noting that South Africa and Zimbabwe share a similar legal system⁹⁹ that

⁹⁰ There is no one definition of what is comparative law or comparative method are. However, Esin Orucu define comparative law as empirical descriptive research design using comparison as technique to cognise. Marie Luce defines it as the application of comparative technique to the field of law.

⁹¹ Jaakko Husa 'Methodology of comparative law today: From paradoxes to flexibility?' (2006) 57 *Revue Internationale de Droit Comparé* at 1095.

⁹² James Gordley 'Comparative legal research: Its function in the development of harmonized law' (1995) 43 *The American Journal of Comparative Law* at 555.

⁹³ Mark Van Hoecke Methodology of Comparative Legal Research available at <https://biblio.ugent.be/publication/7145504> accessed on 5 June 2019.

⁹⁴ K Zweigert & H Kötz *An introduction to comparative law* (1998) at 15.

⁹⁵ *Ibid.*

⁹⁶ Peter de Cruz *A modern approach to comparative law* (1993) at 8.

⁹⁷ Esin Örüçü 'Critical Comparative Law: Considering Paradoxes for Legal Systems in Transition' (2000) 4 *Netherlands Comparative Law Association* at 44.

⁹⁸ Hyland R 'Comparative law' in Petterson (ed) *Blackwells's Companion of Law and Legal theory*.

⁹⁹ A legal system is the sum of the laws of a given society and includes the way it is made, how it is enforced, and the institution involved in its making and enforcement. For more information about legal system. See also Hahlo, H. R. and Kahn, Ellison *The South African Legal System and Its Background* (1968) Chapter 3. See also Lovemore Madhuku *Introduction to Zimbabwean Law* (2010) Chapter 1.

resides in the same family of law. They both have a mixed/plural legal system.¹⁰⁰ Both legal systems are amalgams of civil¹⁰¹ and common law.¹⁰² They are predominantly English procedural and commercial law, while private law is substantively Roman-Dutch law.¹⁰³ In addition, these two Southern African countries' legal systems provide an overreaching doctrine of supremacy of the constitution and entrenchment of the Bill of Rights. Both countries' constitutions provide for constitutional supremacy and say that any laws, practices, customs or conduct that are inconsistent with their constitutions are invalid to the extent of their inconsistency.¹⁰⁴ Another striking legal similarity between the two countries' legal systems is that they all recognise customary law.¹⁰⁵ The constitutions of these countries enjoin the courts to apply customary law when it is applicable subject to the constitutions or any other legislation that specifically deals with customary law.

Besides sharing the same legal family, South Africa and Zimbabwe have strong and well-defined financial inclusion policies. The former's financial inclusion policy is manifested in the government's National Development Plan (NDP),¹⁰⁶ while the latter's policy is documented in the Zimbabwe National Financial Inclusion Strategy 2016-2020 (NFIS).¹⁰⁷ The NDP

¹⁰⁰ According to Merry, legal pluralism is generally defined as a situation in which two or more legal systems coexist in the same social field. According to Griffiths, legal pluralism is the coexistence of different systems of rules and laws within a social group; the rules and laws found here do not belong to a single 'system' but, rather, are a constellation of overlapping rules systems

¹⁰¹ Civil law refers to codified laws. Countries with civil law systems have comprehensive, continuously updated legal codes that specify the types of matters that can be brought before a court, the applicable procedures, and the punishments that are appropriate for each infraction. Such codes distinguish between different categories of law substantive law establishes which acts are subject to criminal or civil prosecution, procedural law establishes how to determine whether a particular action constitutes a criminal act, and penal law establishes the appropriate penalty. In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code.

¹⁰² Common law is generally uncoded law. Under this legal system, there is no comprehensive compilation of legal rules and statutes. It is largely based on precedent, meaning the judicial decisions that have already been made in similar cases. These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law known as yearbooks and reports.

¹⁰³ Roman Dutch law is the fusion of Roman law and medieval Dutch law. The fusion occurred in Holland over a considerable period of time and was completed by the end of the sixteenth century. For more information about Roman Dutch Law see Lee, R. W (Robert Warden), 1868-1958 *An introduction to Roman-Dutch law* (1953) see also Sachs Albie The future of Roman Dutch law in a non-racial, democratic South Africa: some preliminary observation (1989).

¹⁰⁴ Constitution of the Republic of South Africa, 1996 section 2, Constitution of Zimbabwe 2013 section 2 see also *S v Makwanyane and Another* 1995 (3) SA 391 at para 8 see also *Dawood and Another v Minister of Home Affairs and Others* 2000 (3) SA 936 para 59.

¹⁰⁵ Constitution of the Republic of South Africa supra note 103 section 36(1) Constitution of Zimbabwe supra note 103 Section 46(1). See also *Bhe and Others v Khayelitsha Magistrate and Others* 2005 (1) SA 580 (CC). For further discussion on the Constitution and recognition of customary law, see Evadn Grant 'Human rights, cultural diversity and customary law in South Africa' (2000) 50 *Journal of African Law*.

¹⁰⁶ National Development Plan 2030 available at <https://www.gov.za/issues/national-development-plan-2030> accessed on 24 August 2018.

¹⁰⁷ Zimbabwe National Financial Inclusion Strategy 2016-2020 available at

acknowledges financial inclusion as one of the important tools for realising its goals.¹⁰⁸ It aims to broaden access to banking services to poorer people and lowering costs through a combination of competitive pressures and reducing other infrastructure costs. It envisages that the proportion of the banked population that has access to transactional financial services and saving facilities will increase from 63% to about 90% by 2030.¹⁰⁹ Similarly, Zimbabwe's NFIS seeks to enable low income and disadvantaged segments of society to access affordable financial services. It seeks to increase overall levels of access to formal financial services to the Zimbabwean population from 69% to 90% by 2020.¹¹⁰

In addition, South Africa has a lot in common with Zimbabwe as far as mobile telecommunications are concerned. Both countries have higher rates of mobile penetration. A 2017 Finmark report says that Zimbabwe has a mobile telecommunications penetration rate of 58%, while South Africa has a 68% penetration rate.¹¹¹ Both countries launched their mobile money services around the same time. Vodacom introduced M-Pesa in 2010,¹¹² while Econet introduced EcoCash in 2011. Both countries have similar levels of financial exclusion among the poor. The 2015 Finscope survey reported that financial exclusion is 20% in rural South Africa.¹¹³ The 2014 survey on Zimbabwe revealed that the level of financial exclusion in rural areas is 28%.¹¹⁴ In both countries, financial exclusion rates in poor and remote areas are higher than at the national levels. This shows that there is a problem of financial exclusion of poor constituencies in both countries.

Both Zimbabwe and South Africa are members of the Southern African Development Community (SADC).¹¹⁵ As part of its efforts to increase financial inclusion among its member

<https://www.mfw4a.org/publication/zimbabwe-national-financial-inclusion-strategy-2016-2020> accessed on 27 May 2022.

¹⁰⁸ World Bank report 'Achieving effective financial inclusion in South Africa: a payments perspective' available at

<http://www.treasury.gov.za/publications/other/Achieving%20Effective%20Financial%20Inclusion%20in%20South%20Africa.pdf> accessed on 10 April 2022.

¹⁰⁹ Ibid.

¹¹⁰ See Zimbabwe National Financial Inclusion Strategy 2016-2020 op cit note 107.

¹¹¹ GSMA report 'Mobile economy sub-Saharan report 2017' available at <https://www.gsmaintelligence.com/research/?file=7bf3592e6d750144e58d9dcfac6adfab&download> accessed on 27 May 2022.

¹¹² See Chinakidzwa M et al op cit note 7 at 228.

¹¹³ Finmark trust Finscope survey South Africa 2015 available at http://www.finmark.org.za/wp-content/uploads/2016/03/Broch_FinScopeSA2015_Consumersurvey_FNL.pdf accessed on 10 August 2018.

¹¹⁴ Finmark Trust report 'Finscope survey Zimbabwe 2014' available at <https://www.rbz.co.zw/index.php/research/research/working-papers/101-finscope-consumer-survey-zimbabwe-2014> accessed on 10 February 2022.

¹¹⁵ The Southern African Development Community (SADC) is a Regional Economic Community comprising 16 Member States: Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar,

states, the regional block adopted mobile money guidelines to assist them in harmonising their legal frameworks for mobile money services.¹¹⁶ The guidelines set out the principles that central banks should consider when developing and amending country-specific mobile money guidelines.¹¹⁷

1.6 OUTLINE OF THE THESIS

This thesis is made up of six chapters, which cover the following issues:

Chapter 1 introduces the thesis and discusses mobile money services, financial inclusion, and financial regulations in general. The chapter also provides a brief outline of mobile money regulation in South Africa and Zimbabwe. It describes the purpose of the study, identifies the problem statement, presents the hypotheses and outlines the research methodology.

Chapter 2 provides an in-depth description of mobile money services. Different definitions of mobile money and various models of mobile money services are examined in chapter 2. The focus of the chapter is on the history and functions of mobile money services. Furthermore, the chapter discusses the benefits that derive from using mobile money services. Chapter 3 focuses on financial inclusion. It examines the concept of inclusion in the financial sector and highlights the importance of financial inclusion in combating poverty. The chapter dissects the two countries' levels of financial inclusion and assesses the state and patterns of financial inclusion in remote and poor areas of the two jurisdictions.

Chapter 4 contains the thrust of the thesis and directly addresses the research question. It outlines and explains South African and Zimbabwean mobile money regulatory frameworks. It assesses their enhancing and inhibitory effects on mobile money services. The chapter discusses how mobile money regulatory ecosystems contribute to the fight against financial inclusion. In this context, the chapter examines AML/CFT, credit, electronic payment, banking, telecommunications, and tax regulations and how the regulatory rationale behind them affect mobile money services and financial inclusion. It provides the comparative aspect of the thesis. The chapter compares the mobile money regulatory frameworks of the two countries under

Malawi, Tanzania, Zambia, Namibia, Seychelles, South Africa, Mauritius, Mozambique, and Zimbabwe. Established in 1992, SADC is committed to Regional Integration and poverty eradication within Southern Africa through economic development and ensuring peace and security.

¹¹⁶ See Finmark trust report (2019) 'SADC Mobile Money Guidelines' op cit not 47

¹¹⁷ Ibid.

consideration to illustrate which country's regulations supports mobile money initiatives and financial inclusion.

Chapter 5 continues the analysis from chapter 4 by discussing the impact of the regulations on mobile money services in South Africa and Zimbabwe. It also illustrates the nexus between mobile money services and financial inclusion by demonstrating that mobile money services have increased financial inclusion in Zimbabwe and that their absence in South Africa has a negative impact on the fight against financial exclusion. The challenges of financial risks that are often associated with mobile money services are also discussed in chapter 5 in light of how South Africa and Zimbabwe have mitigated the risks associated with mobile money services. Chapter 6 provides a summary of the findings and proffers recommendations for South Africa and Zimbabwe on how to navigate regulations that militate against the successful adoption of mobile money services and that hinder financial inclusion.

CHAPTER 2: OVERVIEW OF MOBILE MONEY SERVICES

2.1 INTRODUCTION

Modern banking is premised on the need to improve the efficiency, reliability and security of transactions.¹¹⁸ It was unimaginable until recently that mobile phones could be used as powerful mechanisms to achieve this goal. Due to technological advancements, mobile phones have become some of the most important devices used in most banking transactions. This is because they provide convenient and cost-effective ways of transacting.¹¹⁹ There is no denying that this is attributed to their ubiquitous real-time communication that permits the authorisation and settlement of transactions in real-time.¹²⁰ In the developing world, mobile banking technology spread rapidly, leapfrogging the stages that developed nations passed by addressing the weak infrastructure problems and the high costs of conventional banking.¹²¹

Technological advances provide unprecedented opportunities for financial development and access. It has become a common tool for conducting financial transactions.¹²² Gutierrez and Singh point out that the most significant areas of financial innovation of the past few decades has been the use of mobile phones to conduct financial and banking transactions.¹²³ It has revolutionised banking. As such, mobile money services have tremendously contributed towards broadening access to financial services to poor and vulnerable groups, enabling most developing economies to leapfrog some of the financial stages which developed economies

¹¹⁸ See Perlman L J op cit note 41 at 46, See also Mas and Kumar 'Banking on mobile Why, and how, for who' (2008) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1655282 accessed on 1 June 2022, See also OECD report (2020) 'Digital Disruption in Banking and its Impact on Competition' available at <https://www.oecd.org/competition/digital-disruption-in-banking-and-its-impact-on-competition-2020.pdf> accessed on 31 May 2022.

¹¹⁹ Eva Gutierrez & Sandeep Singh 'What Regulatory Frameworks Are More Conducive to Mobile Banking' Policy Research Working Paper 6652 available at <http://documents.worldbank.org/curated/en/208411468151504563/pdf/WPS6652.pdf> accessed on 1 June 2022.

¹²⁰ Perlman L J op cit note 41 at 46. See also Alice S. Etim 'Mobile banking and mobile money adoption for financial inclusion' (2014) 9 *Research in Business and Economics Journal* at 2.

¹²¹ Janine Aron 'Mobile Money and the Economy: A Review of the Evidence' (2018) *The World Bank Research Observer* at 135.

¹²² Lin-li-Lin & Huei- Ting Yand 'Evolution of interactive graphics inferences for mobile money services' in (eds) Marco Soares and Francisco: *Advances in Usability and Evaluation part 1* (2013) at 438, See also Chatain P et al op cit note 44 at 147.

¹²³ Gutierrez E & Singh S op cit note 119 at 1.

went through.¹²⁴ Research shows that this form of banking also integrates markets across countries, bringing efficiency in financial transactions.¹²⁵

This chapter discusses the concept of mobile money services and their history. It focuses on the definition of mobile money services and the models of mobile money services highlighted in chapter 1. These are the bank-centric model, mobile network operator model and the collaboration (bank and mobile network operator) model.¹²⁶ The chapter discusses these models and their advantages and disadvantages. In addition, the chapter outlines the various financial services that are offered by mobile money services. It further explores the benefits of mobile money services.

2.2 DEFINING MOBILE MONEY SERVICES

Defining mobile money services poses many challenges since there is no universally accepted definition.¹²⁷ Definitions vary from one country to another, depending on the country's regulatory environment. While variances are not important, definitions adopted by countries play significant roles when it comes to regulating mobile money services. There are different views of what constitutes mobile money services. Firpo loosely defines mobile money services as a wide range of financial services that are offered across mobile phones.¹²⁸ Mazambani and Mutambara concur and assert that mobile money services involve the performance of banking services through the use of mobile devices.¹²⁹ However, Perlman provides a different but more precise definition. He views mobile money services as 'the entire ecosystem that allows basic banking functionality provided by non-banking entities, such as mobile network operators, and

¹²⁴ Claire Alexandre and Lynn Chang Eisenhart 'Mobile money as an engine of financial inclusion and lynchpin of financial integrity' (2013) 8 *Washington Journal of Law, Technology & Arts* at 286.

¹²⁵ World Bank Development Research Group 'Report on digital financial solutions to advance women's economic participation' (2015) report available at <http://www.g20.utoronto.ca/2015/Digital-Financial-Solution-to-Advance-Women....pdf> accessed on 1 June 2022 . Also see Simone di Castr Mobile money enabling regulations (2013) GSMA report available at https://www.gsma.com/publicpolicy/wp-content/uploads/2013/02/GSMA2013_Report_Mobile-Money-EnablingRegulatorySolutions.pdf accessed on 31 May 2022 . See also Pako Maradung, *Factors affecting the adoption of mobile money services in the banking and financial industries of Botswana* (Unpublished LLM thesis Northwest University 2013).

¹²⁶ Chapter 1 of this thesis.

¹²⁷ There is no one definition of mobile money services, different authors have defined it differently while the law makers have also come up with their own definition to suit particular needs of their constituencies.

¹²⁸ Janine Firpo E-Money – Mobile Money – Mobile Banking – What's the Difference? Available at <http://blogs.worldbank.org/psd/e-money-mobile-money-mobile-banking-what-s-the-difference> accessed on 31 May 2022 . See also Azza Zeinelabdin, Karrar and Azizah, Abdul Rahman Collaborative 'Mobile Money Service Provision: Recommendations for National Issues' (2018) *International Journal of Engineering & Technology* at 210.

¹²⁹ Last Mazambani & Emmanuel Mutambara 'Mobile money failure - Can the balanced scorecard be of any help?' (2017) 7 *Risk governance & control: Financial markets & institutions* at 41.

which include the transfer of fiat cash into electronic stores of value (SOVs), bill payments, transfer and reception of money from other account holders as remittance without setting feet in a bank or bank-like institution'.¹³⁰ The key point to note from this definition is that mobile phones are used to make electronic payments and as electronic stores of values where account balances or records of all transactions are kept in a phone as Stores of Value Account (SVAs).¹³¹ He further points out that the essence of mobile money services is to provide banking services to the unbanked or under-banked. In line with this definition,¹³² Nyakawa posits that 'mobile money has always been for the Bottom of the Pyramid (BoP),¹³³ who will graduate to formal banking after acquiring financial literacy and financial independence from their experiences using mobile money'. Peruta argues that the goal of mobile money services is to facilitate access to the banking system while overcoming the lack of bank infrastructure.¹³⁴ Thus, mobile money services do not lie outside formal banking systems.¹³⁵

Several distinctions can be drawn among the above definitions. While there is consensus that mobile phones are the main drivers of mobile money services, the first definition provides a broader and general description of mobile money services. This description is problematic because it encompasses services such as internet banking¹³⁶ and mobile banking, both of which are provided by conventional banks. Mobile banking involves connections between mobile phones and personal or business bank accounts. Customers can use their mobile devices to perform banking tasks such as depositing, withdrawing, making account transfers, paying bills, and requesting balance information.¹³⁷ Despite the channelling of these services through mobile phones, all transactions are recorded and controlled by traditional banks. These services improve access to banking for pre-existing customers.¹³⁸ This sharply contrasts with Perlman's definition. Perlman distances mobile money services from traditional banks. His

¹³⁰ See Perlman L J op cit note 41 at 20.

¹³¹ Ibid.

¹³² Ibid.

¹³³ The term "Bottom of the Pyramid" or BOP was coined by management author, CK Prahalad, to describe the 'socio-economic grouping of the poor and underserved section of the market. See CK Prahalad (2006) *The Fortune at the Bottom of the Pyramid*. This phrase is used by developmental economists and by the World Bank, as well as entities developing new models of doing business targeted at this demographic. The theory among development economists is that providing increased consumption choices to the poor will increase their welfare".

¹³⁴ Peruta M D op cit note 42 at 154.

¹³⁵ Nyakawa Gerald 'Is mobile money competing with banks' (The Standard 24 January 2016).

¹³⁶ The term internet banking according to Longman dictionary refer to "service provided by banks so that people can find out information about their bank account, pay bills etc using the Internet". Oxford dictionary defines it as "a method of banking in which the customer conducts transactions electronically via the Internet".

¹³⁷ See Janine Firpo op cit note 128.

¹³⁸ D Matthew *Factors that impact consumer adoption of mobile banking within the m-commerce domain* (Unpublished Master's thesis University of Witwatersrand, 2013) 5.

characterisation of mobile money services as primarily centred on mobile phones and mobile network operators where traditional banks play little or no role at all is the distinguishing factor. Perlman's definition mirrors the concept of transformative banking,¹³⁹ which presents mobile money services as means to fight poverty and not mere additions to banking services. For this reason, this thesis prefers Perlman's definition of mobile money services.

2.3 HISTORY OF MOBILE MONEY SERVICES

The evolution of mobile money services can be traced to the introduction of telephone banking in the United Kingdom in 1989 by Giro Bank. Giro Bank launched the "first Direct" service, which allowed customers to call and talk to the bank's staff regarding their bank accounts.¹⁴⁰ The success of 'first direct' and widespread advances in technology encouraged other banks to adopt new methods of interacting with customers. The introduction of mobile phones and the internet in the 1990s resulted in a revolutionary transition from telephone banking to mobile banking. Banks started to use mobile phones as additional channels through which customers operate existing bank accounts instead of using ATMs for some functions. This was criticised as an additive rather than transformative development. Thus, it is important to distinguish 'additive' banking from transformative banking. Rouxy and Mariscal submit that additive mobile banking refers to services that incorporate mobile technologies as alternative distribution mediums for financial entities.¹⁴¹ Porteous describes the introduction of mobile banking by banks as 'additive'¹⁴² because mobile banking primarily targets existing bank customers and offers mobile banking as an additional channel alongside other channels of interaction with the banks.¹⁴³ Notably, this form of banking only give access to banking

¹³⁹ Porteous (2006) op cit note 71 distinguishes between "additive" and "transformational" services. He points out that additive" services such as mobile (cell phone) banking allows people to manage their bank accounts through a cell phone, and that "transformational" services allow people to obtain financial services such as saving, credit, and insurance through their cell phones without a need to have a bank account. Weber and Darbellay, 2010: also argued "that transformative models allow the unbanked to access financial products without existing bank accounts, mainly through their mobile phones based on services provided by mobile network operators, MFIs (microfinance institutions) and non-bank agencies". See also Alice S. Etim, op ci note 120 at 3.

¹⁴⁰ Britain Banking Association 2014 report: The way we bank now. available at <https://www.yumpu.com/en/document/view/49062597/ey-and-bba-the-way-we-bank-now-a-world-of-change> accessed on 31 May 2022.

¹⁴¹ Ernesto Flores-Rouxy & Judith Mariscal 'The Development of Mobile Money Systems' (2021) *División de Administración Pública* 7.

¹⁴² David Porteous 'The enabling environment for mobile banking in Africa' available https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-paper-the-enabling-environment-for-mobile-banking-in-africa-may-2006_0.pdf at accessed on 31 May 2022. . See also Ahmed Dermish, Christoph Kneiding, Paul Leishman, & Ignacio Mas 'Branchless and Mobile Banking Solutions for the Poor: A Survey of the Literature' (2011) *Technology, Governance, Globalization* at 85. See also Alice S. Etim op cit note 119 at 5.

¹⁴³ See David Porteous op cit note 141, See also Leon Joseph Perlman op cite note 41 at 25. See also Dermish A et al op cit note 142 at 85.

services such as transferring funds to bank account holders.¹⁴⁴ Mobile banking was never intended to provide access to people who do not have bank accounts. Flores-Roux & Mariscal posit that these services are intended to make traditional financial services more convenient, but they do not aim to attract new users who are at the lower end of the economic spectrum.¹⁴⁵ The development of mobile banking was not customer-centric, but it was a cost-cutting and profit maximisation measure.¹⁴⁶ Research shows that competition and the introduction of alternative channels such as ATMs led banks to re-evaluate their existing channels and strategies.¹⁴⁷ Hence, they transitioned from telephone banking to mobile banking.

Dermish *et al* postulate that transformative mobile banking consists of the offering of a financial product that is tied to the use of a mobile phone to generally unbanked people who are typically low-income earners.¹⁴⁸ It is specifically designed to meet the needs of unbanked segments by offering products that address their needs.¹⁴⁹ For a model to be transformative, the product set should be simplified to make it easier to market to previously unbanked consumers. It must engage a network of retail outlets as cash-in/cash-out points that act as alternatives to branches and ATMs.¹⁵⁰ Transformative models offer payments and money transfers without the use of bank accounts or credit cards.¹⁵¹ In most cases, these initiatives are driven by new players, such as telecommunications companies, who target different markets than traditional banks.¹⁵² The transformational extent of mobile banking depends on an enabling environment. As noted already, this was not the case with the introduction of mobile banking. Thus, there was a vacuum for a transformational banking system. This resulted in the entrance of non-banking actors who utilise technology to fill the gap. Mobile network operators moved into the financial landscape to provide alternative financial products. These mobile network operator products include mobile money services. The first moves were made in the Philippines in 2000 and Kenya in 2007.¹⁵³ Over the years, mobile money services have become a ubiquitous tool

¹⁴⁴ Flores-Roux E & Mariscal J op cit note 141 at 7.

¹⁴⁵ Ibid.

¹⁴⁶ See Porteous D op cit note 142 at 34.

¹⁴⁷ Kunal Patel & Irwin Brown 'Towards a Theory of Multi-Channel Banking Adoption amongst Consumers' (2016) 19 *Electronic Journal Information Systems Evaluation* at 137.

¹⁴⁸ See Dermish A, et al op cit note 142 at 84.

¹⁴⁹ See Porteous A op cit note 142 at 15.

¹⁵⁰ See Dermish A et al op cit note 142 at 84.

¹⁵¹ See Flores-Roux E & Mariscal J op cit note 141 at 7.

¹⁵² See Porteous D op cit see note 142 at 15.

¹⁵³ Owen Kufandirimba, Ngonidzashe Zanamwe, Gilford Hapanyengwi, & Gabriel Kabanda 'Mobile Money in Zimbabwe: Integrating Mobile Infrastructure and Processes to Organisation Infrastructure and Processes' (2013) 2 *Online Journal of Social Sciences Research* at 92. See also GSMA report Mobile money in the Philippines – the market, models and regulation available at <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/06/Philippines-Case-Study-v-X21-21.pdf>. accessed on 31 May 2022.

in most developing countries. The number of mobile money users, the volume of transactions and their monetary value increased at a staggering rate in Sub-Saharan Africa.¹⁵⁴ Most countries in this region have been experiencing exponential growth in the use of mobile money services.¹⁵⁵ The GSMA¹⁵⁶ report of 2018 revealed that there were more than 866 million registered mobile money services accounts in 90 countries, averaging a combined total value of transactions of US\$ 1,3 billion per day.¹⁵⁷

2.4 HOW MOBILE MONEY SERVICES WORK

Mobile money services are electronic transfers, payments and Store of Value (SOV) systems that are accessible through mobile phones.¹⁵⁸ Phones store value and facilitate confirmation of account balances and keep records of all transactions in the Store of Value Accounts (SVAs).¹⁵⁹ Accessing mobile money services requires one to register at a mobile network operator outlet or agent.¹⁶⁰ Registration is free. Customers produce proof of identity, fill out application forms and must own active SIM cards.¹⁶¹ They then choose secret personal identification numbers (PINs), after which they are assigned individual electronic account numbers. In most cases, these are their cell phone numbers.¹⁶² Customers transact by first converting their cash into electronic money (e-money)¹⁶³ by depositing (cashing-in) it with participating dealers or

¹⁵⁴ See Aparna Gosavi op cit note 9 at 433.

¹⁵⁵ Ibid.

¹⁵⁶ The GSM Association is an industry organization representing the interests of mobile network operators worldwide. It includes more than 750 mobile operators as full GSMA members and a further 400 companies in the broader mobile ecosystem as associate members.

¹⁵⁷ GSMA, State of the Industry Report on Mobile Money 2018 available at <https://www.gsma.com/mobilefordevelopment/resources/2018-state-of-the-industry-report-on-mobile-money/> at 3 accessed on 31 May 2022.

¹⁵⁸ See Perlman L J op cit note 41 at 18.

¹⁵⁹ Ibid.

¹⁶⁰ Finmark Trust, Research report on mobile money 2017 available at <https://finmark.org.za/system/documents/files/000/000/267/original/Final-Report-on-Mobile-Money-in-South-Africa.pdf?1603094540> on 1 June 2022.

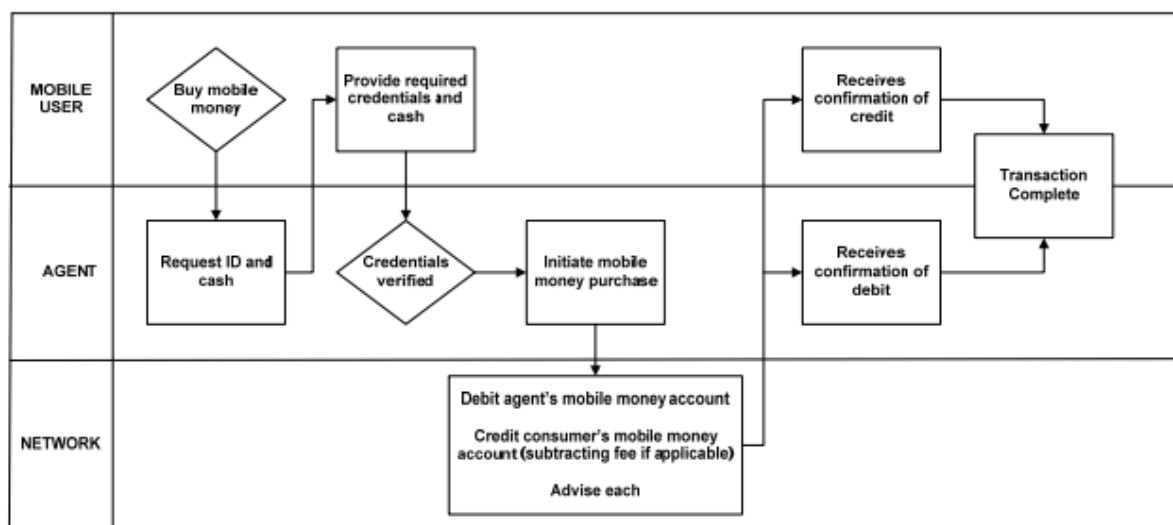
¹⁶¹ Genna Robb, Isaac Tausha and Thando Vilakazi 'Competition and regulatory issues in emerging mobile payments markets: a case study of Zimbabwe' in Jonathan Klaaren Simon Roberts & Imraan Valodia (eds) *Competition Law and Economic Regulation in Southern Africa: Addressing Market Power in Southern Africa* (2017) Chapter 9. See also Jonathan Greenacre & Ross P. Buckley 'Using trusts to protect mobile money customers' 2014 *Singapore Journal of Legal* at 61. See also Ecocash website, available at <https://www.EcoCash.co.zw/about> accessed on 30 May 2022., See also Safaricom website, available at <https://www.safaricom.co.ke/personal/m-pesa/getting-started/register-for-m-pesa> accessed on 31 May 2022. See also Vodacom website at https://www.vodacom.co.ls/?page_id=841 accessed on 1 June 2022. See also Telecel website Available at <http://telecel.co.zw/telecash> accessed on 1 June 2022.

¹⁶² See Genna Robb et al op cit note 160.

¹⁶³ The European Central bank defines electronic money (e-money) as "an electronic store of monetary value on a technical device that may be widely used for making payments to entities other than the e-money issuer. See also According to Michael Tarazi and Paul Breloff e-money" refers to electronically recorded value issued against the receipt of equivalent value. The electronic value, once issued, may be redeemed for cash, transferred between customers, or used by a customer to make payments to merchants, utility companies, and other parties. E-money may be issued by banks or nonbanks, but the term is used herein to refer to electronic value issued by nonbanks".

agents.¹⁶⁴ Cashing-in entails purchasing equivalent values of their cash in electronic money from the agents.¹⁶⁵ The money is stored as electronic money in the customers' mobile phones. As soon as electronic money is loaded into their electronic accounts, customers can transfer money to other mobile money services customers, pay for goods and services (locally or internationally), pay utility bills, withdraw money (cash-out) or buy airtime.¹⁶⁶ Thus, mobile money accounts are superficially similar to bank accounts, as they allow the depositing, withdrawal, holding and transferring of funds.

Figure 1: Cash-in



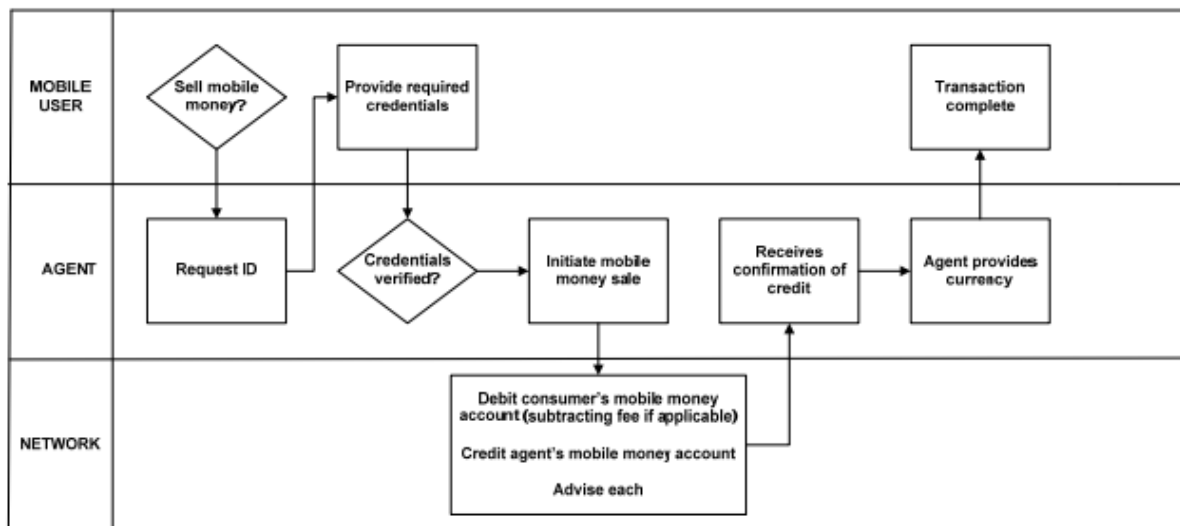
Source: Cynthia Merritt, 2010

Figure: Cash-out

¹⁶⁴ See Nick Hughes and Susie Lonie op cit note 19 at 74. See also Bill, Maurer: Taylor, C. Nelms & Stephen, C. Rea op cit note 11 at 55.

¹⁶⁵ Tavneet Suri 'Mobile money' (2017), *Annual review of economics* at 502, See also Alexandre C & Eisenhart L C note 124 at 285, 289. See also Alexandre C, Mas I & Radcliffe D 'Regulating New Banking Models that can Bring Financial Services to all' (2010) *Challenge Magazine* at 6.

¹⁶⁶ Ibid.



Source: Cynthia Merritt, 2010

Mobile money services rely on Unstructured Supplementary Service Data (USSD),¹⁶⁷ which is a Global System for Mobile Communications (GSM) protocol used to send text messages.¹⁶⁸ It is the most popular mechanism for communicating between mobile money services platforms and customers in the developing world.¹⁶⁹ A mostly utilitarian function of USSD is to add voucher codes to mobile airtime refills or to check available airtime balances in prepaid GSM services.¹⁷⁰ Mobile financial services are currently delivered by this technology to low-income customers as it is the most effective way to reach them.¹⁷¹ This is because it was designed for real-time interaction.¹⁷² Mobile network operators who use it today include Wing in Cambodia,¹⁷³ Easy-Paisa in Pakistan, Tigo and M-Pesa in Tanzania, and EcoCash in Zimbabwe. Users compose USSD messages by typing standardised characters such as *151*200#. This prompts return messages from the network. The messages are automatically

¹⁶⁷ Robb G et al op cit note 161 at 216.

¹⁶⁸ Linda Rosencrance 'USSD (Unstructured Supplementary Service Data)' available at <https://www.techtarget.com/searchnetworking/definition/USSD> accessed on 2 February 2022.

¹⁶⁹ Munacinga S op cit note 42 at 3.

¹⁷⁰ See Perlman L op cit note 41 at 201.

¹⁷¹ Michel Hanouch 'What is USSD & Why Does it Matter for Mobile Financial Services?' CGAP available at <https://www.cgap.org/blog/what-ussd-why-does-it-matter-mobile-financial-services> accessed on 1 June 2022.

¹⁷² Mas I and Kumar M op cit note 117 point out that "Unstructured supplementary service data (USSD) is an alternative messaging system available on almost all GSM phones. Unlike SMS, USSD entails the prior establishment of a transmission path that remains place for the duration of the USSD "session"—the sequence of messages being exchanged between the two parties. This transmission path does not tie up network resources while there are no messages to transmit (unlike a voice call, which is being "transmitted" whether the participants are talking or not)".

¹⁷³ Wing customers use the USSD Code *989# to perform the transfers, Easy-Paisa in Pakistan customers use USSD code *786# to access mobile money services, Ecocash customer use USSD code *151#.

displayed on the handset screen.¹⁷⁴ Customers must then respond by selecting items from the menu on their screen. Responses initiate USSD sessions that allow interactions between the customers and the servers.¹⁷⁵ USSD platforms are session-based. The mobile money user therefore enter access codes on the handset to select the services they desire whenever a USSD session is activated using a series of star or hash commands. The session lasts for less than three minutes before it is automatically cancelled.¹⁷⁶ The advantage of using USSD codes is that they can be used on any handset and require no internet.¹⁷⁷ Hence, the service is available to everyone who has a mobile phone. As a result of the simplicity of the input, it has become one of the most popular mobile money access methods. The input function and keystrokes are similar to those involved in recharging prepaid airtime.¹⁷⁸ In Perlman's opinion, the major weakness of USSD is that it's not "doubly"¹⁷⁹ encrypted but instead uses the innate and possibly insecure data encryption of the GSM network. The above cements the argument that mobile money services provided by mobile network operators are transformational because they accommodate everyone.

2.4.1 Trust accounts

While proponents of mobile money services argue that traditional banks play little to no role in the provision of mobile money services, the reality is that banks have a role to play. While the users of mobile money services may not have any relationship with conventional banks,¹⁸⁰ and whereas mobile money transactions may be processed solely by mobile network operators, money circulating within mobile money services ends up in banks. Cash deposits in mobile money accounts are held in trust accounts which are administered by commercial banks or building societies.¹⁸¹ The most common regulations require mobile network operators to hold their mobile money liabilities as deposits at regulated financial institutions.¹⁸² Most entities that provide mobile money services are not fully and prudentially regulated institutions and

¹⁷⁴ See Mas and Kumar Op cit note 172.

¹⁷⁵ See Robb G et al op cit note 161 at 216.

¹⁷⁶ See Perlman L J op cit note 41 at 201.

¹⁷⁷ Jenny Hoffman, Mobile Banking: Implementation choices (2006) *Finmark trust*, at 7 available at https://finmark.org.za/system/documents/files/000/000/300/original/Rep_mobileBanking.pdf?1614582664 accessed on 1 June 2022.

¹⁷⁸ See Perlman L J op cit note 41 at 201.

¹⁷⁹ "Double encryption is where two or more independent layers of encryption are enabled to protect against compromises of any one layer of encryption. Using two layers of encryption mitigates threats that come with encrypting data".

¹⁸⁰ See Finmark trust report op cite note 4.

¹⁸¹ Ibid.

¹⁸² Kazuko Shirono, Bidisha Das, Yingjie Fan, Esha Chhabra and Hector Carcel-Villanova. 'Is Mobile Money Part of Money? Understanding the Trends and Measurement' *IMF Working Paper No. 2021/177*

lack experience in the management of funds belonging to members of the public. Thus, funds deposited by mobile money customers are exposed to operational risks, liquidity and bankruptcy.¹⁸³ As a precaution against these risks, many jurisdictions require mobile money providers to deposit all funds received from their mobile money customers into trust accounts.¹⁸⁴ These accounts are also known as escrow accounts.¹⁸⁵ They are separate bank accounts that accrue interest. In the Kingdom of Eswatini, for instance, mobile network operators must ensure that balances in their trust accounts are equal to the total outstanding mobile money liabilities.¹⁸⁶ Trust accounts isolate customer funds from the providers' funds. This protects these funds from claims by creditors. In other words, trust accounts segregate assets by ring-fencing users' funds from the assets of the mobile money firms.¹⁸⁷ Trust deeds¹⁸⁸ are generally required to ensure that trust accounts are properly managed by the trustees. In most cases, funds held in trust funds at banks are protected by local banking laws in cases of bank bankruptcy. This is achieved by insurance.

The funds held in trust by mobile money operators are subject to withdrawal and reserve requirements, as is the case with all other bank accounts.¹⁸⁹ A classic example is that of M-Pesa in Kenya. A number of Kenyan commercial banks administer the trust accounts kept by M-Pesa on behalf of its customers.¹⁹⁰ Thus, it can be argued that money that has been deposited into a mobile money account is safe, even if the mobile money provider fails. However, no mobile money scheme has become insolvent as yet. Hence, there is no test case on the effects of the failure of a mobile network operator or a bank that acts as a trust agent.

¹⁸³ Jonathan Greenacre 'Safeguarding funds stored in mobile money systems' (2020) Briefing paper available at https://sites.tufts.edu/flpfi/files/2020/09/Safeguarding-Funds-Stored-in-Mobile-Money-Systems_Greenacre.pdf accessed on 1 February 2022.

¹⁸⁴ According to SADC mobile money guidelines, Trust Account – "is a bank account which holds funds that are received from Mobile Money customers, which account is held in trust or held in a fiduciary capacity on behalf of the Mobile Money customers (may also be referred to as an Escrow Account or a Custodial Account)".

¹⁸⁵ Finmark trust report 'Will the payment of interest on mobile money wallets encourage formal savings' available at <https://finmark.org.za/knowledge-hub/blog/will-the-payment-of-interest-on-mobile-money-wallets-encourage-formal-savings?entity=blog> accessed on 1 May 2022.

¹⁸⁶ Central Bank of Eswatini. 2019. "Practice Note for Mobile Money Service Providers available at <https://www.centralbank.org.sz/wp-content/uploads/2021/03/PracticeNoteforMMSP-FinalMarch2019.pdf> accessed on 1 June 2022.

¹⁸⁷ See Greenacre J op cit note 182 at 7.

¹⁸⁸ This is a legal document that outlines how the trust relationship between the trustee and users (as 'beneficiaries' of the trust) will operate.

¹⁸⁹ See Ahmad A H et al op cite note 5 at 763.

¹⁹⁰ Isaac Mbiti & David N. Weil 'Mobile banking: the impact of M-pesa in Kenya' (2011) *NBER Working Paper No. 17129* available at <https://www.econstor.eu/bitstream/10419/62662/1/668481188.pdf> accessed on 31 May 2022, For more information about on mobile money and trust accounts see Greenacre & Buckley 'Using trusts to protect mobile money customers' (2014) *Singapore Journal of Legal Studies*

2.4.2 Mobile money agents

The success of mobile money services depends on the rapid deployment of agents.¹⁹¹ Mobile money agents are at the front-line of the provision of mobile money services. They are the human faces of mobile money and are located close to customers.¹⁹² By definition, agents are non-bank entities, such as retailers, who register customers for mobile money and handle the liquidity needs of mobile money users on behalf of mobile network operators.¹⁹³ The GSMA estimated that in 2019, there were 7.7 million mobile money agents worldwide.¹⁹⁴ Perlman says that agents are commonly known as outlets, retail partners, correspondents or cash merchants.¹⁹⁵ They link mobile money providers and customers.¹⁹⁶ They offer front line customer services such as cash-ins (deposits) and cash-outs (withdrawals).¹⁹⁷ The GSMA reported that in 2019, mobile money agents digitalised \$176 billion, which was the total value of cash-in transactions globally.¹⁹⁸ In most cases, agents are not engaged exclusively in the provision of mobile money services. Predominantly, these are grocery stores, lottery kiosks, airtime kiosks, pharmacies, or post offices.¹⁹⁹ They are always engaged in other businesses and often get into the mobile money platform as an add-on.²⁰⁰ Their main banking responsibility in the mobile money services industry is to hold e-money, which they trade with customers²⁰¹ as they would trade any inventory.²⁰² Besides facilitating cash-ins and cash-outs, agents offer services such as disbursement of government social grants, bill payments and loans.²⁰³ They receive compensation through commissions for transactions that they facilitate, such as cash-ins, cash-outs and customer registration.²⁰⁴ As part of their responsibilities, agents also assist customers with front-line support, such as educating them about the way mobile

¹⁹¹ See Suri T op cit note 165 at 506.

¹⁹² Neil Davidson & Paul Leishman 'Focus on agent networks building, incentivising and managing a network of mobile money agents (2011) *GSMA* at 2.

¹⁹³ See Merritt C op cit 58 note 150.

¹⁹⁴ Nika Naghavi (2019) 'State of the Industry Report on Mobile Money 2019 GSMA' available at <https://www.gsma.com/sotir/wp-content/uploads/2020/03/GSMA-State-of-the-Industry-Report-on-Mobile-Money-2019-Full-Report.pdf> accessed 14 March 2022.

¹⁹⁵ See Perlman L J op cit note 41 at 53.

¹⁹⁶ See Merritt C op cit 58 at 8.

¹⁹⁷ See Gosavi A, op cit note 9 at 433, see also Perlman L J op cit note 41 at 53, See also Merritt C op cit note 58 at 9.

¹⁹⁸ See Naghavi N op cit note 194.

¹⁹⁹ Ibid.

²⁰⁰ See Davidson N & Leishman P op cit note 192.

²⁰¹ See Suri T op cit note 164 at 502.

²⁰² Ibid.

²⁰³ Jerop Komen, L 'M-PESA: A Socio-Economic Assemblage in Rural Kenya. Networking Knowledge' (2016) 9 *Journal of the MeCCSA Postgraduate Network* at 9.

²⁰⁴ For further discussion about Agents see Neil Davidson and Paul Leishman op cit note 192.

money works.²⁰⁵ and advising potential customers on whether particular mobile money services are worth trying. They also troubleshoot problems for customers.²⁰⁶

Mobile money agents are classified into super agents and sub-agents. The GSMA defines super agents as entities that make wholesale purchases of electronic money from mobile money providers and resell it to agents, who then sell it to end-users.²⁰⁷ Super agents allow mobile money providers to reach areas where they do not have branches. Like wholesalers in other distribution systems, super agents earn lower commissions than sub-agents.²⁰⁸ In most cases, super agents are banks.²⁰⁹ Safaricom contracted several banks in Kenya to play this role. Sub-agents are entities or individuals to whom part, or all of the duties of agency banking, have been delegated by super-agents. They provide limited cash-in and cash-out services to customers, particularly in remote areas.²¹⁰ Airtime resellers are becoming more prevalent as sub-agents in rural areas.²¹¹ The Kenyan mobile money system is a case in point. Safaricom's agent network reflects a two-tier structure that has super agents (who manage liquidity and act as liaisons between Safaricom and individual stores) and sub-agents (who are under the management of super agents). Super agents buy and sell cash from Safaricom, make it available to sub-agents, and distribute commissions to agents.²¹² The requirements to become a mobile money agent vary across countries,²¹³ although their role is the same, i.e. agents fulfil what some people refer to as the human element of mobile money. They care for the brands of each mobile money service, educate customers about the technology, ensure the reliability and security of the service, and perform front-end risk management and prudential regulation.

²⁰⁵ See Davidson N & Leishman P op cit note 192, See also Maurer B, Nelms T C & Rea S C op cit note 11 at 55.

²⁰⁶ Flaming, M., C. McKay & M. Pickens 2011 'Agent management toolkit: building a viable network of branchless banking agents. CGAP' available at <https://www.semanticscholar.org/paper/Agent-management-toolkit-%3A-building-a-viable-of-Flaming-Mckay/cb290def9a4d0c15c1b7417c5893e9e2884283d6#extracted> accessed 28 May 2022..

²⁰⁷ GSMA 'Mobile Money Definitions' available at <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/06/mobilemoneydefinitionsnomarks56.pdf> accessed on 20 January 2022.

²⁰⁸ See Davidson N & Leishman P op cit note 192

²⁰⁹ Ibid.

²¹⁰ David Cracknell 'M-Banking Agent Selection' (2010) MicroSave Briefing Note # 81, available at http://www.microsave.net/wp-content/uploads/2018/10/BN_81_M-Banking_Agent_Selection.pdf accessed on 2 February 2022.

²¹¹ See Merrit C op cit note at 7.

²¹² Bangens, Lennart, and Bjorn Soderberg. 2008. "Mobile Banking—Financial Services for the Unbanked?" SPIDER, The Swedish Program for Information and Communication Technology in Developing Regions. available at <https://spider1.blogs.dsv.su.se/wp-content/blogs.dir/362/files/2016/11/Spider-ICT4D-Series-2-Mobile-banking-financial-services-for-the-unbanked.pdf>. 28 May 2022.

²¹³ See Suri T op cite note 164 at 503.

2.5 MODELS OF MOBILE MONEY SERVICES

An understanding of the nature and operation of mobile money is necessary for adequately addressing regulatory issues related to their development and advancement. This is because their nature and operation differ considerably from one business model to another. There are different types of mobile money models in emerging economies. Some are entirely driven by banks, while others are driven by mobile network operators.²¹⁴ In different regions, some models are more prevalent than others. Approximately two-thirds of mobile money services in Sub-Saharan Africa, the Middle East and North Africa are led by mobile network operators, while in East Asia, the Pacific, Europe and Central Asia, mobile network operators provide about a third of mobile money services.²¹⁵ There are also emerging models which see collaboration between banks and mobile network operators. One of the newest models is the Independent Service Provider (ISP) model.²¹⁶ Mobile money models are defined by the type of entities responsible for issuing their services.²¹⁷ Different countries allow varying models, depending on the applicable regulatory environment, customer preferences and demographics.²¹⁸

In general, the regulatory environment determines the applicable model.²¹⁹ This affects how the financial sector treats mobile money services. As noted earlier, mobile money services are typically owned by two main players, namely, financial institutions or mobile network operators. Hence, economists and bankers categorise mobile money services according to the roles played by banks and mobile network operators. Thus, there are bank-led (bank-centric) mobile money services and mobile network operator-led (operator-led) mobile money services. In the middle, one finds collaboration and partnership models.²²⁰ All these models are discussed below.

²¹⁴ Tinashe Nyaruwata 'Mobile Money Provision and Adaptation in a Multicurrency Economy: The Case of Zimbabwe' (*Unpublished Master's thesis University of Cape Town*).

²¹⁵ See Shirono K et al op cit note 182 at 16.

²¹⁶ Chaix L and Torre D op cit note 62.

²¹⁷ See Shirono K et al op cit note 182 at 16.

²¹⁸ See GSMA report Op cit see note 111 at 9.

²¹⁹ See Lal R & Sachdev I op cit note 58.

²²⁰ Ibid. See also Bara A note op cite note 39 at 346. See also Tarazi, M. & Breloff, P. (2010) 'Nonbank E-Money Issuers: Regulatory Approaches to Protecting Customer Funds' *CGAP Focus Notes, Issue No. 63*. available at <https://www.cgap.org/sites/default/files/CGAP-Focus-Note-Nonbank-E-Money-Issuers-Regulatory-Approaches-to-Protecting-Customer-Funds-Jul-2010.pdf> accessed on 1 June 2022.

2.5.1 The bank-centric model

Banks provide mobile money services in jurisdictions where regulation allows them to do so on their own or through partnerships with service providers that can reach remote areas that are not traditionally served by banks. The bank-led model targets new and existing bank customers so that they can conduct transactions using their mobile phones instead of having to physically visit bank branches in underserved areas. Bara says that the bank-led model was the first mobile money service.²²¹ Under this model, banks offer financial services to clients through mobile devices. This involves mobile network operators, although they play assisting roles.²²² Banks are the primary drivers of mobile money services and take the lead in marketing, branding and managing customer relationships.²²³ The mobile network operators' function is only to provide mobile technology that facilitates mobile money transactions.²²⁴ Like all mobile money services, the bank-led model uses USSD channels provided by mobile operators to deliver their services to clients.²²⁵ Hence, mobile network operators play the role of agents. Under the bank-centric model, clients do not have contractual relationships with mobile network operators. Their relationships are with banks.²²⁶ Thus, clients have direct contractual relationships with prudentially supervised banks, notwithstanding that day-to-day or periodic interactions may be conducted through the banks' agents or through mobile phones linked to the banks.²²⁷

The bank-led model is considered more secure because banks, as registered financial institutions, are at the forefront of offering these services.²²⁸ Bank-led mobile money services are operated through domestic banking licences. Hence, funds accepted from the public are treated as deposits and are subject to domestic banking laws. However, this model has often been confused with mobile banking. Bank-centric mobile money services can be distinguished from the mobile banking on the basis that mobile money services are new products designed to cater for the needs of previously unbanked communities and to provide electronic money

²²¹ See Bara A op cit note 39 at 346.

²²² See Lal R & Sachdev I op cit note 58 at 17.

²²³ See Merritt C op cite note 58 at 9. See also Adaba G B & Azerikaha D op cit note 61 at 270 see also Siera Leone Guidelines for mobile money services; available at bsl.gov.sl/GUIDELINES_MOBILE_MONEY2015.pdf accessed on 28 May 2022. See also Chaix L & Torre D op cit note 62 at 11.

²²⁴ See M Kersop and SF du Toit op cit note 35 at 1616.

²²⁵ Rasheda Sultana 'Mobile Financial Services (MFS) business and regulations: Evolution in South Asian Markets' (2014) *SSRN Electronic Journal* at 5.

²²⁶ See Bara A op cite note 39 at 347.

²²⁷ See Parlman L J op cite note 41 at 223.

²²⁸ See Shirono K et al op cit note 182 at 16.

that is not linked to bank accounts.²²⁹ Kingdom Bank's Cellcard product in Zimbabwe is an example of a bank-led mobile money service.²³⁰ Bank-led models typically have agents who are employees or contractors of the banks. Therefore, one may consider them as true agents in a legal sense.²³¹ In certain cases, banks expand the agent functions by allowing retailers to open accounts on behalf of them but do not give them permission accept deposits or participate in banking activities.²³²

2.5.2 The operator-led model

The mobile network operator-led model refers to services in which mobile network operators act autonomously in providing mobile money services.²³³ Under this model, mobile network operators are the primary drivers of mobile money services and take the lead in marketing, branding and managing customer relationships.²³⁴ This contrasts with the bank-led model discussed above. As noted, mobile network operators are only involved in the provision of primary network infrastructure for facilitating transactions in the bank-led model. The mobile network operator model restricts (and potentially eliminates) the involvement of banks or other financial institutions in the delivery, clearance and settlement of mobile money.²³⁵ Unlike the bank-led model, the operator-led model does not require customers to have direct contractual relationships with licenced banks. Instead, customers exchange cash for the electronic value that is stored in virtual accounts on servers owned and operated by mobile network operators.²³⁶ Thus, electronic value is stored with mobile network operators. Mobile network operators enjoy the advantage of owning mobile networks. Thus, they leverage the ability to reach large numbers of people in remote locations.²³⁷ Even though mobile network operators are primarily not financial service providers, they have advantages when setting up mobile money networks. Firstly, they have a broad network of third parties with whom they distribute airtime who can be used to quickly scale mobile money agents and provide widespread access to the service. Second, users already have an existing, low-cost interface through their handset and SIM card. These two advantages pave the way for indirect benefits unique to mobile network operators

²²⁹ See Kersop M & Du Toit S F op cit note 35 at 1616.

²³⁰ 'Kingdom leads in New Market entry category' *The Chronicle* newspaper 27 October 2011 available at <https://www.chronicle.co.zw/kingdom-leads-in-new-market-entry-category/> accessed on 30 May 2022.

²³¹ See Parlman L J op cit note 41 at 223.

²³² Ibid.

²³³ Ibid.

²³⁴ See Adaba G B op cit note 61 at 274.

²³⁵ Ibid.

²³⁶ See Bara A op cit note 39 at 347.

²³⁷ See Naghavi N op cit note 194.

including savings from airtime distribution, reduction in churn, and increased share of wallet for voice and SMS. Lastly, mobile network provider's experience with mass media marketing and their reputation with a broader clientele not familiar with traditional banks is crucial to building confidence.²³⁸ Merritt says that this is the reason why the operator-model is thriving in most emerging markets.²³⁹ Many mobile network operators provide mobile money as a core product offering. Their assets and incentives make them uniquely positioned to deliver these services in a sustainable and scalable way.²⁴⁰ Pelletier, Khavul, and Estrin argue that mobile network operator-led mobile money services are more likely to launch mobile money services in countries with weaker legal rights and less credit information.²⁴¹

The GSMA documented the success of operator-led mobile money services in fostering financial inclusion in several countries.²⁴² It observed that mobile network operators are significantly more successful in designing and deploying mobile money systems than traditional banks, or even non-bank financial service providers. The most prominent mobile network operator-led mobile money service is M-Pesa in Kenya, which allows Safaricom (the mobile network operator) to provide the customer interface, process transactions and provide accounts.²⁴³ Safaricom categorically stated that M-Pesa is not a bank and that, therefore, it cannot fall under the jurisdiction of a central bank. It also cannot be held to the same expectations as traditional banks.²⁴⁴ In Zimbabwe, EcoCash is an example of a mobile network operator-led mobile money service. Ecocash enables Econet (the mobile network operator) to take responsibility for entire transaction processes, such as running the mobile network, performing cash-ins and cash-outs, and transferring funds and settling.²⁴⁵ The challenge that faces mobile network operators in the mobile money services industry is that they lack experience in developing and distributing financial services.²⁴⁶ They are not connected to

²³⁸ Abenezer Mechale 'Mobile money and consumer protection: an analysis of regulatory environments to enable mobile money' (*Unpublished thesis University of Pennsylvania 2021*) 13.

²³⁹ Cynthia Merritt op cit note 58 argues that mobile network operator led mobile money services thrive in developing markets because of their ability to reach large numbers of unbanked people in physically remote location beyond the presence of banks or landline infrastructure.

²⁴⁰ See Scharwatt C et al op cit note 2.

²⁴¹ Adeline Pelletier; Susanna Khavul; & Saul Estrin 'Innovations in emerging markets: the case of mobile money' (2020) 29 *Industrial and Corporate Change* at 399.

²⁴² Claire Pénicaud & Arunjay Katakam 'State of industry report 2013 mobile financial services for the unbanked' available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/02/SOTIR_2013.pdf accessed on 1 June 2022..

²⁴³ Amanda Bloch Kernun 'Sustaining the growth of mobile money services in developing nations' (2018) 15 *Vanderbilt Journal of Transnational Law* at 1115.

²⁴⁴ Mavhiki Severino, Nyamwanza Tonderai & Shumba Life 'Impact of mobile banking on traditional banking practices in Zimbabwe' (2015) 3 *International Journal of Economics, Commerce and Management* at 6.

²⁴⁵ Econet website <https://www.ecocash.co.zw/about/terms-conditions> accessed on 1 June 2022.

²⁴⁶ See Lal R & Sachdev I op cit note 58 at 5.

existing payment systems. For this reason, cash deposits under this model are held in trust accounts administered by commercial banks.²⁴⁷

2.5.3 The collaboration model

This model, also known as the partnership model, entails collaboration between mobile network operators and banks and the participation of third parties who link the two main partners.²⁴⁸ This model allows each partner to retain focus on their separate skill. Specialisation makes it easier to implement mobile money services than the previously discussed models.²⁴⁹ The collaboration model capitalises on each organisation's respective strengths in terms of providing customer services, innovation and an environment of sound regulatory compliance.²⁵⁰ Banks concentrate on financial responsibility, while mobile network operators focus on the transmission network.²⁵¹ The collaboration model was necessitated by the need to comply with regulations. Perlman observed that regulatory rules and commercial imperatives resulted in the collaboration of mobile network operators with licenced banks to provide mobile money services.²⁵² Since this model retains each party in their natural role, it makes the provision of mobile money services easier.²⁵³ The major challenge with this model is the issue of customer ownership. South Africa is an example of a jurisdiction whose regulatory environment provides for a collaboration model. Due to stringent banking regulations that limit the business of banking to banks, mobile network operators are forced to collaborate with banks to provide mobile money services.²⁵⁴ To this end, Vodacom (a mobile network operator) partnered with Nedbank (a licenced bank) to provide M-Pesa (a mobile money service).

2.5.4 The independent service provider model

The independent service provider model is a hybrid model by which financial institutions have no relationships with mobile network operators and banks. This model simply uses mobile network operators as bearers of technical information or as data carriers that allow mobile money services software applications (that allow customers access to its system) to be added

²⁴⁷ See Nyakawa G op cite note 125.

²⁴⁸ See Chaix L and Torre D op cit note 62 at 17. See also Cynthia Merritt op cite note 58.

²⁴⁹ See Kersop M and Du Toit S op cit note 35 at 1616.

²⁵⁰ See Cynthia Merritt op cite note 58.

²⁵¹ See Chaix L and Torre D op cit note 62 at 17.

²⁵² See Perlman L J op cit note 41 at 226.

²⁵³ See Chaix L and Torre D op cit note 62 at 18.

²⁵⁴ Ibid.

on to compatible phones.²⁵⁵ The role of a licenced bank under this model is to store funds received by mobile money providers or one of their subsidiaries for prudential reasons.²⁵⁶ Under this model, third parties, as opposed to financial agents or network operators, act as intermediaries between banks, operators, traders, and end-users.²⁵⁷ ISPs concentrate all the organisational specialities held by banks and operators in the previously presented models. Companies such as PayPal, Obopay, and CashEdge, to name a few, launched P2P payment services in the United States and abroad independently and in partnership with financial institutions. This model was created by newcomers to the payments industry. Newcomers are trying to find ways to process payments outside of traditional wire transfers and bank card networks. They are appealing to merchants who are looking to cut payment processing costs. They are also attractive to underbanked customers who cannot obtain traditional bank cards and those seeking cross-border remittance services.²⁵⁸

In summary, one may argue that different mobile money models offer similar end-user experiences, although their service delivery mechanisms differ. These models may be subject to different regulations, all of which have a significant impact on how mobile money is treated in a particular jurisdiction. Regardless of the business model, both banks and mobile network operators are essential in the provision of mobile money services. Under the bank-led model, customers have direct contractual relationships with licenced financial institutions. In contrast, the network operator-model allows customers to exchange cash for electronic value recorded in virtual accounts on the servers operated by mobile network operators and other issuers of stored-value cards.

2.6 Services offered through mobile money services

Mobile money services, like all financial services, are made up of a variety of services. They offer secure storage and deposits, withdrawals, and transfers at lower costs. They are convenient and faster than banks.²⁵⁹ Consumers can access these services and transact either directly on their own or indirectly via agents or other service providers.²⁶⁰ At its inception,

²⁵⁵ See Parlman L Jop cit note at 246.

²⁵⁶ Ibid.

²⁵⁷ See Chaix L and Torre D op cit note 62 at 11.

²⁵⁸ Smart Card Alliance. (2008). Proximity Mobile Payments Business Scenarios: Research Report on Stakeholder Perspectives. A Smart Card Alliance Contactless Payments Council *White Paper*. July 2008.

²⁵⁹ Zeinab Mahmoud 'Determinants of Mobile Money Adoption' (2019) Conference Paper available at <https://www.econstor.eu/bitstream/10419/201742/1/ITS2019-Aswan-paper-39.pdf> accessed on 7 February 2022.

²⁶⁰ GSMA report op cit note 156.

mobile money was predominantly used for mobile money transfers,²⁶¹ which are also known as person-to-person transfers (P2P). These allow people to send and receive small amounts of money to or from other mobile phone users across countries.²⁶² P2P transfers take the form of domestic and international remittances. Recent research shows that sending and receiving money through mobile phones is still the primary use of mobile money services in many countries.²⁶³ According to the GSMA's 2018 report, cash-ins and cash outs represented the majority of mobile money services transactions in 2018.²⁶⁴ In Zimbabwe, EcoCash enables users to receive money from more than 50 countries.²⁶⁵ The expansion of mobile money services enables consumers to use mobile money as an instrument for the payment of goods and services.²⁶⁶

Mobile money services allow account holders to purchase and sell goods and services at merchant shops using their phones.²⁶⁷ Hence, mobile payments complement and compete with cash, cheques, debit and credit cards in the payment for goods and services.²⁶⁸ They are used for payment of public transport, hospital fees, and goods in supermarkets,²⁶⁹ termed customer to business (C2B)²⁷⁰ payments. C2Bs include payments in retail environments and settlement of bills. Account-holders can pay for electricity, water and other utility bills using their mobile phones without the need for a bank account.²⁷¹ Businesses can also make payments to individuals (B2C). This puts them in a position to provide avenues for the payment of government welfare grants, loan disbursements and salary payments through mobile money services.²⁷² Another innovative extension of mobile money services is the use of prepaid airtime scratch cards as virtual currency. In Kenya and Nigeria, people can exchange prepaid

²⁶¹ Jan Lepoutre & Augustina Oguntoye 'The (non-)emergence of mobile money systems in Sub-Saharan Africa: A comparative multilevel perspective of Kenya and Nigeria' (2017) *Technological Forecasting & Social Change* at 265. See also Suri T op cit note 165 at 501.

²⁶² See Merrit Cop cite note 145.

²⁶³ See Peruta M D op cit note 42 at 156. See also Siti Hadayit 'Cash in and cash out agents for mobile money inclusion in Indonesia' (2011) *Innovations: Technology, Governance, Globalization* at 119. available at. See also Maurer B, Nelms T C & Rea S C op cit note 11 at 55.

²⁶⁴ GSMA report op cit note 155 at 5.

²⁶⁵ Joel M. Chigada & Benedikt Hirschfelder 'Mobile banking in South Africa: A review and directions for future research' (2017) *South African Journal of Information Management* at 5

²⁶⁶ See GSMA report op cit note 110. See also Peruta M D op cit note 42 at 156.

²⁶⁷ Mujuru T & Brown I 'Realising Partnership Needs A grounded theory of mobile money services in Zimbabwe' (2013) *International conference on resources and management* at 41.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ This means Customer to Business.

²⁷¹ See GSMA report op cit note 156, See Econet website op cit note 243, Saficom website op cit note 160.

²⁷² Ibid.

airtime with local merchants for goods and services instead of paying with cash or bank cards.²⁷³

In addition, mobile money services are taking the lead in the provision of insurance services. Most mobile network operators offer micro-insurance products through mobile phones, signalling a move from being mere channels of communication to providers of insurance.²⁷⁴ Products such as life, health, personal and accident cover have become an important component of mobile money services.²⁷⁵ These insurance products have been successfully integrated into the mobile money services ecosystem because all the information required for registration is easily extracted from the clients' mobile money accounts. Monthly premiums are also deducted from clients' mobile money accounts. GSMA reports show that in Asia, micro-insurance products offered by mobile network operators cover almost 40 million people. Insurance products provided by mobile network operators are relatively cheaper as compared to those provided by traditional insurance companies. In Zimbabwe, EcoSure charges EcoSure charges Z\$288 per month for funeral cover to the value of Z\$ 250 000.²⁷⁶

Also, mobile money services provide safe storage of savings. Account-holders can store some money electronically on their mobile phones. This money is known as an electronic wallet (e-wallet).²⁷⁷ There are no charges or other fees for storing money with mobile money services. However, mobile money services, unlike conventional banks, do not pay interest on deposits or savings. In Kenya, the interest that is earned from trust accounts is donated to charity.

2.7 Benefits of mobile money services

Mobile money services can bring unprecedented benefits to poor and unbanked people. They can help to make the financial services industry more efficient and inclusive. Mobile money services have proven to be important tools in the eradication of socio-economic challenges faced by poor people. In addition to healthcare, education, utilities, and social welfare, mobile money services can help vulnerable groups access basic public services they might otherwise not be able to access. A growing body of evidence shows mobile money services are valuable

²⁷³ ACP Report op cit note 54.

²⁷⁴ Microinsurance Network report of 2016 'Insights on Mobile Network Operators as a distribution channel for micro-insurance in Asia. available at https://www.microinsurancenetwork.org/sites/default/files/Insights%20on%20MNO%20as%20distribution%20channel%20for%20MI%20in%20Asia_2016.pdf. accessed on 14 November 2019.

²⁷⁵ Ibid. see also Ecosure website Available at <https://www.ecosure.co.zw/> accessed on 28 May 2022.

²⁷⁶ Ecosure website, available at <https://www.ecosure.co.zw/products/individual> accessed on 28 May 2022.

²⁷⁷ See Lal R & Sachdev I op cit note 58.

in helping vulnerable groups access public services, such as healthcare, education, utilities, and social welfare that they might otherwise be unable to access. In addition to improving access, Manyika et al says ‘mobile money services can reduce the cost of providing financial services by up to 90%.’²⁷⁸ Mobile money services can provide marginalised groups who are traditionally excluded from formal financial systems, such as women, youth, rural poor and displaced persons, with increased safety and privacy over cash.²⁷⁹ Hence, mobile money has been heralded as a means of alleviating poverty and reducing extreme inequalities by bringing the poor and the unbanked into formal financial services.²⁸⁰

The most important benefit derived from mobile money services is financial inclusion.²⁸¹ Financial inclusion helps to propel socio-economic development. According to the GSMA's 2018 report, about 1,7 billion people in the world lack access to safe, reliable and convenient financial services.²⁸² This is attributed to the high costs of banking and the absence of financial infrastructure in rural and remote areas. The high charges levied by banks on account holders who are low-income earners and who cannot afford such fees have been identified as a barrier to financial inclusion.²⁸³ Moreover, conventional banks have long struggled to extend their services into low income and rural areas.²⁸⁴ This has created difficulties for vulnerable groups, low-income earners, and unemployed rural dwellers to access financial services. The introduction of mobile money services has the potential to offset the lack of infrastructure, making financial services reachable.²⁸⁵ In other words, mobile money services help in filling the financial infrastructure gap in low-income areas, thereby extending financial opportunities for low-income earners and rural populations through increasing the availability of financial services in those communities.²⁸⁶ Africa, a region reeling from financial exclusion, has 26 times as many mobile money users as ATMs and 58 times more than bank branches.²⁸⁷ As mentioned

²⁷⁸ Manyika J, Lund S, White O, Berry C. Digital finance for all: Powering inclusive growth in emerging economies available at <https://www.mckinsey.com/~/media/mckinsey/featured%20insights/Employment%20and%20Growth/How%20digital%20finance%20could%20boost%20growth%20in%20emerging%20economies/MGI-Digital-Finance-For-All-Executive-summary-September-2016.ashx> accessed on 30 May 2022..

²⁷⁹ See Suri T op cit note 165 at 101

²⁸⁰ Ibid.

²⁸¹ Peter Tobbin ‘Towards a model of adoption in mobile banking by the unbanked, a quantitative survey’ (2012) 14 *info* at 74. See also Mazambani L & Mutambara E op cit note 128 at 41. See also Donovan K op cit note 32.

²⁸² See GSMA report op cite note 156 at page 5.

²⁸³ See Mago S & Chitokwindo S op cit note 6 at 222.

²⁸⁴ C. Leigh Anderson, Marieka Klawitter & Travis Reynolds ‘Impact of Regulations on Cash-In and Cash-Out Networks’ (2018) *Evans school policy analysis and research (EPR)* at 1. See also Clifford K op cit note 2 at 8.

²⁸⁵ See Peruta M D op cit note 42 at 157.

²⁸⁶ See Anderson L C et al op cit note 28.

²⁸⁷ See Ahmad Hassan Ahmad et al op cit note 5 at 34.

above, mobile money services use agents who are mostly retailers in the communities they serve. They simply use existing mobile network infrastructure to provide mobile money services. This eliminates the need for brick-and-mortar bank branches. Mago *et al* submit that mobile money services have so far allowed nearly 3 billion people without bank accounts to access financial services.²⁸⁸ This has increased financial activity in rural and remote areas, resulting in economic growth and the reach of financial markets in many developing countries.

Closely linked to financial inclusion is the benefit of the formalisation of informal transactions. Mobile money services have the potential to attract the unbanked and capture money circulating outside the financial sectors.²⁸⁹ In most emerging markets, there are many transactions and cash circulating outside formal markets. In South Africa, as much as 68% of the population still use informal channels to transact.²⁹⁰ In Zimbabwe, the central bank estimates that approximately US\$ 2,5 billion is circulating outside the formal market.²⁹¹ This is explained in part by the fact that money is circulating among the unbanked, low-income earners and the poor who are relegated to the informal sector.²⁹² Mobile money is a solution to this problem. Evidence suggests that the use of mobile money services increases the use of formal accounts.²⁹³ Countries that successfully adopted mobile money services witnessed a significant shift of people from the cash-based and unbanked economy into a modern system of book entry. The World Bank observes that the introduction of M-Pesa in Kenya in 2009 almost displaced informal methods of money transfer. Kenya began to experience a phenomenal increase in formal transactions.²⁹⁴ There was a massive reduction in the use of hand delivery and bus drivers for transferring money.²⁹⁵ The ultimate benefit of formalising informal transactions is that financial track records can easily be established.²⁹⁶ This helps

²⁸⁸ See Mago S & Chitokwindo S op cit note 6 at 221.

²⁸⁹ See Mazambani L & Mutambara E op cite not 128 at 41.

²⁹⁰ FSCA report financial sector outlook study <https://www.fsca.co.za/Documents/FSCA%20Financial%20Sector%20Outlook%20Study%202022.pdf> accessed on 1 June 2022.

²⁹¹ Business Reporter RBZ disputes \$7,5bn in informal sector *The Herald* 28 July 2015 available at <https://www.herald.co.zw/rbz-disputes-75bn-in-informal-sector/> accessed on 1 June 2022.

²⁹² Steven Mago & Sibert Chitokwindo op cite note 6 at 229.

²⁹³ Thorsten Beck How mobile money is driving economic growth available at <https://www.weforum.org/agenda/2015/09/how-mobile-money-is-driving-economic-growth/> accessed on 20 May 2022.

²⁹⁴ World Bank Report (2010). Kenya economic update: Kenya at the tipping point? Available at <http://documents.worldbank.org/curated/en/849841468286307168/Kenya-economic-update-Kenya-at-the-tipping-point-with-a-special-focus-on-the-ICT-revolution-and-mobile-money>. accessed on 1 June 2022.

²⁹⁵ Ibid.

²⁹⁶ See Maradung P op cite note 124 at 16.

governments in planning monetary policy and fighting money laundering. It also helps to curb the financing of terrorism.

In addition to the above benefits, mobile money services pose lower risks as compared to informal methods of money transfer. Informal methods of money transfer involve the carrying of cash by individuals and the sending money through bus drivers, friends and relatives.²⁹⁷ The most common risk with the use of these methods of money transfer is that there are chances that the money might be misused, delayed or not even reach its intended beneficiaries.²⁹⁸ These informal methods lack safety. Due to its inherent anytime, anywhere, and convenient characteristics, mobile money provides an unprecedented potential solution to the safety and efficiency problems that characterise informal transfers.²⁹⁹ It has the advantage of reducing the risk of dealing with cash since all the money is stored in electronic form on mobile phones.

Another benefit of mobile money is that it is relatively cheaper as compared to conventional banks.³⁰⁰ Oliver *et al* argue that the primary function of mobile money services is to reduce the cost of banking. High bank charges and meagre interests in deposits cause many people to avoid banks. Cheaper fees associated with mobile money services arise from the fact that mobile money services attract no ledger fees or minimum balances. At best, they attract very modest withdrawal fees that are affordable to the poor.³⁰¹ In the Philippines, for example, a typical bank transaction costs US\$2.50, while a mobile money transaction of a similar amount costs US\$0.50.³⁰² In Kenya, it costs US\$12 to send US\$350 using transfer companies such as Western Union, while sending the same amount using mobile money services costs US\$0.75.³⁰³ In an international comparison of 26 banks, McKay and Pickens found that branchless banking (including mobile money) was 19% cheaper than alternative services.³⁰⁴

Another benefit of using mobile money services is that individuals do not need to withdraw or send money immediately. They can accumulate savings on mobile money accounts. This

²⁹⁷ World Bank report op cit note 294. See also Oliver K Kirui, Julius J, Okello, Rose A, Nyikal & Georgina W. Njiraini 'Impact of Mobile Phone-Based Money Transfer Services in Agriculture: Evidence from Kenya' (2013) 52 *Quarterly Journal of International Agriculture* at 143. See also Sander Migrant Remittances to Developing Countries – A Scoping Study: Overview and Introduction to Issues for Pro-Poor Financial Services. Prepared for DFID available at <https://www.findevgateway.org/library/migrant-remittances-developing-countries-scoping-study-overview-and-introduction-issues-pro> accessed on 22 May 2022..

²⁹⁸ See Mago S & Chitokwindo S op cite note 6 at 221.

²⁹⁹ See Tobbin P op cit note 281 at 75.

³⁰⁰ See Lal R & Sachdev I op cit note 58 at 27. See also Oliver K at el note 297.

³⁰¹ See Kirui O K et al op cit note 297 at 146.

³⁰² See Maradung P op cite note 297 at 17.

³⁰³ See Kirui O K et al op cit note 297 at 146.

³⁰⁴ See Donovan K op cit note 32 at 63.

means that mobile money services can also be used as safe saving instruments.³⁰⁵ Users of mobile money services often keep balances on their mobile money accounts. As such, they use the system as a rudimentary bank account even though the system does not provide interest.³⁰⁶ Research shows that the use of mobile money services lowers the propensity of people to use informal saving mechanisms. Suri and Jack observe that three-quarters of M-Pesa account holders in Kenya use the product for saving money.³⁰⁷ Mobile money services have changed the saving behaviour among the unbanked. Storing money in mobile phones implies lower risks than holding cash.

One of the most important features of mobile money is that it is convenient. It provides customers with real-time access to their money. As mentioned above, mobile money services do not require access to the internet, making them accessible on any mobile device. A decade ago, the unbanked faced greater difficulties in sending and receiving remittances. As with all electronic transactions, mobile money services create data trails that are important from a regulatory perspective as well as from a socio-economic perspective. Financial institutions are required, among other things, to create data about their transactions, to store and monitor that data, and to report suspicious activities.³⁰⁸ The data collected from mobile money services transactions can be used to shed some light on the behaviour and needs of the poor and vulnerable groups who have been largely ignored by financial service providers. In cash-based economies, the spending and saving activities of individuals have only been known to interest third parties with great effort. Africans have become accustomed to this environment, developing social behaviours based on spending that is anonymous to government and corporate entities.³⁰⁹

2.8 Conclusion

The foregoing discussion shows that mobile money is unique to the developing world. It entails the use of basic mobile handsets capable of voice and text transmission. It does not require

³⁰⁵ Mbiti I & Weil D N op cit note 187.

³⁰⁶ Morawczynski and Pickens "Poor People Using Mobile Financial Services: Observations on Customer Usage and Impact from M-PESA. available at <https://www.cgap.org/sites/default/files/CGAP-Brief-Poor-People-Using-Mobile-Financial-Services-Observations-on-Customer-Usage-and-Impact-from-M-PESA-Aug-2009.pdf> accessed on 1 June 2022..

³⁰⁷ Suri T op cit note 165.

³⁰⁸ Alexandre C & Eisenhart L C op cit note 124 at 293.

³⁰⁹ Andrew Harris, Seymour Goodman & Patrick Traynor 'Privacy and Security Concerns Associated with Mobile Money Applications in Africa' (2013) 8 *Washington Journal of Law on Journal of Law, Technology & Arts* at 249.

internet-connected smartphones.³¹⁰ It is a form of branchless banking that serves the financial needs of the poor and the unbanked. Mobile money services accounts are similar to bank accounts, as they allow deposits, withdrawals, transfers and savings. They provide a wide range of services, such as money transfers and payments for goods and services such as insurance. Mobile money services can be used as saving instruments. Mobile network operators and banks mainly provide mobile money services through the bank-led model and the mobile network operator-led model, both of which are transformative. The mobile network operator-led is more transformative because it provides banking services where banks are unwilling or unable to provide banking services. Agents are the main drivers of mobile money services. In most cases, they are retailers and small community shops that interact directly with users of mobile money. Due to its ubiquity, security and relative inexpensiveness, mobile money is an important tool for fighting financial exclusion. In countries where mobile money has been successfully adopted, it brought enormous benefits such as safer means of transacting, efficiency, convenience and formalisation of informal transactions. Hence, mobile money services have become a key driver of socio-economic development in emerging markets.

³¹⁰ See Maurer B et al op cit note 11 at 53.

CHAPTER 3: FINANCIAL INCLUSION

3.1 INTRODUCTION

The financial inclusion of poor and unbanked communities is a major area of interest for policymakers, practitioners and academics.³¹¹ Globally, financial inclusion is acclaimed as a robust tool for combatting poverty and inequality.³¹² Efforts to enhance financial inclusion commenced in the 1970s when Muhammed Yunus, the founder of Grameen Bank, adopted an innovative approach to microcredit.³¹³ Ageme *et al* say that after that, “there has been a general consensus that lack of financial inclusion of the disadvantaged people and the poor is the major reason for rising levels of poverty and unemployment among underprivileged communities.”³¹⁴ Inclusive financial systems are important for African countries and the world at large.³¹⁵ This is because the size of financially excluded people is enormous. The Global Financial Index report of 2017 estimated that two billion people around the globe lack access to formal financial services.³¹⁶ International agencies such as the World Bank Group (WBG), the Group of 20 (G-20), the International Monetary Fund (IMF) and other consultative groups formulated many policies and initiatives to reduce financial exclusion throughout the world.³¹⁷ This illustrates that financial inclusion is seen as an important policy option for alleviating poverty, minimising social exclusion and enhancing economic growth.³¹⁸ There is a growing realisation of the need to harness the untapped potential of individuals who are currently excluded from formal

³¹¹ Michael Chibba ‘Financial inclusion, poverty reduction and millennium development goals’ (2009) 2 *European Journal of Development Research* at 213. See also Ogunsakin Sanya and Fawehinmi Festus Olumide Financial inclusion as an effective policy tool to poverty alleviation a case of Ekiti state (2017) 4 *IOSR Journal of Economics and Finance* at 1. See also Franklin Allen, Asli Dermirguc-Kunt, Leora Klapper, Maria Soledad & Martines Peria ‘The foundation of financial inclusion: Understanding ownership and use of formal accounts’ (2016) 27 *Journal of Financial Intermediation* at 2.

³¹² Ibrahim Husian Bakari, Manu Daga and Adamu Idi ‘An examination of the impact of financial inclusion on poverty reduction An empirical evidence from Sub-Saharan Africa’ (2019) 1 *International Journal of Scientific and Research Publications* at 240. See also Dai Amadou Financial inclusion and poverty reduction; Approaches and implication for Mali (2018) 4 *Academic Journal of Economic Studies* at 51.

³¹³ Nhavira JDG “Whither Financial Inclusion? A Holistic Approach” (2015) *Journal of Strategic Studies* at 81.

³¹⁴ Anthony E. Ageme, C. A. Anisiuba, Felix Chukwubuzo Alio, Hillary Chijindu Ezeaku & J.U.J. Onwumere Empirical assessment of the effects of financial Inclusion on poverty reduction in Nigeria (2018) *European Journal of Economics, Finance and Administrative Sciences* at 22.

³¹⁵ See Bakari I H et al op cit note 312 at 240.

³¹⁶ Asli Demirgüç-Kunt, Leora Klapper, Dorothe Singer, Saniya Ansar and Jake Hess ‘The Global Findex Database 2017 Measuring Financial Inclusion and the Fintech Revolution’ (2018) available at <https://openknowledge.worldbank.org/handle/10986/29510> accessed on 21 February 2022. at 5. See also Chibba M note 311 at 213. See also Ann Brady ‘Financial services for all’ (2020) available at <https://www.iso.org/news/ref2468.html> accessed on 21 February 2022.

³¹⁷ See Ageme A et al op cit note 313.

³¹⁸ Ram A. Cnaan, M. S. ‘Moodithaya and Fem Ida Handy Financial Inclusion: Lessons from Rural South India’ (2012) *Journal of Social Policy* at 2.

financial services. There is also an urgency to assist communities that are underserved by financial institutions to enable them to develop their own capacity.³¹⁹ The role of financial inclusion in fighting poverty is one of the Sustainable Development Goals (SDG). Arun and Kamath sum up all of this by asserting that

Governments across the globe have come to realise the ramification of financial exclusion and have vastly adopted policies and strategies geared towards growing global financial inclusion which is essential for world economic prosperity.³²⁰

3.2 WHAT IS FINANCIAL INCLUSION?

The term financial inclusion gained prominence in the early 2000s because of the correlation between poverty and financial exclusion.³²¹ However, there is no universally accepted definition of the term financial inclusion. This is attributed to divergent views on what constitutes financial inclusion. There are varying definitions in the literature. Also, scholars have proposed several different dimensions of the constitutive elements of financial exclusion based on varied socio-economic facts.³²² As such, the Global Partnership for Financial Inclusion (GPFI) accepts that financial inclusion means different things in different circumstances.³²³ Sarma and Pais submit that financial inclusion is the “ease with which financial services could be accessed, their availability and affordability.”³²⁴ Demircuc-Kunt and Levine define financial inclusion as “the removal of obstacles in the form of price and non-price constraints from financial services.”³²⁵ The World Bank sees financial inclusion as “the provision of useful and affordable financial products and services in a way that meets the needs of individuals and businesses.”³²⁶ The Centre for Financial Inclusion (CFI) defines financial inclusion as

³¹⁹ Thouraya Triki & Issa Faye Financial inclusion in Africa available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Financial_Inclusion_in_Africa.pdf accessed on 1 June 2022.

³²⁰ Thankom Aurn & Rajalaxmi Kamath ‘Financial inclusion: Policies and practices’ *IIBM Management review* at 268.

³²¹ See Bakari I H op cit note 312 at 240.

³²² Eric Osei-Assibey ‘Financial inclusion. What drives supply and demand for basic financial service in Ghana’ (2009) 33 *Savings and Development* at 211

³²³ Ibid.

³²⁴ Mandira Sarma & Jesim Pais ‘Financial inclusion for development’ (2011) *Journal of International Development* at 614.

³²⁵ Asli Demircuc- Kunt & Leora Klapper ‘Financial inclusion in Africa an overview’ (2012) *World bank Policy Research Working Paper No 6088* at 1.

³²⁶ World Bank Report: Financial inclusion is a key enabler to reducing poverty and boosting prosperity. available at <https://www.worldbank.org/en/topic/financialinclusion/overview> accessed on 1 June 2022.

...a means of providing access to a full suite of quality financial services to everyone who can use them and making sure that people have the tools they need to manage their financial and economic lives.³²⁷

Researchers and academics say that financial inclusion targets a special group of people in society. This means that the definitions they ascribe to financial inclusion are not generalised but are flexible depending on the group in question. In this regard, they pay particular attention to specific portions of the population that have been historically excluded from the formal financial sector because of their low-income levels and volatility of their access to such incomes, gender, location, and levels of financial literacy.³²⁸ This is manifest in the definition by Thrift, who say that financial inclusion is a process that serves to ensure that certain groups of individuals have access to the formal financial system.³²⁹ Conroy expands on this definition by including the specific groups of people targeted by financial inclusion. He points out that financial inclusion is a process that ensures that poor and disadvantaged groups gain access to formal financial systems.³³⁰ Triki and Faye submit that financial inclusion is

...a multi-dimensional concept that goes beyond improved access to encompass enhanced access to savings and risk mitigation products, as well as financial infrastructure that allows individuals and companies to engage more actively in the economy while protecting their rights.³³¹

The adoption of a broader and multi-dimensional definition of financial inclusion is crucial in that it helps us to move beyond the erroneous assumption that inclusion will inevitably be achieved by simply offering enough access points.³³² The foregoing definitions show that financial exclusion occurs mainly among people who are on the margins of society. In the context of this thesis, financial inclusion is defined as the process of including poor, vulnerable and disadvantaged members of society who are excluded from the formal financial system through the provision of quality formal financial products at an affordable cost.

³²⁷ Muzi Maziya & Thuletho Zwane Financial Inclusion is more than just access to credit (*The Mail and Guardian* 3 November 2017 available at <https://mg.co.za/article/2017-11-03-financial-inclusion-is-more-than-just-access-to-credit/> accessed on 1 June 2022).

³²⁸ See Triki T & Faye I op cit note 312 at 25.

³²⁹ Leyshon A, Thrift N. 'Geographies of financial exclusion: financial abandonment in Britain and the United States' (1995) 20 *Transactions of the Institute of British Geographers* at 312.

³³⁰ John Conroy, 'APEC and financial exclusion: missed opportunities for collective action?' (2005) 12 *Asia-Pacific Development Journal* at 72.

³³¹ See Triki T & Faye I op cit note 319 at 25.

³³² Ibid.

3.3 SIGNIFICANCE OF FINANCIAL INCLUSION

Financial inclusion ensures that a range of appropriate financial services are available to every individual in a manner that makes them understand and access financial services. Building an inclusive financial system is an integral part of human development.³³³ A financially inclusive system reduces information and transaction costs and influences savings rates and investment decisions.³³⁴ Financially exclusionary systems force the poor to rely on their limited savings and earnings to pursue growth opportunities.³³⁵ Recent empirical evidence from household data indicates that access to basic financial services such as savings, payments and credit make substantial and positive differences in improving the lives of poor people.³³⁶ Accessible and affordable financial services promote more inclusive growth and better livelihoods.³³⁷ High rates of financial inclusion are associated with high rates of investment, employment and low poverty.³³⁸ Access to financial services stimulates entrepreneurship, induces capital accumulation and enhances the wealth of people who could have been financially excluded.³³⁹ Affordable financial services makes previously excluded individuals more efficient in saving and allows the unbanked to borrow and enhance their livelihoods.

Therefore, financial inclusion is not just about the banks or access to credit. It is about reducing inequality, improving the welfare of societies, and enhancing economic development. Larry Elliott says that “the economic growth of a country cannot be achieved while the vast percentages of the country are financially excluded”. Financial exclusion limits the participation of households in economic growth and development.³⁴⁰ Research reveals that for growth benefits to trickle down to the lower spectrum, it is vital to target the under-served by including them in the financial system. The World Bank says that financial inclusion plays an important role in balancing financial stability, mitigating social inequality, and reducing

³³³ Jonathan Tembo and Stevenson Dhlamini ‘An evaluation of approaches used to reduce financial exclusion in rural Zimbabwe’ (2013) *International Conference on Education, Law and Humanities* at 98.

³³⁴ Bernard Gambe & Maxwell Sandada ‘The effectiveness of selected financial strategies Evidence of a developing country’ (2018) *Acta Universitatis Danubius* at 59.

³³⁵ See Demirgac-Kunt A & Kloppe L op cit note 325 at 2.

³³⁶ Sydney Chikalipah ‘What determines financial inclusion in Sub-Saharan Africa?’ (2017) 8 *African Journal of Economic and Management Studies* at 8.

³³⁷ Nicholas Masiyandima, Khupukile Mlambo & Simon Nyarota ‘Financial inclusion and quality of livelihood in Zimbabwe’ (2017) 14 *African Finance Journal Conference Africa growth Institute*, available at

³³⁸ See Barkori I H op cit note 311 at 240.

³³⁹ See Masiyandima N et al op cit note 335 at 8.

³⁴⁰ Dunstone W Ulwod & Peter W Muriu ‘Barriers of Financial Inclusion in Sub-Saharan Africa’ (2017) 8 *Journal of Economics and Sustainable Development* at 66.

poverty.³⁴¹ It has the potential to draw the unbanked population into the formal financial system and to give them opportunities to access financial services.³⁴² It helps to reduce the growth of expensive and exploitative informal sources of credit.³⁴³ Access to affordable financial services also enables the poor to partake in economic activities and to take advantage of growth opportunities that are necessary for financial empowerment.³⁴⁴ It further enhances efficiency and welfare by providing avenues for secure and safe saving practices and by facilitating access to efficient financial services.³⁴⁵ Financial inclusion helps families and businesses to plan for long term goals and take steps to mitigate the financial impacts of unexpected emergencies.³⁴⁶ It helps in reducing challenges that are caused by financial shocks and unexpected expenses. Therefore, financial inclusion is a pre-condition for achieving accelerated economic growth and for reducing income inequality and poverty.³⁴⁷

3.4 FINANCIAL INCLUSION IN DEVELOPED COUNTRIES

The fight against financial exclusion is not only happening in the developing world but also in developed countries. However, most developed countries took proactive measures, including the enactment of legislation, to address this problem. These steps made it possible for them to reduce the levels of exclusion significantly. In 2010, the G20 recognised the importance of financial inclusion across G20 member countries and endorsed a financial inclusion action plan. They also established the Global Partnership for Financial Inclusion as an implementing mechanism.³⁴⁸ The United States of America (USA) enacted the Community Reinvestment Act (CRA) in 1977 to address the problem of financial exclusion.³⁴⁹ The Act requires the Federal Reserve and other federal banking regulators to encourage financial institutions to help the

³⁴¹ Noelia Clamara, Ximena Peña & David Tuesta 'Factors that matter for financial inclusion: Evidence from Peru' BBVA Working Paper No. 14/09 available at https://www.bbvaerearch.com/wp-content/uploads/mult/WP_1409_tcm348-426338.pdf accessed on 1 June 2022.

³⁴² Alfred Hannig & Stefan Jansen 'Financial Inclusion and Financial Stability: Current Policy Issues Asian Development Bank Institute' available at <https://www.adb.org/sites/default/files/publication/156114/adbi-wp259.pdf> accessed on 1 June 2022.

³⁴³ See Sarma M & Pais J op cit note 324 at 613.

³⁴⁴ See Cnaan A et al op cit note 318 at 184.

³⁴⁵ Ibid.

³⁴⁶ See World bank report op cit note 326 at 292.

³⁴⁷ See also Chibba M op cit note 311.

³⁴⁸ Adele Atkinson & Flore-Anne Messy Promoting Financial Inclusion through Financial Education: OECD/INFE Evidence, Policies and Practice OECD Working Papers on Finance, Insurance and Private Pensions No. 34 available at <https://www.oecd-ilibrary.org/docserver/5k3xz6m88smp-en.pdf?expires=1568720794&id=id&accname=guest&checksum=F45E3BC24F4EDB03D8B0D056FA02E68C> . accessed on 1 June 2022. See also Alexandra Zins & Laurent Weill 'Determinants of financial inclusion in Africa' (2016) 6 *Review of Development Finance* at 46.

³⁴⁹ Board of Governors Federal Reserve System available at https://www.federalreserve.gov/consumerscommunities/cra_about.htm accessed on 28 May 2022.

credit needs of the communities in which they do business, including low to mid income-earners.³⁵⁰ It prevented the exclusion of some parts of the American community and encouraged banks and savings associations to help meet the needs of all segments of America.³⁵¹ Studies say that the CRA succeeded in increasing access and lending in low and mid-income communities that banks used to ignore.³⁵²

France followed the American example by enacting the Banking Act of 1984. Article 8 of the Act recognises the right to a bank account.³⁵³ In 1998, the Law of Exclusion was passed to strengthen the right to a bank account.³⁵⁴ The Act simplified the process of exercising the right to basic banking services. In other developed countries, banks developed voluntary charters and codes of practice. Through trade associations, they made provision for access to basic bank accounts as a response to the problem of financial exclusion. In Germany, for example, the German Bankers Association (GBA) introduced a voluntary code in 1996. The code provides for an “everyman” current account that offers basic banking transactions to everyone. Research shows that almost one million everyman accounts were opened between 1996 and 2000.

3.5 FINANCIAL INCLUSION IN AFRICA

Financial inclusion is necessary for both developed and developing economies.³⁵⁵ Chibba posits that “the financially excluded person is more often than not, the average citizen in African countries.”³⁵⁶ Access to traditional financial services in Sub-Saharan Africa is low. The share of the population with bank accounts or borrowing from financial institutions is low compared to developed countries.³⁵⁷ An estimated 80% of adults in Sub-Saharan Africa do not have access to basic financial services.³⁵⁸ Most of them do not have basic bank accounts. Thus,

³⁵⁰ Christopher R. Berry & Sarah L. Lee ‘The Community Reinvestment Act after Thirty Years’ (2008) available at https://www.researchgate.net/publication/228964702_The_Community_Reinvestment_Act_after_Thirty_Years accessed on 30 May 2022.. See also 12 Code of Federal Regulations. Sec. 25.22.

³⁵¹ Ibid.

³⁵² Eugene A. Ludwig & James Kamihachi and Laura Toh, ‘The Community Reinvestment Act: Past Successes and Future Opportunities’ available at <https://econpapers.repec.org/bookchap/fipfedfmo/2009tpsaf.htm> at 90. accessed on 28 May 2022.

³⁵³ See Sarma M & Pais J op cit note 324.

³⁵⁴ Ibid.

³⁵⁵ See Ulwod D W & Muriu P W. op cit note 339.

³⁵⁶ See Chibba M note 311 o at 214.

³⁵⁷ Osei-Assibey E op cit note 322 at 211.

³⁵⁸ Alberto Chaia, Aparna Dalal, Tony Goland, Jonathan Morduch & Robert Schif ‘Half the World is Unbanked’ (2009) *Financial access initiative framing note* available at https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-paper-half-the-world-is-unbanked-oct-2009_0.pdf accessed on 1 June 2022.

they are financially excluded from mainstream financial services.³⁵⁹ Statistics show that only one adult in four in Africa has access to a formal account held at a financial institution.³⁶⁰ Most countries on the continent face challenges in moving towards greater financial inclusion.³⁶¹ The low level of financial inclusion in Africa is caused by low incomes, high consumption, and poor investment and economic growth.³⁶² Zins and Weil argue that “the banking systems in Africa are less inclusive than those outside Africa.”³⁶³ Most financial institutions are concentrated in urban areas.³⁶⁴ In a continent in which the larger part of the population resides in rural areas, this implies greater financial exclusion for the majority who reside in low density rural and marginal areas.³⁶⁵ In Zimbabwe, for instance, 80% of bank branches are located in urban centres.³⁶⁶ Notwithstanding, recent years have been seeing Africa experience positive developments in access to financial services.³⁶⁷ Technological advancements such as mobile money have helped to broaden access to financial services on the continent.³⁶⁸

3.6 CAUSES OF FINANCIAL EXCLUSION

Financial exclusion is multifaceted. It affects varying proportions of the population in every country.³⁶⁹ Research shows that many factors prevent some segments of society from accessing financial services.³⁷⁰ Hence, the development of financial inclusion policies requires the identification of these factors. The most prominent method of examining the causes of financial exclusion is classifying them into demand and supply factors.³⁷¹ Factors that affect the demand and supply of financial services inhibit the access of individuals and firms to financial

³⁵⁹ See Osei-Assibey E op cit note 322.

³⁶⁰ See Demirgac-Kunt A & Klopper L op cit note 325 at 2.

³⁶¹ Norman Marime & Loverage Chakazamba ‘Urban financial exclusion in Zimbabwe an explanatory study’ (2016) 7 *Research Journal of Finance and Accounting* at 3.

³⁶² See Bakari I H et al op cit note 312.

³⁶³ See Zins A & Weill L op cit note 348 at 46.

³⁶⁴ Franklin Allen, Elena Carletti, Robert Cull, Jun Qian, Lemma Senbet & Patricio Valenzuela (2014) ‘Improving Access to Banking: Evidence from Kenya’ *Policy Research Working Paper* 6593.

³⁶⁵ Ibid.

³⁶⁶ See Masiyandima N et al op cit note 337.

³⁶⁷ See Demirgac-Kunt A & Klopper L op cit note 325.

³⁶⁸ Ibid.

³⁶⁹ See Atkinson A & Messy A op cit note 348.

³⁷⁰ See Louis L & Chartier F op cit note 8 at 173.

³⁷¹ Smita Ramakrishna & Pankaj Trivedi ‘What Determines the Success of Financial Inclusion? An Empirical Analysis of Demand Side Factors’ (2018), *Review of Economics & Finance*, See also European Commission Report (2008) Financial services provision and prevention of financial exclusion available at <https://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfrc0807.pdf> accessed on 1 June 2022. , See also Sanderson Abel, Learnmore Mutandwa & Pierre Le Roux ‘A Review of Determinants of Financial Inclusion’ (2018) *International Journal of Economics and Financial Issues*.

services.³⁷² Beck and Torre submit that “the problem of financial exclusion should rather be analysed by identifying different demand and supply constraints.”³⁷³ Demand factors concern barriers to access that can undermine the willingness of consumers to engage in financial services or that affect their capacity to do so.³⁷⁴ Supply factors, on the other hand, limit the ability of financial institutions to extend products and services to underserved or unserved segments of society.³⁷⁵ However, the classification of the causes of financial exclusion into demand and supply factors is not the only way of explaining the causes of financial exclusion. Sama and Pais categorise the causes of financial exclusion into socio-economic, infrastructure, and bank-related factors.³⁷⁶ This thesis uses the demand and supply approach in explaining the causes of financial exclusion.

3.6.1 Supply factors

Lämmermann says that “supply factors that influence financial inclusion are primarily focused on a financial institution’s approach or interaction with clients.”³⁷⁷ Major supply factors that deter people from accessing and using formal financial institutions include bank charges, stringent requirements for opening accounts, tight risk assessments, and geographical location.³⁷⁸ High bank charges and prohibitive transaction costs are the main reason why poor people and other low-income earners shun financial institutions. High charges erode and discourage savings. This deters the poor from accessing banks and other financial institutions. In South Africa, bank charges are four times higher than in Germany and Australia.³⁷⁹ These fees make people feel that they need to pay in order to spend their money.³⁸⁰ In addition to high

³⁷² United Nations ‘Impact of access to financial services, including by highlighting remittances on development: Economic empowerment of women and youth’ available at https://unctad.org/system/files/official-document/ciem6d2_en.pdf accessed on 1 June 2022.

³⁷³ Beck, Thorsten and Augusto de la Torre, ‘The Basic Analytics of Access to Financial Service: Financial Markets, Institution and Instruments’ (2007) *World Bank Publications*.

³⁷⁴ Bongani Ngwenya, Theuns Pelse, Talent Chivaura ‘Perceptions of post-multicurrency regime financial inclusion confidence challenges in Zimbabwe’ (2018) 21 *South African Journal of Economic and Management Sciences* at 13.

³⁷⁵ SADC Financial Inclusion Strategy draft report available at <https://finmark.org.za/system/documents/files/000/000/207/original/FI-strategy-SADC.pdf?1601978334> accessed on 1 June 2022

³⁷⁶ Madrin Sama & Jesim Pais ‘Financial Inclusion and Development ‘A Cross Country Analysis’ available at <https://www.findevgateway.org/paper/2008/09/financial-inclusion-and-development-cross-country-analysis> accessed on 1 June 2022.

³⁷⁷ Stefanie Lämmermann Financial exclusion and access to credit available at http://www.socialwatch.org/sites/default/files/Eu_SW2010_Financial_eng.pdf. accessed on 1 June 2022.

³⁷⁸ Ibid. See also SADC report op cite note 374.

³⁷⁹ Norman Marime & Loverage Chakazamba ‘Urban Financial Exclusion in Zimbabwe: An Exploratory Study’ (2016) 7 *Research Journal of Finance and Accounting* at 2.

³⁸⁰ SA consumers shun banks available at <http://www.quickconsolidationloans.co.za/news/sa-consumers-shun-banks/>. accessed on 1 June 2022.

banking fees, banks in the developing world offer significantly low and unattractive interest rates. According to the World Bank, the average deposit interest rate³⁸¹ in South Africa in 2021 was 3,4%.³⁸² This is a strong deterrent to potential clients seeking financial services. Therefore, poor people turn to private intermediaries and informal money lenders, resulting in their financial exclusion.³⁸³

Geographical locations play a fundamental role in facilitating access to formal financial services. Financial institutions have an inherent tendency to discriminate against poor and remote areas.³⁸⁴ These areas are perceived as unbankable and are avoided by financial institutions. Transaction costs in remote areas are regarded as high due to low populations, lack of infrastructure, and small average transactions.³⁸⁵ As such, financial institutions tend to avoid these areas and focus on proven and profitable areas.³⁸⁶ It is generally expensive to establish a financial service or to develop an innovative solution to deliver financial services to low-income areas. Financial institutions consider these areas as high risk. As a result, large bank branches are found in major towns, which are far away from rural areas. The cost of travelling to cities and towns for banking is prohibitive for many people.³⁸⁷ High transaction costs in the form of substantial distances to banks and costly and unreliable transport make it difficult for people in remote geographical locations to access financial services.³⁸⁸ The situation is compounded by poor infrastructure in remote and rural areas. Kempton and Whaley concluded that physical barriers contribute significantly to the financial exclusion of communities in remote areas.³⁸⁹ Poor infrastructure makes it impracticable to provide branch services in isolated areas, resulting in large numbers of underserved areas.³⁹⁰ Inadequate infrastructure inhibits the ability of financial institutions to reach remote areas, which are far away from brick

³⁸¹ The Deposit Interest Rate is the average rate paid by commercial banks to individuals or corporations on deposits.

³⁸² The World Bank 'Deposit interest rate (%) - South Africa' available at <https://data.worldbank.org/indicator/FR.INR.DPST?locations=ZA> accessed on 21 February 2022.

³⁸³ Andreas Madestam 'Informal finance: A theory of moneylenders' *Journal of Development Economics* 107 (2014).

³⁸⁴ See Thrift L A op cit note 284 at 326.

³⁸⁵ International Labour Organization report : 'Developing rural economies through financial inclusion; The role of access to finance' available at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_437194.pdf accessed on 1 June 2022.

³⁸⁶ Demircac-Kunt A & Klopper L op cit note 325 at 4.

³⁸⁷ Osei-Assibey E op cit note 321.

³⁸⁸ Xavier Giné, Jessica Goldberg & Dean Yang 'Commitments to Save: A Field Experiment in Rural Malawi' available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1904244 accessed on 1 June 2022.

³⁸⁹ Elaine Kempson & Claire Whaley 'Kept out or opted out? Understanding and combating financial exclusion' available at <https://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfr9902.pdf> accessed on 1 June 2022.

³⁹⁰ See Atkinson A & Messy A op cit note 348.

and mortar branches of financial institutions.³⁹¹ Moreover, the practicality and security of transporting cash into bank branches in remote areas and storing it securely further reduce the supply of formal financial services to these areas.³⁹² Poor physical infrastructure acts as a barrier to financial service providers, as they cannot get required supplies to their service points in remote areas.³⁹³

In addition, the lack of documentation among the poor contributes to their financial exclusion.³⁹⁴ Most financial institutions require various documents to access their services, such as proof of identity, proof of income, and proof of residence. It is important to note that most poor people do not have access to all these documents. Their situation is exacerbated by the fact that formal financial institutions have stringent Know Your Customer (KYC) requirements. Difficulties in satisfying documentation requirements lead to the denial of many people access to financial services. Financial institutions also require collateral security before they can provide loans. Low-income consumers seldom have collateral. Individuals in such situations often shun formal financial institutions and use informal financial products, which are expensive. Reliance on such products can effectively lead people into financial exclusion and poverty, exacerbating their vulnerability.

3.6.2 Demand factors

These are barriers to access that undermine the willingness of consumers to engage with financial services. Demand factors also affect the capacity of consumers to access financial services.³⁹⁵ Demand factors explain each person's personal experience and psychological relationship with money and how they view the financial sector.³⁹⁶ Some researchers refer to this as self-exclusion. Self-exclusion is usually due to cultural or religious reasons, as well as issues of illiteracy, affordability and eligibility.³⁹⁷ Factors such as mistrust, lack of confidence, concerns about costs, fear of losing control over money, and financial illiteracy deter both access and use of financial services. Financial institutions are viewed with suspicion and are thought not to work in the best interests of consumers, particularly concerning bank charges.³⁹⁸

³⁹¹ See SADC Financial Inclusion Strategy Op cit note 375 at 38.

³⁹² See Atkinson A & Messy A op cit note 348.

³⁹³ See SADC report note 375.

³⁹⁴ See SADC Financial Inclusion Strategy op cit note 377.

³⁹⁵ See Ngwenya B et al op cit note 373.

³⁹⁶ See Lammerman S op cit note 377 at 27.

³⁹⁷ See Osei-Assibey E op cit note 322.

³⁹⁸ See SADC Financial Inclusion Strategy report op cit note 375 at 38.

This negative perception towards formal financial institutions leads some people to avoid banks and other formal financial institutions.³⁹⁹ This exclusion of an entire social group generates a high risk of spreading negative opinions about financial institutions, leading to high financial exclusion. Most poor people deeply mistrust banks. This mistrust is rooted in fear of exploitation.⁴⁰⁰ In Zimbabwe, for example, bank failures led to the loss of confidence in the banking sector and a sharp decrease in credit and deposit growth.⁴⁰¹

Financial literacy also contributes significantly to financial exclusion because financial literacy enhances financial inclusion.⁴⁰² It is defined as a form of literacy that relates to one's proficiency in making financial decisions.⁴⁰³ Research shows that there is a correlation between financial literacy and financial inclusion.⁴⁰⁴ A well-informed economic participant tends to make better choices among available financial products and services.⁴⁰⁵ Kostov *et al* reveal that in South Africa, financial literacy is an important determinant of financial inclusion.⁴⁰⁶ The OECD says that awareness of financial products that are available within a country is a prerequisite for financial inclusion.⁴⁰⁷ Lusardi and Mitchell conducted research that shows that few individuals possess the necessary financial skills to make financial decisions.⁴⁰⁸ Most poor people are not financially capable of using, and let alone understanding, financial solutions that are available to them.⁴⁰⁹ Some people do not know how to use financial products and do not understand how financial markets work. This ignorance puts them at a higher risk of financial exclusion.⁴¹⁰ Proponents of financial literacy programmes argue that reading and writing skills improve an individual's chances of increasing their earnings. In South Africa, research conducted by Vacu and Chipote in the Eastern Cape found that people who can read English

³⁹⁹ Kondongwe, Shingirayi, *The Root Causes of Bank Failures in Zimbabwe Since the Year 2008 to 2015* (2015) available at

SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3120898#:~:text=The%20study%20finds%20that%20the,and%20poor%20credit%20risk%20management. accessed on 1 June 2022.

⁴⁰⁰ 6 challenges to financial inclusion in South Africa; Available at <https://www.weforum.org/agenda/2017/04/financial-inclusion-south-africa/>. accessed on 1 June 2022.

⁴⁰¹ See Kondongwe, S op cit note 399 at 8.

⁴⁰² See Masiyandima N et al op cit note 337 at 9.

⁴⁰³ Elizabeth L Nanziri & Murray Leibbrandt 'Measuring and profiling financial literacy in South Africa; South Africa', (2018) 21 *South African Journal of Economic and Management Sciences* at 2.

⁴⁰⁴ Atkinson A & Messy A op cit note 348.

⁴⁰⁵ See Louis L & Chartier F op cit note 8 at 182.

⁴⁰⁶ Atkinson A & Messy A op cit note 348 at 15.

⁴⁰⁷ Ibid.

⁴⁰⁸ Annamaria Lusardi & Olivia S. Mitchell 'The economic importance of financial literacy: Theory and evidence' (2014) 52 *Journal of Economic Literature* at 10.

⁴⁰⁹ Maxwell Sandada and Richard Mapfuyanzara 'An Investigation of the causes of financial exclusion In Zimbabwe' (2016) 13 *Africa growth Institute* at 14.

⁴¹⁰ Marta Maciejasz-Świątkiewicz 'Financial exclusion as a result of limited financial literacy in the context of the financialization process' (2015) 4 *Naukio Finansach Financial Sciences* at 91.

have the confidence to interact with bank officials and can better read and understand different services and benefits offered to them.⁴¹¹ Thus, the lack of financial literacy faced by the poor affects their uptake and usage of financial products and services.

Liquidity challenges are major deterrents for low-income people, as they affect their ability to access and use financial services.⁴¹² The scarcity of money and low-income levels play critical roles in influencing access to financial services. Lack of income and the cost of financial services reduce dependence on formal financial services.⁴¹³ Research by Allen *et al* reveals that not having enough money is globally regarded as the main reason why most people do not have bank accounts.⁴¹⁴ The situation is worsened by unattractive bank interest rates. This leads to excessive reliance on informal sources of credit, such as loan sharks. It also leads to a culture of not saving. Cultural and religious factors also impact financial inclusion. Kempson says that religion hinders Muslims from interacting with the banking sector.⁴¹⁵ Most financial service providers in non-Muslim countries do not tailor their products for Muslim clients. This leads to the financial exclusion of Muslims.

The foregoing analysis shows that financial exclusion originates from different sources and cannot be solved through a unilateral approach. However, the challenge of financial exclusion is complicated by an unconducive policy and regulatory environment.⁴¹⁶ Government intervention through control and regulatory reforms has the potential to exclude some segments of society from the financial system. This is the main thrust of this thesis. The following chapters delve into this issue deeper.

3.7 FINANCIAL INCLUSION AND HUMAN RIGHTS

In the modern era, the moral legitimacy of government policy and practices is measured against human rights. To live meaningful lives and to develop, people need their basic human rights to

⁴¹¹ Mishi S Vacu N.P & Chipote P 'Impact of financial literacy in optimising financial inclusion in rural South Africa: Case study of the Eastern Cape province' available at <https://econrsa.org/system/files/workshops/papers/2012/mishi-financial-literacy.pdf> accessed on 1 June 2022.

⁴¹² J. Michael Collins & Leah Gjertson 'Emergency savings for low-income consumers' available at <https://www.irp.wisc.edu/publications/focus/pdfs/foc301c.pdf>, accessed on 1 June 2022.

⁴¹³ See Ulwod D W & Muriu P W op cit note 340.

⁴¹⁴ See Franklin A et al note 364 at 10.

⁴¹⁵ Elaine Kempson, Adele Atkinson and Odile Pilley ; Policy level response to financial exclusion in developed economies Available at https://www.researchgate.net/publication/241102753_Policy_Level_Response_to_Financial_Exclusion_in_Developed_Economies_Lessons_for_Developing_Countries. accessed on 1 June 2022.

⁴¹⁶ SADC Financial Inclusion Strategy report op cite note 374.

be protected and promoted.⁴¹⁷ However, it makes little sense to tell people that their rights are respected if they continue to be financially excluded. Hence, it is important to assess the relationship between financial inclusion and human rights. The South African and Zimbabwean Constitutions entrenches human rights. The Bill of Rights endows everyone with the right to have access to adequate housing, healthcare, sufficient food, water and social security.⁴¹⁸ The Constitutions obliges the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.⁴¹⁹ Access to financial services is linked to the pursuit of certain other human rights enshrined in the Constitution. The Constitution does not explicitly provide for a right to access financial services. However, it is difficult to exercise the rights to access to food, shelter, education and health unless one has some form of income. Access to basic financial services offers an effective and efficient instrument that the poor can leverage to achieve other rights. The rights to human dignity, equality and freedom are denied to people who lack access to basic financial services. Liebenberg says that the

...respect for human dignity requires respect for equal worth of the poor by state through marshalling its resource to redress the conditions that perpetuate their marginalisation such as financial exclusion.⁴²⁰

3.8 FINANCIAL INCLUSION IN SOUTH AFRICA

3.8.1 The apartheid period

Colonial and apartheid systems played a pivotal role in shaping financial exclusion in South Africa.⁴²¹ However, attempts to account for the role played by these two systems of racial subjugation is bedevilled by a lack of accurate and reliable statistical material. There is no statistics or data depicting the state of financial inclusion or exclusion in apartheid South

⁴¹⁷ *Khosa v Minister of Social Development; Mahlaule v Minister of Social Development* 2004 (6) SA 505 (CC) para 85.

⁴¹⁸ Supra Constitution of South Africa op cit note 104 at Chapter 2.

⁴¹⁹ Ibid.

⁴²⁰ S Liebenberg 'The Value of Human Dignity in Interpreting Socio-Economic Rights' (2005) (2) *South African Journal on Human Rights*, Volume at 21.

⁴²¹ Apartheid ("apartness" in the language of Afrikaans) was a system of legislation that upheld segregationist policies against non-white citizens of South Africa. After the National Party gained power in South Africa in 1948, its all-white government immediately began enforcing existing policies of racial segregation. Under apartheid, non-white South Africans (a majority of the population) would be forced to live in separate areas from whites and use separate public facilities. Contact between the two groups would be limited. Despite strong and consistent opposition to apartheid within and outside of South Africa, its laws remained in effect for the better part of 50 years.

Africa. The 1931 census only counted Europeans.⁴²² Subsequent censuses did not measure financial inclusion. This does not mean that financial exclusion did not exist at the time. To assess the levels of financial inclusion and exclusion during these periods, this thesis considers apartheid laws that impacted peoples' access to financial services. It is common cause that the apartheid government's *modus operandi* was racial segregation. The financial sector played a huge role in cementing racial exclusion.⁴²³ Financial services were predominantly accessible to the non-black community.⁴²⁴ Thus, the apartheid financial sector and the policies created by the government led to gross financial inefficiencies and exclusion of black people.⁴²⁵ A multiplicity of barriers was put in place to make it difficult for black people (Africans, coloureds and Indians) to access financial services.⁴²⁶ Therefore, a skewed financial inclusion pattern was developed in favour of whites. Non-whites had little or no access to formal financial services. Various pieces of legislation enacted by the colonial and apartheid regimes became tools for limiting access to financial services for blacks. The most notorious ones were the Native Land Act of 1913, the Group Areas Act of 1950 and the Usury Act of 1968.

The Native Land Act was influential in alienating Africans from mainstream financial services. It deprived them of the right to own or rent land in areas that were defined as white areas.⁴²⁷ Section 1(a) of the Act provided that:

A native shall not enter into any agreement or transaction for the purchase, hire or acquisition from a person other than a native of any such land or of any right thereto, interest therein or servitude thereover.⁴²⁸

The Act restricted blacks to only 7% of land in the country and gave whites the remaining 93%.⁴²⁹ As a result, land became inaccessible for blacks. Leepo and Ndikho observe that

⁴²² A.J. Christopher 'The Union of South Africa censuses 1911-1960: an incomplete record.' (2011) 56 *Historia* at 9.

⁴²³ Cedric Ludweg 'Trade unions and financial inclusion (The case of South Africa)' (2006) *International Labour Organisation Working Paper No. 51*.

⁴²⁴ Philip Kostov, Thankom Arun & Samuel Annim 'Determinants of Access to Finance: An Investigation into the Mzansi Intervention' (2012) 12 *The European Journal of Development Research* at 399.

⁴²⁵ Marie Kistern 'Policy initiative to expand financial outreach in South Africa' available at <https://www.dbsa.org/sites/default/files/media/documents/2021-03/Policy%20initiatives%20to%20expand%20financial%20outreach%20in%20South%20Africa%2030%20May%202006.pdf> accessed on 1 June 2022.

⁴²⁶ See Ludweg C op cit note 423.

⁴²⁷ Native Land Act of 1913.

⁴²⁸ Supra Native Act of 1913 section 1(a).

⁴²⁹ Modise, Leepo, & Mtshiselwa, Ndikho. (2013). The Natives Land Act of 1913 engineered the poverty of Black South Africans: A historico-ecclesiastical perspective. *Studia Historiae Ecclesiasticae* at 14.

“opportunities for further accumulation of land through purchasing were severely curtailed”⁴³⁰ for blacks. This Act did not only deprive blacks of the right to own productive land but also profoundly affected their socio-economic well-being. Denial of access to land meant that black people did not have collateral to support applications for loans.⁴³¹ Finance and credit are advanced based on the value that is attached to the land used as security. Since the Native Land Act dispossessed blacks of their land, it deprived them of the ability to access credit. The situation was further exacerbated by the fact that creditors did not place any value on land owned by black people. Most blacks were pushed out of the formal financial system. Those who wanted credit had to rely on informal lines of credit.⁴³² Hence, the Native Land Act was instrumental in determining who had access to credit. Ultimately, it created financial exclusion.

During the apartheid epoch, legislation was equally instrumental in limiting access to credit for blacks. One such statute was the Usury Act 73 of 1968. Racial segregation policies deprived a large segment of the population of blacks access to formal education.⁴³³ Under the guise of protecting them from unscrupulous individuals and organisations who were intent on taking advantage of their “ignorance” through credit, the government enacted the Usury Act.⁴³⁴ This Act placed a ceiling on the amount of interest charged by credit providers.⁴³⁵ While the ceiling provision had good intentions, it had an unintended discriminatory effect on the supply of credit and loans.⁴³⁶ Ceilings on interest rates, in most cases, make it difficult for the intended beneficiaries to access credit. They make it difficult for financial institutions to meet their needs and to remain economically viable.⁴³⁷ Mohane, Coetzee and Grant argue that:

⁴³⁰ Bev Orton *Women, Activism and Apartheid South Africa: Using Play Texts to Document the Herstory of South Africa* (2018) at 22.

⁴³¹ Rudzani Mulaudzi *From Consumers to Investors: an investigation into the character and nature of Stokvels in South Africa's urban, peri-urban and rural centres using a phenomenological approach* (Unpublished thesis University of Cape Town 2017) 13.

⁴³² Ibid.

⁴³³ Raymond Anderson ‘Micro lending – The effects of a changing regulated environment upon stakeholders with particular reference to strategies for independent micro lenders’ (2019) *Conference Paper*.

⁴³⁴ Ibid.

⁴³⁵ Usury Act Act no 73 of 1968.

⁴³⁶ Ali Salem Alshebami. & D. M Khandare ‘The Impact of Interest Rate Ceilings on Microfinance Industry’ (2015) 2 *International Journal of Social Work* at 13.

⁴³⁷ Ibid.

When the government controls how the market works, supply and demand cannot interact freely to find equilibrium, quality, and price.⁴³⁸ This distorts the allocation of resources if the equilibrium is above the ceiling.⁴³⁹

The Usury Act led to the reduction of financial services to the poor because financial institutions could not cover their costs with small loans.⁴⁴⁰ Prior to 1992, it was not possible for microlenders to charge full-cost recovery interest rates.⁴⁴¹ Most black people were shunned by financial institutions because of this, leading to their relegation to informal markets.⁴⁴² The plight of black South Africans was further exacerbated by the location of financial institutions in Central Business Districts (CBDs). The lack of physical access to banking facilities contributed immensely to the financial exclusion of black communities.

The Group Areas Act reserved areas close to CBDs for whites.⁴⁴³ Section 10 of the Act provided that blacks were not allowed to occupy land or premises in the controlled areas. They were confined to the native locations.⁴⁴⁴ These native locations were located further from towns and cities and had no financial institutions. This undermined the ability of black people to access financial services. In Cape Town, for example, whites obtained prime land near Table Mountain and the coast, while coloureds, Africans and Indians were banished to racially homogeneous group areas on the periphery of the city.⁴⁴⁵ Approximately 150 000 coloureds were forcibly removed from District Six in Cape Town between 1957 and 1980.⁴⁴⁶ The Group Areas Act culminated in the forceful removal of black citizens from urban areas into congested townships that were far away from city centres and economic opportunities that are in CBDs.⁴⁴⁷ Control measures were put in place to limit the movement of blacks from rural areas into cities and towns.

⁴³⁸ Happy Mohane, Gerhard Coetzee & William Grant 'The Effects of the Interest Rate Ceilings on the Micro Lending Market in South Africa' (200) 39 *Agrekon* at 734. See also Anderson R op cit note 432. See also Ali Salem Alshebami et al note 434.

⁴³⁹ Ibid.

⁴⁴⁰ See Ludweg C op cit note 423.

⁴⁴¹ See Mohane H et al op cit note 438 at 731.

⁴⁴² Andrie Schoombee 'South African banks and the unbanked: Progress and prospects' *Stellenbosch Economic Working Papers*. 2 / 2004 at 5.

⁴⁴³ Jeff McCarthy 'Local and regional government: from rigidity to crisis to flux' in David M. Smith (ed) *The Apartheid City and Beyond Urbanization and Social Change in South Africa* 1st ed (1992) at 27.

⁴⁴⁴ Group Areas Act No 41 of 1950 Sec 10.

⁴⁴⁵ Henry Trotter 'Trauma and memory: the impact of apartheid-era forced removals on coloured identity in Cape Town' in Adhikari Mohamed (ed) *Burdened by race: Coloured identities in southern Africa* (ed) (2009) at 51. See also Mesthrie U 1999 'Dispossession in Black River, Rondebosch: the unfolding of the Group Areas Act in Cape Town'. *Unpublished manuscript, African Studies Collection, University of Cape Town*.

⁴⁴⁶ See Trotter H op cit note 445 at 49.

⁴⁴⁷ The Group Areas Act of 1950 available at <https://www.sahistory.org.za/article/group-areas-act-1950> accessed on 1 June 2022.

The freedom of movement of blacks was severely curtailed by the Blacks (Urban Areas) Consolidation Act 25 of 1945.⁴⁴⁸ Under this Act, the occupation of housing in urban areas by blacks was tightened. Regulations required blacks to produce permits giving them permission to be in cities. The Urban Areas Act stipulated that:

No black person could stay in prescribed areas (urban areas) for more than 72 hours unless they had permission to do so.⁴⁴⁹

An incidental consequence of this legislation was that most blacks were forced to stay in scheduled areas (rural areas) where there were no financial facilities. Their access to financial services was severely curtailed, leaving them with no option but to rely on informal financial systems. Towards the end of apartheid, the apartheid government started to open financial services for blacks. In the late 1980s and early 1990s, there was an increase of credit facilities by furniture and clothing retailers to blacks. An exemption notice to the Usury Act was issued in 1992. It exempted small loans from interest rate restrictions.⁴⁵⁰ The exemption was aimed at increasing access to credit and other financial services. Banks had contended that the caps introduced by the Usury Act made it increasingly difficult to provide small loans to poorer consumers who wanted to gain entry into the formal financial sector.⁴⁵¹ The notice gave exemption to money lending transactions that did not exceed 6000 ZAR where the terms of the loans did not exceed 36 months.⁴⁵² Micro-lenders began opening shops everywhere, offering credits to previously deprived groups. The exemption promoted the rapid growth of the micro-lending industry. By 1999, the number of micro-loans issued in the country totalled R15 billion.⁴⁵³ However, consumer options were limited. The finance provided was also inadequate in that loans provided were short-term and therefore inappropriate for the financing of more costly assets by black households.⁴⁵⁴

⁴⁴⁸ Pass laws in South Africa 1800-1994 available at <https://www.sahistory.org.za/article/pass-laws-south-africa-1800-1994> accessed on 3 March 2020.

⁴⁴⁹ Blacks (Urban Areas) Consolidation Act 25 of 1945.

⁴⁵⁰ Exemption Notice to the Usury Act (GN 3451 of 31 December 1992).

⁴⁵¹ Leriba Consulting Limited 'The risk of unsecured lending in South Africa' (2013) Occasional research report available at accessed on 2 June 2022 at 2.

⁴⁵² Ibid.

⁴⁵³ Candice Sage *Impact of the regulation of unsecured credit on consumers: An Analysis of the National Credit Act 34 of 2005 and its Regulations* (Unpublished Thesis University of KwaZulu Natal 2018).

⁴⁵⁴ 'Making credit market work. A policy framework for credit consumers' available at <https://slideplayer.com/slide/8759410/> accessed on 2 June 2022.

3.8.2 Post-apartheid South Africa

When South Africa adopted a democratic system early in the 1990s, approximately 60% of the adult population was excluded from formal financial services. Most of the excluded people were Africans.⁴⁵⁵ As such, the post-apartheid government inherited a financial sector that was developed and designed to protect and benefit a few.⁴⁵⁶ The banking sector was under-branched since financial institutions were concentrated in white urban areas.⁴⁵⁷ A paradigm shift in the financial sector was required to transform the banking industry to service the marginalised and the vulnerable communities and enable them to participate in the formal economy.⁴⁵⁸ The new government quickly realised that financial inclusion was a key component of economic transformation.⁴⁵⁹ In 2003, it enacted the Broad-Based Black Economic Empowerment Act (B-BBEE) with the aim of promoting the effective participation of Africans in the economy.⁴⁶⁰ Section 12 of the Act provides for the establishment of a transformative Charter for a particular sector of the economy by a Minister responsible for that sector.⁴⁶¹ In light of this, the Financial Service Charter (FSC), which applies to banks, insurance companies and financial intermediaries, was adopted by the government and major financial players in 2004. It is a social contract between the government, labour, civil society, and the financial service sector. Its aim is to transform the financial sector.⁴⁶² Clause 8 of the Charter provides for the creation of strategies that ensure that financial services are accessible to everyone.⁴⁶³ It was against this background that an initiative called Mzansi account⁴⁶⁴ was introduced by the big four private banks (ABSA, FNB, Standard Bank and Nedbank) in collaboration with Post Bank in 2004. Essentially, the Mzansi account was an entry-level bank account aimed at improving financial inclusion and savings, particularly for underbanked and low-income people.⁴⁶⁵ Its overarching objective was to bring financial services within reach of everyone.⁴⁶⁶ The banks offered

⁴⁵⁵ Marié Kirsten 'Policy initiatives to expand financial outreach in South Africa' (2006) *World Bank/Brookings Institute Conference* at 2.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid.

⁴⁵⁸ See Louis L & Chartier F op cit note 8 at 178.

⁴⁵⁹ See Abrahams R op cit note 37 at 649.

⁴⁶⁰ Broad-Based Black Economic Empowerment Act 53 of 2003 Preamble.

⁴⁶¹ Supra Broad-Based Black Economic Empowerment Act sec 12.

⁴⁶² See Abrahams R op cit note 37 at 649.

⁴⁶³ Financial Sector Charter clause 8 available at http://www.treasury.gov.za/comm_media/press/2003/2003101701.pdf accessed on 2 June 2022.

⁴⁶⁴ According to Finmark Trust 2009 Report 'The Mzansi account is an entry-level bank account, based on a magnetic stripe debit card platform, developed by the South African banking industry and launched collaboratively by the four largest commercial banks together with the state-owned Postbank in October 2004

⁴⁶⁵ Finmark Trust Report (2009) The Mzansi bank account initiative in South Africa final report.

⁴⁶⁶ The use of financial inclusion data. Country case study: South Africa (The Mzansi story and beyond) *A report by The National Treasury, South Africa and the AFI Financial Inclusion Data Working Group* Available at

standardised products at a relatively low cost.⁴⁶⁷ The account, unlike other bank accounts, did not charge monthly fees. It gave users five free transactions per month.⁴⁶⁸

The Mzansi account met challenges. Legally, the extent and form of collaboration between the competing major commercial banks required careful consideration within the competition law framework.⁴⁶⁹ The Competition Act prohibits anti-competitive behaviour such as price-fixing and collusion between competitors. It also prohibits the abuse of dominance.⁴⁷⁰ The Mzansi account contravened the Act since it was a single brand, a uniform set of product features, and uniform pricing structures across all participating banks. The Competition Act prohibited the pricing and product features of the Mzansi account.⁴⁷¹ An exemption from the Act was sought but was declined by the Competition Commission, which resolved that each bank had to charge its own fees.

Another challenge to the Mzansi account was posed by AML/CFT rules. The Know Your Customer (KYC) regulations, issued in terms of the Financial Intelligence Centre Act (FIC Act), require, *inter alia*, that financial institutions must verify their customers' personal and residential details.⁴⁷² Since the Mzansi initiative targeted the poor, most of whom stayed in informal settlements and could not produce FIC Act documents such as recognised proof of residence, the account was likely to fail. The government provided regulatory assistance in the form of regulatory exemptions. It revised the 2003 Exemption 17 to FIC Act, which limited the application of the AML/CFT rules to low-value accounts. The regulations did not exempt account products with typical debit card functionality, individual accounts that were inactive for 180 days, or certain second-order financial products. Under the (2004) revised Exemption

https://www.afiglobal.org/sites/default/files/publications/the_use_of_financial_inclusion_data_country_case_study_south_africa.pdf accessed on 22 June 2022..

⁴⁶⁷ See Kostov P, Arun T & Annim S op cit note 424 at 400.

⁴⁶⁸ See Finmark Trust Report op cit note 465.

⁴⁶⁹ Ibid.

⁴⁷⁰ Competition Amendment Act, No. 35 of 1999 sec 8.

⁴⁷¹ The National Treasury, South Africa 'The Use of Financial Inclusion Data Country Case Study: South Africa. The Mzansi Story and Beyond' available at https://www.gpfi.org/sites/gpfi/files/documents/The%20Use%20of%20Financial%20Inclusion%20Data%20Country%20Case%20Study_South%20Africa.pdf accessed on 2 June 2022..

⁴⁷² Financial Intelligence Centre Act, 2001 Act No 38 sec 21 & 22, See also Financial Intelligence Centre Act, 2001. Government Gazette No R1595.

17, anyone who wanted to open a Mzansi account was not required to produce proof of their residence.⁴⁷³

The success of the Mzansi account towards financial inclusion was the subject of contention among researchers and economists. At its inception, the Mzansi account aimed at creating two million accounts. According to the Finmark Trust report of 2009, more than five million Mzansi accounts were opened between October 2004 and December 2008.⁴⁷⁴ Approximately 90% of the account holders had not been previously banked, while 48% were from rural areas.⁴⁷⁵ This illustrates that the Mzansi account exceeded its target and expectations.⁴⁷⁶ Evidence also shows that the Mzansi initiative has been a gateway for a substantial number of previously unbanked people to open non-Mzansi bank accounts.⁴⁷⁷ It decisively shifted the frontier of access to financial services in South Africa.⁴⁷⁸ However, critics argue that the success of the initiative should be measured according to the usage, change in transactional behaviour and improvement in the propensity to save among the Mzansi account holders. To this end, Ismail & Masinge point out that only 60% of the 4.9 million accounts opened and remained active.⁴⁷⁹ Most banks abandoned the account. Despite this setback, it can be argued that the account was instrumental in contributing towards the extension of financial services to the unbanked. Hence, the accounted improved financial inclusion.

Another initiative relevant to financial inclusion in post-apartheid South Africa is the establishment of the South Africa Social Security Agency (SASSA) for the payment of grants.⁴⁸⁰ In an effort to alleviate poverty, social and financial exclusion and inequality, the government introduced a comprehensive social protection system that consists of seven types

⁴⁷³ Bankable Frontier Associates 2009 Report The Mzansi bank account initiative in South Africa final report available at https://finmark.org.za/system/documents/files/000/000/316/original/MsanziBankAccInitiativeSA_2009.pdf?1614593520 accessed on 2 October 2022. Financial Intelligence Centre Act, 2001 Act No 38. Exemption in terms of Financial Intelligence Centre Act, Government Notice No. R 1353, 19 November 2004

⁴⁷⁴ See Finmark Trust Report op cit note 465.

⁴⁷⁵ Ibid.

⁴⁷⁶ See Kostov P et al op cit note 467 at 400.

⁴⁷⁷ See Finmark Trust Report op cit note 465

⁴⁷⁸ Ibid.

⁴⁷⁹ Tashmia Ismail & Khumbula Masinge 'Mobile Banking: Innovation for the Poor' (2011) *UNU-MERIT Working Paper 2011-074*.

⁴⁸⁰ Section 27(1)(c) of the Constitution of the Republic of South Africa, 1996 states that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. Section 27(2) also places a duty on the state to take reasonable, legislative and other measures within its available resources to achieve the progressive realisation of this right. This was done by enacting the South African Social Security Agency Act 9 of 2004 and the Social Assistance Act 13 of 2004.

of grants.⁴⁸¹ The initiative was strengthened by the passing into law of the Social Assistance Act 13 of 2004. The adoption of the Social Assistance Regulations no R898 of 2004, which provide for methods of payment that include electronic transfers, was also instrumental towards financial inclusion.⁴⁸² However, from 2004, most grant recipients received their grants by way of cash collection from designated collection points. According to a Finmark survey, only 34% of grant recipients had bank accounts in 2004.⁴⁸³ To improve convenience, efficiency, and security, SASSA, in conjunction with MasterCard, introduced a biometric grant payment distribution system in 2012.⁴⁸⁴ As a way of encouraging recipients to use bank accounts to receive their grants, a special bank account that did not attract any monthly fees was introduced. Recipients could make purchases, check account balances and withdraw cash at till points at no cost at selected South African retailers.⁴⁸⁵ This provided nearly 10 million grant recipients with a formal bank account and a MasterCard debit card.⁴⁸⁶ A large proportion of poor and vulnerable people were brought into the formal banking system. According to Abrahams, “by moving away from cash payment system to the MasterCard system, approximately one-fifth of South African population now enjoys the benefit of formal banking products.”⁴⁸⁷

The transition from cash-based disbursements to electronic transfers opened gates for grant recipients to a wide range of financial products that come with owning a bank account.⁴⁸⁸ Credit facilities, insurance and debt orders became accessible to this group of people. This contributed significantly to increased financial inclusion.⁴⁸⁹ However, it brought its own challenges. The use of electronic transfers opened a new frontier of exploitation. Some financial institutions and non-financial providers targeted grant recipients with products such as funeral cover, airtime, and micro-loans.⁴⁹⁰ Debit orders and deductions left some grant recipients with little or no money for necessities. This resulted in an amendment of regulation 26A of the

⁴⁸¹ See Abrahams R op cit note 37 at 649.

⁴⁸² Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance; Government Gazette No. R. 898 of 2008.

⁴⁸³ See Finmark Trust Report op cit note 465.

⁴⁸⁴ See Abrahams R op cit note 37 at 649.

⁴⁸⁵ Ibid.

⁴⁸⁶ See Donovan K op cit note 32.

⁴⁸⁷ See Abrahams R op cit note 37 at 652.

⁴⁸⁸ Robyn Foley & Mark Swilling (2018) How one word can change the game: Case Study of State Capture and the South African Social Security Agency available at <https://www.markswilling.co.za/2018/12/how-one-word-can-change-the-game-case-study-of-state-capture-and-the-south-african-social-security-agency/> accessed on 1 June 2022..

⁴⁸⁹ *The Minister of Social Development of the Republic of South Africa & others v Net1 Applied Technologies South Africa (Pty) Ltd & others* (752/2017) [2018] ZASCA 129 at para 27.

⁴⁹⁰ Palesa Shipalana ‘Digitising Financial Services: A Tool for Financial Inclusion in South Africa?’ available at <https://saiia.org.za/research/digitising-financial-services-a-tool-for-financial-inclusion-in-south-africa> accessed on 1 June 2022.

Regulations of the Social Security Act by inserting a provision that prohibited all electronic debit orders, stop orders or deductions except for funeral cover.⁴⁹¹ However, the validity of the amendment was challenged in *Minister of Social Development of the Republic of South Africa & others v Net1 Applied Technologies South Africa (Pty) Ltd & others*.⁴⁹² The court set the amendment aside. Debit orders and deductions had a profound effect on the grant recipients' attitude towards the use of bank accounts. Most of them became afraid of fully utilising the banking services that come with owning bank accounts. They only used the accounts for cash withdrawals and rarely used them as stores of value, insurance, or access credit.⁴⁹³ According to a Finmark survey, 43% of all grant recipients withdrew all their money as soon as it was deposited.⁴⁹⁴ Most of these vulnerable people remained underbanked despite having bank accounts.

3.9 FINANCIAL INCLUSION IN ZIMBABWE

3.9.1 The colonial period

The economy of colonial Zimbabwe (Rhodesia) can best be described as dual (uneven, separate development) and enclaved (isolated).⁴⁹⁵ As a result, a relatively well-developed and sophisticated formal economy coexisted with an economically underdeveloped and backward rural economy, creating a highly dualistic economy.⁴⁹⁶ Black people were excluded from the mainstream economy, whereas whites had access to all financial services as the case was in apartheid South Africa. Between 1890 and July 1892, there were no banks in Rhodesia.⁴⁹⁷ The first bank to be set up in colonial Zimbabwe was Standard Bank, which opened on 22 July 1892.⁴⁹⁸ Other banks, such as the African Banking Corporation (ABC) and the Bank of Africa, followed in 1893 and 1895, respectively. These commercial banks did not provide loans to Africans who lived in the countryside and scattered labour centres that were far away from commercial banks. Therefore, no banking solutions were availed to them, resulting in high

⁴⁹¹ Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance; Government Gazette NO. R. 511 of 2016.

⁴⁹² *Supra The Minister of Social Development of the Republic of South Africa & others v Net1 Applied Technologies South Africa (Pty) Ltd & others*.

⁴⁹³ See Finmark Trust Report op cit note 158.

⁴⁹⁴ *Ibid*.

⁴⁹⁵ Godfrey Kanyenze 'Economic Structural Adjustment Programme (ESAP): Precursor to the Fast Track Resettlement?' in Medicine Masiwa Post-independence land reform in Zimbabwe Controversies and Impact on the Economy (2004) at 91.

⁴⁹⁶ *Ibid*.

⁴⁹⁷ Tapiwa Madimu & Enocent Msindo 'Towards Banking Inclusion? The Post Office Savings Bank (POSB) in Southern Rhodesia, 1905–1945' (2019) *African Economic History* at 57.

⁴⁹⁸ *Ibid*.

levels of financial exclusion among Africans. As was the case in apartheid South Africa, black communities in colonial Zimbabwe were deliberately excluded from access to financial services through legislation. Several laws restricted blacks from participating in the mainstream economy. These laws promoted the financial exclusion of blacks. The most notorious of them was the Land Apportionment Act (1930), the Land Tenure Act (1969),⁴⁹⁹ the Tribal Trust Land Act (1967) and the Native Land Husbandry Act (1951).

The Land Apportionment Act provided the foundation of the policy of parallel development.⁵⁰⁰ It partitioned the land into European and African reserves and forced Africans to leave fertile lands that they had held for generations and to which they were spiritually attached. This Act sent them into barren lands.⁵⁰¹ It rescinded the right of Africans to land ownership. As Africans were moved from productive to unproductive dry land, their crop and livestock production decreased. At the time, agriculture was the main activity for Africans.⁵⁰² Policies, legislation and regulations that affected agricultural production negatively affected their participation in access to financial services. As such, Africans were unable to engage in profitable farming and were excluded from the economy and financial activities related to it. Aside from this, various restrictions were placed on African products, negating the marketing of the small harvests reaped by African producers.⁵⁰³ The Land Apportionment Act also did not allow Africans in European areas unless it was for the benefit of Europeans.⁵⁰⁴ All banks and financial institutions were in European areas in which Africans were not allowed to go. This limited their access to financial services.

Access to financial services was also related to land tenure. Statutes enacted by the colonial government changed land ownership rights. The Tribal Trust Land Act introduced a system of land rights with a communalistic principle. Chiefs, instead of individuals, were given exclusive authority over tribal trust lands. They had sole rights over land usage in these areas. As a result, people living on tribal trust lands did not receive title deeds. They had no way of securing loans using their land as collateral, thereby limiting their access to credit. However, some used cattle

⁴⁹⁹ Land Apportionment Act (LAA) (1930).

⁵⁰⁰ Percy Ibbotson 'Urbanization in Southern Rhodesia' (1946) 16: *Journal of the International African Institute* at 73.

⁵⁰¹ Onias Mafa 'The Historical Context of Land in Zimbabwe' (2015) *Council for the Development of Social Science Research in Africa* at 43.

⁵⁰² Marcel Fafchamps, John Pender & Elizabeth Robinson 'Enterprise finance in Zimbabwe' (1994) *World Bank Report* at 5.

⁵⁰³ Henry Vusso Moyana 'Land and Race in Rhodesia' (1975) *The African Review: A Journal of African Politics, Development, and International Affairs* at 18.

⁵⁰⁴ See Ibbotson P op cit note at 500.

as collateral for loans. This was also limited by the Native Land Husbandry Act, which was enacted under the pretext of preventing overgrazing and land degradation. The Act prohibited Africans from owning more than three cattle.⁵⁰⁵ By 1965, it was estimated that 48% of African farming families had no cattle.⁵⁰⁶ Ultimately, it removed the ability of Africans to participate in the economy, resulting in their financial exclusion.

3.9.2 The post-independence period (1980 to 1990)

Zimbabwe, like South Africa, inherited a well-developed financial system when it attained independence in 1980.⁵⁰⁷ It had one of the most developed financial sectors in Sub-Saharan Africa.⁵⁰⁸ It had four commercial banks, three building societies, three financial houses and the Post Office Bank in 1980.⁵⁰⁹ Like South Africa in 1994, the financial system in Zimbabwe in 1980 excluded Africans. Kanyenze and Kondo observe that the “financial system in Zimbabwe was exclusive of the country’s population as financial services were available only to urbanites that constituted less than thirty per cent of the population.”⁵¹⁰ Unlike South Africa, which put measures to address financial exclusion soon after the end of apartheid, Zimbabwe did little to address the discrepancy in levels of financial inclusion. Like the period prior to independence, financial institutions remained heavily regulated.⁵¹¹ No attempts were made in the first ten years of independence to increase the participation of Africans in the financial sector.⁵¹² No legislation was passed to nudge financial institutions to lend to previously disadvantaged communities.⁵¹³ Financial authorities introduced various statutes and statutory instruments to prescribe specific roles and functions, interest rates, taxation and reserve requirements for different types of financial institutions.⁵¹⁴ This was instrumental in shaping the levels of financial inclusion in Zimbabwe. Laws such as the Prescribed Rate of Interest Act of 1983 were introduced. The Act provided that “unless governed by another law, agreement or trade

⁵⁰⁵ Victor E.M. Machingaidze ‘Agrarian Change from above: The Southern Rhodesia Native Land Husbandry Act and African Response’ (1991) 24 *The International Journal of African Historical Studies* at 575.

⁵⁰⁶ G. Kay, *Rhodesia: A Human Geography* (New York, 1970) 9.

⁵⁰⁷ See Chitokwindo S et al op cit note 3 at 416.

⁵⁰⁸ Charles Harvey ‘The Limited Impact of Financial Sector Reforms in Zimbabwe (1996) *IDS Working Paper* 36 at 163, See also Kanyenze Godfrey & Kondo Timothy *Beyond the Enclave. Towards a Pro-Poor and Inclusive Development Strategy for Zimbabwe* (2011) at 437. See also Chitokwindo S et al op cit note 3 at 416.

⁵⁰⁹ See Kanyenze G & Kondo T op cit note 508 at 347.

⁵¹⁰ Ibid.

⁵¹¹ Obert Nyawata & Clever Mumbengegwi Financial Liberalization and the Adoption of Indirect Instruments of Monetary Policy at (2000) 131 In book: *Macroeconomic and Structural Adjustment Policies in Zimbabwe*, also see Harvey C op cit note 508 at 163.

⁵¹² Edward Mawanyika *Financial liberation in Zimbabwe. What went wrong?* (Unpublished Master’s thesis University of Cape Town 1999)

⁵¹³ Ibid, also see Charles Harvey op cit note 508 at 163.

⁵¹⁴ See Nyawata O & Mumbengegwi C op cit note 511.

custom, the rate at which interest-bearing debt accrue interest should be prescribed by the relevant Minister.”⁵¹⁵ Like the Usury Act in South Africa, the Act set an interest rate ceiling on credit. In 1986, the government issued Statutory Instrument no 146/1986, which set the prescribed interest rate at 10% per annum.⁵¹⁶ As mentioned above, The ceiling made it difficult for financial institutions to meet their needs and to remain economically viable. As mentioned above, when the government controls how the market works, supply and demand cannot interact freely to find an equilibrium of quality and price.⁵¹⁷ Like in South Africa, the interest ceiling failed to increase the volume of credit extension since financial institutions were cautious of lending to new customers, especially Africans.⁵¹⁸ Harvey notes that the interest rate ceiling was used extensively to limit banks from lending.⁵¹⁹ This contributed to the continued marginalisation of Africans from formal financial services. As such, small firms and low-income groups had no access to credit.⁵²⁰

3.9.3 The Economic Structural Adjustment Programme (ESAP) period

This period started in 1990 and ended in 2000. It led to a paradigm shift in Zimbabwe’s regulatory approach to financial institutions in the early 1990s. The government realised that excessive regulations and controls interfered with competition and made banks less efficient, resulting in reduced access to banking.⁵²¹ Thus, the government began adopting a policy of deregulation and relaxed financial regulations. This was done under the auspices of the Economic Structural Adjustment Programme (ESAP), a World Bank and IMF-funded programme. ESAP was introduced in 1991 to liberalise the financial sector and improve access to finance, and reduce poverty.⁵²² Regulations pertaining to the entry of new financial institutions were relaxed. Also, there was a deregulation of interest rates on the understanding that markets determined interest rates and that left to operate on the laws of supply and demand, the markets would stimulate growth in savings and encourage banks to provide more credit.⁵²³ Consequently, Zimbabwe witnessed the emergence of new financial institutions, most of which

⁵¹⁵ Prescribed Rate of interest Act 30 of 1983.

⁵¹⁶ Statutory Instrument no 146/86.

⁵¹⁷ See Mohane H op cit note 438.

⁵¹⁸ See Mawanyika E op cit note 512.

⁵¹⁹ See Harvey C op cit note 507.

⁵²⁰ Daniel Makina ‘Recovery of the Financial Sector and Building Financial Inclusiveness’ (2009) *UNDP Comprehensive Economic Recovery in Zimbabwe Working Paper Series 5*.

⁵²¹ See Kanyenze G & Kondo T op cit note 507 at 376.

⁵²² Theresa Moyo *Financial Sector Liberalization and the Poor: A Critical Appraisal* (2001) 14

⁵²³ Ibid.

were owned by indigenous Zimbabweans.⁵²⁴ The number of banks increased from ten in 1991 to 30 within a decade. However, this did not result in a decrease in the rate of financial exclusion. Daniel Makina says that “the reforms did not address the structural causes that hindered financial inclusiveness.”⁵²⁵ The formal banking sector continued to serve prime clients as it has done for centuries, leaving the majority of the poor unbanked.⁵²⁶ Researchers point out that most of the new banks that were licenced were not commercial banks but merchant banks and discount houses.⁵²⁷ Merchant banks, according to Kanyenze and Kondo,

Generally, operate in the wholesale arena of banking thus they are more inclined to do business with large organizations and corporate clients. They do not have appetite for small enterprise let alone those marginalized section of the economy.⁵²⁸

Kanyenze and Kondo further point out that when measured in terms of the depth of products and services offered, the new banking institutions did not offer any innovative services. Instead, they chose to fight for space in the market for generic banking products, mainly deposits mobilisation and lending to well-established companies and individuals with high net worths.⁵²⁹ The poor and the marginalised did not benefit from the deregulation of financial services.

3.9.4 The banking crisis period

Deregulation of the financial sector resulted in the emergence of many indigenous banks, which totalled 43 by 2003.⁵³⁰ During this period, banks operated within the framework of the Banking Act of 1964. In terms of this Act, the licensing of banks was performed by the Ministry of Finance through the Registrar of Banks and Financial Institutions.⁵³¹ Under this arrangement, there was no strict supervision of banks.⁵³² Due to a combination of poor management of funds and lack of supervision, the newly established banks faced tight problems of liquidity constraints and failed to meet their regulatory obligations.⁵³³ As a result, Zimbabwe saw the

⁵²⁴ See Kanyenze G & Kondo T op cit note 508 at 376, See also Chitokwindo S op cit note 3 at 416.

⁵²⁵ See Makina D op cit note 520 at 4.

⁵²⁶ Ibid.

⁵²⁷ Charles Nyoka ‘Banks and the fallacy of supervision: the case for Zimbabwe’ (2015) 1 *Banks and Bank System* at 8, See Charles Harvey op cit note 508 at 182.

⁵²⁸ See Kanyenze G & Kondo T op cit note 508 at 482.

⁵²⁹ Ibid.

⁵³⁰ Ibid.

⁵³¹ Mawanyika E op cit note 512.

⁵³² IMF Zimbabwe: Selected Issues and Statistical Appendix (2005) available at <https://www.bookstore.imf.org/books/zimbabwe-selected-issues-and-statistical-appendix-7126b3d0-d38d-4d04-b4d8-58293f7f10ec> accessed on 1 June 2022.

⁵³³ Njanike, K The impact of globalisation on banking service quality in Zimbabwe (2003) 10 *Annals of the University of Petroşani, Economics* at 206.

closure of 13 banks, which were all licenced after 1991.⁵³⁴ This catastrophic experience by individual banks and the turmoil of the sector led to the review of the regulatory environment and significant amendments to the laws governing the financial sector.⁵³⁵ The Troubled Financial Institution Resolution Act⁵³⁶ was introduced in 2004. Under this Act, “seven of the thirteen collapsed banks were placed under curatorship, one under liquidation, one closed, and the other four were placed under troubled banks fund.”⁵³⁷ Most depositors lost their money because of the closure of these banks.⁵³⁸ The Financial Laws Amendment Act of 2004 transferred the powers of the Registrar of Banking Institutions under the Minister of Finance to the Reserve Bank of Zimbabwe (RBZ).⁵³⁹ The mandate of the RBZ is to ensure that potential banks meet stringent standards to avoid registering weak banks. This move reduced competition within the financial sector and amounted to a reversal of the liberalisation of the early 1990s.⁵⁴⁰ As a result, financial inclusion suffered as more people shunned the banking system. They were unsure which bank might be next on the firing line. People started to keep cash outside the banking system, leading to a decline in public deposits.

The situation was further exacerbated when banks that had survived the crisis closed their branches in remote areas as a cost-cutting measure. Kanyenze and Kondo observe that “over ten bank branches were closed in rural Zvishavane, Mhangura, Mberengwa, Shamva, Maphisa growth point, Hwange and Shurugwi most of them belonging to commercial banks.”⁵⁴¹ The RBZ introduced unrealistic maximum withdrawal limits.⁵⁴² The cash withdrawal limit was not enough to cover a one-way bus fare ticket for those who stayed in town.⁵⁴³ This further

⁵³⁴ Lance Mambondiani *Corporate governance of banks: evidence from Zimbabwe's banking sector* (Master's thesis University of Manchester 2001) See Nyoka C op cit note 527 at 8.

⁵³⁵ See Nyoka.C op cit note 527.

⁵³⁶ The Troubled Financial Institutions (Resolution) Act, Chapter 24:28, Act 31/2004 enacted on January 14, 2005, allowed the Reserve Bank of Zimbabwe to establish the Troubled Bank Fund for the purpose of providing financial assistance to financial institutions in distress.

⁵³⁷ Shewangu Dzomira Analysis of bank failures during financial tumult in Africa-Zimbabwe: a historical review (2014) *Journal of Governance and Regulation* see 78 See also Mambondiani L op cit note 534 at 23.

⁵³⁸ Zimbabwe: Selected Issues and Statistical Appendix 2003 International Monetary Fund Staff Country Report at 56. See also Bothwell Fundira Money laundering in Zimbabwe, 2004 to 2006 (2007) *Institute for security studies*.

⁵³⁹ See Kanyenze G & Kondo T op cit note 508 at 376.

⁵⁴⁰ See Kanyenze G & Kondo T op cit note 508 at 489.

⁵⁴¹ Ibid.

⁵⁴² Chitokiwondo S op cite note 3

⁵⁴³ Mediel Hove 'Endangered Human Security in Cash Strapped Zimbabwe, 2007-2008' (2017) *African Studies Quarterly* 17 at 53.

encouraged people to shun banks, leading to further financial exclusion. According to the RBZ, only 18.3% of the people had access to bank accounts in 1997.⁵⁴⁴

3.9.5 The post-banking crisis period

In 2009, the government abandoned the Zimbabwean dollar and adopted the multicurrency regime. This brought sanity within the banking sector, particularly because the US\$ emerged as the dominant currency. Despite dollarisation, Zimbabwe continues to witness a very subdued use of formal financial institutions. The penetration rate, measured by the number of bank accounts held by banks, remains low.⁵⁴⁵ The advent of technology, such as the introduction of electronic banking, did not manage to dislodge financial exclusion in Zimbabwe.⁵⁴⁶ However, the use of mobile money services has seen a large increase in recent years of the use of formal financial services.

3.10 Conclusion

Low-income people have limited access to traditional financial systems. Factors that limit access include high service costs, prohibitively long travel distances to bank branches and ATMs, and negative perceptions of financial service providers. Although financial inclusion remains a global challenge, recent evidence suggests that mobile money can play a vital role in promoting financial inclusion, especially in Sub-Saharan Africa. Financial inclusion is an important tool for fighting poverty and underdevelopment. It is imperative for both developed and developing countries. While most developed countries have made strides in addressing problems of financial exclusion, most African countries are facing challenges in dealing with this problem. Both the excluded (the poor and disadvantaged) and financial institutions (banks and insurance companies) should equally shoulder the blame for causing financial exclusion. The high fees charged by financial institutions, documentation requirements for opening accounts, and unavailability of services in remote areas result in financial exclusion. On the other hand, illiteracy, negative attitudes towards financial institutions and poverty among the poor equally result in financial exclusion.

⁵⁴⁴ Reserve Bank of Zimbabwe Report op cit note 82.

⁵⁴⁵ Chikoko, Laurine & Mangwendeza, Patrick 'Financial inclusion by Zimbabwean commercial banks in a liquidity constrained environment' (2012) *Journal of Economics and International Finance* at 255.

⁵⁴⁶ Emmanuel Dumbu. 'Banking the unbanked: Perceptions of the international cross border women entrepreneurs in Beitbridge, Zimbabwe' (2018) *London Journal of Research in Management and Business* at 5.

Arguably, the legacies of colonialism and apartheid in South Africa and Zimbabwe play a pivotal role in shaping their financial inclusion landscape. The apartheid system limited Africans from access to financial services through various pieces of legislation. The same can be said of Zimbabwe, where colonial legislation kept Africans out of the formal financial system. In the post-colonial period, the two countries adopted various measures, including legislative changes, to address the problem of financial exclusion. Despite such measures, both Zimbabwe and South Africa are still experiencing financial exclusion. However, Zimbabwe appears to be in deeper trouble than its South African counterpart.

CHAPTER 4: FINANCIAL REGULATION

4.1 INTRODUCTION

The regulatory failure that led to the catastrophic Global Financial Crisis of 2008 prompted governments to pay more attention to the regulation of financial systems. It led to a rethink of the rules and assumptions underpinning financial systems across the globe.⁵⁴⁷ Van Niekerk and Van Heerden argue that well-structured regulatory regimes contribute to the efficiency and stability of financial systems.⁵⁴⁸ Wood and Clement define financial regulation as government intervention in the financial system through the passage of rules and laws, and the establishment of institutional arrangements for the enforcement, monitoring and supervision of compliance with financial regulations.⁵⁴⁹ It encompasses the regulation of securities, banking, insurance, and derivatives and investment management, among related fields. The Organization of Economic Cooperation and Development (OECD) describes financial regulation as an instrument or mechanism by which the state, through its agencies and the legislature, compels an entity or individual to comply with specific requirements.⁵⁵⁰ Financial regulations are implemented and enforced through policies, legislation, decrees and other types of legal instruments.⁵⁵¹ The South Africa National Treasury policy document report of 2011 outlines the important role played by financial institutions and the need to regulate them to ensure the stability of the financial system, consumer protection and maximum efficiency.⁵⁵²

⁵⁴⁷ Andrew Godwin, Steve Kourabas and Ian Ramsay 'Twin Peaks and Financial Regulation: The Challenges of Increasing Regulatory Overlap and Expanding Responsibilities' (2016) *The International Lawyer* at 279

⁵⁴⁸ Gerda van Niekerk & Corlia van Heerden 'The importance of a legislative framework for co-operation and collaboration in the Twin Peaks model of financial regulation' (2020) *SALJ* at 108.

⁵⁴⁹ Anthony Wood & Kimarie Clement 'A Review of the Financial Regulatory Framework of Barbados' (2015) *Monetaria* at 114, See also Sam Mensah, Franklin BeInye, Adu Anane-Antwi, Dan Seddoh and Antony Aboagye 'A Comprehensive Financial Sector Regulatory Framework Study for Ghana' (2018) available https://assets.publishing.service.gov.uk/media/5beafae540f0b667b056110a/062_Final_Report_v2.1.pdf accessed on 1 June 2022.

⁵⁵⁰ OECD Report policy framework for effective and efficient financial regulation general guidance and high-level checklist available at <https://www.oecd.org/finance/financial-markets/44362818.pdf> accessed on 1 June 2022.

⁵⁵¹ *Ibid.*

⁵⁵² South Africa National Treasury Policy Document 2011 'A safer financial sector to serve South Africa better' available at <http://www.treasury.gov.za/documents/national%20budget/2011/a%20safer%20financial%20sector%20to%20serve%20south%20africa%20better.pdf> accessed on 1 June 2022..

In an ideal situation in which financial services are provided in a perfectly competitive market, there is no need for regulation since any unnecessary regulation imposed by the state on financial institutions will be a net cost to consumers. On the other hand, when there are market imperfections and failures due to the lack of appropriate regulations, consumers will pay the cost. Therefore, financial regulations are designed to protect consumers from market imperfection and failures which compromise consumer welfare in an unregulated environment. Financial institutions such as banks are inherently unstable, particularly when they are left to function freely without any form of regulatory constraints and supervision.⁵⁵³ This poses many problems. Hence, financial regulations are designed to bring stability and to achieve certain key policy goals of the government. They are aimed at ensuring the safety and soundness of financial institutions.⁵⁵⁴ Regulatory oversight that focuses on the solvency of financial institutions and the protection of consumers is critical for a well-functioning financial system.⁵⁵⁵ This is exemplified by regulatory requirements of minimal capital requirements that act as a direct buffer against insolvency. They indirectly protect consumers since higher capital levels mean owners have more to lose from risk-taking. Notably, financial institutions, particularly banks, do not consider the potential cost of their failure to the economy. When left to their devices, they can take greater risks that have the potential to harm the market.⁵⁵⁶ The effects of organisational failure in the financial sector engulf other sectors of the economy.⁵⁵⁷ Financial institutions are not deterred by the spill-over effects of their risky decisions. Therefore, the government needs to step in with regulations and policies to protect financial institutions from themselves and to safeguard other financial institutions which may be affected.⁵⁵⁸ Thus, financial regulations ensure economic stability. They curtail the harmful effects of risky decisions taken by banks.

Financial regulations are also designed to protect consumers and investors through rules of conduct for businesses.⁵⁵⁹ Regulations ensure fair interaction between service providers and

⁵⁵³ Paolo Garrona *The Costs and Benefits of Financial Regulation Towards a Monitoring System* (2015) at 45

⁵⁵⁴ G-30 Report The structure of financial supervision (Approaches and challenges in a global market) available at https://group30.org/images/uploads/publications/G30_StructureFinancialSupervision2008.pdf accessed on 1 June 2022.

⁵⁵⁵ Ibid.

⁵⁵⁶ Botha Erika & Makina, Daniel 'Financial regulation and supervision: Theory and practice in South Africa' (2011) 10 *International Business & Economics Research Journal* at 29.

⁵⁵⁷ Samra Chaudary & Daisy Salvador-Adebayo 'Why Regulate Financial Markets? The underlying rationale for financial regulation in the wake of the current crisis' (2014) *Journal of European Studies* at 126.

⁵⁵⁸ Ibid.

⁵⁵⁹ See G-30 report op cite note 554.

consumers.⁵⁶⁰ The financial sector has inherent information asymmetries and power imbalances demonstrated by the reality that service providers have more information about their products and services than consumers.⁵⁶¹ Regulations guard this information asymmetry. They contribute to lessening financial exploitation and ensure transparency through demands for full disclosure of all information that is relevant to consumers.⁵⁶² Since depositors cannot monitor the financial activities of their banks, they cannot judge the safety and soundness of the banks. Notwithstanding the importance of screening and monitoring, it is expensive for small depositors to do so. Regulators fill the gap by controlling and supervising financial institutions.

Although the legislature and government agencies have good intentions for regulating financial institutions, financial regulations can become impediments to economic development and innovation. The fear of compromising the safety and soundness of the financial sector in the aftermath of the 2008 crisis led governments to create rigid financial regulations that make it difficult for new players to enter the market. In recent years, mobile network operators have become important players in the financial sector. Most banks have adopted the concept of mobile banking. As mentioned in chapter 2 of this study, mobile network operators are now providing banking services in most African countries. However, they find it difficult to navigate rigid regulatory systems to fully provide banking services. This chapter analyses how regulations facilitate and inhibit the adoption of mobile money services in South Africa and Zimbabwe.

4.2 APPROACHES TO REGULATING MOBILE MONEY SERVICES

The regulatory and policy environment for mobile money is complex and often ill-defined since it cuts across various regulatory domains.⁵⁶³ The introduction of mobile money did not witness an accompanying regulatory shift to embrace it.⁵⁶⁴ The same old rules were essentially realigned to accommodate the new service. According to a GSMA 2016 study, countries with enabling regulation enjoy higher rates of success with mobile money.⁵⁶⁵ This includes direct regulation of non-bank institutions and a risk-based approach to registration requirements. On the other hand, cumbersome regulatory regimes can also be a factor for the failure of mobile

⁵⁶⁰ See Botha and Makina *op cit* note 556 at 29.

⁵⁶¹ *Ibid.*

⁵⁶² See Chaudary S & Salvador-Adebayo D *op cit* note 557 at 126.

⁵⁶³ See Katusiime L *op cit* note 52 at 3.

⁵⁶⁴ See Madise Sunduzwayo *op cit* note 74 at 8.

⁵⁶⁵ See Nika Naghavi *op cit* note 194.

money services. A research conducted by Evans and Pirchio shows that, heavy regulation is usually fatal to igniting mobile money schemes in a country⁵⁶⁶ They concluded that most countries where mobile money failed to reach the critical ignition point necessary for explosive growth had imposed requirements that mobile money systems were established by banks and prohibited mobile network operators from taking the leading role.⁵⁶⁷ Therefore, there is a need for an effective and efficient mobile money regulatory framework, which would protect consumers, allow innovative growth and ensure financial soundness.⁵⁶⁸ Lal and Sachdev identify three regulatory approaches to mobile money services, namely, the no specific regulation approach, the prescriptive approach, and the test and learn approach.⁵⁶⁹ Under the no specific regulation approach, regulators do not impose regulations for mobile money services, leaving mobile money operators to find ways to operate such systems within existing legal regimes.⁵⁷⁰ This approach is used in Brazil and South Africa. Under the prescriptive approach, regulators adopt specific rules on how and by whom mobile money services are provided. They adopt the regulations before any deployment of mobile money services.⁵⁷¹ The test-and-learn approach allows regulators to grant restricted licences and partial exemptions for mobile money providers. The regulators establish intermediaries for testing new technologies while still providing oversight.⁵⁷² The most used regulatory approach in mobile money services is the test and learn approach, which is used in the Philippines, Kenya, Sri Lanka and Zimbabwe. The test and learn approach, unlike the prescriptive approach, establishes guidelines within which mobile money operators experiment with different business models.⁵⁷³ Once they determine how the market has evolved, what services people are using, and what methods are most effective, regulators develop and impose regulations. The following section is an analysis of mobile money regulation approaches in South Africa.

⁵⁶⁶ David S. Evans & Alexis Pirchio 'An Empirical Examination of Why Mobile Money Schemes Ignite in Some Developing Countries but Flounder in Most' *Coase-Sandor Working Paper Series in Law and Economics* No. 723, 2015.

⁵⁶⁷ Ibid.

⁵⁶⁸ See Madise Sunduzwayo op cit note at 8.

⁵⁶⁹ See Lal R & Sachdev I op cit note 58 at 13.

⁵⁷⁰ Ibid.

⁵⁷¹ International Atomic Energy Agency Approaches and Methods to Conduct Regulatory Safety Review and Assessment available at <https://ansn.iaea.org/Common/topics/OpenTopic.aspx?ID=13052> accessed on 1 June 2022, See also See Lal R & Sachdev I op cit note 58 at 13.

⁵⁷² World bank Group How Regulators Respond to Fintech Evaluating the Different Approaches—Sandboxes and Beyond (2020) *Finance, Competitiveness & Innovation global practice fintech note no. 5* at 38 See also Lal & Sachdev I op cit note 58 at 13.

⁵⁷³ See Lal R & Sachdev I op cit note 58 at 14.

4.3 FINANCIAL REGULATIONS AND MOBILE MONEY SERVICES IN SOUTH AFRICA

Based on the Mobile Money Regulatory Index scores, most Sub-Saharan African countries have enacted regulatory frameworks that enable widespread mobile money adoption with country index scores between 70 and 100.⁵⁷⁴ South Africa has a well-regulated and sophisticated financial sector that encompasses the banking, insurance, and securities industries.⁵⁷⁵ Its banking system is well regulated and ranked among its counterparts in first-world economies.⁵⁷⁶ The country has strong, prudential and market conduct regulations. Since the dawn of democracy, South Africa's financial sector saw the promulgation of regulations and legislation for the financial sector. These improved South Africa's compliance with international standard bodies.⁵⁷⁷

Before analysing the South African regulatory approach to mobile money services and impact of financial regulations on the rollout of mobile money services, it is important to outline the state of mobile money services in South Africa. As mentioned in chapter 2, there are different models of mobile money services. They include the bank-led or bank-centric mobile money services, mobile network or Operator-led mobile money services, and collaboration or partnership mobile money services.⁵⁷⁸ However, the first mobile money service introduced in South Africa did not fall in any of these categories. Makore posits that Wizzit is the pioneer and early innovator in the provision of mobile money services in South Africa.⁵⁷⁹ It is neither an mobile network operators nor a bank. It is a private company that offers a transactional banking account through mobile phones and debit cards.⁵⁸⁰ It was launched in 2004. It targets unbanked and low-income communities.⁵⁸¹ Wizzit facilitates mobile payments such as person to person transfers and offers payments for services and goods, settling utility bills and buying

⁵⁷⁴ See Lorna Katusiime op cit note 52 at 3.

⁵⁷⁵ Reza C Daniels 'Financial intermediation, regulation and formal credit sector in South Africa' (2010) 21 *Development in Southern Africa* at 883.

⁵⁷⁶ Andrew Maredza & Slyvonus Ikhidho 'Measuring impact of Global Financial Crisis and efficiency and productivity of the banking system in South Africa' (2013) *Mediterranean Journal of Social Sciences* at 554.

⁵⁷⁷ See Reza C D op cit note 575.

⁵⁷⁸ Ibid, see also Bara A note op cit note 39 at 346, see also Tarazi, M. & Breloff, P op cit note 220.

⁵⁷⁹ Mildred P Makore 'Exploring use of mobile banking services by the poor: Case of Wizzit Bank, South Africa' available at <https://researchspace.ukzn.ac.za/xmlui/handle/10413/13582>. accessed on 21 March 2019.

⁵⁸⁰ Susan Steinman 'An explanatory study into factors influencing an enabling environment for social enterprise in South Africa' available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.469.93&rep=rep1&type=pdf> accessed on 1 June 2022.

⁵⁸¹ See Makore M P op cit note 579.

airtime using mobile phones.⁵⁸² It also gives customers a Maestro branded debit card for making purchases, getting cash back at retail outlets and withdrawing money at any ATM in South Africa. The mobile money service does not charge users monthly fees. It charges users for each transaction.⁵⁸³ Wizzit operates as a division of the South Africa Bank of Athens.⁵⁸⁴ The reasons for its operation as a division of the bank are discussed later in this chapter.

Commercial banks are major players in the provision of mobile money services in South Africa. The four major retail banks, namely, the First National Bank (FNB), Standard Bank, Nedbank and the Amalgamated Bank of South Africa (ABSA), provide mobile money services.⁵⁸⁵ The mobile money services they provide fall under the bank-led mobile money services category. As mentioned in chapter 2, under the bank-led mobile services category, banks offer financial services to their clients while mobile network operators merely play assisting roles.⁵⁸⁶ The function of mobile network operators in the bank-led model is to provide mobile technology that facilitates mobile money transactions.⁵⁸⁷ Such services are additive in that they add mobile phones as additional channels through which to operate existing bank accounts in lieu of the internet or ATMs.⁵⁸⁸ Customers access their bank accounts and check balances, make transfers and payments, and perform various other transactions through mobile phones.⁵⁸⁹ Prominent mobile money services provided by banks in South Africa are FNB's E-Wallet, Standard Bank's Instant Money, Nedbank's Send-Imali and ABSA's CashSend.

FNB launched E-Wallet in 2009. This money solution offers every bank's account holder the capability to send money to anyone who has a mobile phone number.⁵⁹⁰ Funds are transferred instantly. The recipient receives a text message indicating that the funds have been sent to their mobile phone.⁵⁹¹ The recipient does not need to have a bank account to receive the funds. They

⁵⁸² V.B. Kakande & S.V. Suryavanshi 'Financial innovation and financial inclusion – Wizzit Model' (2009) 1 *ETHOS Journal of research articles in management science and allied areas* at 28, See also Makore M P op cit note 579.

⁵⁸³ Kakande V B & Suryavanshi S V op cit note 578.

⁵⁸⁴ Tashmia I & Khumbula M op cit note 478 at 6, See also Kakande V B & Suryavanshi S V op cit note 578 at 23.

⁵⁸⁵ Irwin Brown, Zaheeda Cajee, Douglas Davis & Shaun Stroebe 'Cellphone banking: Predictors of adoption in South Africa' (2003) 23 *International Journal of Information Management* at 382.

⁵⁸⁶ See Lal R & Sachdev I op cit note 58 at 17.

⁵⁸⁷ Kersop M & du Toit S F op cit note 35 at 1603, see also Porteous D op cit note 141.

⁵⁸⁹ See Brown I et al op cit note 584.

⁵⁹⁰ Nkaelang, Boitumelo, S. Ojo, Victor Wacham and A. Mbarika 'Mobile payment services in South Africa: Providing secure financial services to the poor' (2012) available at <https://www.semanticscholar.org/paper/Mobile-payment-services-in-South-Africa%3A-Providing-Nkaelang-Ojo/d1fcfb520245d430a4e7e2caefc9084973aadbfb0> accessed on 1 June 2022.

⁵⁹¹ FNB website available at

only need a valid cell phone number. They can withdraw the cash at any FNB ATM.⁵⁹² E-Wallet gives senders and receivers access to other services such as buying electricity and prepaid airtime and transferring the funds to third parties.⁵⁹³ ABSA introduced its mobile banking service, CashSend, in 2008. CashSend allows ABSA customers to send money from their accounts to anyone who has a mobile phone. The customers choose between internet and cell phone banking services to use CashSend. Like FNB's E-Wallet, CashSend does not require the receiver of money sent using CashSend to have a bank account. Recipients can collect the money from ABSA ATMs.⁵⁹⁴ While E-Wallet and CashSend are conducted through a mobile phone, they cannot be called mobile money per se since they are additive services. They are best described as mobile banking.

Standard Bank provides its mobile money services through Instant Money. Compared to E-Wallet and CashSend, the Instant Money mobile money service is more transformative. It works for everyone, whether one has a Standard Bank account or not.⁵⁹⁵ Like its counterparts, Instant Money offers a PIN-controlled and cardless collection service.⁵⁹⁶ Instant Money can be collected at any Standard Bank ATM and partner retailers such as selected supermarkets and retailers, including Pick and Pay, Shoprite, Checkers, Usave and Ok Furniture. Standard Bank recently added spaza shops to the list of retailers.⁵⁹⁷ To register for Instant Money, one needs to dial *120*212# and enter their ID number and create a unique Instant Money wallet pin.⁵⁹⁸ With an Instant Money wallet, one can send and receive money, make payments for goods and cash out a transaction. Retailers such as Shoprite, Checkers, PEP and Pick and Pay also provide banking and insurance services in South Africa. PEP offers customers transactional products,

<https://www.fnb.co.za/send-money/#:~:text=The%20recipient%20will%20receive%20an,they%20would%20like%20to%20withdraw> accessed on 1 June 2022.

⁵⁹² See Brown I et al op cit note 585.

⁵⁹³ Peter Ondiege 'Mobile Banking in Africa: Taking the Bank to the People' (2010) 8 *AFD Africa Economic Brief* at 11.

⁵⁹⁴ ABSA Website <https://www.absa.co.za/self-service/tools-to-do-your-banking/anytime-anywhere-banking-transactions/cashsend/> accessed on 22 February 2021.

⁵⁹⁵ Standard Bank Instant Money available at <https://www.standardbank.co.za/southafrica/personal/products-and-services/ways-to-bank/innovative-payment-solutions/instant-money> accessed on 2 February 2022.

⁵⁹⁶ Ibid.

⁵⁹⁷ You can now receive Standard Bank Instant Money cash at Shoprite/Checkers, Pick n Pay Available at <https://www.iol.co.za/business-report/companies/you-can-now-receive-standard-bank-instant-money-cash-at-shopritecheckers-pick-n-pay-419c70f2-0df7-45be-8ede-32a6f8039400> accessed on 22 February 21.

⁵⁹⁸ See Standard Bank op cit note 38.

including store-to-store money transfers, cash withdrawals at till points, funeral insurance and personal loans underwritten by its subsidiary, Capfin.⁵⁹⁹

This thesis focuses on mobile money services provided by mobile network operators. South Africa's two biggest mobile network operators, Vodacom and MTN, provide mobile money services. With its MTN mobile money, MTN was one of the pioneers of mobile money in South Africa. In 2005, MTN and Standard Bank jointly launched MTN mobile money in South Africa.⁶⁰⁰ However, MTN mobile money ceased signing up new customers in early 2009.⁶⁰¹ Inspired by the success of M-Pesa in Kenya, Vodacom South Africa launched the M-Pesa mobile money services in 2010.⁶⁰² However, the adoption of Vodacom's M-Pesa in South Africa was moderate and never reached the heights recorded in Kenya.⁶⁰³ When M-Pesa launched in South Africa in 2010, Vodacom hoped that it would build a customer base of 10 million users in three years. After six years, the service only had 76 000 active users.⁶⁰⁴ This forced Vodacom to abandon the service in 2016.⁶⁰⁵ Notwithstanding its failure, M-Pesa was transformative. Everyone with a Vodacom SIM card was able to open an M-Pesa account and deposit money and withdraw cash. Customers were able to conduct these transactions at M-Pesa outlets, which included retail stores, spaza shops, community service containers and all Nedbank branches.⁶⁰⁶ They were able to use the mobile money to buy airtime and to transfer it to other persons. Users did not need to have a bank account. The M-Pesa account did not charge monthly fees and did not require customers to maintain minimum balances.⁶⁰⁷ Vodacom recently relaunched its mobile money services in 2020. The mobile network operator has partnered with a digital payments provider Anant Financial Services and is in the process of creating a 'super app' (Vodapay) that will allow consumers in South Africa to shop online, send

⁵⁹⁹ FinMark Trust report Retailers motivation for offering financial services available at https://cenfri.org/wp-content/uploads/2013/11/Retailers-Motivation-for-Offering-Fin-Services-in-South-Africa-report_FinMark-Trust_FinMark-Trust_2014.pdf accessed on 14 March 2021.

⁶⁰⁰ See David Porteous op cit note 141 at 23.

⁶⁰¹ CGPA 2010 report 'Update on Regulation of Branchless Banking in South Africa' available at <https://www.cgap.org/sites/default/files/researches/documents/CGAP-Regulation-of-Branchless-Banking-in-South-Africa-Jan-2010.pdf> accessed on 2 October 2022.

⁶⁰² Rabelani Dagada & Stephanie Townsend 'Vodacom M-Pesa "Mobilising cash in challenging market' (2012) *Wits Business School WBS-2012-1* at 2.

⁶⁰³ After the failed stint with M-Pesa, Vodacom is planning to launch another fintech services in South Africa.

⁶⁰⁴ Why Vodacom Mpesa flopped in South Africa <https://mybroadband.co.za/news/business/164334-why-vodacom-m-pesa-flopped-in-south-africa.html> accessed on 22 February 2021

⁶⁰⁵ Vodacom South Africa pulls plug on M-Pesa Available at <https://techcentral.co.za/vodacom-sa-pulls-plug-on-m-pesa/65103/> accessed on 22 February 2021.

⁶⁰⁶ Vodacom and Nedbank launch mobile money revolution in South Africa. available at <https://www.fanews.co.za/article/banking/35/general/1223/vodacom-and-nedbank-launch-mobile-money-revolution-in-south-africa/8410> accessed on 22 February 2021.

⁶⁰⁷ See Tashmia I & Khumalo M op cit note 584 at 100.

money, pay bills among other features.⁶⁰⁸ The super-app will offer a range of services, including loans and savings, seamless QR and person-to-person payments, entertainment, and personalised shopping. The shopping platform will be supported by all major retail brands in South Africa.⁶⁰⁹ The partnership will see Ant Financial Services license its Alipay technology platform to Vodacom and carry out operations as Vodacom Financial Services.⁶¹⁰

MTN partnered with Standard Bank South Africa in a joint venture to provide MTN banking, which offered a mobile money account for transactions.⁶¹¹ The account number was the cell phone number and an extra checking digit. The account worked similarly to M-Pesa. Accountholders are issued with a mobile money cash card with which they can make cash withdrawals and deposits at Standard Bank branches and ATMs. In September 2016, MTN announced that it was decommissioning this service owing to poor adoption and lack of commercial viability.⁶¹² However, more than three years after ditching its mobile money offering, MTN relaunched its mobile money (MoMo) services in South Africa in January 2020 in partnership with the Ubank.⁶¹³ The new service offers basic services allowing users to send and receive money via an app or over the mobile network using USSD technology, buy airtime and prepaid electricity, and pay for municipal bills and TV subscriptions. MTN also promised to add more innovation which would bring more South Africans to the digital economy. The mobile network giant announced that MoMo targeted about 11-million unbanked market and 50 % of the adults who are underbanked. This would close the gap between the banked and unbanked. MTN asserted that its banking services would enable consumers that were underserved to have digital delivery channels to receive and send money safely and conveniently.

4.3.1 The regulatory framework for mobile money services

There is no specific mobile money regulation in South Africa. Regulators and the legislature decided that the current legal framework governing the financial services sector is sufficient to

⁶⁰⁸ Vodacom <https://www.vodacom.com/news-article.php?articleID=7525> accessed on 22 February 2021.

⁶⁰⁹ <https://www.vodacom.com/pdf/what-we-do/2021/Financial-services.pdf> accessed on 22 February 2021.

⁶¹⁰ Vodacom Financial Services is a wholly owned and independently managed subsidiary of Vodacom South Africa. It has its own board, management team and budget. See also Tage-Kene Okafor After its failed stint with M-Pesa, Vodacom is planning to launch another fintech service in SA available at <https://techpoint.africa/2020/07/23/vodacom-super-app-plans-alipay/> accessed on 22 February 2021.

⁶¹¹ MTN Mobile Money Service available at https://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns1058/Cisco_MTN_CS.pdf accessed on 2 June 2022.

⁶¹² See Dagada R op cite note 602 at 44.

⁶¹³ See Dagada R op cite note 602 at 150.

deal with money services. However, this does not remove the need to regulate mobile money services. The difficulty lies in that money services double as telecommunication services and financial services because of their dependence on cell phones. In the absence of specific regulation of mobile money services in South Africa, various pieces of legislation apply, such as the Banks Act 94 of 1990, the Mutual Banks Act 134 of 1993, the South Africa Reserve Bank Act 90 of 1989, the National Payment Systems Act 78 of 1998, the Financial Intelligent Center Act 307 of 2002, and the Consumer Protection Act 68 of 2008. All these statutes play a vital role in regulating the banking and insurance industries. The following subsections assess the impact of these statutes on the roll out of mobile money services.

4.3.2 Banks Act 94 of 1990

The Banks Act was promulgated as the Deposit-Taking Institutions Act in 1990. In 1993, its name was changed to the Banks Act.⁶¹⁴ The Act created a legal framework for the regulation and supervision of banks.⁶¹⁵ Section 11 of the Act provides that:

No person shall conduct the business of a bank unless such person is a public company and is registered as a bank in terms of this Act.⁶¹⁶

This means that firms that are banking businesses and which provide banking services fall within the definition of conducting the business of a bank. As such, they must obtain banking licences from the Registrar of Banks.⁶¹⁷ An analysis of the definitions of business of a bank in the Act helps to determine if the services provided by mobile network operators fall within the scope of business of a bank as contemplated by the Banks Act and if it requires a banking licence. Chapter 1 of the Act defines the business of banking as *inter alia*

- (a) ‘(a) the acceptance of deposits from the general public (including persons in the employ of the person so accepting deposits) as a regular feature of the business in question.
- (b) the soliciting of or advertising for deposits;
- (c) the utilisation of money, or of the interest or other income earned on money, accepted by way of deposit as contemplated in paragraph (a)-
 - i. for the granting by any person, acting as lender in his name or through the medium of a trust or a nominee, of loans to other persons;

⁶¹⁴ Supra Banks Act 94 of 1990 sec 1.

⁶¹⁵ World Bank report “ Achieving effective financial inclusion in South Africa: A payment perspective available at <http://www.treasury.gov.za/publications/other/Achieving%20Effective%20Financial%20Inclusion%20in%20South%20Africa.pdf> accessed on 22 February 2021.

⁶¹⁶ Banks Act 94 of 1990, sec 11.

⁶¹⁷ See Perlman L J op cit note 41 at 502.

- ii. for investment by any person, acting as an investor in his own name or through the medium of a trust or a nominee; or
- iii. for the financing, wholly or to any material extent, by any person of any other business activity conducted by him in his own name or through the medium of a trust or a nominee; but does not include:
 - (aa) the acceptance of a deposit by a person who does not hold himself out as accepting deposits on a regular basis and who has not advertised for or solicited such deposit...⁶¹⁸

To determine whether an entity is involved in the business of banking, there is a need for an assessment of whether the entity under scrutiny takes deposits as defined by the Act, whether it conducts associated lending activities or any other activity which the Registrar of Banks has declared to be the business of a bank. The determination also requires an analysis of whether the core activities of the entity amount to the business of a bank.⁶¹⁹

There is still debate whether deposit, as understood by mobile network operators in their marketing messages, carries the same meaning as in the banking sense.⁶²⁰ The process of adding money to an mobile money services account is known as cash-in. Lal and Sachdev submit that cash-in refers to the process whereby members of the public deposit their cash into a mobile money account.⁶²¹ This converts physical cash into electronic funds at a registered mobile money services agent. Undoubtedly, this process can only be described as an acceptance of funds from the public. The question is whether such funds can be regarded as deposits under the Banks Act. Section 1 of the Banks Act provides that the term ‘deposit’.

when used as a noun, means an amount of money paid by one person to another person subject to an agreement in terms of which-

- (a) an equal amount or any part thereof will be conditionally or unconditionally repaid, with or without a premium; on-demand or at specified or unspecified dates or in circumstances agreed to by or on behalf of the person making the payment and the person receiving it; and
- (b) no interest will be payable on the amount so paid or interest will be payable thereon at specified intervals or otherwise.

For one’s activity to trigger the above provisions, their activity must involve the acceptance, advertising or utilisation of ‘deposits’ as defined.⁶²² Funds deposited or loaded in a mobile money account can be used for making payments, storing funds for future use, transferring

⁶¹⁸ Supra Banks Act 94 Chapter 1.

⁶¹⁹ See Perlman L J op cit note 41 at 502.

⁶²⁰ See Madise S op cit note 74 at 76

⁶²¹ See Lal R & Sachdev I op cit note 58.

⁶²² In brief: Banking regulatory framework in South Africa Available at <https://financialregulationjournal.co.za/2021/05/26/in-brief-banking-regulatory-framework-in-south-africa/> accessed on 19 August 2021.

funds, or converting back to cash at agents. Section 1 envisions all these types of services as deposits. Mobile money services allow the depositors to withdraw the deposits or any remaining funds on demand.⁶²³ Therefore an mobile network operator offering mobile money services can be said to be conducting the business of a bank.⁶²⁴ It is an offence for entities that are not registered and licenced as banks to accept deposits. As such, mobile network operators cannot provide mobile money services without contravening the law. For mobile network operators to provide mobile money services, they must be registered as banks. Registering as a bank comes with a plethora of requirements. This includes maintaining liquidity requirements with the South African Reserve Bank and complying with prudential oversight and liquidity guarantees.⁶²⁵ Section 72 of the Banks Act provides that a bank should hold liquid assets of at least 20% of its prescribed liability.⁶²⁶ The section further states that a bank cannot pledge or otherwise encumber any assets held by it in compliance with liquidity requirements unless the Registrar has provided an exemption.⁶²⁷ These liquidity requirements are disincentives for mobile network operators to register as banks. Mobile network operators are not necessarily interested in the business of banking as their mainstream banking counterparts.⁶²⁸ They cannot maintain the liquidity requirements required by the Act. It will be unfair to hold them to the same standards as traditional banks.

The Banks Act allows the Registrar to designate, with the approval of the Minister, any activity of a public sector, governmental or other institution, or person or category of persons, to be exempted from registration as banks and to accept deposits provided such activity is performed following any conditions as may be determined.⁶²⁹ The Teba Savings Fund⁶³⁰, some mining houses, the trade-in securities and financial instruments, and the issuing of commercial papers have at one point been permitted to accept deposits from the public without registering as banks.⁶³¹ The exemption does not apply to mobile network operators. Under the Banks Act,

⁶²³ Bridget Kim & Sasha Graham What stops mobile money in South payments in South Africa. available at <https://www.financialinstitutionslegalsnapshot.com/2015/03/what-stops-mobile-money-payments-in-south-africa/> accessed on 20 May 2021.

⁶²⁴ See Finmark Trust Research Report on Mobile Money in South Africa available <https://finmark.org.za/system/documents/files/000/000/267/original/Final-Report-on-Mobile-Money-in-South-Africa.pdf?1603094540> accessed on 1 June 2022.

⁶²⁵ See Perlman L J op cit note 41 at 501.

⁶²⁶ Supra Banks Act 94 sec 72.

⁶²⁷ Ibid.

⁶²⁸ See Perlman L J op cit note 41 at 522.

⁶²⁹ Supra Banks Act 94 Section 1 (cc).

⁶³⁰ Teba Bank Limited, a registered bank, changed its name to UBANK Limited, with effect from 1 October 2010.

⁶³¹ Designation of activities not falling within the meaning of “the business of a bank” (“Teba savings fund”) GN 677 GG 17987 of 7 May 1997.

mobile network operators are not recognised as banks. To provide their services, mobile network operators partnered with registered banks to provide mobile money services and to act as their agents. Section 52 of the Banks Act allows licenced banks to enter into agreements with non-banks to act as their agents for payments, provision of services and acceptance of deposits.⁶³²

4.3.3 Regulation of the National Payment System (NPS)

Mobile money services, like other forms of banking, operate within the National Payment System (NPS). Payment systems are critical to the effective functioning of financial systems in any country.⁶³³ If the payment system is not sufficiently protected against risks such as credit, liquidity, and settlement risks, disruptions within the system can trigger or transmit further disruptions among its participants or generate systemic disruptions of financial markets or the broader economy.⁶³⁴ In South Africa, which has no specific regulation approach to mobile money services, the National Payments Systems Act applies to mobile money payment services. The National Payment System is regulated by the National Payment Systems Act 78 of 1998 (NPS Act) and the Reserve Bank Act 90 of 1989. These two pieces of legislation provide the legal framework for the oversight of the payment system in South Africa. The preamble of the NPS Act provides that the Act seeks to provide for the management, administration, operation, regulation, supervision of payments, and clearing and settlement systems in South Africa.⁶³⁵ The Reserve Bank policy paper on the *Review of National payment systems Act 78 of 1998* says that the National Payment System is regulated in two ways. While it is regulated by the NPS Act, some of its components are self-regulatory.⁶³⁶ The NPS is governed by two regulatory authorities - the South African Reserve Bank and the Payment Association of South Africa (PASA). In terms of section 10(1)(c) of the South African Reserve Bank Act, the Reserve Bank must perform such functions, implement rules and procedures, and in general, take such steps as may be necessary to establish, conduct, monitor, regulate and supervise payment clearing and settlement systems.⁶³⁷ A reaffirmation of this function appears

⁶³² Supra Banks Act 94 sec 52.

⁶³³ Vivienne A. Lawack Mobile money, financial inclusion and financial integrity: The South African case (2013) 8 *Washington Journal of Law, Technology & Arts* at 331.

⁶³⁴ See Lawack V A op cit note 633 at 331.

⁶³⁵ National Payment Systems Act 78 of 1998 (Preamble).

⁶³⁶ South Africa Reserve Bank Policy paper *Review of the National Payment Systems Act 2018* available at <http://www.treasury.gov.za/publications/other/NPS%20Act%20Review%20Policy%20Paper%20-%20final%20version%20-%202013%20September%202018.pdf> accessed on 1 June 2022.

⁶³⁷ South African Reserve Bank Act 90 of 1989 sec 10(1)(c).

in Section 2 of the National Payments System Act.⁶³⁸ The SARB's National Payment System Division (NPSD) is the regulator, supervisor, and overseer of the NPS. This means the final oversight of the NPS rests with the SARB. Section 3 of the NPS Act provides that the SARB may recognise a payment system management body established to organise and regulate the participation of its members in the payment system.⁶³⁹ To this end, the Payment Association of South Africa (PASA) was created as an association of banks that provide management instruments in the payment system. Therefore, PASA and NPSD are the two regulatory authorities at the centre of NPS in South Africa.

One critical issue under investigation in this thesis is whether these two regulatory authorities and statutes that fall under their jurisdiction promote or hinder the participation of mobile network operators in the payment system and how this affects the rollout of mobile money services in South Africa. Access to the NPS is divided into two levels. The highest level of access is to the settlement system. Lower-level access entails access to clearing. According to the NPS Act, the term 'settlement system' means a system for the discharge of payment or settlement obligations or the discharge of payment and settlement obligations between participants in that system.⁶⁴⁰ The BIS defines it as an act that discharges obligations in respect of funds or securities transfer between two or more parties.⁶⁴¹ The cog of the South African settlement system is the South African Multiple Options Settlement (SAMOS).⁶⁴² SAMOS is owned and operated by the SARB.⁶⁴³ Section 3(4) of the NPS Act stipulates that no person may participate in the settlement system unless such person is the Reserve Bank, a bank, a mutual bank, a co-operative bank or a branch of a foreign institution (bank). Participants must be members of PASA.⁶⁴⁴ South African registered banks are the only entities that have direct access to SAMOS. As such, they are allowed to participate in the settlement domain.

⁶³⁸ Supra National Payment Systems Act 78 sec 2.

⁶³⁹ Supra National Payment Systems Act 78 sec 3.

⁶⁴⁰ Supra National Payment Systems Act 78 sec 1.

⁶⁴¹ Bank of International Settlement, A glossary of terms used in payments and settlement systems (2003) available at https://www.bis.org/cpmi/glossary_030301.pdf accessed on 1 June 2022.

⁶⁴² The SAMOS system is a real-time gross settlement (RTGS) system owned and operated by the SARB. It was introduced on 9 March 1998 and is linked to various participating banks, clearing systems and operators. The SAMOS system facilitates the settlement of domestic individual high-value payment transactions, retail transaction batches, and bond and equity market settlement obligations. It is an automated system that settles obligations in real-time or in a delayed settlement arrangement.

⁶⁴³ Competition Commissioner Report *Banking Enquiry Report to the Competition Commissioner* (2019) available at <https://www.noseweek.co.za/relocate/Uncensored%20Competition%20Commission%20Report%20on%20Banking.pdf> accessed on 1 June 2022.

⁶⁴⁴ Supra National Payment Systems Act 78 sec 3(4).

Clearance is defined in section (1) of the NPS Act as the exchange of payment instructions.⁶⁴⁵ The South African National Payment System Strategy and Framework (Blue Book) states that clearing is the physical exchange of payment instructions between the payer's bank and the payee's bank (or their agents).⁶⁴⁶ Section 6 of the Act provides that no person may clear payment instructions unless that person is a Reserve Bank settlement system participant, bank, mutual bank, a designated clearing system participant, a co-operative bank or branch of a foreign institution that is allowed to clear.⁶⁴⁷ Furthermore, section 4(5) of the same Act says that no person may be allowed to clear unless such person is a member of PASA.⁶⁴⁸ The NPS Act restricts PASA membership to the SARB, commercial banks, mutual banks, co-operative banks and branches of foreign institutions and designated clearing system participants.⁶⁴⁹

The regulatory framework discussed above shows that persons who are not banks are prohibited from directly participating in the clearing and settlement of payments in their names. Formal participation in the NPS is limited to banks, mutual banks and branches of foreign institutions that hold settlement accounts with the SARB. Payment settlement and clearing spaces are strictly reserved for these entities. This makes it difficult for mobile network operators to provide mobile money services as they are neither registered banks nor designated system operators. The NPS Act limits the participation of mobile network operators in the NPS by requiring participants to be registered banks. However, the Act does not completely shut the door for entities that are not banks to participate in the NPS. Section 7 of the NPS Act says that entities other than banks may participate in NPS as third-party payment providers if payments are 'due' to a third party and when such payments are not deposits.⁶⁵⁰ The Act allows fiat money to be stored in non-bank accounts when the payments are due to third parties such that if nothing is due, the entity accepting such funds from the public is regarded as engaging in the business of accepting deposits.⁶⁵¹ This does not provide sufficient regulatory power to address challenges faced by mobile network operators in providing mobile money services.⁶⁵² Mobile

⁶⁴⁵ Supra National Payment Systems Act 78 sec 1(iv).

⁶⁴⁶ National Payment System Strategy and Framework available at <http://www.pasa.org.za/docs/default-source/default-document-library/the-national-payment-system-framework-and-strategy-vision-2025.pdf?sfvrsn=4> accessed on 1 June 2022..

⁶⁴⁷ Supra National Payment Systems Act 78 sec 6.

⁶⁴⁸ Supra NPS Act 78 sec 3(5).

⁶⁴⁹ Supra NPS Act sec 78 3(3).

⁶⁵⁰ Finmark Trust report 'The profile of retail payment services and models in South Africa' available at https://finmark.org.za/system/documents/files/000/000/374/original/FocNote1_ProfileRPSinSA.pdf?1614843804 accessed on 1 June 2022..

⁶⁵¹ See Perlman L J op cit note 41 at 523.

⁶⁵² See Review of the National Payment Systems Act policy paper op cit note 643 at 144.

network operator mobile money services involve taking funds from the public for future use. This can be considered as deposit-taking because the payments are not immediately due.⁶⁵³

Since some mobile network operators are already providing mobile money services in South Africa, the question is, on what legal basis are they providing such services? Retailers, mobile network operators, and entrepreneurs wishing to offer banking services that entail taking deposits from the public can do so alongside banks. They can do this through partnerships, joints ventures and as agents of registered banks. In this way, they benefit significantly from leveraging the compliance function and the infrastructure of established banks. The Banks Act gives wide discretion to banks to utilise non-bank third parties to offer banking services beyond their traditional branch networks as agents and through outsourcing arrangements.⁶⁵⁴ It allows banks to contract as agents to receive on their behalf from clients any deposits or money due to them.⁶⁵⁵

Mobile network operators partner with licenced banks to provide mobile money services. In 2010, Vodacom South Africa partnered with Nedbank, a bank, as the prudentially licenced and supervised entity to offer a South African version of M-Pesa.⁶⁵⁶ To operate M-Pesa, Vodacom South Africa formed a new division, Vodacom Payment Services Pty Ltd (hereafter VPSPL) to operate M-Pesa. VPSPL styled itself as a corporate agent of Nedbank. It housed the funds it received from clients in a ‘collateral account’. This made VPSPL a financial institution.⁶⁵⁷ MTN partially became a division of Standard Bank when it was offering the MTN Mobile Money.⁶⁵⁸ These partnerships hindered the ability of mobile network operators to innovate and react quickly to market needs.⁶⁵⁹ Mobile network operators pointed out that the partnerships led the SARB to refuse to directly engage them. They had to arrange meetings through their sponsoring banks, which lacked openness. This frustrated their ability to provide mobile money services.⁶⁶⁰ The need to partner with banks constrained innovation and prevented competition that could have challenged the established players. The incentive for banks to market and

⁶⁵³ See Perlman L J op cit note 41 at 523.

⁶⁵⁴ A bank agent is generally an entity who has been authorized by the bank to enter into agreements which legally bind the bank. In an outsourcing arrangement, an entity contracts with the bank to perform a specific function. Since an agency relationship sometimes emerges from an outsourcing agreement, the distinction between an agency agreement and an outsourcing agreement is sometimes blurred.

⁶⁵⁵ *Supra* Banks Act 94 Sec 1(1).

⁶⁵⁶ Vodacom relauches M-Pesa in SA available at <https://businesstech.co.za/news/mobile/64556/vodacom-relauches-m-pesa-in-sa/>. accessed on 19 August 2021.

⁶⁵⁷ See Kersop M & Du Toit F S op cit note 35 at 1603.

⁶⁵⁸ *The Standard Bank of SA v 3MFuture Africa* (47/2013) [2013] ZASCA 157.

⁶⁵⁹ See Finmark trust report op cit note 624 at 21.

⁶⁶⁰ *Ibid.*

distribute mobile money products was compromised due to its potential to cannibalise the banks' existing business. Arguably, the structure of the National Payment System creates barriers for non-bank participants to participate in clearing services. This adds unnecessary costs to participation in payment services. These barriers limit the ability to launch payment mechanisms that can compete with banks in cost, acceptance and interoperability. The forced partnership model increases the overall cost of services and limits the ability to innovate and to challenge the existing models.

4.3.4 Anti-Money Laundering (AML) regulations.

There is potential for the exploitation of mobile money services for illegal means. The services have inherent financial integrity risks and could be abused for money laundering and financing of terrorism.⁶⁶¹ Ample evidence suggests that cyberspace facilitates illegal activities and creates obstacles for the detection, investigation, and prevention of crimes.⁶⁶² Mobile money services make it very convenient for "layering"⁶⁶³ of funds through intricate movements that disguise their illegal origins, especially since they are considerably less expensive than traditional financial instruments. They are susceptible to smurfing⁶⁶⁴ because they enable a large amount of money to be transferred and hidden as inconspicuous smaller amounts. The success of mobile payment schemes in Kenya and the Philippines helped to bring the issue of AML/CTF compliance for mobile payments into focus. To this end, mobile money services have been closely monitored by anti-money laundering regulators, which have inevitably affected the rollout of such services.

AML is the task of preventing the process of money laundering, in all its phases. It is frequently presented only through the lens of regulatory compliance, as the burden falls primarily on intermediaries, responsible for meeting Know Your Customer (KYC) standards posed by regulations or conducting Customer Due Diligence (CDD) to avoid the related high

⁶⁶¹ See Kersop M & Du Toit F S op cit note 35 at 1607.

⁶⁶² Thai Ha Van 'Money Laundering Risks Posed By Mobile Money Services' (2021) 15 *Technium Social Sciences Journal, Technium Science* at 253.

⁶⁶³ Occurs when funds are concealed by moving them around in a series of complex bank transfers or financial transactions. Out of the various techniques of layering, the most common is to make electronic transfers between different jurisdictions and through offshore accounts. For instance, the criminal may wire the proceeds to a corporation in an overseas island where the money trail doesn't end because the same corporation can be owned by a trust on another island.

⁶⁶⁴ Smurfing is a money-laundering technique involving the structuring of large amounts of cash into multiple small transactions. Smurfs often spread these small transactions over many different accounts, to keep them under regulatory reporting limits and avoid detection.

penalties.⁶⁶⁵ Before assessing the effects of AML regulations on mobile money services, this section will outline the concept of money laundering.

There is no standard definition of money laundering. Article 6 of the United Nations Convention Against Transnational Organised Crime, 2000, defines money laundering as the conversion or transfer of property, knowing that such property is the proceeds of crime, to conceal or disguise the illicit origin of the property or helping any person who is involved in the commission of an offence to evade the legal consequences of his or her actions.⁶⁶⁶ The Financial Task Force (FATF) defines money laundering as the processing of criminal proceeds to disguise their illegal origin to legitimise the ill-gotten proceeds of crime.⁶⁶⁷ Section 1 of the Financial Intelligence Centre Act (FIC Act) provides a similar definition and says that money laundering is an activity that has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities.⁶⁶⁸ Across the globe, AML regulatory regimes are based on FATF Recommendation, an inter-governmental body whose purpose is to develop the promotion of policies to combat money laundering.⁶⁶⁹ FATF's mandate is to set standards and promote effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, and other threats to the integrity of the global financial system. A first set of recommendations called the forty recommendations was released by FATF in 1990, outlining important steps for fighting money laundering.⁶⁷⁰ As money laundering techniques evolved, the FATF revised its standards comprehensively and in 2004 the task force published its Ninth Special Recommendations (40+9 Recommendation), further strengthening the already existing international standards for combating money laundering and terrorist financing. The FATF updated its recommendations in 2012 to further enhance global safeguards and further protect the integrity of the financial system. The 2012 recommendations focus on the Risk Based Approach (RBA) to AML/CFT, especially prevention and supervision. According to FATF,

⁶⁶⁵ Luigi Bellomarini, Eleonora Laurenza, and Emanuel Sallinger 'Rule-based Anti-Money Laundering in Financial Intelligence Units: Experience and Vision' (2020) *Conference paper*.

⁶⁶⁶ UN Convention Against Transnational Organised Crime Article 6.

⁶⁶⁷ The Financial Task Force (FATF) available at <https://www.fatf-gafi.org/faq/moneylaundering/#:~:text=Money%20laundering%20is%20the%20processing,profits%20without%20jeopardising%20their%20source>. accessed on 7 May 2021.

⁶⁶⁸ Supra Financial Intelligence Centre Act 38 of 2001 op cit note Sec (1).

⁶⁶⁹ FATF 40 Recommendations Available at <https://www.fatf-gafi.org/media/fatf/documents/fatf%20standards%20-%2040%20recommendations%20rc.pdf> accessed on 7 May 2021.

⁶⁷⁰ Louis De Koker, 'Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001', (2004) *Journal of South African Law* at, 746.

globally, more than 200 jurisdictions have committed to adhere to FATF Recommendations through FATF-Style Regional Bodies (FSRBs) and FATF memberships. Presently, the FATF recommendations are universally acknowledged as the international standards of AML/CFT.⁶⁷¹

Money laundering involves three stages, namely, placement, layering and integration of illicit proceeds.⁶⁷² Schaap says that placement refers to the introduction of proceeds of crime into legal payment systems as opposed to their injection into the underground economy.⁶⁷³ A launderer pursues such a course of action less suspiciously than would be observed by law enforcement authorities.⁶⁷⁴ Depositing cash into a bank account or converting funds into instruments such as cheques are the most common methods of placement.⁶⁷⁵ The act of placement is key to the laundering process as it allows the concealment of the nexus between the money and the crime. It allows burying of the paper trail. The layering stage entails creating a series of transactions to separate the beneficiaries from their crime source and obscure the money laundering trail.⁶⁷⁶ At this stage, funds are used to purchase securities and insurance, which can then be transferred into investment instruments or to countries that require little record-keeping and reporting.⁶⁷⁷ Currency exchange, remittances, insurance transactions, and business activities through shell companies are among the most common activities found in this phase.⁶⁷⁸ At this stage, funds are divided into smaller amounts and transferred several times and re-assembled. The last stage of money laundering is known as integration. Schaap says that integration is the unnoticed reintroduction of laundered money into the formal economy.⁶⁷⁹ The proceeds of illegal activities are turned into lawful business earnings using ordinary financial or commercial operations. This is accomplished by investing in assets such as real estate or luxury products. According to De Koker not all jurisdictions necessarily reflect these stages.⁶⁸⁰ He notes that in South Africa money laundering schemes consist only of

⁶⁷¹ See Kersop M & Du Toit F S op cit note 35 at 1608.

⁶⁷² Paul Allan Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 2nd ed (2006) at 18.

⁶⁷³ Cees Schaap *Fighting Money Laundering: With comments on the legislation of the Netherlands Antilles and Aruba* 1st ed (1998) at 79.

⁶⁷⁴ See Kersop M & Du Toit F S op cit note 35 at 1620.

⁶⁷⁵ See Schott P A op cit note 668.

⁶⁷⁶ Izelde Louise Van Jaarsveld *Aspects of money laundering in South African law* (Unpublished Doctoral Thesis, UNISA, 2001) 168.

⁶⁷⁷ See Schott P A op cit note 672 at 7.

⁶⁷⁸ See Thai Ha Van op cit note 662 at 255.

⁶⁷⁹ See Schaap C op cit note 673 at 20.

⁶⁸⁰ Louis De Koker *South African money laundering and terror financing law* (2017 ed).

placement. Criminals often deposit ill-gotten cash into bank account and later withdraw the money and spend it.⁶⁸¹ No layering takes place and consequently no integration is required.

To combat money laundering, most countries enacted legislation against the crime. Financial institutions must carry out customer due diligence to identify their clients and acquire relevant information pertinent to providing financial services to them under the FATF Standards.⁶⁸² In doing so, financial institutions ensure that their customers and financial transactions can be quickly identified, verified, and monitored to evaluate the risks for money laundering and terrorism financing. Anti-Money Laundering (AML) regulations are enforced for this purpose. Several studies show that reducing the profitability of money laundering requires a comprehensive and effective AML framework that is implemented and enforced on a timely basis.⁶⁸³ However, applying an overly cautious approach to AML/CFT safeguards has the unintended consequence of excluding consumers from the financial system.⁶⁸⁴ Studies conducted by the Consultative Group for Assisting the Poor (CGAP) in 2009 found that AML/CFT regulations may adversely affect access and use of financial services if they are not carefully drafted.⁶⁸⁵

There are two regulatory approaches to AML/CFT, the rule-based approach and the risk-based approach. The "rule-based" approach entails that governments enact regulations containing specific rules that private businesses must follow, in this case, specific rules on what transactions to report to public authorities.⁶⁸⁶ The approach in question provides clear and transparent rules that offer both legal certainty and legal equality since all subjects of the regulation are subject to the same standards.⁶⁸⁷ The use of this approach to money laundering regulation is widespread. However, its downside is that it requires significant resources on the

⁶⁸¹ See De Koker op cit note 680 at 5.

⁶⁸² See FATF Recommendations op cit note 699.

⁶⁸³ See Schott P A op cit note 672.

⁶⁸⁴ FATF Guidance Anti-money laundering and terrorist financing measures and Financial Inclusion, available at <https://www.fatf-gafi.org/publications/financialinclusion/documents/fatfguidanceonanti-moneylaunderingandterroristfinancingmeasuresandfinancialinclusion.html#:~:text=The%20FATF%20has%20prepared%20a,the%20purpose%20of%20combating%20crime>. accessed on 1 June 2022.

⁶⁸⁵ Consultative Group to Assist the Poor (CGAP), Financial Access 2009 Measuring Access to Financial Services around the World available at <https://www.cgap.org/sites/default/files/CGAP-Financial-Access-2009.pdf> accessed on 1 June 2022..

⁶⁸⁶ Brigitte Unger & Grans van Waarden 'How to Dodge Drowning in Data? Rule- and Risk-Based Anti-Money Laundering Policies Compared' (2009) *Review of Law and Economics*, at 955.

⁶⁸⁷ Julien Mansourian Artificial Intelligence or Rules-Based AML/Sanctions? Available at <https://blogs.oracle.com/financialservices/post/artificial-intelligence-or-rules-based-aml-sanctions#:~:text=A%20rules%2Dbased%20approach%20to,accounts%20based%20on%20prior%20trans> actions accessed on 09 September 2021.

part of banks to review the transactions that are flagged or blocked for verification. Researchers assert that the rule-based approach is rigid, formalistic, bureaucratic, and full of bureaucratic procedures, leading to high administrative burdens and ineffectiveness.⁶⁸⁸ Additionally, a rules-based approach to AML cannot adapt to changes in criminal behaviour designed to evade detection.⁶⁸⁹ By contrast, a risk-based approach involves the development of appropriate risk control measures based on a process of identification and categorization of risk.⁶⁹⁰ It requires countries, competent authorities, banks and other relevant persons to assess, detect, isolate and understand all money laundering and terrorist financing risk to employ appropriate mitigation measures in accordance with applicable level of risk.⁶⁹¹ This approach also involves the tailoring of rules to focus on instances of higher risk and gives private actors more discretion as to what to report. It requires regulated institutions to have the ability to exercise sound judgement and to respond appropriately to the identified risks. As of 2012, FATF has adopted the risk-based approach to AML/CFT instead of the rule-based approach. According to the 2012 Recommendations, AML/CFT should be regulated according to the risk-based approach, especially as it relates to preventive measures and supervision. Whereas the 2003 Recommendations provided for the use of a rule-based approach in some areas, the 2012 Recommendations regard RBA as "essential" to a country's AML/CFT regulations.⁶⁹² The risk-based approach, in summary, stipulates that financial institutions should take enhanced measures to manage and mitigate the risks that are identified as high, while less intensive measures are recommended when the risks are identified as lower.⁶⁹³ The main difference between the two approaches is the allocation of responsibility for determining the risk as well as the appropriate risk management actions. In addition, they both have an impact on the roll-out of mobile money services.

South Africa's AML regulatory approach has evolved from a rule-based system to a risk-based system. According to 2021 Finscope report, amendments to the FIC Act in 2017 introduced a

⁶⁸⁸ See Unger & Grans Van Waarden op cit note 680 at 957.

⁶⁸⁹ Ibid

⁶⁹⁰ Louis de Koker 'Identifying and managing low money laundering risk Perspectives on FATF's risk-based guidance' (2009) 16 *Journal of Financial Crime* at 342.

⁶⁹¹ Howard Chitimira 'An exploration of current regulatory aspects of money laundering in South Africa' (2021) 24 *Journal of Money Laundering Control* at 797.

⁶⁹² FATF Guidance for a risk-based approach the banking sector Available at <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Banking-Sector.pdf> accessed on 1 October 2022.

⁶⁹³ Finmark report 'Applying the Risk Based Approach – Undertaking AML/CTF Risk Assessment of low-value remittance and banking products and services in South Africa' available at https://finmark.org.za/system/documents/files/000/000/149/original/FMT_Product-Risk-Assessment_v5_final_18092019.pdf?1594736892 accessed on 1 June 2022..

change from the previous rules-based approach to AML/CTF towards a risk-based approach (RBA), specifically regarding customer due diligence (CDD). In the period prior to 2017, financial institutions were required to follow a rule-based approach. The country has several anti-money laundering measures, including the Prevention of Organised Crime Act (POC Act),⁶⁹⁴ Financial Intelligence Centre Act (FIC Act)⁶⁹⁵ and the Money Laundering and Terrorist Financing Control Regulations (MLTFC Regulations).⁶⁹⁶ POC Act specifies activities that constitute money laundering, whereas the FIC Act specifies measures for suppressing and detecting money laundering.⁶⁹⁷ FIC Act requires financial institutions to conduct CDD and KYC. The CDD and KYC requirements aspects of AML regulations have a profound effect on mobile money services. In *Energy Measurements (Pty) Ltd v First National Bank of South Africa Ltd*, the court held, *inter alia*, that financial institutions have a duty to establish and verify the identity of their customers before concluding any transactions to prevent and combat money laundering activities in South Africa.⁶⁹⁸ Mugarura argues that FIC Act is a hurdle in the regulation of financial services in South Africa.⁶⁹⁹ Section 21 of FIC Act imposes an obligation on accountable institutions to verify the identity of their clients by providing that:⁷⁰⁰

When an accountable institution engages with a prospective client to enter into a single transaction or to establish a business relationship, the institution must, in the course of concluding that single transaction or establishing that business relationship and in accordance with its Risk Management and Compliance Programme—

- (a) establish and verify the identity of the client.
- (b) if the client is acting on behalf of another person, establish and verify—
 - i. the identity of that other person; and
 - ii. the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
- (c) if another person is acting on behalf of the client, establish and verify—
 - i. the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client.

⁶⁹⁴ For more information about the Act see Prevention of Organised Crime Act 121 of 1998 available at http://www.saflii.org/za/legis/num_act/pooca1998294.pdf Accessed on 1 June 2022.

⁶⁹⁵ For more information about the Act see The Financial Intelligence Centre Act, 38 of 2001 (FICA). It can be accessed on <https://www.gov.za/documents/financial-intelligence-centre-act>.

⁶⁹⁶ See Lawack V A op cit note 633.

⁶⁹⁷ Ibid, also see Louis De Koker op cite note 670.

⁶⁹⁸ *Energy Measurements (Pty) Ltd v First National Bank of South Africa Ltd* 2001 (3) SA 132 (W)

⁶⁹⁹ Norman Mugarura 'The use of 'mobile phones' in changing the banking regulatory landscape in Africa' (2019) 27 *African Journal of International and Comparative Law*.

⁷⁰⁰ Supra Financial Intelligence Centre Act 38 sec 21.

Section 77 of FIC Act gives the Minister of Finance wide powers to make regulations.⁷⁰¹ The regulations have the same legislative authority as FIC Act.⁷⁰² Consequently, FIC Act must be read in conjunction with the MLTFC Regulations. Regulation 4 of the MLTFC Regulations GN No. R 1595 provided details on the identification and verification of clients.⁷⁰³ It stipulated that to establish and verify the identity of a client, an institution must obtain the full name of the client, the date of birth, the identification number, the residential address, and the tax registration number.⁷⁰⁴ The Financial Intelligence Centre Guidance Note 3A (Guidance Note 3A) reiterated the importance of this process.⁷⁰⁵ Verification of an individual's identity requires an identification document, while a residential address requires documents such as utility bills.⁷⁰⁶ The first schedule of FIC Act identifies accountable institutions and includes banks and money remitters in the list.⁷⁰⁷ Hence, mobile network operators that offer mobile money services were required to comply with MLTFC requirements for CDD and KYC, given that the services entail the transfer of money. Mobile money services require users to open accounts. Hence, mobile money providers typically establish business relationships with their customers as envisaged by FIC Act. As such, mobile money service providers must carry out CDD. The World Bank says that mobile money service providers need to observe CDD policies alongside other financial institutions, including verifying the identifies of their clients before engaging in business relationships with them.⁷⁰⁸ Regulation 4 and Guidance Note 3A were however, repealed in 2017 by GNR.1062 of 29 September 2017 when the risk-based approach was adopted in South Africa.

Studies show that these requirements created certain problems for low-income earners.⁷⁰⁹ AML/CFT obligations increased the cost of transacting, which was transferred to customers, potentially discouraging some of them from using formal financial systems, particularly if informal options are cheaper and equally reliable.⁷¹⁰ In certain instances, the opening of mobile

⁷⁰¹ Section 77 of the FIC Act provides that The Minister, after consulting the Centre, may make, repeal and amend regulations concerning any matter that may be prescribed in terms of this Act; and any ancillary or incidental administrative or procedural matter which is necessary to prescribe for the proper implementation or administration of this Act.

⁷⁰² Supra Financial Intelligence Centre Act 38 sec 77.

⁷⁰³ Reg 4 (GN R1595 in GG 24176 of 20 December 2002)

⁷⁰⁴ Supra MLTFC Regulations Reg. 3.

⁷⁰⁵ Financial Intelligence Centre Guidance Note 3A: Guidance for Accountable Institutions on Client Identification and Verification and Related Matters (28 March 2013).

⁷⁰⁶ Supra MLTFC Regulations Reg 4.

⁷⁰⁷ Supra Financial Intelligence Centre Act 38 Schedule 1.

⁷⁰⁸ See Chatain, P et al op cit note 44 at 146.

⁷⁰⁹ See De Koker L op cit note 694 at 718.

⁷¹⁰ See FATF Guidance Anti-money laundering and terrorist financing op cite note 678.

money accounts was difficult or impossible since the validation of the information required proved to be problematic, particularly concerning residential addresses. Documents that were used as proof of residence were listed in paragraph 11 of Guidance Note 3A. These include utility bills, leases, rates and tax statements, phone and cellular accounts, and valid TV licences.⁷¹¹ It was difficult for clients who reside in rural areas and informal settlements to verify their residential addresses under these regulations. Kersop and Du Toit observe that people who live in informal settlements lack the means to confirm their residential addresses and often face significant difficulties accessing formal remittance services.⁷¹² The World Bank concluded that people are often denied the opportunity to open accounts due to insufficient documents.⁷¹³

Lawack questions the need for requiring potential customers to provide residential addresses to identify themselves in developing countries like South Africa.⁷¹⁴ She points out that the residential address requirement is more useful in developed countries.⁷¹⁵ De Korke says that in richer countries, residential addresses help distinguish different people who have similar names. However, he argues that residential addresses are useless in countries that have comprehensive national identity systems.⁷¹⁶ In South Africa, the value of residential addresses is diluted by the high level of immigration. Therefore, the DDC and KYC requirements hamper attempts to provide access to mobile money services in South Africa.

South African regulators were aware of the challenges posed by the verification process. This was evident by Exemption 17,⁷¹⁷ issued by the government which exempted certain financial institutions from complying with selected provisions of section 21 of FIC Act and Regulations 3 and 4 when dealing with certain types of accounts. The effect of Exemption 17 was that it was no longer necessary to obtain or verify a customer's residential address.⁷¹⁸ The exemption was extended to mobile money services by the Banks Act Guidance Note 6/2008, issued by the Registrar of Banks.⁷¹⁹ As such, Mobile network operators required only a national identity document and a registered SIM card to open a mobile money account. For example, Vodacom's

⁷¹¹ Supra Guidance Note 3A para 11.

⁷¹² See Kersop M & Du Toit F S op cit note 35 at 1639.

⁷¹³ See Chatain, P et al op cit note 44 at 145.

⁷¹⁴ See Lawack V A op cit note 633 at 336.

⁷¹⁵ Ibid.

⁷¹⁶ See De Koker L op cit note 697 at 718.

⁷¹⁷ The exemption was intended to simplify identification and verification requirements for low value products.

⁷¹⁸ The Banks Act Guidance Note 6/2008 issued by the Registrar of Banks, See Kersop M & Du Toit op cit note 35 at 1639.

⁷¹⁹ Supra The Banks Act Guidance Note 6/2008.

M-Pesa accounts required only a SIM card and a national identification card for registration.⁷²⁰ It made it easier for the poor and vulnerable to open mobile money accounts. However, the exemption was withdrawn in 2017 when South Africa adopted the Risk-Based Approach (RBA) to CDD.⁷²¹ The approach affords accountable institutions the flexibility to use a range of mechanisms to establish and verify the identities of their customers.⁷²² The RBA requires financial institutions to differentiate between the means of identification and verification used in respect of clients in different risk categories. Financial institutions apply simplified measures in cases of lower risk and apply enhanced measures in cases of higher risk.⁷²³ The RBA considers risks proportional to the particular financial institution, the types of remittance or banking products offered, the transactional limits of remittances or banking products, and customer demographics. This approach is a problem in South Africa mobile money sector in that it introduces the potential for over-compliance on the part of financial services providers and a de-risking process that could ultimately lead to financial exclusion. Over-compliance and de-risking reinforce financial exclusion by making it possible for providers of financial services to readily turn away customers who are perceived to be high risk without concrete evidence.

Closely related to AML/CFT regulations is the South Africa's Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002 (RICA). The Act provide that every mobile phone user must register their phone number. Under section 39 of the Act, users are required to provide their name and surname, along with proof of identity (i.e., identity document or passport), and proof of their physical address (e.g., bank statement or utility bill).⁷²⁴ This is seen as one of the initiatives to prevent crime and money laundering as well as combat terrorism financing. According to Chatain et al, RICA and FIC Act AML/CFT identification and verification requirements are not well aligned.⁷²⁵ He points out that clients who were subjected to RICA processes may have to undergo similar (but slightly different) processes for FIC Act if they wish to open an mobile money account. De Koker reveals that mobile operators in South Africa reported a significant drop in their new

⁷²⁰ Mpesa guide (2011).

⁷²¹ Financial Intelligence Centre Amendment Act (No. 1 of 2017). See also Finmark Trust Report op cit note 160. See also I L De Koker, M Basson, J Symington and P Smit *Money Laundering and Terrorist Financing: Law and Compliance in South Africa* (2022).

⁷²² Guidance note 7 on the implementation of various aspects of the financial intelligence centre act, 2001 (act 38 of 2001).

⁷²³ See Finmark Trust report op cit note 160.

⁷²⁴ Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002 (RICA). Section 39.

⁷²⁵ See Chatain, P et al op cit note 44 at 56

customer registrations when RICA regulation was launched, thus hindering their ability to tap unbanked populations for financial inclusion.⁷²⁶ However, this decline was only temporary. Mobile phone registration in South Africa has since increased.

In summary, mobile money services provided by mobile network operators targeted the poor and vulnerable who, in most cases, reside in rural areas and informal settlements. These groups do not have access to verifiable proofs of residences due to internal migration. Observers note that it was a challenge for the populations targeted by mobile network operators to comply with CDD requirements as envisaged by FIC Act. In general, CDD requirements created a barrier that prevented the poor and vulnerable from accessing traditional banking. Putting the same requirements on mobile money systems inevitably led to the same result. AML regulations and CDD requirements were partly responsible for the failure of mobile money services to attract the anticipated number of users. The FIC Act requirement to provide proof of residence inevitably made it difficult for mobile network operators to provide mobile money services.

4.3.5 Credit regulations

In the last few years, mobile money services have evolved from virtual savings accounts to credit supply platforms.⁷²⁷ When offering loans, mobile money providers use transaction and savings data to price microcredit and assess credit risk.⁷²⁸ Kenya's M-Shwari⁷²⁹ is one of the most successful mobile banking initiatives that offers credit.⁷³⁰ Over 10 million M-Shwari accounts exist in Kenya, and 50,000 loans are disbursed daily.⁷³¹ Mobile money providers in Tanzania, Rwanda, Uganda, and Zimbabwe also offer loans to their customers. Regulatory requirements in these countries have made these credit facilities a success. However, this is not the case with South Africa. The mobile money services offered by MTN and Vodacom do not feature a credit facility. In South Africa, credit agreements are governed by the National Credit

⁷²⁶ Louis de Koker 'Will RICA's customer identification data meet anti-money laundering requirements and facilitate the development of transformational mobile banking in South Africa' (2010) *Finmark Trust exploratory note*

⁷²⁷ Njuguna Ndung'u Next steps for the digital revolution in Africa Inclusive growth and job creation lessons from Kenya *WORKING PAPER 20 (2018)*

⁷²⁸ Ibid

⁷²⁹ M-Shwari (meaning 'calm' in Kiswahili) is a combined savings and loans product launched through a collaboration between the Commercial Bank of Africa (CBA) and Safaricom. The M-Shwari account is issued by CBA but must be linked to an M-Pesa mobile money account provided by Safaricom. The only way to deposit into, or withdraw from, M-Shwari is via the M-Pesa wallet.

⁷³⁰ Kathryn Enriquez & Janiece Jackson 'M-Shwari Comparisons: An Investigation of Income' (2021) available at https://www.rose-hulman.edu/mathREU/reports/2021_Enriquez_Jackson.pdf accessed on 28 January 2022.

⁷³¹ Tamara Cook & Claudia McKay Top 10 Things to Know About M-Shwari (2015) CGAP available at <https://www.cgap.org/sites/default/files/Forum-How-M-Shwari-Works-Apr-2015.pdf> accessed on 1 June 2022.

Act 34 of 2005.⁷³² The primary objectives of the Act are to promote and advance the social and economic wellbeing of South Africans, to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective, and accessible credit market and industry, and to protect consumers.⁷³³ Under the Act, the National Credit Regulator (NCR) is the primary administrative regulator responsible for registration of industry participants, investigating serious complaints, and enforcing the law.⁷³⁴ All credit providers, credit bureaux and debt counsellors must register and report to the NCR. The requirement to register as a credit provider is applicable to all credit agreements, irrespective of whether the credit provider is involved in the credit industry and irrespective of whether the credit agreement is a once-off transaction.⁷³⁵ Thus for mobile network operators to provide credit facilities, they need to register with the NCR. To register as a credit provider an entity need to be complete an application form and provide other required documents such proof of registration with the South African Revenue Services (SARS), company registration and identification documents.⁷³⁶

A review of the NCA and the requirements for registration as a credit provider shows that mobile network operators in South Africa do not face any restrictions in registering and providing credits to their clients. In contrast to the Banks Act, NPS Act and AML/CFT regulations cited above, the NCA does permit mobile money providers access to the credit market, provided that they are registered with NCR. The registration process is comparatively easy. As a matter of fact, mobile network operators in South Africa advance airtime loans to customers⁷³⁷. Thus, mobile network operators in South Africa can be registered as credit

⁷³² According to section 4 of the National Credit Act, the Act applies to all credit agreements within the Republic involving, individuals, except transactions, at arm's length (loans between family members, partners and friends on an informal basis will not be regulated) and between a stokvel, and a member of that stokvel, juristic persons (businesses) with an asset value or annual turnover of less than R1m, but not if such a juristic person enters into a large agreement (i.e. for more than R250 000).

⁷³³ National Credit Act no 34 2005 s3(1).

⁷³⁴ Supra National Credit Act s12.

⁷³⁵ *Du Bruyn NO & others v Karsten* (929/2017) [2018] ZASCA 143

⁷³⁶ Requirement to register as a credit provider are, Complete the NCR Application Form, have a company registration or be a sole proprietor, provide a copy of the share certificate/s if the application is a company. Submit the following: Certified copy of ID, Police clearance certificate (no older than 6 months)

Provide certified copies of ID/Passports of all members/directors/trustees/partners/sole proprietors Complete & sign resolution document if the applicant is a juristic person. Provide a police clearance certificate for all members/directors/trustees/partners/sole proprietors issued by the South Africa Police Services (SAPS).

Proof of payment of the registration fee, Non-Refundable application fee of R 500, Branch fee of R 250 per location or premises where you will be operating from, registration Fee of R 1500, letter from the bank confirming the applicant's banking details or a copy of a cancelled blank check, proof of registration with the South African Receiver or Revenue Services (SARS).

⁷³⁷ Gugu Lourie MTN introduces MTN Xtra Time: airtime advance for prepaid and TopUp customers available at <https://www.techfinancials.co.za/2016/08/25/mtn-introduces-mtn-xtra-time-airtime-advance-for-prepaid-and-topup-customers/> accessed on 29 January 2022, also see Stay connected with Airtime Advance available at <https://www.vodacom.co.za/vodacom/services/airtime->

providers. As part of an initiative to drive financial inclusion, Vodacom Financial Services provides short-term cash loans to small, mid-sized and micro enterprises.⁷³⁸ Vodacom offers short-term loans of up to R350,000 to SMMEs (small, medium, and micro enterprises) in South Africa through its VodaLend products.⁷³⁹ It is only Vodacom which offers credit, other mobile network operators such as MTN are yet to offer the service. Vodacom's move is good news in the fight against financial inclusion and refutes claims that opening financial services to non-financial institutions will lead to instability. Accordingly, South African credit regulations allow mobile network operators to provide credit services, and this can be used to expand credit services to vulnerable and poor communities.

4.3.6 Insurance

Poor people are more vulnerable to risks.⁷⁴⁰ They face more sicknesses, death, natural disasters, and related shocks, among other risks. This necessitates their protection from these hazards. Insurance is one of the methods for risk mitigation. It can allay the vulnerability of the poor by replacing uncertain prospects of large losses with the certainty of making regular payments.⁷⁴¹ However, most insurance companies do not have strategies for low-income groups. Low-income levels and high insurance premiums exclude a significant portion of the population from insurance coverage.⁷⁴² Insurance products that are not specifically designed to fit the needs of low-income income groups aggravate the exclusion.⁷⁴³ As a result, most poor people deal with risks through informal insurance.⁷⁴⁴ Morduch argues that informal insurance mechanisms used by the poor offer weak protection and are often insufficient.⁷⁴⁵ Against this backdrop, mobile microinsurance (m-insurance) models emerged to provide cover and

advance#:~:text=If%20you%20qualify%20for%20Airtime,select%20'Airtime%20%26%20Transfers'.&text=Select%20from%20the%20R5%2C%20R10,as%20per%20your%20qualifying%20criteria accessed on 29 January 2022.

⁷³⁸ Vodacom to offer short-term cash loans between R3,000 and R350,000 for small businesses available at <https://businesstech.co.za/news/mobile/498363/vodacom-to-offer-short-term-cash-loans-between-r3000-and-r350000-for-small-businesses/> accessed on 29 January 2022.

⁷³⁹ Vodacom launches R3,000-R350,000 business loans for SMMEs available at <https://currentaffairsza.com/2021/06/15/vodacom-launches-r3000-r350000-business-loans-for-smmes/> accessed on 29 January 2022.

⁷⁴⁰ Graig Churchill 'Insuring low-income markets: Challenges and solutions for commercial insurer' (2009) *Actuary of the future* at 400.

⁷⁴¹ Kennedy Otiendo Odenyo *Factors affecting microinsurance in Kenya* (Unpublished MBA Thesis, United States International University – Africa, 2018) at 17.

⁷⁴² Ampaw, E. M., Chai, J., & Frempong, J. 'Examining the overarching factors of clients' loyalty based on the mobile insurance typology' (2019) *South African Journal of Business Management* 50 at 1.

⁷⁴³ Ibid.

⁷⁴⁴ Jonathan Morduch 'Between the State and market. Can informal insurance patch the safety net' (1999) *The World Bank Research Observe* at 187.

⁷⁴⁵ Ibid at 188.

financial inclusion for the poor. In 2016, the GSMA said that there were 106 m-insurance services in 31 emerging markets.⁷⁴⁶ Multiple non-traditional insurance stakeholders are involved in the provision of m-insurance, including technical service providers (TSPs) and mobile network operators.⁷⁴⁷ Mobile network operators introduced m-insurance as a solution for helping the poor and vulnerable to gain access to insurance. M-insurance was developed to ameliorate household shocks and the financial risks faced by low-income earners.⁷⁴⁸ Research shows that mobile insurance can alleviate and combat extreme poverty and hunger through the provision of products that provide agricultural, life and funeral cover to the economically underprivileged.⁷⁴⁹ It holds the potential to rapidly scale, enhance efficiency and reduce the cost of insurance⁷⁵⁰

M-insurance is a type of microinsurance that is solely marketed, administered and whose payment system is facilitated by a mobile phone.⁷⁵¹ Wiedmaier-Pfister and Ncube define it as the distribution and administration of insurance through digital devices (primarily mobile phones) utilising digital technology, interfaces, platforms and processes to support the entire insurance process across the value chain.⁷⁵² The m-insurance value chain is made up of both traditional insurance stakeholders (insurers/underwriters and insurance intermediaries) and non-traditional insurance stakeholders, such as mobile network operators. This type of microinsurance can be mobile network operator-driven (MNO-driven) or insurer-driven. The insurer-driven model involves the interaction of traditional insurance companies with their clients using mobile network operator technology.⁷⁵³ Insurers take the lead in the partnership by conducting product development and overseeing the overall business strategy.⁷⁵⁴ Mobile network operators play a passive role and act as a pipe in which transactions are performed off

⁷⁴⁶ GSMA report 'State of the Industry Report on Mobile Money 2021' available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2021/03/GSMA_State-of-the-Industry-Report-on-Mobile-Money-2021_Full-report.pdf accessed on 14 October 2021.

⁷⁴⁷ Martina Wiedmaier-Pfister and Sandisiwe Ncube 'Regulating mobile Insurance business via mobile phones: Regulatory challenges and emerging' (2018) *Access to Insurance Initiatives* at 7.

⁷⁴⁸ See Ampaw, E. M., Chai, J., & Frempong, J op cit note 742.

⁷⁴⁹ Ibid.

⁷⁵⁰ See Wiedmaier-Pfister M & Ncube S op cit note 741 at 4.

⁷⁵¹ Finmark Trust report (2014) *Regulating M-insurance in Zimbabwe: Managing risk while facilitating innovation*. Available at https://cenfri.org/wp-content/uploads/2014/07/Managing-risk-while-facilitating-innovation-the-case-of-m-insurance-in-Zimbabwe_FinMark-Trust_March-2014.pdf accessed on 19 July 2021.

⁷⁵² See Wiedmaier-Pfister M & Ncube S op cit note 747 at 11.

⁷⁵³ Hailu Abebe Wandiraro 'The impact of mobile insurance and microfinance in Kenya' (2020) *Journal of Banking and Financial Technology* at 98.

⁷⁵⁴ See Wiedmaier-Pfister M & Ncube S op cit note 747 at 8.

their infrastructure.⁷⁵⁵ Their role is limited to facilitating premium payments and acting as a shop front where insurers can display and sell their products.⁷⁵⁶ As such, mobile network operators operate as a platform through which insurers and the insured exchange data. Under the MNO-driven model, mobile network operators own brands and promote insurance products. Mobile network operators drive the model and contribute significant resources and backing to the initiative.⁷⁵⁷ Insurance is viewed as a strategic initiative in which mobile network operators invest as they strive to increase revenue through transactions and seek non-financial benefits such as reducing churn or raising brand awareness.⁷⁵⁸ Mobile network operators are the primary insurance providers for the poor. This section focuses on insurance models driven by mobile network operators. It discusses the nature of m-insurance and regulatory issues surrounding its provision in South Africa.

MNO-driven microinsurance products gained significant attention in recent years due to their rapid growth in African and Asian markets.⁷⁵⁹ Insurance policies are offered by mobile network operators to cover risks such as illness, accidental injury, death, and property loss. The provision of these services makes it possible for mobile network operators to increase their clientele. Economies of scale allow them to open insurance services to vulnerable and poor communities. M-insurance is a growing trend in countries such as Uganda, Ghana, Tanzania, the Philippines and Zimbabwe.⁷⁶⁰ Mobile network operators provide two different forms of m-insurance. They provide freemium or loyalty-based mobile insurance and paid insurance.⁷⁶¹ Freemium insurance is provided when a mobile network operator subscriber receives free insurance. The insurance can be offered as a monthly reward to incentivise subscribers to increase their usage of airtime, mobile money transactions or certain levels of savings.⁷⁶² The first wave of m-insurance initiatives introduced loyalty models where mobile network operators paid the premiums. In most instances, clients could upgrade the cover by paying additional premiums.⁷⁶³ In Ghana, Tigo provides loyalty-based life insurance cover for prepaid subscribers and members of their families (limited to one). There are cases in which freemium

⁷⁵⁵ Jeremy Leach and Sandiswe Ncube 'Managing risk while facilitating innovation. A case of Tanzania' (2014) available at https://cenfri.org/wp-content/uploads/2014/07/Managing-risk-while-facilitation-innovation-the-case-of-m-insurance-in-Tanzania_FinMark-Trust_June-2014.pdf accessed on 17 July 2021.

⁷⁵⁶ See Wiedmaier-Pfister M & Ncube S op cit note 747 at 8.

⁷⁵⁷ Ibid.

⁷⁵⁸ See Leach J and Ncube S op cit note 755.

⁷⁵⁹ Ibid.

⁷⁶⁰ See Wandiraro op cit note 753 at 99.

⁷⁶¹ See Finmark Trust report (2014) op cit 751.

⁷⁶² See Odenyo K O op cit note 741.

⁷⁶³ See Wiedmaier-Pfister M & Ncube S op cit note 747 at 16.

coverage may be upgraded to provide additional coverage for small premiums.⁷⁶⁴ Mobile network operators also provide paid insurance. Paid products are optional and flexible, allowing subscribers to pay via airtime, mobile money transfer, mobile wallet or over the counter.⁷⁶⁵ Mobile wallets and airtime deduction are the predominant forms of premium collection available to m-insurance clients across various jurisdictions. Between these, airtime deduction is the most prominent.⁷⁶⁶ Automatic payment is made when there are sufficient funds in the subscribers' m-wallet or airtime.⁷⁶⁷

4.3.7 Regulation of m-insurance in South Africa

The regulation and supervision of the insurance market are critical for enhancing access to insurance. They determine who can operate in the market and set the ceiling for prices. They also enforce the provision of certain types of insurance.⁷⁶⁸ Notably, liberal insurance legislation increases insurance services, while rigid regulatory frameworks hinder their growth.⁷⁶⁹ The regulatory approach to m-insurance in South Africa is hands-off in that the government did not develop specific regulations for m-insurance. The industry is regulated by the general insurance legislative system, such as the Insurance Act 18 of 2017 and the Prudential Authority (PA).⁷⁷⁰ The Insurance Act is the first major prudential legislation that builds on the Twin Peak model of financial regulation. It provides a framework for prudential regulation and supervision of the insurance business in South Africa. It introduces a framework for microinsurance to help promote financial inclusion.⁷⁷¹ One of its objectives is to increase access to insurance for all South Africans.⁷⁷²

⁷⁶⁴ GAAP Brief 'Emerging global landscape of mobile insurance' available at <https://www.cgap.org/sites/default/files/Brief-The-Emerging-Global-Landscape-of-Mobile-Microinsurance-Jan-2014.pdf> accessed on 21 July 2021.

⁷⁶⁵ Leach J and Ncube S op cit note 755, See also See Wandiraro op cit note 753 at 99.

⁷⁶⁶ See Wiedmaier-Pfister M & Ncube S op cit note 747 at 17.

⁷⁶⁷ See Ampaw, E. M., Chai, J., & Frempong, J op cit note 742 at 3.

⁷⁶⁸ South Africa National Treasury document: 'The South African microinsurance regulatory framework policy document' available at <http://www.treasury.gov.za/publications/other/microinsuranceregulatoryframework/policy%20document%20micro%20insurance.pdf> accessed on 21 July 2021.

⁷⁶⁹ See Odenyo K O op cit note 741.

⁷⁷⁰ Prudential Authority is a juristic person operating within the administration of the Reserve Bank. Its function is to regulate and supervise in accordance with the financial sector laws financial institutions that provide financial products or securities services- and market infrastructures, cooperate with and assist the Reserve Bank the Financial Stability Oversight Committee the Financial Sector Conduct Authority the national Credit Regulator and the Financial Intelligence Centre.

⁷⁷¹ Preamble of the Insurance Act 18 of 2017.

⁷⁷² Supra Insurance Act 18 of 2017 sec 3(C).

Section 5(1) of the Act provides that no person may conduct insurance business in South Africa unless the person is licenced under the Insurance Act.⁷⁷³ To provide microinsurance, a person must be a profit company or a non-profit company registered under the Companies Act, or a co-operative registered under the Co-operatives Act.⁷⁷⁴ The Act assigns the Prudential Authority (PA) powers to designate any juristic person, an insurer or any associate, or related or inter-related person of any juristic person that is part of the group of companies as an insurance group.⁷⁷⁵ The Act further stipulates that the PA must as part of designating an insurance group also designate the holding company or juristic person that must apply for a licence as a controlling company of that insurance group.⁷⁷⁶ The designation qualifies a holding company to apply for a licence as a controlling company of an insurance group. As such, the PA has the authority to licence an entity as an insurer. To qualify for licencing as a controlling company, a holding company, or another juristic person that controls an insurance group, must demonstrate that its key persons and significant owners meet the prescribed requirements for being fit and proper, has a sound business plan and that it will be able to comply with the governance framework, financial soundness, reporting and public disclosure requirements of the Insurance Act.⁷⁷⁷ On microinsurance products, the Act stipulates that micro-insurers can provide long and short-term insurance. Long term micro insurers are permitted to provide risk, credit, life, and funeral insurance.⁷⁷⁸ For the short-term, they are allowed to offer property, motor, agriculture, legal expenses, accident, and health cover. In terms of Prudential Standards Financial Soundness of Micro insurers (MFS) 1, the Absolute Minimum Capital Requirement (AMCR) for micro-insurers is set at R4 million.⁷⁷⁹ This figure is relatively low compared to traditional insurance.

Insurance legislation and regulations make it easy for mobile network operators to venture into the insurance business in South Africa. The PA has designated some mobile network operators as controlling companies of insurance groups. Vodacom was granted an insurance licence and is now offering life, funeral and health insurance in the market.⁷⁸⁰ MTN joined Sanlam to

⁷⁷³ Supra note 766 Insurance Act sec 5(1).

⁷⁷⁴ Supra note 766 Insurance Act sec 22(1)(a)(iii).

⁷⁷⁵ Supra note 766 Insurance Act sec10.

⁷⁷⁶ Ibid.

⁷⁷⁷ Supra note 766 Insurance Act sec 22.

⁷⁷⁸ Supra note 766 Insurance Act sec 1.

⁷⁷⁹ Prudential Standard FSM 1 Framework for Financial Soundness of Micro insurers.

⁷⁸⁰ Insurance Act Notice - Publication for the licencing of controlling company under Chapter 4 of the Insurance Act no 18 of 2017 - Vodacom FS.

provide life and funeral cover.⁷⁸¹ Sanlam offers its insurance products through MTN's mobile app, website, and USSD platform. Through this collaboration, MTN provides the platform, payment solution and clientele distribution, while Sanlam underwrites the insurance products, ensures regulatory compliance and provides capital. In other words, MTN is acting as Sanlam's agent. None of the insurance services offered by these mobile network operators fall under the traditional form of insurance. They can neither be categorised as freemium nor loyalty based. This is because clients must pay monthly premiums. Vodacom premiums start from R92 per month for R100 000 life cover.⁷⁸² The provision of insurance by mobile network operators is a positive development. However, their services are not transformative. They have increased accessibility and not affordability. Their prices are not very different from those of traditional insurance companies. This is one of the explanations why mobile network operators are struggling to attract clients.

In summary, the no-specific regulation approach to mobile money services in South Africa creates a system of overlapping regulations that make it difficult for mobile network operators to provide banking services. Requirements set out by the Banks Act, the NPS Act and the AML regulations prohibit the entrance of mobile network operators into the banking system. Financial regulators need to balance their regulatory objectives of facilitating growth while protecting consumers and encouraging innovation.

4.4 THE REGULATION OF MOBILE MONEY SERVICES IN ZIMBABWE

Unlike in South Africa, access to banking services in Zimbabwe is limited due to a prolonged period of economic decline and banking crises.⁷⁸³ Over 67% of Zimbabwe's population lives in rural areas with little to no access to banking services. A 2016 report produced by the Reserve Bank of Zimbabwe (RBZ) noted that only 2 million out of 14 million Zimbabweans have bank accounts.⁷⁸⁴ Most people turned to informal banking due to liquidity challenges and high bank charges that plagued the financial sector for the past two decades, resulting in a largely cash-

⁷⁸¹

Vodacom website <https://www.vodacom.co.za/vodacom/services/insurance/insurance?icmp=Home/Menu/Insurance/Browse/P1/WhatWeOffer> accessed on 1 June 2022., see also MTN website <https://www.mtn.co.za/insurance/>. accessed on 1 June 2022.

⁷⁸² Ibid.

⁷⁸³ Dermish A, B Hundermark and C Sanford. 2012. 'Mapping the Retail Payment Services Landscape: Zimbabwe'. *FinMark Trust*, see also Genna Robb et al op cit note 161.

⁷⁸⁴ RBZ 2016 Zimbabwe national financial inclusion strategy report available at <https://library.buse.ac.zw/docs/gvt-publications/zim-fin-strat.pdf> accessed on 05 August 2021.

based economy and the use of direct and informal cash transfer mechanisms.⁷⁸⁵ Over-reliance on informal cash transfers was exacerbated by inflation, policy inconsistency, and lack of trust in the banking sector. Cash was the only mode of payment for the poor, unbanked, and low-income earners.⁷⁸⁶ They sent cash to distant relatives by buses and friends. Remitting funds in this way was risky, unreliable, and slow. The advent of mobile money services made it possible for most people to access formal financial services. The number of mobile money accounts stood at 7.6 million in March 2020.⁷⁸⁷ Unlike in South Africa, the adoption of mobile money services in Zimbabwe is a success that mirrors similar developing countries such as Kenya. This section examines mobile money services in Zimbabwe. It pays attention to the country's regulatory approach and compares it with the approach in South Africa to demonstrate the extent to which Zimbabwe's financial regulations enable the successful rollout of mobile money services.

4.4.1 Overview of mobile money services in Zimbabwe

To understand the regulatory framework for mobile money services in Zimbabwe, it is necessary to outline the current state of the service. Zimbabwe has seen tremendous growth in mobile money services over the years.⁷⁸⁸ In Zimbabwe, as in South Africa, mobile money services are operated by mobile network operators and financial institutions such as banks. Like South Africa, Zimbabwe offers three mobile money options - the bank-led model, the operator-led model, and the partnership model. The bank-led model was introduced first.⁷⁸⁹ Commercial banks, building societies and merchant banks offer mobile money services as an additive service.⁷⁹⁰ Bank-led mobile money services include Touch, provided by the Commercial Bank of Zimbabwe (CBZ),⁷⁹¹ E-Wallet provided by ZB bank,⁷⁹² Blue 247 provided by Stanbic,⁷⁹³ and Textacash provided by the Central African Building Society

⁷⁸⁵ Dermish, A., Hundermark, B. and Sanford, C. 'Mapping the retail payment services landscape – Zimbabwe' (2012) *Fin Mark Trust*.

⁷⁸⁶ Chitimira H and Torerai E (2021) "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe' (2020) 24 *PER / PELJ* at 9

⁷⁸⁷ Potraz Report 2020 available at http://www.potraz.gov.zw/wp-content/uploads/2020/06/Sector_Performance_1stQ2020.pdf. accessed on 1 June 2022.

⁷⁸⁸ Mujuru T op cit note 267.

⁷⁸⁹ See Bara A op cit note 39, See Also Chitimira H & Torerai E op cit note 786.

⁷⁹⁰ Ibid.

⁷⁹¹ CBZ website <https://www.cbz.co.zw/ebanking-services/cbz-touch-mobile-banking/> accessed on 14 June 2021.

⁷⁹² ZB bank website <https://www.zb.co.zw/for-you/zb-ewallet> accessed on 14 June 2021.

⁷⁹³ Stanbic bank website <https://www.stanbicbank.co.zw/zimbabwe/personal/ways-to-bank/Blue247-Mobile-Banking> accessed on 14 June 2021.

(CABS).⁷⁹⁴ These services are only available to the formal banking clients of the respective banks. This is also the case in South Africa.⁷⁹⁵ Mobile money services are used as channels to give clients mobile access to their bank accounts. A variety of services are provided by these mobile money services, including bank account balance inquiries, payment of bills, internal and external transfer of funds, and purchase of goods and services. One does not need to have a smartphone or access to the internet to access mobile money services offered by banks. These services are delivered via the interactive service of the Unstructured Supplementary Service Data (USSD) codes. USSD is a short code, such as ‘*151#’,⁷⁹⁶ which is a telecommunications technology used to interact with a mobile money transfer service provider in real-time through a menu-based interface.⁷⁹⁷ Currently, USSD remains the best communication technology available to provide low-income residents who use mobile money services.⁷⁹⁸

Whereas banks are the main providers of mobile money in South Africa, mobile network operators are the leading players in Zimbabwe. Zimbabwe has three major mobile network operators, namely Econet, Telecel and NetOne.⁷⁹⁹ Econet is the biggest mobile network operators in Zimbabwe and has over 8 million subscribers.⁸⁰⁰ Its Ecocash mobile money service is the most popular because Econet has a countrywide presence.⁸⁰¹ Ecocash was launched in 2011. Within 18 months, it had accumulated 2.3 million customers with over one million active accounts.⁸⁰² The Postal and Telecommunication Regulatory Authority of Zimbabwe (POTRAZ) report of 2020 says that there were 5,5 million active Ecocash subscribers.⁸⁰³ In addition to an Econet SIM card, one only needs a passport or national identification document to open an Ecocash account.⁸⁰⁴ To register, one must fill out a form and submit a copy of a

⁷⁹⁴ CABS website <https://www.cabs.co.zw/news/how-register-textacash> accessed on 14 June 2021.

⁷⁹⁵ Munalye C *The effects of mobile money transfer services on traditional banking services offered by banks: Case Study of BancABC* (Unpublished BCom Midlands State University 2015).

⁷⁹⁶ Robb G, Tausha I and Vilakazi T op cit note 161 at 216.

⁷⁹⁷ See Michel Hanouch op cit note 171.

⁷⁹⁸ Ibid.

⁷⁹⁹ See Robb G, Tausha I and Vilakazi T op cit note 161, also see Chitimira H & Torerai E op cit note 786 at 6.

⁸⁰⁰ POTRAZ Report Abridged postal & telecommunications sector performance report fourth quarter 2020 available at <https://t3n9sm.c2.acecdn.net/wp-content/uploads/2021/03/Abridged-Sector-Performance-report-4th-Q-2020.pdf> accessed on 1 June 2022.

⁸⁰¹ Chipso Nduna *Financial freedom in mobile money: the role of the Central Bank in Zimbabwe* (Unpublished LLM Thesis University of Western Cape 2020).

⁸⁰² Kabweza LSM ‘Telecel reveals they killed off the Skwama mobile money service’ (2012) Available at <https://www.techzim.co.zw/2012/09/telecel-reveals-they-killed-off-the-skwama-mobile-money-service/#:~:text=Telecel%20Zimbabwe%20revealed%20last%20week,competency%20of%20GSM%20mobile%20telecommunications> accessed on 15 September 2021.

See also Lal R & Sachdev I op cit note 58 at 17, See also Mkhithika Karen Nkululeko *The adoption of Ecocash by formal and informal entrepreneur in Zimbabwe* (Unpublished LLM Thesis, NSYSU 2018).

⁸⁰³ See POTRAZ 2020 Report op cit note 800.

⁸⁰⁴ Ecocash website <https://www.ecocash.co.zw/about> accessed 13 July 2021.

valid government-issued identity document or a passport to an authorised Ecocash agent.⁸⁰⁵ Ecocash is used for most transactions, including payments for groceries, utilities and taxi rides. It provides merchant services, utility bill payments, business-to-business transfers, person-to-person transfers, business-to-person transfers and long-distance remittances.⁸⁰⁶ Ecocash does not charge monthly fees. However, it levies a low fee per transaction. For example, at the time of writing it cost Z\$0.75 to send Z\$ 20 excluding tax. Ecocash also provides insurance and savings services through EcoSure and EcoSave, respectively.⁸⁰⁷ Money received via Ecocash accounts, whether as remittances from within the country or abroad, can be saved for future use.⁸⁰⁸ POTRAZ says that Ecocash processed 99.7% of all mobile money transactions in 2019.⁸⁰⁹ Ecocash also gives its customers the option to link their Ecocash accounts to their bank accounts to transfer money from their bank accounts to their Ecocash wallets to pay for goods and services.⁸¹⁰ Moreover, residents of Zimbabwe residing abroad can transfer money to their relatives living in Zimbabwe through EcoCash Diaspora. Ecocash formed partnerships with Western Union, World Remit, Cassava Remit, AfroCoin, MoneyGram, Mukuru, Call Home, and MTN Zambia to provide this service.

Zimbabwe's second-largest mobile network operator is the government-owned NetOne which, according to the 2020 POTRAZ report, has 3,6 million subscribers.⁸¹¹ It was the first mobile network operator to introduce a mobile money service in 2011, termed One-Wallet.⁸¹² One-Wallet provided a cocktail of services that included sending and receiving money, airtime purchases and bill payments. Unfortunately, the service was a dismal failure after its launch and cost the government over US\$6 million in losses.⁸¹³ The service was re-launched in 2017 under the brand One-Money. In addition to the services offered under One-Wallet, One-Money offers merchant services.⁸¹⁴ One-Money comes with a debit card for cash withdrawals and POS swipes at all ZimSwitch ATMs. NetOne mobile money clients increased because of rebranding.

⁸⁰⁵ Ecocash website <https://www.ecocash.co.zw/about> accessed 13 July 2021

⁸⁰⁶ Chitungo S K and Monongo S 'Extending the Technology Acceptance Model to Mobile Banking Adoption in Rural Zimbabwe' (2013) 3 *Journal of Business Administration and Education* at 51.

⁸⁰⁷ Econet Wireless Zimbabwe' available at <http://www.econet.co.zw>, accessed 13 July 2021.

⁸⁰⁸ Ibid.

⁸⁰⁹ Ecocash widens lead in mobile transaction volumes <https://www.econet.co.zw/news/5/press-releases/14/ecocash-widens-lead-in-mobile-transaction-volumes> accessed 13 July 2021.

⁸¹⁰ Angeline Mbogo 'EcoCash Charges, Rates & Tariffs in 2021' available <https://afritechnews.com/ecocash-charges-rates-and-tariffs/> accessed on 18 July 2021.

⁸¹¹ See POTRAZ report op cit note 800.

⁸¹² Ibid.

⁸¹³ Farai Mudzingwa 'Is Netone giving up one Money' Available at <https://www.techzim.co.zw/2018/03/netone-giving-onemoney/> accessed on 15 August 2021.

⁸¹⁴ Netone website <https://www.netone.co.zw/products/view-product/109-onemoney> accessed on 15 August 2021.

The POTRAZ survey reported that One-Money attracted almost a million subscriptions in 2020.⁸¹⁵ Like Ecocash, One-Money does not charge monthly fees. Each transaction has a low fee. Registration for One-Money only requires an identity document and a NetOne SIM card.

Telecel is the third-largest mobile operator in Zimbabwe. It provides mobile money services under the brand name Telecash and has around 700 thousand subscribers.⁸¹⁶ Telecel first introduced mobile money services called Skwama in 2011 in joint partnership with Kingdom Bank.⁸¹⁷ However, Skwama attracted very few clients and was discontinued. It had few clients because it required users to be clients of the host bank.⁸¹⁸ In addition, partnering with a single bank limited its potential market size because many of its subscribers were clients of other banks.⁸¹⁹ In 2014, Telecel connected its mobile platform with more banks via ZimSwitch Mobile⁸²⁰ and launched Telecash.⁸²¹ Telecash provides similar services like Ecocash, such as utility bill payments, business-to-business transfers, person-to-person transfers, business-to-person transfers, and long-distance remittances.⁸²² Telecel introduced a debit card, the Telecash gold card, which was used for payment at more than 5 000 ZimSwitch points of sale throughout the country.⁸²³ The card allows one to pay for groceries, DSTV subscriptions, restaurant and hotel bills, as well as many other goods and services. In addition, cardholders can withdraw cash from ZimSwitch ATMs. While Telecel's reintroduction of mobile money services boosted its subscriptions, Telecash's market share remains low. POTRAZ's 2020 report shows that Telecash accounts for only 0.03% of mobile money transactions.⁸²⁴ In addition, just over 50 000 people were using Telecel's mobile money service at the end of the first quarter of 2020.⁸²⁵

⁸¹⁵ See POTRAZ report op cit note 800.

⁸¹⁶ See POTRAZ report op cit note 800.

⁸¹⁷ See Robb G, Tausha I and Vilakazi T op cit note 161 at 219.

⁸¹⁸ See Robb G, Tausha I and Vilakazi T op cit note 161 at 13.

⁸¹⁹ Kabweza LSM. 2012. 'Telecel reveals they killed off the Skwama mobile money service' available at <https://www.techzim.co.zw/2012/09/telecel-reveals-they-killed-off-the-skwama-mobile-money-service/#:~:text=Telecel%20Zimbabwe%20revealed%20last%20week,competency%20of%20GSM%20mobile%20telecommunications> accessed on 15 September 2021.

⁸²⁰ The ZimSwitch Mobile platform enables all financial institutions connected to ZimSwitch to offer mobile banking services through USSD technology, via the internet, and integrates with service providers such as utility companies. The platform enables users to transfer money through ZimSwitch Instant Payment Interchange Technology (ZIPIT) which acts as an aggregator that facilitates transactions when customers look to move money to and from their bank accounts for mobile payments.

⁸²¹ See Robb G, Tausha I and Vilakazi T op cit note 161 at 219.

⁸²² Telecash website <https://telecel.co.zw/telecash> accessed on 14 June 2021.

⁸²³ Trycolyn Pikirayi 'NetOne's OneMoney now has a debit card...finally' available at <https://www.techzim.co.zw/2017/10/netones-onemoney-now-has-a-debit-card-finally/>. accessed on 14 June 2021.

⁸²⁴ See POTRAZ Report op cit note 800.

⁸²⁵ Ibid.

4.4.2 Mobile money regulation in Zimbabwe

Zimbabwe's regulatory approach to mobile money services differs from South Africa's. This is because Zimbabwe adopted a test and learn approach. It did not issue specific regulations for mobile money services at the beginning.⁸²⁶ Just like in South Africa, a plethora of regulations that include the Reserve Bank of Zimbabwe Act [Chapter 22:15], the Banking Act [Chapter 24:20] (Banking Act), the National Payment Systems Act [Chapter 24:23], the Postal and Telecommunications Act [Chapter 12:05] and *ad hoc* Statutory Instruments (SI) were used to control the provision of mobile money services by mobile network operators. However, in 2020, almost a decade after the introduction of mobile money services, the Ministry of Finance and Economic Development issued a Statutory Instrument dealing specifically with mobile money services due to the challenges the country faced in regulating this form of banking. This section examines the regulatory approach used by Zimbabwe and discusses how it contributed to the success of mobile money services.

4.4.3 Banking Act [Chapter 24:20]

Like in South Africa, all banks and banking-related activities in Zimbabwe are regulated by banking legislation in the form of the Banking Act [Chapter 24:20]. The preamble of the Banking Act specifies that it is designed to regulate the registration, supervision, and regulation of banking businesses and financial activities in Zimbabwe.⁸²⁷ Like the South Africa Banks Act, section 5 of the Banking Act stipulates that no person shall conduct banking business in Zimbabwe unless the person is a registered bank.⁸²⁸ The 'business of banking' is defined in a way that also mirrors the definition provided by the South African Banks Act. It defines the business of banking as

the business of accepting deposits withdrawable or repayable on demand or after a fixed period or after notice and the employment of those deposits, in whole or in part, by lending or any other means for the account and at the risk of the person accepting the deposits.⁸²⁹

A close inspection of this provision reveals it has the same effect as South Africa's Banks Act in that it restricts the participation of mobile network operators in banking. The Banking Act does not allow mobile network operators to provide banking services unless they are registered

⁸²⁶ See Bara A op cit note 39, See also Chitimira H & Torerai E op cit note 786.

⁸²⁷ Banking Act, [Chapter 24:20], Preamble.

⁸²⁸ Supra note 827 Banking Act, [Chapter 24:20], sec 5.

⁸²⁹ Supra note 827 Banking Act sec 1.

as banks. This is buttressed by section 7, which provides a list of banking activities that only a registered bank may conduct.⁸³⁰ The banking activities provided in this section that are relevant to mobile money are receiving deposits, providing money transfer services, and administering payment methods.⁸³¹ These activities are restricted to licenced banks. Therefore, the Banking Act limits the participation of mobile network operators in the banking system through registration requirements, just as the Banks Act of South Africa. Furthermore, section 6 of the Banking Act provides a summary of the various types of banking institutions. These include commercial banks, accepting houses, discount houses, finance houses, and microfinance institutions. Mobile network operators are not included in these provisions by definition and by nature of their business.⁸³²

In addition to the above, in 2004 the RBZ issued the Exchange Control (Money Transfer Agencies) Order prohibiting any persons engage in money transfer business unless is registered. Section 3(2)b of the Exchange control order provided that no person shall be registered as a money transfer agency unless such person is a division, department, unit or subsidiary company of a banking institution or a building society, the accounts of which are audited separately from the accounts of the parent banking institution or building society.

4.4.4 The National Payment Systems Act

In Zimbabwe, the NPS Act regulates systems that clear payment instructions between financial institutions.⁸³³ In terms of section 3(3) of the Act, the RBZ will only recognise a payment system when only financial institutions and the Reserve Bank are participants.⁸³⁴ Financial institutions are defined in the NPS Act as banking entities registered and conducting banking activities under the Banking Act or any other institution lawfully engaging in banking activities in terms of section 7(1)(a), (d) and (f) of the Banking Act,⁸³⁵ which caters for any other institution “providing money transmission services.” It requires such an institution to have a “registration certificate”. Therefore, mobile network operators must meet two requirements for recognition as financial institutions under the NPS Act and to participate in the National

⁸³⁰ For the list of activities that may be specified by in a registration certificate see Supra note 821 Banking Act sec 7.

⁸³¹ See Chitimira H & Torerai E op cit note 786.

⁸³² See Nduna C op cit note 801.

⁸³³ National Payment Systems Act.

⁸³⁴ Supra note 833 National Payment Systems Act sec 3(3).

⁸³⁵ Supra note 857 National Payment Systems Act sec 2, See also supra note 821 Banking Act ss 7(1)(a), (d) and (f).

Payment System. These requirements are providing money transmission and possessing registration certificates. The services offered by mobile network providers can be classified as money transmission services, making them automatically satisfy the first requirement. As mentioned above, operator-led mobile money services transactions involve cash-ins or cash-outs of funds. The GSMA defines cash-in as the process by which a customer credits his/her account with cash. In most cases, an agent takes the cash and credits the customer's mobile money account.⁸³⁶ Cash-out is defined as the process by which a customer deducts cash from his/her mobile money account.⁸³⁷ The transaction is usually conducted by an agent, who gives the customer cash in exchange for a transfer from their mobile money account. An analysis of these definitions illustrates the process of mobile money transmission. Therefore, the service offered by mobile network operators falls within the scope of money transmission envisaged by the Banking Act.

The second stage of the enquiry involves registration certificates. The Banking Act defines a “registration certificate” as “a registration certificate issued in terms of section 10 of the Banking Act”.⁸³⁸ In terms of section 10, a registration certificate is issued upon registering a banking institution under section 8.⁸³⁹ Mobile network operators are registered under the Postal and Telecommunications Act, [Chapter 12:05], not the Banking Act. They cannot be issued with a registration certificate under the Banking Act. Thus, mobile network operators do not pass the second leg for registration certificate requirements set in the NPS Act. This means that mobile network operators that provide mobile money services are not recognised as financial institutions by the Zimbabwean NPS Act. Therefore, they cannot participate in the payment system. The NPS Act mirrors its South African counterpart as it does not permit the participation of mobile network operators in the National Payment System. This restricts the provision of mobile money services by mobile network operators.

The RBZ is responsible for all licencing and supervision of mobile money services in Zimbabwe. This is because these services are, in fact, financial products, putting them under the purview of the RBZ. Acting within the context of the test and learn approach, the RBZ issued directives and circulars which permit mobile network operators to participate in the National Payment System. The RBZ set legal guidelines within which mobile network

⁸³⁶ GSMA Mobile money definitions available at <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/06/mobilemoneydefinitionsnomarks56.pdf> accessed on 1 June 2022..

⁸³⁷ Ibid.

⁸³⁸ Supra note 827 Banking Act sec 2.

⁸³⁹ For more information about application for registration as a bank see section 8 of the Banking Act.

operators are allowed to experiment while staying within the bounds of the law. This enabled the RBZ to closely monitor the evolution of the market before developing more detailed regulations.⁸⁴⁰ During this experimental phase, the RBZ published numerous circulars and guidelines that allowed and regulated mobile network operators involved in mobile banking. It issued a circular titled *A Framework for the Recognition of Payment Systems in Zimbabwe*. The circular invited non-banks to apply for recognition as payment services providers. Paragraph 5 of the circular advised non-bank institutions wishing to provide payment services to partner with deposit-taking financial institutions through which they could apply for recognition.⁸⁴¹ Effectively, this meant that mobile network operators could only provide mobile money services by partnering with registered banking institutions.⁸⁴² Mobile network operators can only be granted a licence to participate in the National Payment System when they have entered into partnerships with licenced banks before the submission of their applications for licences.⁸⁴³

The RBZ requires Mobile network operators to maintain trustee accounts with registered financial institutions with real money deposits, which back balances in the e-money accounts.⁸⁴⁴ It prohibited Mobile network operators from offering products outside an official list of regulated products, including products that ‘store value’ and create ‘credit.’ As discussed in the context of South Africa, such partnerships make it difficult for mobile network operators to innovate and offer mobile money services. It is for this reason that mobile money failed in South Africa. Despite this requirement, Zimbabwe has a thriving mobile money industry. The question is, why mobile money services provided by mobile network operators are successful under such conditions in Zimbabwe? The answer lies in partnerships that some mobile network operators formed with banking institutions and the fact that, unlike in South Africa, non-banks in Zimbabwe have access to the National Payment System. The partnerships are described below.

⁸⁴⁰ See Lal R & Sachdev I op cit note 58 at 14.

⁸⁴¹ Reserve Bank of Zimbabwe Circular A framework for the recognition of payment systems in Zimbabwe (2016) available at <https://www.rbz.co.zw/documents/nps/framework-for-the-recognition-of-payment-systems-in-zimbabwe---april-2016.pdf> accessed on 21 October 2020.

⁸⁴² See Bara A op cit note 39 at 348.

⁸⁴³ ESAAMLG Report (2016), Anti-money laundering and counter-terrorist financing measures - Zimbabwe, Second Round Mutual Evaluation Report, ESAAMLG, Dar es Salaam available at <http://www.esaamlg.org/reports/me.php> accessed on 12 November 2021.

⁸⁴⁴ Makina D, Chiwunze G & Ndari E ‘Financial inclusion strategies for making financial markets work for the poor in Zimbabwe’ (2014) *Zimbabwe Economic Policy Analysis and Research Unit*. at 29.

When Econet launched Ecocash, it also acquired a shareholding in TN Bank. In 2013, Econet acquired 100% of the bank and rebranded to Steward Bank.⁸⁴⁵ The bank served as the implementing partner for Ecocash services.⁸⁴⁶ The control of TN Bank gave Econet access to a registered financial institution platform for its mobile money service. Econet successfully navigated the challenges associated with partnerships with independent banks. However, only Econet managed to use this strategy for Ecocash. Telecel and NetOne did not have the same financial muscle as Econet. As such, they could not acquire their own banks. They partnered with ZimSwitch, a financial switching company that was formed in 1994 through a partnership among six financial institutions to connect nineteen of Zimbabwe's banks.⁸⁴⁷ The ZimSwitch mobile platform enables all financial institutions connected to ZimSwitch to offer mobile banking services through USSD technology and through the internet. It also integrates with service providers, such as utility companies. Partnering with the ZimSwitch platform helped the mobile network operators to obviate the need to contract with individual banks for the provision of mobile services and access to the national payments system, as they did before.⁸⁴⁸ The partnership allowed customers of different banks two options in terms of which network to use to access the mobile financial services.

4.4.5 Anti-Money Laundering Regulation

Zimbabwe follows the rule-based approach to AML. The country's anti-money laundering position is governed by two pieces of legislation, the Bank Use Promotion and Suppression of Money Laundering Act [*Chapter 24:24*] (BUPSMML) and the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (MLPC Act). The two statutes were enacted to combat money laundering and domesticate FATF regulations. Zimbabwe, like South Africa, is a member of Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). As the ESAAMLG is a FATF-style regional body, Zimbabwe is obliged to adopt the FATF Anti-Money Laundering and Terrorist Financing measures. Just like FIC Act in South Africa, the BUPSMML

⁸⁴⁵ Stewart bank website <https://www.stewardbank.co.zw/about-us/steward-bank/history/>, accessed on 12 November 2021.

⁸⁴⁶ Mudzingwa, G. 'An assessment of the impact of post dollarisation corporate mergers and acquisitions on equity value of corporate entities in Zimbabwe' (Unpublished master's thesis University of Zimbabwe 2015) 6. See also Robb G, Tausha I and Vilakazi T op cit note 161, See also Savings and Retail Banking in Africa A case study on mobile financial services: unlocking the potential of mobile for low-value account holders available at <https://www.wsbi-esbg.org/SiteCollectionDocuments/Scale2Save%20Case%20Study%20on%20Mobile%20Financial%20Services.pdf> accessed on 22 September 2021.

⁸⁴⁷ See Robb G, Tausha I and Vilakazi T op cit note 161 at 219.

⁸⁴⁸ Ibid.

and the MLPC Act require financial service providers to carry out KYC and CDD assessments for all their clients. CDD and KYC requirements are critical for combating financial crimes like money laundering. These crimes threaten financial market integrity. Section 15 of the MLPC Act stipulates that when opening an account for a client or establishing a business relationship with them, financial institutions and non-financial businesses must identify the persons with whom they are dealing and verify their identities through identity documents.⁸⁴⁹ Section 24(1) of the BUPSM Act provides that a designated institution shall take reasonable steps to verify the identity of every applicant, including requiring an identity document if the applicant is an individual.⁸⁵⁰ Mobile network operators that provide mobile money services are financial institutions for the purposes of the MLPC Act. They are also designated institutions under the BUPSM Act. The MLPC Act defines a financial institution as any person who conducts a business that includes, *inter alia*, the transfer of money or value.⁸⁵¹ A designated institution is defined in the BUPSM Act as a person, other than a financial institution, who carries on the business, whether formally or informally, of providing money transmission services.⁸⁵² Thus, mobile network operators that provide mobile money services fall within the regulatory sphere of both the BUPSM Act and the MLPC Act. Hence, they are required to conduct KYC and CDD assessments when dealing with clients. Besides identity cards, section 25 of the BUPSM Act requires financial institutions to establish the names, addresses and occupations of their customers.⁸⁵³ To this end, all banks in Zimbabwe require a national identity document, proof of residence and occupation to open bank accounts as part of KYC and CDD requirements.⁸⁵⁴ However, these requirements proved onerous to the unbanked poor man in the street. They became a barrier that excluded the poor from formal financial services. Poor, unbanked, and low-income earners in Zimbabwe lack formal identity documentation and employment. They are disadvantaged by the requirements to comply with AML/CFT standards through CDD and KYC.⁸⁵⁵

⁸⁴⁹ Money Laundering and Proceeds of Crime Act [Chapter 9:24] sec 15.

⁸⁵⁰ Bank Use Promotion and Suppression of Money Laundering Act [Chapter 24:24] sec 24.

⁸⁵¹ Supra note 849 Money Laundering and Proceeds of Crime Act sec2.

⁸⁵² Supra note 850 Bank Use Promotion and Suppression of Money Laundering Act. Schedule 1.

⁸⁵³ Supra note 850 Bank Use Promotion and Suppression of Money Laundering Act. sec 25.

⁸⁵⁴ Florence Barugahara 'Financial Inclusion in Zimbabwe: Determinants, Challenges, and Opportunities' (2021) *International Journal of Financial Research* at 267, See also Nduna C op cit note 801 at 15, See also CABS requirement available at <https://www.cabs.co.zw/sites/default/files/New%20account%20requirements.pdf> See also CBZ Current Account Application available at https://www.cbz.co.zw/banking/current-account-application/#gf_6 accessed on 22 July 2021, See also ZB Bank Current account requirements available at <https://www.zb.co.zw/for-you/personal-accounts> accessed on 22 July 2021.

⁸⁵⁵ See Makina D, Chiwunze G & Ndari E op cit note 844.

In Zimbabwe, mobile money services are designed for low-income earners and the poor, who usually lack the documents needed for CDD and KYC. When mobile money services are subjected to the same stringent CDD and KYC requirements as banks, poor people are pushed into financial exclusion.⁸⁵⁶ In 2016, the RBZ pointed out that failure to meet the minimum account opening requirements is among the key elements hindering financial inclusivity in Zimbabwe.⁸⁵⁷ Thus, Zimbabwe relaxed its KYC and CDD requirements for mobile network operators providing mobile money services. Alex Bara says that the RBZ relaxed the KYC requirements for mobile money services to allow marginalised people to participate in these products.⁸⁵⁸ The RBZ adopted a risk-based approach to CDD.⁸⁵⁹ The KYC and CDD measures were simplified for mobile money services. To open a mobile money account, KYC requirements were limited to national identity cards and passport size photos. This paves the way for the unbanked, poor and vulnerable to open mobile money accounts. The simplified KYC and CDD requirements partly explain the tremendous success of mobile money services in Zimbabwe.

After a decade of the test and learn approach, there was a paradigm shift in Zimbabwe's regulatory approach. Zimbabwe started to introduce legal instruments that recognise and control mobile money services. As part of efforts to better regulate and control mobile money services and increase financial inclusion, the Minister of Finance and Economic Development issued a statutory instrument that recognises mobile money services providers as financial institutions. Section 81 of the Banking Act empowers the Minister to issue regulations covering any matter that the Banking Act requires or that he considers necessary or convenient to be prescribed to carry out or give effect to the Banking Act.⁸⁶⁰ In line with this, the Minister issued the Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations, 2020 (Statutory Instrument 80 of 2020). This was the first legal instrument specifically designed for mobile money providers. It marked the end of the test and learn approach. The Statutory Instrument recognises mobile money service providers as financial institutions. Section 3(1) of the Regulation states that mobile money providers are deemed to be financial institutions in terms of the Banking Act.⁸⁶¹ This paradigm shift in regulation means mobile network operators offering mobile money are considered as financial institutions by the

⁸⁵⁶ See Chitimira H & Torerai E op cit note 786 at 18.

⁸⁵⁷ See Barugahara F op cite note at 854.

⁸⁵⁸ See Alex Bara op cit note 39 at 348, See also Chitimira H & Torerai E op cit note 786 at 19.

⁸⁵⁹ Ibid.

⁸⁶⁰ Supra note 827 Banking Act, sec 81.

⁸⁶¹ Statutory Instrument 80 of 2020 reg 3(1).

Banking Act. Mobile money services providers that were not recognised under the Banking Act now fall within its ambit. The Statutory Instrument also provides details on licencing requirements under which mobile network operators could offer mobile money services. Section 3(2) says that mobile network operators who wish to provide money transmission services or mobile banking must be licenced under the Postal and Telecommunication Act [Chapter 12:05]⁸⁶² and must obtain recognition of their payment systems in accordance with section 3(1) of the National Payment Systems Act. Mobile network operators are also permitted to provide banking services without partnering with financial institutions. Previously, mobile network operators needed to form financial partnerships with banks. This was a challenge for smaller mobile network operators. However, mobile banking providers are required to open and maintain separate bank accounts dedicated to mobile banking. The process of obtaining a licence for providing mobile money services is simplified. The Minister also issued another statutory Instrument on mobile money services, the Banking (Savings Interest Rates) Regulations, 2020 (Statutory Instrument 65A of 2020). In a move meant to protect mobile money services users and increase financial inclusion, the Statutory Instrument enables mobile money account holders to earn interest on the money they keep in their mobile money wallets. Mobile money service providers must credit interest due to their clients in terms of the regulation. They must do so monthly and proportionate to each customer's daily closing balance each month.⁸⁶³

4.4.6 Insurance regulations

Mobile network operators in Zimbabwe also offer insurance services to their clients, known as 'm-insurance', like their counterparts in South Africa. This insurance service offers a significant opportunity to scale up access to insurance.⁸⁶⁴ Initial m-insurance product offerings were simple funeral, life and accident cover. These became increasingly diverse. Some schemes now include personal accident, agriculture, and hospitalisation cover. These types of insurance services are both freemium and paid. Zimbabwe adopted a similar approach to South Africa on the regulation of m-insurance. It has no regulation for this type of insurance service. Accordingly, mobile network operators that offer insurance services are required to adhere to

⁸⁶² Supra note 861 Statutory Instrument 80 of 2020 reg 3(2).

⁸⁶³ Finmark report Interest on Mobile Money in Zimbabwe "Paying the customer their dues" available at <https://finmark.org.za/knowledge-hub/blog/interest-on-mobile-money-in-zimbabwe-paying-the-customer-their-dues?entity=blog> accessed on 11 November 2021.

⁸⁶⁴ Jeremy Leach M-Insurance: Ensuring Take-off While Doing No Harm (1013) CGAP) available at <https://www.cgap.org/blog/m-insurance-ensuring-take-while-doing-no-harm> accessed on 11 November 2021.

mainstream insurance regulations. The Insurance Act [Chapter 24:07] and the Insurance Regulations 1989 govern insurance services in Zimbabwe. The Act assigns regulatory and supervisory power of all insurance activities to the Insurance and Pensions Commission (IPEC).⁸⁶⁵ The Commission is responsible for registering insurers, observing the activities of registered insurance companies, insurance agents, insurance brokers, and developing standards for the conduct of insurance business for the industry.⁸⁶⁶ Section 7 of the Insurance Act says that anyone who is not registered as an insurer may not engage in insurance activities.⁸⁶⁷ Applications for registration as an insurer in a class of insurance business are lodged with the Commissioner in the prescribed form and shall be accompanied by such documents as the Commission may require.⁸⁶⁸ Registration as an insurer requires one to have unencumbered capital of the nature and amount prescribed, and at least half of the directors, trustees or other individuals who have administrative control over the company must be Zimbabwean citizens or permanent residents of Zimbabwe.⁸⁶⁹ Currently, the unencumbered capital is set at US\$75 million in the case of life assurance business, including funeral insurance, and US\$ 35 million for non-life insurance business. For the insurer, which carries both above mentioned US\$100 million is required. US\$75 million is required for an insurer that carries on reinsurance business, while US\$62 million is required for an insurer that carries on life assurance business solely for the purpose of issuing funeral policies.⁸⁷⁰ Microinsurance requires US\$4.5 million. The IPEC recently adopted a risk-based approach to capital requirements called the Zimbabwe Integrated Capital and Risk Programme (ZICARP). ZICARP requires local insurers to have capital aligned to the risk they cover.⁸⁷¹ This change introduced a principle-based approach to regulation, moving away from a rules-based approach. Nevertheless, the Act does not provide for the registration of insurance agents and brokers.⁸⁷² Agents and brokers are regulated by the Insurance Regulations, 1989 (Statutory Instrument 49 of 1989 or SI 49). Regulation 14(1) of the Statutory Instrument gives the Commissioner of Insurance and Pension and Provident Funds power to issue agent licences.⁸⁷³ Regulation 15(2) of the regulation provides that every agent who represents a registered insurer in respect of life insurance business shall hold a valid

⁸⁶⁵ Insurance Act [Chapter 24:07] sec 6.

⁸⁶⁶ Ibid.

⁸⁶⁷ Supra note 865 Insurance Act sec 7(1).

⁸⁶⁸ Supra note 865 Insurance Act sec 9.

⁸⁶⁹ Supra Insurance note 865 Act sec 8.

⁸⁷⁰ Statutory Instrument 59 of 2020 reg 2.

⁸⁷¹ IPEC 'launches a solvency capital framework for insurers' available at <https://ipec.co.zw/ipec-launches-a-capital-solvency-framework-for-insurers/> accessed on 11 November 2021.

⁸⁷² Supra note 865 Insurance Act [Chapter 24:07] sec 7(2).

⁸⁷³ Insurance Regulations, 1989 reg 14.

insurance agent (life) licence or a valid insurance agent (life) (temporary) licence.⁸⁷⁴ In an attempt to pave the way for microinsurance, the Insurance Regulations, 1989, were amended by the Insurance (Amendment) Regulations, 2018 (No. 21). The amendment sets requirements for the registration of microinsurance providers and allows corporates to act as licenced insurance agents.⁸⁷⁵ The regulations do not prohibit any company, let alone mobile network operators, from entering the insurance industry as insurers or agents. Thus, mobile network operators in Zimbabwe face no challenges besides the capital requirements to register as insurers or insurance agents.

Zimbabwe's regulatory structure made it possible for mobile network operators to succeed in rolling out m-insurance. Unlike in South Africa, insurance products provided by mobile network operators in Zimbabwe are transformative, affordable, and designed to meet the needs of the poor. Econet was the first mobile network operator to offer m-insurance, called Ecolife, in 2010. Ecolife was a loyalty-based m-insurance product provided to Econet subscribers.⁸⁷⁶ Econet subscribers using the product received free life insurance coverage as a value-added service.⁸⁷⁷ Subscribers enrolled by sending an SMS to a nominated number. Policies were activated from the date of recharging a minimum of US\$3.⁸⁷⁸ For minimum airtime spend of US\$3, Ecolife subscribers qualified for free life cover.⁸⁷⁹ Within one year of its launch, Ecolife had 1.6 million policyholders,⁸⁸⁰ which is approximately 20% of the Zimbabwean adult population.⁸⁸¹ To offer insurance services, Econet partnered with First Mutual Life (FML) because the Insurance Act required Econet to register as FML's agent to obtain the necessary licence.⁸⁸² Statutory Instrument 49 of 1989 made it easy for mobile network operators to join hands with insurers to provide cheap and affordable insurance services. However, a fallout

⁸⁷⁴ Ibid reg 15(1).

⁸⁷⁵ Statutory Instrument 39 of 2018.

⁸⁷⁶ See Finmark report op cit note 751.

⁸⁷⁷ International Association of Insurance Supervisors (2015) Issues paper on conduct of business in inclusive insurance available at <https://www.iaisweb.org/uploads/2022/01/151111-Issues-Paper-Conduct-of-Business-in-Inclusive-Insurance.pdf> accessed on 1 June 2022. at 20.

⁸⁷⁸ Finmark report op cit note 751.

⁸⁷⁹ Ibid.

⁸⁸⁰ Jeremy Leach 'Understanding the impact of m-insurance failures' available at https://cenfri.org/wp-content/uploads/2017/12/9th_IMC_Understanding_the_impact_of_m-insurance_failures.pdf accessed on 11 November 2020.

⁸⁸¹ Wiedmaier-Pfister M & Ncube S op cit note 747 at 7.

⁸⁸² *Econet Wireless (Pvt) Ltd v Trustco Mobile (Pty) Ltd & Anor* S-43-13. See also L.S.M Kabweza 'More than 1.6 million Econet subscribers have registered for Ecolife'. available at <https://www.techzim.co.zw/2011/05/more-than-1-6-million-econet-subscribers-have-registered-for-ecolife/> accessed on 1 June 2022..

between Econet and its investor led to the collapse of Ecolife in 2012. Over 1 million subscribers lost their microinsurance cover.

In 2014, Econet relaunched its m-insurance adventure by establishing an insurance company, Econet Life.⁸⁸³ The new service was called EcoSure. EcoSure does not work as an agent but as an insurer. As opposed to the loyalty-based service of Ecolife, which used points, the new service is a subscription-based service with different pricing packages underwritten by Econet Life. Subscribers register on their mobile phones using a USSD code. Monthly premiums are debited from their EcoCash accounts every month.⁸⁸⁴ EcoSure packages range from US\$ 0.50c per month for pay-outs of US\$ 500 to US\$ 5 per month for pay-outs of US\$5 000. A US\$1 per month payment makes one eligible for a payout of US\$1000.⁸⁸⁵ EcoSure registered over 1 million users within two months of its launch.⁸⁸⁶ In 2017, it had over 2 million subscribers.

Telecel also offers insurance services under the name Telecare. Unlike Econet, which established its own fully flagged insurance company, Telecel partnered with Zimnat Lion (an insurer) to provide its subscribers with insurance products. Telecare products include travel cover, hospital cash back, funeral cover and medical cover. Under the partnership, Telecel provides the mobile platform for facilitating premium collection, while Zimnat Lion underwrites and administers the product.⁸⁸⁷ Premiums start at US\$0.45 per month for a minimum funeral cover of US\$250 and a hospital cash plan of US\$20 a day for 30 days. According to Telecel, for as little as US\$ 0.50 per month, one can be on Telecare Single Value cover, which gives US\$250 worth of funeral cover and hospital cashback of up to US\$25 each day one is hospitalised due to an accident. For just \$2.15 per month, one can enjoy Family Value cover for immediate family members.

The above analysis shows that Zimbabwe and South Africa have a similar approach on m-insurance regulation in that they have no specific regulations for mobile network operators'

⁸⁸³ Nigel Gambanga 'Econet jumps back into insurance. What's their play here?' available at <https://www.techzim.co.zw/2014/12/econet-jumps-back-insurance-whats-play/> accessed on 23 April 2021.

⁸⁸⁴ Nigel Gambanga 'Exclusive: Econet relaunches Ecolife (update)' available at <https://www.techzim.co.zw/2014/11/exclusive-econet-relaunches-ecolife/> accessed on 23 April 2021.

⁸⁸⁵ See Ecosure website op cit note 275.

⁸⁸⁶ See Gambanga op cit note 883.

⁸⁸⁷ Bankable Frontier Association report (2015) Can the digitalization of microinsurance make all the difference? Assessing the growth potential of digital microinsurance available at https://cenfri.org/wp-content/uploads/2015/06/Can-the-digitalization-of-microinsurance-make-all-the-difference-Assessing-the-growth-potential-of-digital-microinsurance_BFA_March-2015.pdf accessed on 23 April 2021 at 14 See also Telecare available at <https://www.telecel.co.zw/products-services/telecare> accessed on 23 April 2021.

insurance. Both jurisdictions regulate m-insurance within the general insurance regulations, which are used on all insurance entities. The two countries' Insurance Acts do not prohibit mobile network operators to provide insurance products. As such, mobile network operators can be both insurers and agents. However, the products offered in Zimbabwe are transformative as they are cheap as compared to those offered in South Africa. This partly explains why mobile network operators in Zimbabwe managed to attract more people.

4.5 TAXATION

4.5.1 General overview

The taxation of mobile money services and related products is one of the major areas of regulatory controversy. The success of mobile money services has attracted the attention of tax authorities seeking to diversify their revenue sources.⁸⁸⁸ Mobile money services are characterised by transparent billing systems that make their economic activities easier to target with taxes and fees. The last few years have seen the emergence of mobile money sector-specific taxation across sub-Saharan Africa, largely driven by the need for governments to find innovative means to widen the tax base and plug budget spending deficits.⁸⁸⁹ Various forms of sector-specific taxation have been created, from excise duties on service fees to sector taxes on revenue totals or transaction taxes on the amount of each underlying transaction. In many developing countries, informality has resulted in a limited tax base.⁸⁹⁰ The high incidence of activity in the informal economy makes it difficult to tax consumption of goods and services, personal income and the activities of small firms.⁸⁹¹ In addition, the growth of the digital sector has a negative impact on domestic tax revenue collection. In some countries, the migration of mobile communication from SMS and voice calls to digital channels such as WhatsApp and WeChat have led to a decrease in tax revenues. The former channels were important sources of tax revenue, while the latter contribute little or nothing.⁸⁹² The lower tax take from traditional

⁸⁸⁸ See Clifford K op cit note 2 at 3.

⁸⁸⁹ Ibid.

⁸⁹⁰ See Clifford K op cit note 2 at 12.

⁸⁹¹ Xavier Pedros & Mayuran Sivakumaran 'Rethinking mobile taxation to improve connectivity' (2019) GSMA available at https://www.gsma.com/publicpolicy/wp-content/uploads/2019/02/Rethinking-mobile-taxation-to-improve-connectivity_Summary_ENG-1.pdf accessed on 1 June 2022. at 13.

⁸⁹² World Bank (2018). Uganda Economic Update 11th Edition, Financing Growth and Development: Options for Raising More Domestic Revenue available at <https://openknowledge.worldbank.org/handle/10986/29916> accessed on 14 April 2020.

communication channels is used to justify introducing alternative taxation methods for the digital economy.

Muthiora and Raithatha contend that the mobile industry is among the highest taxed in Sub-Saharan Africa.⁸⁹³ Mobile network operators face three layers of taxation: general taxation such as Value-Added Tax (VAT), mobile sector-specific taxation such as excise duties on airtime usage, and mobile money taxation.⁸⁹⁴ Sector-specific taxes on mobile services do not align with principles of taxation, namely efficiency, equity, and simplicity.⁸⁹⁵ A sector-specific mobile service tax increases prices for consumers and costs for firms, resulting in the reduction of consumption and supply of mobile money services. Reducing mobile service consumption through sector-specific taxes reduces the social and economic benefits that come with mobile technology. Many taxes have a significant impact on mobile money services.⁸⁹⁶ The tax burdens both consumers and mobile network operators.

4.5.2 South Africa

South Africa uses a residence-based taxation system whereby residents are taxed on worldwide income and non-residents are taxed on South African-sourced income.⁸⁹⁷ Companies are resident in South Africa if they are incorporated or have their place of effective management in South Africa. The South African tax system is governed by the Tax Administration Act 28 of 2011,⁸⁹⁸ the Income Tax Act 58 of 1962, the Value-Added Tax Act 89 of 1991, the South African Revenue Service Act 34 of 1997,⁸⁹⁹ the Transfer Duty Act 40 of 1949, and the Customs and Excise Act 91 of 1964. The tax system is administered by the South African Revenue Service (SARS). Under section 4 of the SARS Act, SARS is responsible for the enforcement

⁸⁹³ Brian Muthiora and Rishi 'Raithatha Rethinking mobile money taxation' (2017) GSMA available at <https://www.gsma.com/mobilefordevelopment/blog/rethinking-mobile-money-taxation/> accessed on 12 February 2022.

⁸⁹⁴ Ibid.

⁸⁹⁵ Castells, Paul, Pedrós, Xavier & Sivakumaran, Mayuran 'The mobile tax bill: how mobile is impacted by sector-specific taxes' (2019) Conference Paper available at <https://www.econstor.eu/bitstream/10419/205173/1/Castells-et-al-tax.pdf> accessed on 12 February 2022.

⁸⁹⁶ Tarna Silue 'E-money, Financial Inclusion and Mobile Money Tax in Sub-Saharan African Mobile Networks' (2021) *Études et Documents n°22*, CERDI at 3.

⁸⁹⁷ SARS Taxation in South Africa 2021 (2021) available at <https://www.sars.gov.za/wp-content/uploads/Ops/Guides/LAPD-Gen-G01-Taxation-in-South-Africa.pdf> accessed on 19 February 2022.

⁸⁹⁸ For more information about the Act see the Tax Administration Act 28 of 2011 available at https://www.gov.za/sites/default/files/gcis_document/201409/a282011.pdf accessed on 1 June 2022.

⁸⁹⁹ For more information about the Act see the South African Revenue Service Act 34 of 1997 available at <https://www.gov.za/documents/south-african-revenue-service-act> accessed on 1 June 2022.

of all tax legislation, as well as any other legislation dealing with the collection of revenue or the control of imports, exports, manufacture, movement, storage or use of certain goods, as may be determined by legislation or an agreement between SARS and a state organ.⁹⁰⁰ For the purpose of mobile money services, this thesis focuses on the Income Tax Act, the Custom and Excise Act, and the VAT Act.

In South Africa, income tax is governed by the Income Tax Act, whose section 5(1) requires companies to pay Corporate Income Tax on all income and profits received every financial year.⁹⁰¹ In terms of section 5(2) of the Income Tax Act, the Minister of Finance is responsible for setting the rates of tax chargeable in respect of taxable income.⁹⁰² Resident companies and permanent establishments of foreign companies are subject to corporate income tax at the rate of 27%.⁹⁰³ Mobile money providers are subject to corporate income tax. In addition, the VAT Act is also applicable to mobile money providers. VAT is an indirect tax on the consumption of goods and services in the economy. In terms of section 9(1) of the VAT Act, mobile network operators are required to account for VAT charged on the sale of any goods and services such as airtime.⁹⁰⁴ The supply of airtime in the form of vouchers attracts revenue for mobile network operators in terms of section 7(1)(a) of the VAT Act.⁹⁰⁵ Thus, VAT tax is levied on the sale of airtime. This is also outlined in section 10(19) of the VAT Act, which provides as follows:

Where any token, voucher or stamp (other than a postage stamp as defined in section 1 of the Postal Services Act, 1998) is issued for a consideration in money and the holder thereof is entitled on the surrender thereof to receive goods or services specified on such token, voucher or stamp or which by usage or arrangement entitles the holder to specified goods or services, without any further charge, the value of the supply of the goods or services made upon the surrender of such token, voucher or stamp is regarded as nil.

Consequently, if mobile money providers use vouchers to load money into an electronic wallet or mobile money account, such vouchers are subject to VAT. This increases the cost of

⁹⁰⁰ South African Revenue Service Act 34 of 1997 sec 4. See also Income Tax Act sec 2.

⁹⁰¹ Income Tax Act 58 of 1962 sec 5(2).

⁹⁰² Ibid.

⁹⁰³ KPMG South Africa: Budget 2022; reduction in corporate income tax rate and broadening the tax base available at <https://home.kpmg/us/en/home/insights/2022/02/tnf-south-africa-budget-2022-reduction-in-corporate-income-tax-rate-and-broadening-tax-base.html#:~:text=The%202022%20budget%20speech%2C%20delivered,to%20broaden%20the%20tax%20base> accessed on 30 June 2022.

⁹⁰⁴ Value-Added Tax Act 89 of 1991 sec 9(1).

⁹⁰⁵ Ibid sec 7(1). See also *Mobile Telephone Networks (Pty) Limited v CSARS* (966/12) [2014] ZASCA 4 at para 34.

providing mobile money services. In addition to VAT, South Africa's Custom and Excise Act also plays a role in the provision of mobile money services. Custom and excise duties are levied on imported goods with the aim of raising revenue and protecting the local market.⁹⁰⁶ They are usually calculated as a percentage of the value of the goods (set in the schedules to the Customs and Excise Act).⁹⁰⁷ Importing cell phones into South Africa attracts custom and excise duty of 7%. In addition, cell phones also attract an *ad valorem* duty, which is a tax levied on a range of luxury goods.⁹⁰⁸ Schedule 2B of the VAT Act says this form of tax applies to any listed⁹⁰⁹ goods which are manufactured in South Africa or imported goods of the same class or kind.⁹¹⁰ All cell phones that are imported into South Africa are thus charged *ad valorem* tax.. This means that to import a cell phone, a 15% custom and excise duty is charged (duty plus *ad valorem* tax). The impact of such tax is that it increases the cost of a cell phone, which is the cornerstone of the mobile money services ecosystem. Most cell phones that are used in South Africa are imported. As such, taxes make them expensive for the poor. However, the *ad valorem* tax only applies to smartphones. Since users of mobile money services users are at the bottom of the economic pyramid, they use ordinary phones. Thus, such a tax will have little impact on access to cell phones for mobile money services.

4.5.3 Zimbabwe

Zimbabwe, unlike South Africa, uses a source-based tax system.⁹¹¹ All income from a source within, or deemed to be within Zimbabwe is subject to tax in Zimbabwe unless a specific exemption is available.⁹¹² In Zimbabwe, taxation is regulated by the Income Tax Act [Chapter 23:06], the Capital Gains Tax Act [Chapter 23:01]⁹¹³, the Value Added Tax Act [Chapter

⁹⁰⁶ SARS 'Duties and Taxes' available at <https://www.sars.gov.za/customs-and-excise/duties-and-taxes/> accessed on 26 February 2022.

⁹⁰⁷ Ibid.

⁹⁰⁸ Supra note 904 Value-Added Tax Act Part 2B of Schedule 1.

⁹⁰⁹ The listed goods currently include Air conditioning machines, TV sets and other electronic equipment, Motorcycles and motor vehicles, Firearms, Cellular telephones, and Perfumes and skin care products. See also SARS website op cit note 906.

⁹¹⁰ Supra note 904 Value-Added Tax Schedule 1 PART 2B.

⁹¹¹ Peter Nyasha Mushure *An assessment of the administrative capacity of the Zimbabwe revenue authority to deliver the envisaged benefits of the new income tax bill* (Unpublished Master thesis UZ 2013).

⁹¹² Ibid.

⁹¹³ This is a tax charged on gains from a source within Zimbabwe upon the sale or deemed disposal of a specified asset. Specified assets are defined as rights to property registered in terms of certain specified statutes, immovable property situate in Zimbabwe or any marketable security. Marketable securities are bonds capable of being sold in a share market exchange, shares, debentures, stock or any right possessed due to a person's participation in any unit trust. Non-residents are taxed on gains arising from disposal of specified assets from a source within Zimbabwe. Gains on immovable property are determined on the location of the property, while gains on other specified assets are determined on the residency of the person that is disposing of the property. Non-residents may, however, be exempted under double-taxation treaties.

23:12] (VAT), the Customs and Excise Act [*Chapter 23:02*], and the Stamp Duties Act [*Chapter 23:09*]⁹¹⁴. The charging statute is the Finance Act [*Chapter 23:04*], which stipulates the rates at which taxes are levied. The Zimbabwean tax system is administered by the Zimbabwe Revenue Authority (ZIMRA),⁹¹⁵ which was established pursuant to the Revenue Authority Act [*Chapter 23:11*] with the mandate of acting as the agent of the State in assessing, collecting and enforcing the payment of all tax revenue.⁹¹⁶ This thesis focuses on the Income Tax Act, the VAT Act and Customs and Excise Act which apply to mobile money services. Companies in Zimbabwe are subject to income tax under the Income Tax Act, which is imposed on income earned in Zimbabwe or deemed to be derived in Zimbabwe.⁹¹⁷ Section 6 of the Act provides that an income tax shall be charged, levied, and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund on all taxable income received by or accrued to or in favour of a person.⁹¹⁸ The current Corporate Income Tax (CIT) is set at 24%.⁹¹⁹ VAT is a type of indirect tax levied on goods and services for value-added at every point of production or distribution cycle, starting from raw materials and going all the way to the final retail purchase.⁹²⁰ In Zimbabwe, VAT is levied in terms of the VAT Act. Section 6 of the Act provides that there shall be charged, levied and collected, a tax at such rate as may be fixed on the value of the supply by any registered operator of goods or services supplied in the course or furtherance of any trade carried.⁹²¹ The VAT standard rate is currently 14.5%. Certain goods are zero-rated, which means that a VAT rate of 0% is charged. Other goods are specifically exempted from VAT.⁹²² Zero-rated goods include exports of goods from Zimbabwe to an

⁹¹⁴ Stamp duties are payable in respect of brokers' notes executed after sales of marketable securities, sales of off-market share instruments, registration of acquisition of immovable property and registration of bonds.

⁹¹⁵ Section 2 of the Income Tax Act provides that Commissioner in charge of the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of the taxes leviable under this Act, Chapter II. Section 4 of the VAT Act provide that The Commissioner shall be responsible for carrying out the provisions of th VAT Act, Section 2 of the Custom and Excise Act also provides that the Commissioner in charge of the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of duties in terms of the Customs and Excise Act.

⁹¹⁶ Revenue Authority Act [*Chapter 23:11*].

⁹¹⁷ Income Tax Act [*Chapter 23:06*].

⁹¹⁸ Ibid sec 6.

⁹¹⁹ Zimbabwe Revenue Authority available at <https://www.zimra.co.zw/domestic-taxes/corporate/tax-rates> accessed on 13 February 2022.

⁹²⁰ Value Added Tax South Africa Revenue Services available at <https://www.sars.gov.za/types-of-tax/value-added-tax/#:~:text=Value%2DAdded%20Tax%20is%20commonly,and%20services%20in%20the%20economy.&text=VAT%20is%20therefore%2C%20charged%20at,for%20the%20goods%20and%20services>. Accessed on 14 February 2022.

⁹²¹ Value Added Tax Act [*Chapter 23:12*] sec 2.

⁹²² Global tax guide to doing business in Zimbabwe available at <https://www.dentons.com/en/services-and-solutions/global-tax-guide-to-doing-business-in/zimbabwe> accessed on 20 May 2021.

address in an export country and certain basic foodstuffs such as sugar. Customs and Excise taxes are taxes or fees that are levied on imported or exported goods. In Zimbabwe, taxes on imported and exported goods are regulated by the Customs and Excise Act.⁹²³

All the above taxes apply to mobile money providers. Mobile money providers are required to pay income tax. This means mobile network operators such as Econet, Telecel and Netone are required to pay 24% of their income to ZIMRA. In addition, the services they provide fall under services supplied in Zimbabwe in the course of a business, making them subject to VAT. Therefore, airtime, Wi-Fi bundles and mobile money services are subject to 14,5% VAT. The transaction tax introduced on electronic transactions by the Ministry of Finance in 2021 under the Finance (Rate of Incidence of Intermediated Money Transfer Tax) Regulations 2021 (Statutory Instrument 80 of 2021) is significant for this study. The Statutory instrument introduced a 2% Intermediated Money Transfer Tax (IMTT) for all transactions mediated by financial institutions and mobile money platforms.⁹²⁴ The IMTT was designed to increase revenue collection by taxing the informal sector, which conducts most of its transactions electronically since these transactions had previously fallen outside the reach of ZIMRA.⁹²⁵ IMTT is collected in terms of section 36G, read with the 13th Schedule of Income Tax Act. Section 36G of the Income Tax Act provides that

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund an intermediated money transfer tax in accordance with the Thirtieth Schedule at the rate fixed from time to time in the charging Act.⁹²⁶

The implication of the new tax arrangement is that the government will take 2% of every amount deposited or transferred into an electronic account. It also means that the government will take a further 2% from every amount transferred from that electronic account.⁹²⁷ Consequently, electronic transactions became more costly. The increase in the electronic transactions tax made fewer people afford to transact electronically, thereby preventing

⁹²³ Customs and Excise Act [*Chapter 23:02*].

⁹²⁴ Finance (Rate of Incidence of Intermediated Money Transfer Tax) Regulations, 2021. See also Josphat Nyoni, Tendai Vanesssa Jaravaza, Matthew Mare, Martin Dandira & Elias Kandjinga 'Policy Contradictions and Policy Dilemma: A Case of Intermediary Money Transfer Tax (IMTT) on Business Performance in the Engineering Sector in Zimbabwe' (2021) *Business and Economic Research* at 77.

⁹²⁵ Tatenda Tendayi The inadvertent rise of digital transactions in Zimbabwe available at <https://www.dlapiperafrica.com/africa-wide/insights/africa-connected/issue-02/inadvertent-rise-of-digital-transactions-in-zimbabwe.html> accessed on 1 June 2022.

⁹²⁶ Supra note 911 Income Tax Act sec 36G.

⁹²⁷ Munacinga Simatele & Edson Mbedzi 'Consumer payment choices, costs, and risks: Evidence from Zimbabwe' (2021) *Cogent Economics & Finance* at 8.

consumers from using mobile money services as a mode of payment for goods and services.⁹²⁸ Service providers charge between 1% and 3% per transaction for payments.⁹²⁹ Simatele found that users of mobile money services incur an average cost of 6% per transaction.⁹³⁰ This result in an increase in transaction costs, causing many people to avoid the service. Due to this, mobile money services are generally disliked by Zimbabweans, resulting in a strong preference for cash. In turn, this reverses the government's efforts to push for a cashless economy that promotes financial inclusion.⁹³¹

Zimbabwe's mobile money services sector is also heavily impacted by the Customs and Excise Act. Cell phones are an important component of mobile money services. In Zimbabwe, nearly all cell phones are imported. To increase revenue, the Ministry of Finance introduced an excise duty of US\$50 on all mobile phones imported into Zimbabwe in 2021.⁹³² This is in addition to a 25% customs duty on imported handsets. The US\$50 amount does not take into account the price of the phone. Mobile network operators must collect the US\$50 levy on each phone “prior to registration.”⁹³³ As a result of the prevailing economic challenges, it is plausible to assert that the levy makes owning a cell phone out of reach for many Zimbabweans.⁹³⁴ Mobile phones are the most important tools in the mobile money services ecosystem. No mobile money services transaction is possible without one. As a result of the \$50 excise duty, very few people will afford to buy a cell phone, ultimately affecting mobile money services.

4.5.4 Conclusion

⁹²⁸ MISA Zimbabwe ‘Implications of electronic transactions tax on digital rights’ available at <https://zimbabwe.misa.org/2018/10/03/implications-of-electronic-transactions-tax-on-digital-rights/> accessed on 15 February 2022.

⁹²⁹ See Munacinga S op cit note 927 at 8.

⁹³⁰ Ibid

⁹³¹ Grant Thornton ‘Analysis of Intermediated Money Transfer Tax’ available at https://www.veritaszim.net/sites/veritas_d/files/Analysing%20the%20Impact%20of%20the%20Intermediary%20Financial%20Transactional%20Tax.pdf accessed on 15 February 2022.

⁹³² Ministry of Finance and Economic Development (2021). The 2021 National Budget Statement ‘Building Resilience and Sustainable Economic Recovery’ Presented to The Parliament of Zimbabwe on 26 November 2020. Government of Zimbabwe.

⁹³³ Tapiwa Matthew Mutisi ‘Zimbabwe introduces US\$50 “tax” on every new mobile phone’

<https://innovation-village.com/zimbabwe-introduces-us50-tax-on-every-new-mobile-phone/#:~:text=The%20Zimbabwean%20government%20will%20now,reasonable%20tax%20in%20the%20world.> accessed on 25 November 2021.

⁹³⁴ Transparency International Zimbabwe An analysis of the 2022 national budget presented on 25 November 2021: the importance of transparency and accountability in public expenditure tracking(2021) TI Z Policy Brief Series Volume 1 Issue available at <https://www.tizim.org/wp-content/uploads/2021/11/Transparency-International-Brief-Compressed.pdf> accessed on 19 February 2022.

The mobile money industry is one of the most taxed sectors of the economy. The Income Tax, IMTT, VAT and the customs and excise taxes on mobile money services and related products have increased the cost of using mobile money services in Zimbabwe. The increased cost has a negative effect on the use of mobile money as a means of transaction. As described in previous chapters, mobile money services are an alternative to traditional banking because they are relatively cheaper. The Zimbabwean tax system has the effect of making the service expensive for the poor. On the other hand, tax regulations in South Africa have no direct impact on the adoption of mobile money services. Unlike Zimbabwe, South Africa does not have regulations that are specific to mobile money services. Mobile money providers are taxed in the same way as other entities in South Africa. With the exception of *ad valorem* tax, which applies to imported cell phones, VAT and corporate income tax that is applied to mobile money providers is equivalent to other sectors of the economy.

4.6 CONSUMER PROTECTION REGULATIONS

4.6.1 General overview

Financial consumer protection refers to the framework of laws, regulations and other approaches generally designed to ensure fair and responsible treatment of financial consumers in their purchase and use of financial products and their dealings with financial services providers.⁹³⁵ It sets clear rules of conduct for financial firms regarding their retail customers. Consumer protection is an essential part of any financial service as it ensures customers receive fair and transparent treatment in the market, thereby building confidence in the providers of financial services.⁹³⁶ This is especially important in the case of emerging markets with a low history of formal financial service providers. The focus on consumer protection in financial services has increased in recent years, contributing to a better understanding of the benefits of empowering consumers to make informed financial decisions.⁹³⁷ The 2011 Maya Declaration on Financial Inclusion recognizes consumer protection and empowerment as key pillars of financial inclusion efforts to ensure that all people are included in their country's financial sector.⁹³⁸ Ardic, Ibrahim and Mylenko argue that “government intervention and regulation in

⁹³⁵ OECD report (2020) Financial Consumer Protection Policy Approaches in the Digital Age Protecting consumers' assets, data and privacy available at <https://www.oecd.org/finance/Financial-Consumer-Protection-Policy-Approaches-in-the-Digital-Age.pdf> accessed on 4 April 2021.

⁹³⁶ See Abenezer Mechale op cit note 238 at 16.

⁹³⁷ Mobile Financial Services Consumer Protection in Mobile Financial Services Alliance for Financial Inclusion Guideline Note No.13 March 2014.

⁹³⁸ The Maya Declaration is a global initiative for responsible and sustainable financial inclusion that aims to reduce poverty and ensure financial stability for the benefit of all. It is a statement of common principles regarding

the area of consumer protection is justified on the basis of inherent information asymmetries and power imbalances in markets, with producers or service providers having more information about the products or services than the consumers.⁹³⁹ The World Bank says consumer protection regulations mandate providing consumers with accurate information, preventing unfair or deceptive practices, and giving them recourse mechanisms to resolve disputes.⁹⁴⁰ The accessibility of mobile money services and the affordability of the products have attracted millions of new financial service users. These consumers are protected by consumer protection laws. This section seeks to assess whether consumer protection laws in Zimbabwe and South Africa affects the adoption of mobile money services.

Consumer protection is concerned with protecting consumers' financial assets such as deposits from fraud, misappropriation, and misuse. The protection of consumers is a fundamental element of an overall financial consumer protection framework and includes measures for fraudulent or unauthorised payments, customer funds segregation, and procedures for protecting and recovering unclaimed funds.⁹⁴¹ There are many consumer risks associated with mobile money, especially for those who are new to using it. In many countries, using mobile phones to perform financial transactions is still quite new, and the lack of awareness and experience with new technology can create risks. Customer's lack of technological literacy may produce erroneous transactions such as sending money to the wrong account or paying the wrong bill, failure to complete a transaction, weak PIN choices and carelessness in safeguarding personal information. These risks leave mobile money users, especially those from low-income households, vulnerable to losing funds either directly or through increased probability of identity theft or theft of authentication parameters. Exposure to these risks can have a negative impact on consumer trust in the system, making it difficult for mobile money providers to reach the scale it needs to become viable.

Consumer protection extends to protecting consumers' data from the risk of digital security incidents, including cyber-attacks, systems failures, or data breaches at financial institutions. One of the largest sectors at risk from cyber-attacks is the mobile money industry. During

the development of financial inclusion policy. See http://www.afi-global.org/sites/default/files/mayadeclaration_30sep2011.pdf?op=Download accessed on 1 June 2022.

⁹³⁹ Ardic, O. P., Ibrahim, J. A., and Mylenko, N. (2011). Consumer Protection Laws and Regulations in Deposit and Loan Services. *Policy Research Working Paper 5536*. World Bank.

⁹⁴⁰ The World Bank, June 2012, "Good Practices for Financial Consumer Protection." available at <http://responsiblefinance.worldbank.org/publications/financial-consumer-protection>. accessed on 4 April 2021.

⁹⁴¹ OECD report op cit note 935.

mobile payments, personal data is transmitted and is accessible to mobile network operators, application developers, and payment processors who could potentially gain access to that data illegally during the payment process.⁹⁴² The mobile money industry therefore recognises data security as key to building trust and maintaining the growth and sustainability of mobile money services. Loss of consumer trust and confidence could lead to loss of market share, and a lack of trust in new technologies that would otherwise lead to improved financial access. For mobile money to continue to grow and protect the gains in financial inclusion already achieved, it is critical that consumers are protected against cyber-attacks.⁹⁴³

Regulators face a dilemma of protecting consumers without imposing high compliance costs on service providers. As discussed in this thesis, high costs to service providers can affect the ability of the providers to make mobile banking and payment services accessible to the poor and vulnerable and negatively impact the adoption of the service. On the other hand, the absence of strong financial consumer protection, mobile money benefits of expanded financial inclusion may be lost or severely undermined.⁹⁴⁴ Regulators have the responsibility of strengthening consumer protections to build robust and relevant mobile money ecosystems. There is a need to protect the consumer in a way that does not place onerous restrictions on the provision of mobile money services and the channels used to deliver them.⁹⁴⁵ In South Africa, consumer protection is regulated by the Consumer Protection Act 68 of 2008 (CPA) and in Zimbabwe by Consumer protection Act 5 of 2019 and the Deposit Protection Corporation Act Cap 24: 29. This section is going to assess the effect that these pieces of legislation has on the development and adoption of mobile money service in the two jurisdictions under review.

4.6.2 South Africa

The highest security and consumer-centric standards are required to build the necessary confidence when deploying mobile money services. Central or key to the success of mobile money in South Africa would be compliance with the Consumer Protection Act (CPA). The Act spells out the rights of the consumer and the responsibilities of the supplier. It was established to protect the interests of all consumers, ensure accessible, transparent and efficient redress for consumers who are subjected to abuse or exploitation in the marketplace.⁹⁴⁶ The

⁹⁴² OECD report op cit note 935.

⁹⁴³ Data protection in mobile money <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2019/03/Data-Protection-in-mobile-money.pdf> accessed on 4 April 2021

⁹⁴⁴ World Bank report (2012) Good Practices for Financial Consumer Protection at 1 available at <https://openknowledge.worldbank.org/handle/10986/26861> accessed on 1 June 2022.

⁹⁴⁵ Supra note 932 Guideline Note No.13 of March 2014.

⁹⁴⁶ Consumer Protection Act 68 of 2008 (hereinafter referred to as CPA)

CPA builds on many principles contained in the National Credit Act (NCA) but extends to all consumer-facing businesses.⁹⁴⁷ Before the enactment of the Act, there was no comprehensive and systematic body of law which was designed specifically to deal with consumer issues.⁹⁴⁸ Consumer protection was largely unregulated with scattered and fragmented pieces of legislation, which resulted in a lack of basic consumer rights, an inadequate consumer voice and continuous exploitation of consumers.⁹⁴⁹ Consumer protection measures were found in certain industry specific legislation such as the Consumer Affairs (Unfair Business Practices) Act 71 of 1988⁹⁵⁰, Measuring Units and National Measuring Standards Act 76 of 1973, the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972⁹⁵¹, the Merchandise Marks Act 17 of 194⁹⁵² and the Tobacco Products Control Act 83 of 1993⁹⁵³. In addition, there were also several different regulators that enforced standards and ensure that businesses adhere to the law. Among these regulators were the Department of Trade and Industry (DTI), the South African Bureau of Standards (SABS) and the Departments of Agriculture, Health, and Environment. However, these regulators were not effective in protecting the consumers because of lack of co-ordination. This necessitated the proclamation of the CPA.

The CPA defines a consumer as a person who has entered a transaction with a supplier in the ordinary course of the supplier's business or a person to whom those goods or services are marketed in the ordinary course of the supplier's business unless the transaction is exempted.⁹⁵⁴ The Act defines transaction as an agreement between two or more persons for the supply of goods or services for consideration.⁹⁵⁵ For a transaction to fall under the Act, it must fall within

⁹⁴⁷ Virimai Victor Mugobo & Portia Malunga 'Consumer Protection in South Africa: Challenges and Opportunities for Furniture Retailers in Cape Town, South Africa' (2015) 1 *Mediterranean Journal of Social Sciences* at 225.

⁹⁴⁸ Tanya Woker 'Why the need for consumer protection legislation? a look at some of the reasons behind the promulgation of the national credit act and the Consumer Protection Act' (2010) *OBITER* at 12.

⁹⁴⁹ The Banking Association of South Africa 'Consumer Protection Act' available at <https://www.banking.org.za/consumer-information/consumer-information-legislation/consumer-protection-act/> accessed on 2 April 2022.

⁹⁵⁰ The Act was originally called the Harmful Business Practices Act. It enacted to provide for the prohibition or control of unfair business practices, but it does not contain a list of practices that may be considered unfair. It was an enabling Act rather than a prescriptive one and the Act itself does not prohibit anything.

⁹⁵¹ The Act was established to control the sale, manufacture and importation of foodstuffs, cosmetics and disinfectants; and to provide for incidental matters.

⁹⁵² The preamble of the Act provides that the Act intends to make provision concerning the marking of merchandise and of coverings in or with which merchandise is sold and the use of certain words and emblems in connection with business to protect consumers.

⁹⁵³ The Tobacco Products Control Act 83 of 1993 intends, to prohibit or restrict smoking in public places, to regulate the sale and advertising of tobacco products in certain respects and to prescribe what is to be reflected on packages and to provide for matters connected therewith.

⁹⁵⁴ Consumer Protection Act of 2008 sec 1.

⁹⁵⁵ *Ibid.*

the ordinary course of business thus once-off transactions are therefore not transactions in terms of the Act.⁹⁵⁶ Of equal importance is the definition of the term "service". In terms of the Act, "service" includes the performance of work for the benefit of another, the provision of education, information, advice or consultation, banking or similar financial services, transportation of goods or individuals, and access to electronic communication infrastructure.⁹⁵⁷ Consequently, mobile money service falls under the CPA since it involves the provision of quasi-banking services as an ordinary course of business.

Being covered by the CPA comes with a lot of benefits for both the consumers and the providers. Since the CPA protects the rights of consumers, the Act provides confidence and trust in a product or service. As far as the providers are concerned, this act as pull factor. Having access to legal recourse in the event of trouble or challenges makes a service more attractive to customers. In light of this, the CPA provides for the protection of consumers against unconscionable⁹⁵⁸, unfair, unreasonable, unjust or improper trade practices and any deceptive, misleading, unfair or fraudulent conduct.⁹⁵⁹ Section 40 of the Act prohibits the use of physical force against consumers, coercion, undue influence, pressure, duress or harassment; unfair tactics or any similar conduct in connection with the marketing and supply of goods or services.⁹⁶⁰ In the context of mobile money, this section ensures good faith is maintained between parties to a mobile money service contract. In this way, customers are protected from exploitation and can use the service freely. Consequently, more people will use the service.

In addition to the above, section 8 of the CPA places an obligation on all service providers that falls under its jurisdiction to treat every customer equally.⁹⁶¹ It prohibits the supplier of goods and services against discriminating unfairly against a person or category of persons in relation to access, priority, supply and pricing, and even in relation to the enforcement of judgment or termination of an agreement.⁹⁶² Against this prohibition, it must be noted that mobile money was designed to cater for the poor and vulnerable. It does not, however, imply that it excludes those outside of this category. Moreover, section 9 of the Act provides for reasonable grounds

⁹⁵⁶ Ibid.

⁹⁵⁷ Supra note 954 CPA of 2008 sec 1.

⁹⁵⁸ Unconscionable conduct in essence means conduct having a character contemplated in Section 40, or other improper or unethical conduct that would be improper or unethical to a degree that would shock the conscience of a reasonable person.

⁹⁵⁹ Supra note 954 CPA of 2008 Part F.

⁹⁶⁰ Supra note 954 CPA of 2008 sec 40.

⁹⁶¹ Supra note 954 CPA of 2008 sec 8.

⁹⁶² Ibid

for differentiation in specific circumstances.⁹⁶³ It is not a violation of the consumer right of equality to market goods or services in a manner that gives preference to a particular group of consumers if those goods or services are reasonably intended to meet the needs of that group. This means that by prioritising the poor and the vulnerable groups, mobile money services do not contravene the CPA but enhances it.

In addition to consumer protection legislation, many countries have Deposit Insurance Schemes (DIS) to protect depositors against loss of funds if a mobile money provider fails. DIS refers to measures implemented to protect bank depositors, in full or in part, from losses caused by a bank's inability to pay its debts when due. Deposit insurance is one of the components of the regulatory safety net⁹⁶⁴ designed to protect depositors' savings. The primary purpose of deposit insurance schemes is to protect depositors from adverse consequences of bank failure.⁹⁶⁵ The advocates of deposit insurance argue that deposit protection ensures that the financial system remains stable and makes the financial industry and financial transactions more efficient by preventing bank runs.⁹⁶⁶ This is achieved by preventing panic among depositors during a financial crisis and preventing that panic from spreading to healthy financial institutions.⁹⁶⁷ Also, it clarifies the responsibilities and rights of depositors and financial institutions, and reduces the burden on taxpayer in the event of a bank failure.⁹⁶⁸ According to Uahatjiri, deposit insurance was first introduced in the 1930s to mitigate the adverse effects of bank runs, which caused depositors to lose their deposits and confidence in the banking system.⁹⁶⁹ In response to the events of the Great Depression, which saw a large number of bank failures in the USA, the United States became the first country to operate a formal and explicit deposit insurance system in 1934.⁹⁷⁰ Sixty-eight economies now have deposit protection schemes. With regard to mobile money, deposit insurance serves the purpose

⁹⁶³ Supra note 954 CPA of 2008 sec 9.

⁹⁶⁴ Essentially, a financial safety net is a set of arrangements set in place to promote the stability of the financial system and ensure the robustness of the banking sector.

⁹⁶⁵ William E. Gibson 'Deposit Insurance in the United States: Evaluation and Reform' 1972 *The Journal of Financial and Quantitative Analysis* at 1576.

⁹⁶⁶ Asian Development Bank report *Rising to the Challenge in Asia: A Study of Financial Markets* available at <https://www.adb.org/sites/default/files/publication/28692/rising-challenge-malaysia.pdf> accessed on 12 February 2022 at 69.

⁹⁶⁷ Choi, j-b., 2000. Structuring a deposit insurance system from the Asian perspective. In: *Rising to the challenge in Asia: A study of financial markets*. Manila: The Asian Development Bank available <https://www.adb.org/sites/default/files/publication/28692/rising-challenge-malaysia.pdf> accessed on 12 February 2022.

⁹⁶⁸ Ibid at 68.

⁹⁶⁹ Ngaujake, Uahatjiri *Protecting depositors and promoting financial stability in South Africa: Is there a case for the introduction of deposit insurance?* (Unpublished Master's thesis Rhodes University 2003)

⁹⁷⁰ See Asian Development Bank report op cit note 960 at 66.

of facilitating a level playing field between mobile money providers and banks. It improves competitive efficiency between banks and mobile money providers in that, in the absence of deposit insurance, banks might be perceived as safer than mobile money providers, since depositors associate banks with security, which may not always be true. The competition between banks and mobile money services would not be on an equal basis if banks are perceived as safer than mobile money services. In this way, deposit insurance helps improve competitive efficiency, because depositors know that their mobile money deposits are protected.

South Africa does not have a well-defined and explicit depositor protection scheme for depositors. Attempts are however being made to introduce such a scheme in the country. The recent failure of the VBS Mutual Bank has highlighted the necessity of such a scheme. The SARB published a discussion paper titled "*Designing a Deposit Insurance Scheme for South Africa*" in 2014, proposing that the country implement a transparent and credible DIS.⁹⁷¹ The discussion paper provides for the establishment of DIS in order to protect the most vulnerable consumers from the costs of bank failure or to enable them to protect themselves through diversification, hedging, financial structuring, or other sophisticated risk management measures.⁹⁷² Thus the Financial Sector Laws Amendment Bill (FSLAB) was recently passed by parliament and awaits presidential assent.⁹⁷³ The proposed Bill provides much needed protection for depositors. Part 7 of the Bill provides for the establishment of the Deposit Insurance Fund and the Corporation for Deposit Insurance to administer the Fund.⁹⁷⁴ Upon promulgation of the FSLAB, the Corporation for Deposit Insurance will become a wholly owned subsidiary of the SARB.⁹⁷⁵ Added to this, National Treasury published the draft Financial Sector and Deposit Insurance Levies Bills which provides the mechanism for financing the fund.⁹⁷⁶ Mobile money providers, however, will not be covered by such

⁹⁷¹ SARB Discussion paper (2014) *Designing a deposit insurance scheme for South Africa* available at <http://www.treasury.gov.za/twinpeaks/Designing%20a%20deposit%20insurance%20scheme%20for%20South%20Africa.pdf> accessed on 14 March 2022.

⁹⁷² Ibid.

⁹⁷³ SARB 'Project for the establishment of the Corporation for Deposit Insurance' available at <https://www.resbank.co.za/content/dam/sarb/publications/media-releases/2022/codi-newsletter/Corporation%20for%20Deposit%20Insurance%20January%202022%20Newsletter.pdf> accessed on 5 April 2022.

⁹⁷⁴ National Treasury statement Publication of the Draft Financial Sector and Deposit Insurance Levies Bill (and associated administration Bill) for public comment available at http://www.treasury.gov.za/comm_media/press/2021/DraftFinancialSector/2021121501%20Media%20Statement.pdf accessed on 5 April 2022.

⁹⁷⁵ SARB report op cit note 973.

⁹⁷⁶ Financial Sector and Deposit Insurance Levies Bills 2022 clause 9.

protection. The Bill does not include mobile money providers as one of the entities to levied for deposit insurance fund. Mobile money providers are not included in the list of entities that will be taxed for the deposit insurance fund. Unlike banks, mobile money providers such as mobile network operators are not recognised as deposit taking institutions. Therefore, they cannot accept deposits. This will make it even more difficult for mobile money providers to gain traction. Without the assurance that their savings will be safe and protected, few people will use money services. In my opinion, because of this, people will rather keep their money under mattresses or invest in other risky ventures such as pyramid schemes, further contributing to financial exclusion.

4.6.3 Zimbabwe

In Zimbabwe, as in South Africa, consumers are protected by the Consumer Protection Act [Chapter 14:14]. The Act was instituted to protect consumers by ensuring an efficient, fair, reliable, transparent, and sustainable marketplace that is fair to consumers and business.⁹⁷⁷ According to Section 3 of the Act, the CPA applies to all transactions for the supply of goods and services taking place within the Zimbabwean jurisdiction, unless such services are exempted.⁹⁷⁸ As mobile money services are quasi-banking services, they fall under the jurisdiction of the CPA. Therefore, mobile money providers are obligated to conduct their business services in a fair, reliable, and transparent way in order to protect consumers. As with South Africa, the CPA provides insufficient protection for mobile money users in the event of a failure. In the case of bank or mobile money failures, the Act does not provide any recourse, which exposes customers to the risk of losing money. In the absence of such recourse, people are more reluctant to use mobile money services for fear of losing their savings if a provider fails. The memory of losing money when the banking system collapsed around 2008 is still fresh in the minds of many Zimbabweans.

Zimbabwe, unlike South Africa, has a Deposit Protection Scheme to protect bank customers in case of bank failure. The scheme was brought about by the Deposit Protection Corporation Act, [Chapter 24:29] (Deposit Protection Act). The Preamble of the Act states that its purpose is to provide compensation fund for depositors in the event of financial institutions becoming insolvent.⁹⁷⁹ Specifically, Section 4 of the Act establishes a body corporate known as the

⁹⁷⁷ Consumer Protection Act [Chapter 14:14] sec 10.

⁹⁷⁸ Ibid sec 3.

⁹⁷⁹ Deposit Protection Corporation Act [Chapter 24:29] Preamble.

Deposit Protection Corporation⁹⁸⁰ that is responsible for administering the Fund, collecting contributions from contributing institutions⁹⁸¹, and compensating depositors upon the insolvency of the contributory institutions.⁹⁸² Under the Act, consumers are eligible to receive a compensation if a financial institution becomes insolvent are consumers from banks, building societies, and contributory institutions.⁹⁸³ “Contributory institutions” according to the Act mean banking institutions, building societies or other organisations which are contributing to the Deposit Protection Scheme. Nduna contends that because they are excluded from the definition of entities covered by the Deposit Protection Act, mobile network operators providing mobile money services will not be covered by the scheme.⁹⁸⁴ He further argues that mobile money users are not protected under section 40 of the Act.⁹⁸⁵ The section stipulates that those persons who have deposits with an insolvent contributory institution may apply for compensation.⁹⁸⁶ This argument arises from the wording of the relevant sections, which restricts persons who can apply for compensation only to depositors of contributory institutions. Mobile money providers are considered financial institutions under the Banking Act in terms of the Statutory Instrument 80 of 2020.⁹⁸⁷ In terms of the SI, mobile money providers such as mobile network operators should be treated as banks. This means deposits made through such providers are protected. Nevertheless, there is no indication that mobile money providers contribute to the compensation fund. It is hoped that including mobile money users in the Act will increase confidence in the banking system in question and encourage a culture of saving, especially among the poor and vulnerable.

4.6.4 Conclusion

In conclusion, it can be argued that consumer protection plays a vital role towards the development of mobile money services. Consumer protection measures such as CPA and deposit protection schemes helps to build confidence in mobile money services. In both Zimbabwe and South Africa, consumer protection legislations (CPAs) are designed to protect consumers, but the protection they offer does not cover losses incurred when a mobile money provider fails. The two Acts in question only require providers to engage with customers in fair

⁹⁸⁰ Supra note 973 Deposit Protection Corporation Act sec 4.

⁹⁸¹ The Act defines “contributory institution” to include a banking institution, building society or other organisation which is a contributory institution in terms of Part IV.

⁹⁸² Supra note 973 Deposit Protection Corporation Act sec 4.

⁹⁸³ Ibid.

⁹⁸⁴ See Nduna C op cit note 801 at 51.

⁹⁸⁵ See Nduna C op cit note 801 at 51.

⁹⁸⁶ Supra note 979 Deposit Protection Corporation Act section 40.

⁹⁸⁷ Supra note 861 Statutory Instrument 80 of 2020 reg 3(1).

and conscionable manner. Zimbabwe has gone beyond CPA by enacting the Deposit Protection Act to safeguard depositors from institution failure. It is not clear whether the Act will cover users of mobile money since the legislation does not mention mobile money providers. Meanwhile, the South African legislature passed The Financial Sector Laws Amendment Bill, which is intended to protect depositors from bank failures. In terms of the South African banking laws, mobile money services do not qualify as deposit taking institutions. Accordingly, the Bill will not provide protection to mobile money users. This will make it even more difficult for mobile money providers to gain traction.

4.7 MOBILE MONEY INTEROPERABILITY REGULATIONS

4.7.1 General overview

Interoperability refers to the ability for mobile money operators to interconnect to each other and to the banking system.⁹⁸⁸ Allen et al. assert that proximity to bank outlets (accessibility) does not matter when there is limited or no interoperability between ATMs, POS, mobile money and internet service providers, that is, when account holders of any given bank cannot use the ATMs or POS closest to them.⁹⁸⁹ When mobile money services first launched, end users were confined to transactions within the ecosystem of their mobile provider.⁹⁹⁰ Firms with a strong first-mover advantage, due to an early start and significant investments in rolling out their agent network, are understandably reluctant in opening their network of customers and agents to smaller competitors, as this reduces their competitive advantage. According to Anderson large mobile network operators with extensive infrastructure and upfront investment in mobile money networks have little incentive to interoperate with smaller mobile network operators if they have cornered the market.⁹⁹¹ It is only through interoperability that smaller competitors are able to gain customers, as they are able to link up with subscribers on larger

⁹⁸⁸ Steffen Hoernig and Marc Bourreau ‘Interoperability of mobile money International experience and recommendations for Mozambique’ (2017) *International Growth Centre Policy brief* 36404.

⁹⁸⁹ Allen, Demirguc-Kunt, Klapper and Peria op cit note 324.

⁹⁹⁰ Lamia Naji ‘Tracking the journey towards mobile money interoperability Emerging evidence from six markets: Tanzania, Pakistan, Madagascar, Ghana, Jordan and Uganda’ available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2020/06/GSMA_Tracking-the-journey-towards-mobile-money-interoperability-1.pdf accessed on 12 March 2022.

⁹⁹¹ See Anderson R op cit note 433.

networks.⁹⁹² Mobile money markets are characterized by network effects⁹⁹³, since the more people are on the same network, the more people are available to transact with.⁹⁹⁴ This is particularly the case because when mobile money products first develop, there may be no, or limited, interoperability between networks. As a result, consumers tend to stick with large providers so that they can transact as widely as possible.

The interoperability of mobile money allows more funds to enter and leave the system in digital form rather than through cash transactions. Interoperable payment systems have the potential to make it easier for people to send payments to anyone and receive payments from anyone quickly and cheaply.⁹⁹⁵ They lead to the development of large network externalities⁹⁹⁶ which will, in the longer term, reduce operational cost and complexity for all customers.⁹⁹⁷ GSMA research indicates that out of 95 markets with mobile money services, 48 are interoperable with banks or mobile money providers.⁹⁹⁸ Mobile money providers benefit from interoperability in several ways, including reduced costs to establish a large acceptance network and an improved value proposition for their customers by expanding the number and type of acceptance points where customers can access merchant payments services.⁹⁹⁹ Furthermore, providers may be able to generate more revenue from their own customers and clients of other providers as well.¹⁰⁰⁰ Interoperability may lower the entry barriers for new providers, increasing the number

⁹⁹² Simon Roberts ‘Thematic Overview: Economic Regulation and the Development of Telecoms, Mobile Money and Banking’ (2016) *The African Journal of Information and Communication (AJIC)*, 17, 1-6

⁹⁹³ Network effect refers to any situation in which the value of a product, service, or platform depends on the number of buyers, sellers, or users who leverage it. Typically, the greater the number of buyers, sellers, or users, the greater the network effect—and the greater the value created by the offering.

⁹⁹⁴ Robb G et al op cit note 161 at 18.

⁹⁹⁵ Pablo Garcia Arabehehety, Gregory Chen, William Cook, & Claudia McKay ‘Digital Finance Interoperability & Financial Inclusion A 20-Country Scan’ *CGAP Working paper 2016 report*.

⁹⁹⁶ Network externalities describes the circumstances where the value of a product or service changes as the number of users increases or decreases. As the supply of a product increases the price of the product falls and becomes less valuable. In certain circumstances the opposite might happen, the value of a product or service may rise with the increase in the number of users.

⁹⁹⁷ SARB Position Paper on Electronic Money available at <https://dfsobservatory.com/sites/default/files/South%20African%20Reserve%20Bank%20-%20Position%20%20Paper%20on%20%20Electronic%20Money.pdf> accessed on 12 March 2022.

⁹⁹⁸ GSMA report Tracking the journey towards mobile money interoperability: Emerging evidence from six markets: Tanzania, Pakistan, Madagascar, Ghana, Jordan and Uganda available at <https://www.gsma.com/mobilefordevelopment/resources/tracking-the-journey-towards-mobile-money-interoperability-emerging-evidence-from-six-markets-tanzania-pakistan-madagascar-ghana-jordan-and-uganda/> accessed on 16 March 2022.

⁹⁹⁹ CGAP report Interoperability: Why and How Providers Should Pursue It. (2019) available at <https://www.cgap.org/research/publication/interoperability-why-and-how-providers-should-pursue-it> accessed on 12 March 2022.

¹⁰⁰⁰ Ibid.

and perhaps the type of competitors in the market. On the flip side, interoperating systems removes an incentive for a customer to remain with a particular provider.

Broadly speaking, interoperability between payment systems will help to prevent fragmentation and contribute to a harmonised and competitive payments ecosystem.¹⁰⁰¹ The ubiquity and interoperability of payment systems can lead to efficiencies that are passed on to end users in the form of lower fees.¹⁰⁰² Customers are expected to benefit from interoperability through lower prices and expanding network access. Furthermore, interoperability can spur consumer demand and adoption of mobile money services.¹⁰⁰³ This increase in demand occurs through the “network effect,” whereby services become more useful to individuals as the size of a network grows because users can send and receive money to and from a larger range of counterparties.¹⁰⁰⁴ Interoperability is a rapidly growing trend for increasing transaction volume and creating new business opportunities. Governments and development agencies consider interoperability to be crucial for financial inclusion because it can create efficiencies of scale and scope, create network effects, and make transactions easier for customers. It remains a goal for both the mobile money industry and financial inclusion professionals to provide fully interoperable mobile money services that satisfy the needs of customers.¹⁰⁰⁵ This section is going to provide an assessment of regulations around mobile money interoperability in South Africa and Zimbabwe.

The feasibility of interoperability of mobile money operators has always been daunting in the face of regulatory and market barriers which stifle innovation, especially in developing countries.¹⁰⁰⁶ Legislation or policy plays a pivotal role in promoting or prohibiting interoperability in any given country. To create interoperability, a set of common rules and standards are needed, both technically and legally.¹⁰⁰⁷ Established, dominant mobile network operators are particularly wary of regulation that may obviate their competitive advantage. It has been argued that mandating interoperability through regulation destabilize existing markets

¹⁰⁰¹ Deloitte report ‘The future of payments in South Africa Enabling financial inclusion in a converging world’ (2019) available at <https://www2.deloitte.com/content/dam/Deloitte/za/Documents/risk/za-The-future-of-payments-in-South-Africa%20.pdf> accessed on 12 March 2022.

¹⁰⁰² See The National Payment System Framework and Strategy vision 2025.

¹⁰⁰³ C. Leigh Anderson & Travis Reynolds Review of Interoperability and Regulations of Mobile Money (2015) *Evans school policy analysis and research* (EPAR).

¹⁰⁰⁴ Ibid

¹⁰⁰⁵ Lamia Naji How mobile money is increasingly interoperable (2020) GSMA report available at <https://www.gsma.com/mobilefordevelopment/blog/how-mobile-money-is-increasingly-interoperable/> accessed on 11 March 2022.

¹⁰⁰⁶ Dzingirai, C., Mashiri, E. and Makanyeza, C. Drivers of platform level interoperability: evidence from Zimbabwean mobile money operators (2021) *International Conference in Accounting and Business* at 595

¹⁰⁰⁷ See Hoerning S and Bourreau M op cite note 987.

and even reduce incentives for companies to launch new mobile money operations.¹⁰⁰⁸ Anderson *et al* observed that there are three approaches to mobile money interoperability regulation.¹⁰⁰⁹ There is mandatory interoperability approach, mandatory interoperability technical capacity approach and encouraged interoperability approach.¹⁰¹⁰ Mandatory interoperability requires all mobile money systems to be interoperable. However, mandating interoperability involves a trade-off between allowing firms to recoup their investments, particularly when risks are involved, and reducing the monopoly profits that dominant firms could accumulate through the exclusion of their competitors.¹⁰¹¹ Under mandatory interoperability capacity approach, mobile network operators are required to have a plan to interoperate and under encouraged interoperability, interoperability is permitted by regulators, but specific approaches are left up to the market. Countries like Malawi, Mexico, Nigeria, Paraguay, and Rwanda have mandated interoperability for mobile money services while Brazil, India, Indonesia, Lesotho, Namibia, Swaziland, and Uganda, the technical capacity for interoperability is mandated, or mobile network operators are required to have a plan to interoperate in the future. At the most basic level, this category encompasses Brazil, where to attain a license a mobile network operator is required to provide a clear roadmap of how a mobile network operator will eventually interoperate with the wider financial ecosystem.¹⁰¹² Countries like Bangladesh, Kenya, Liberia, Pakistan, Sierra Leone encourage, or simply permit, mobile money service providers to become interoperable.

4.7.2 South Africa.

As discussed above, South Africa does not have mobile money specific regulations. The same can be said of mobile money interoperability. There are no regulations requiring or encouraging interoperation between mobile money providers or between providers and banks. The Electronic Money Position Paper provides that if more than one settlement system participant issues e-money, an e-money Payment Clearing House (PCH) may be established by the Payment System Body (PASA) to ensure interoperability.¹⁰¹³ Electronic money, however, can

¹⁰⁰⁸ See Anderson R op cit note 433.

¹⁰⁰⁹ See Anderson R op cit note 433 at 19.

¹⁰¹⁰ Ibid

¹⁰¹¹ Andes, S. 'Making the Market: How Interoperability and Tipping Points Can Influence Network Size' in *The Heinz Journal*, 9(2):1-17.

¹⁰¹² Ibid

¹⁰¹³ See SARB Position Paper op cit not 991, See also See Lawack V A op cit note 630 at 92.

only be issued by banks.¹⁰¹⁴ The SARB therefore excludes mobile money from its interoperability policies. In addition to this, PASA has not yet established an e-money PCH. As discussed above, mobile money providers are required by law to partner with banks to provide mobile money services. It has led to some kind of interoperability between banks and mobile money providers. Mobile money users are therefore able to make use of bank infrastructure such as ATMs to access cash, deposit money into their e-wallets, and to open mobile money accounts. The recently relaunched MTN mobile money services (MoMo) allow clients to withdraw cash from their wallets using any bank ATMs¹⁰¹⁵. In addition, MTN mobile money allows Vodacom customers to open MTN mobile money accounts on Vodacom sim cards. However, the not-on-us transaction fees as well as related transaction costs and interchange fees are discouraging customers from utilizing another Vodacom channel.¹⁰¹⁶ Thus there is interoperability between mobile money providers. MTN can use Vodacom network to access mobile money services. Therefore, one could argue that, although South Africa does not require mobile money interoperability, its regulation by default encourages it.

The failure of Mobile network operators to successfully roll out mobile money services in South Africa can be partly explained by the lack of mobile money interoperability. If MTN and Vodacom were interoperable, they could have shared agents, infrastructure, and services for mobile money. The sharing of services and infrastructure can reduce operating costs. Reduced operating costs would translate into cheaper services that would draw many people. Added to this, studies have revealed that interoperability is an important factor in influencing mobile network operators to offer mobile money, particularly smaller competitors. It allows smaller competitors to gain access to established players' infrastructures and agents, which eventually leads to the expanded availability of mobile money services. The lack of interoperability could also be the reason why smaller mobile network operators, such as Cell C and Telkom, never attempted to offer such services.

4.7.3 Zimbabwe

¹⁰¹⁴ Payment, clearing and settlement systems in South Africa CPSS – Red Book – 2012 available at https://www.bis.org/cpmi/publ/d105_za.pdf at 384 accessed on 15 March 2022.

¹⁰¹⁵ MTN MoMo available at [https://www.mtn.co.za/Pages/momo-mobile-money.aspx#:~:text=MTN%20Mobile%20Money%20\(MoMo\)%20is,even%20need%20a%20bank%20account.](https://www.mtn.co.za/Pages/momo-mobile-money.aspx#:~:text=MTN%20Mobile%20Money%20(MoMo)%20is,even%20need%20a%20bank%20account.) accessed on 15 March 2022.

¹⁰¹⁶ See Dzingirai, C et al op cit note 1006.

When mobile money services were first introduced in Zimbabwe, users were confined to transactions within the ecosystem of their mobile money provider. There were no rules or regulations that force or encourage interoperability. Mobile money providers only allowed their customers to send money to recipients on rival networks through the “send to unregistered subscriber” option.¹⁰¹⁷ However, recipients use the network of the sender to cash out the money. Thus, there was no mobile money interoperability. The country's mobile money interoperability has largely been shaped by the first-mover advantage. With a 65% share in the mobile network market and a share of over 90% in the mobile payments market, Econet did not want to share its agents, infrastructure or services with competitors arguing that it has spent huge capital outlays in establishing a market.¹⁰¹⁸ As a result, Econet's Ecocash is the leading mobile banking platform and its success can be at least partly ascribed to a combination of network effects and lack of interoperability between Ecocash and the other available mobile payments platforms.¹⁰¹⁹ The mobile network operator exploited the lack of interoperability in mobile payments. It kept its Ecocash platform unintegrated with the other mobile network operators' mobile payments platforms. Furthermore, Econet refused to give the banks access to the Ecocash platform for P2P transactions.¹⁰²⁰ The result of this was that Econet customers could not transfer money via Ecocash in a P2P transaction from their bank accounts.

In 2014, the Bankers' Association of Zimbabwe filed a complaint with the Zimbabwe Competition and Tariff Commission (ZCTC) regarding Econet's conduct regarding its Ecocash platform.¹⁰²¹ The main complaint was Econet's policy of not allowing banks to use its USSD service for P2P transactions.¹⁰²² Smaller operators also claim that Econet has exclusive agreements with agents and coerces its agents to refuse to provide services to the other players. In 2017 the Reserve Bank of Zimbabwe issued ‘*Guidelines for Retail Payment Systems and Instruments*’ that encouraged all payment system operators have interoperable systems.¹⁰²³

¹⁰¹⁷ Emmanuel Ngwa ‘How Perilous is Mobile Money Interoperability to Africa's Mobile Money Bankers?’ available at <https://www.afrohustler.com/mobile-money-interoperability-africa-telcos/> accessed on 15 March 2022.

¹⁰¹⁸ Victor Mukandatsama ‘Econet still uninterested in interoperability’ available at <https://www.techzim.co.zw/2015/07/econet-still-uninterested-in-interoperability/> accessed on 15 March 2022.

¹⁰¹⁹ Lebogang Nleya and Genna Robb ‘Part two: Mobile money in Kenya and Zimbabwe’ available at <https://www.competition.org.za/ccred-blog-competition-review/2014/11/7/part-two-mobile-money-in-kenya-and-zimbabwe> accessed on 15 March 2021.

¹⁰²⁰ See Robb G, et al op cit note 161 at 224

¹⁰²¹ L.S.M Kabweza ‘Econet investigated for anti-competitive behaviour in mobile money business’ available at <https://www.techzim.co.zw/2014/06/econet-investigated-anti-competitive-behaviour-mobile-money-business/> accessed on 15 March 2022.

¹⁰²² The Herald Econet under probe (newspaper 4 April 2018).

¹⁰²³ RBZ ‘Guidelines for Retail Payment Systems and Instruments’ available at <https://www.rbz.co.zw/documents/nps/payment-systems-guidelines-august-2017.pdf> accessed on 15 March 2022.

Zimbabwe adopted the encouraged interoperability approach to mobile money. The RBZ's Guidelines did not immediately lead to interoperability across mobile money platforms in Zimbabwe, despite the requirement that all payment system operators have interoperable systems as specified in the guidelines. Through the ZimSwitch platform, all mobile money providers were interoperable with banks, but money could not be transferred directly from a mobile money wallet of one provider to another. Where subscribers send money across networks, the cash was withdrawn at an agent of the sender's network. Although an RBZ directive stated that agents could offer services to multiple mobile money providers, the practice nonetheless continued.¹⁰²⁴

Although Econet refused to cooperate with other mobile money providers, Telecel and NetOne, the two other mobile network operators in Zimbabwe, partnered ZimSwitch, making mobile banking services available to all financial institutions connected to it and integrates them with other service providers.¹⁰²⁵ This partnership enabled the interoperability between mobile network operators, banks, and other mobile money providers. However, full interoperability could not be achieved without Econet's participation. Econet did not agree to link its Ecocash platform to the system, preferring to maintain its own system.¹⁰²⁶ As of 2020, the RBZ has issued Statutory Instrument 80 of 2020 aimed at coordinating mobile money services from different providers in a way that would benefit end-users in Zimbabwe. Section 4(1) of the Statutory Instrument provided that

It shall be mandatory for every money transmission provider and mobile banking provider shall be connected to a national payment switch, as shall be directed by written notice by the Reserve Bank from time to time that enables interoperability of payments systems and services.¹⁰²⁷

The Statutory Instrument further required all mobile money providers to install, deploy or commission infrastructure and connection protocols, credentials and documentation necessary to enable integration with any recognised payment system in terms of the National Payment System Act.¹⁰²⁸ With this Statutory Instrument, Zimbabwe shifted from encouraging interoperability to mandating it.¹⁰²⁹ Econet had to integrate its mobile money service with

¹⁰²⁴ Genna Robb & Anthea Paelo at 20.

¹⁰²⁵ See Genna Robb, et al op cit note 161 at 219.

¹⁰²⁶ See Robb G and Vilakazi Mobile Payments Markets in Kenya, Tanzania and Zimbabwe: A Comparative Study of Competitive Dynamics and Outcomes (2016) 17 *the African Journal of Information and Communication (AJIC)*, Issue at 27.

¹⁰²⁷ Sec 4(1) of Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations, 2020 (Banking Regulations, 2020).

¹⁰²⁸ Supra Banking Regulations, 2020 sec 4(2).

¹⁰²⁹ See Chitimira H & Torerai E op cit note 786 at 15.

ZimSwitch. As a result, Zimbabwe now has a fully interoperable mobile money eco-system. The mobile money system now allows customers to transfer funds between mobile money accounts held at different mobile money providers or between mobile money providers and banks. This has also contributed to the continued success of mobile money services in Zimbabwe.

In summary, with interoperability, customers can access financial services regardless of which service provider they use. Zimbabwe and South Africa have different approach to mobile money interoperability regulations. While the former has put in place regulatory measures that have made sure that mobile money services are integrated, the latter has neither a regulation nor policy that promotes interoperability. The Central bank in Zimbabwe issued a Statutory Instrument that have made it mandatory for mobile money providers to be connected to the national payment switch (ZimSwitch) to enable interoperability of payment systems and services. Thus, all mobile money providers in Zimbabwe are not only integrated among themselves but also with banks. As a result, people can send and receive payments quickly and cheaply using either their mobile money accounts or bank accounts. This has contributed to the continued success of mobile money services in Zimbabwe. There is, however, no integration of mobile money services providers in South Africa. Mobile money providers can only transact within their network and with their supporting banks. Mobile money users are limited in their transactions, and this probably explains the slow uptake of the service.

4.7 CONCLUSION

This chapter illustrates that a larger part of Zimbabwe's financial regulations, like their South African counterparts, do not recognise mobile money services provided by mobile network operators as financial services. However, the two countries present contrasting fortunes for mobile money services provided by mobile network operators. South African mobile network operators find it difficult to provide mobile money services. Both Vodacom and MTN failed to attract the anticipated numbers of clients to their mobile money platforms. As a result, both at one time discontinued the services. On the other hand, mobile network operators in Zimbabwe managed to attract enormous numbers of customers and exceeded expectations. While several factors could be attributed to this disparity, the two countries' regulatory approaches to services in question partly explain the difference. South African regulators adopted the no specific regulation approach to mobile money services. Mobile network operators that venture into mobile money services are allowed to do so under mainstream financial regulations that govern

banks. These regulations do not allow non-financial institutions to engage in financial activities. This forces mobile network operators to partner with registered financial institutions to provide the services. Such partnerships are burdensome and financially costly for mobile network operators. In contrast, Zimbabwe adopted the test and learn approach. Financial regulations in Zimbabwe are similar to South Africa's. They limit the participation of mobile network operators in the financial system. However, Zimbabwe pursued the test and learn approach, which enabled mobile network operators to participate in the financial system. The RBZ issued circulars and directives which exempted mobile network operators from the application of specific regulations and permitted them to provide some banking services. Zimbabwe later adopted regulations specifically designed for mobile money services. It is mainly the use of delegated powers by the Minister of Finance that has contributed to the difference in mobile money adoption between the two countries. In Zimbabwe, regulators used the powers delegated to the minister of finance under the Banking Act to permit mobile network operators to provide banking services. Despite having such delegated powers, the Minister of finance in South Africa has never used them to allow non-banking institutions to offer banking services except in the case of the Teba Trust Fund. There is also evidence that the rules governing mobile money interoperability also adversely affect their adoption. Mobile money services have seen massive uptake in countries that make interoperability mandatory. Zimbabwe has made it mandatory for mobile money providers to connect with each other and with banks. In contrast, there are no rules or regulations in South Africa that require operators to interoperate. Hence the difference in mobile money adoption between the two countries. Taxation and consumer protection law also play an instrumental role in the adoption of the banking services in question. Due to taxes specific to mobile money, mobile money transactions are made more expensive, resulting in users shunning the service. Furthermore, consumer protection laws such as the deposit protection scheme for mobile money users increase trust and confidence in the service, thereby increasing adoption.

CHAPTER 5: IMPACT OF THE REGULATION OF MOBILE MONEY SERVICES ON FINANCIAL INTEGRITY AND FINANCIAL INCLUSION

5.1 INTRODUCTION

The regulation of mobile money services affects the roll-out of mobile money services and determines the levels of financial inclusion. Recent research suggests that mobile phones play a vital role in promoting financial inclusion.¹⁰³⁰ Ahmad, Green and Jiang submit that mobile money services can increase financial inclusion when one considers their importance and innovativeness in the dissemination of information and provision of financial services.¹⁰³¹ It addresses the problem of cost and proximity, both of which contribute to the staggering numbers of financial exclusion.¹⁰³² Countries that successfully adopted mobile money services, such as Kenya, witnessed sharp increases in the number of people with access to formal financial services.¹⁰³³ Since mobile technology is not limited by high infrastructure and cost constraints that historically kept banks and other financial institutions out of the reach of the poor, it offers a novel way to facilitate access to financial services. This makes mobile money services a unique driver of financial inclusion that also offers a sustained and accessible solution to the problem of financial exclusion.

As discussed in the previous chapter, a country's regulatory approach plays a pivotal role in the success of mobile money services. As such, regulations determine whether and how mobile services can contribute to financial inclusion. By encouraging competition and opening the market to non-bank players while maintaining stability and protecting consumer interests, government regulation will increase financial inclusion more effectively. This chapter examines the impact of the regulation of mobile money services on financial inclusion in South

¹⁰³⁰ Yilmaz Bayar, Marius Dan Gavriltea & Dragoş Păun 'Impact of mobile phones and internet use on financial inclusion: empirical evidence from the EU post-communist countries' (2021) 27 *Technological and Economic Development of Economy* at 724.

¹⁰³¹ Ahmad, Green & Jiang 'Mobile money, financial inclusion and development: a review with reference to African experience' (2020) *Journal of Economic Surveys* at 753.

¹⁰³² See Alexandre C & Eisenhart L C op cit note 124 at 288.

¹⁰³³ Francis M. Mwega 'Financial regulation in Kenya: Balancing inclusive growth with financial stability' available at <https://assets.publishing.service.gov.uk/media/57a09dd4ed915d622c001be5/9279.pdf> accessed on 14 November 2021, See also Brian Muthiora 'Enabling Mobile Money Policies in Kenya Fostering a Digital Financial Revolution' (2014) GSMA available at <http://t1.daumcdn.net/brunch/service/user/P5W/file/mxAyGPsEeNdS1FAkt9vWxBJVHSg.pdf> accessed on 14 November 2021.

Africa and Zimbabwe. The chapter emphasises three factors, namely, penetration by financial institutions, the availability of financial services, and consumer usage of those services.

5.2 IMPACT OF MOBILE MONEY ON FINANCIAL INCLUSION AND FINANCIAL INTEGRITY

5.2.1 Financial inclusion in South Africa

Financial inclusion is an important social and economic policy objective for many developing countries.¹⁰³⁴ Generally, the first step towards full financial inclusion in South Africa is to open a basic bank account, which is usually followed by access to credit, insurance, and long-term savings.¹⁰³⁵ Through the National Development Plan (NDP), the South African government hopes to achieve 90% financial inclusion by 2030.¹⁰³⁶ The country suffers from high levels of financial exclusion among poor people.¹⁰³⁷ In South Africa, 85% of adults have transactional accounts, according to the World Bank's 2021 Global Findex Database.¹⁰³⁸ Such accounts are critical instruments of financial inclusion. This makes South Africa more financially inclusive than its counterparts.¹⁰³⁹ Whereas the adoption of financial products and their usage by 70% of South Africans indicates the accessibility. However, sustainability of such products, associated costs and convenience issues negates the gains of financial inclusion.¹⁰⁴⁰ Real access to financial services remains low as demonstrated by low levels of account usage. The 2021 Finscope survey found that 40% of dormant accounts were held by individuals from low-income households and that within this segment, another 19% withdrew all funds as soon as it

¹⁰³⁴ Jane K Winn and Louis de Koker 'Introduction to mobile money in developing countries: financial inclusion and financial integrity conference special issue' (2013) *Washington Journal of Law, Technology & Arts* at 156.

¹⁰³⁵ National Treasury Draft Consultation paper 'An inclusive financial sector for all South Africa' available at http://www.treasury.gov.za/comm_media/press/2020/Financial%20Inclusion%20Policy%20-%20An%20Inclusive%20Financial%20Sector%20For%20All.pdf accessed on 13 August 2021.

¹⁰³⁶ National Development Plan 2030 available <https://www.gov.za/issues/national-development-plan-2030> accessed on 10 October 2021.

¹⁰³⁷ John P Wentzela, Krishna Sundar Diathab and Venkata Seshachal Sarma Yadavalli 'An investigation into factors impacting financial exclusion at the bottom of the pyramid in South Africa' available at https://repository.up.ac.za/bitstream/handle/2263/59221/Wentzel_Investigation_2016.pdf?sequence=1&isAllowed=y accessed on 17 May 2021.

¹⁰³⁸ World Bank report 'The Global Findex Database 2021 Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19' available at <https://www.worldbank.org/en/publication/globalfindex/Report> accessed on 2 October 2022..

¹⁰³⁹ Ibid.

¹⁰⁴⁰ Velenkosini Matsebula and Derek Yu 'An analysis of financial inclusion in South Africa' (2020) *African Review of Economics and Finance* (12) at 171.

was deposited.¹⁰⁴¹ Research conducted by Deloitte, an audit, assurance, consulting and advisory firm, indicates that there is a decline in the use of transactional accounts and a corresponding rise in the use of cash in the informal market.¹⁰⁴² This is partly attributable to bank charges, which are very high in South Africa compared to other countries in Africa.

In South Africa, banks charge an average monthly fee of ZAR100 per account.¹⁰⁴³ This is in addition to deposit and withdrawal fees. These high fees compound the challenges faced by low-income communities, who have been underserved by traditional financial institutions. Most low-income areas lack access to full-service banks and must travel long distances for such services.¹⁰⁴⁴ This makes financial exclusion relatively high levels among poor and vulnerable communities. Matsebula and Yu conducted research that concludes that black families living in rural areas in the Eastern Cape, KwaZulu-Natal and Limpopo provinces and who have low real per capita income and fewer employed members are associated with a significantly greater likelihood of complete financial exclusion.¹⁰⁴⁵ They use cash as a primary transaction mechanism. Cash comes with risks, particularly given that South Africa has a high crime rate and limited access to credit. Informal credit from loan sharks, *stokvels* and between families and friends provide more credit to poor communities than the formal credit market run by banks.¹⁰⁴⁶

The introduction of mobile money and other digital financial services improved access to financial systems in Africa. Mobile money enables significant financial value for unbanked and underbanked consumers. South Africa embraces technological innovations but is yet to solve its mobile money conundrum due to excessive regulation. Since a decade ago, Africa has been adopting mobile money services at a fast pace, but South Africa lags due to its stringent financial statutes, which are a significant barrier to entry.¹⁰⁴⁷ Though mobile phone penetration

¹⁰⁴¹ FinScope SA Consumer Survey 2022, available at <https://www.fsca.co.za/Documents/FinScope%20SA%20Consumer%202021%20Survey%20%20Results%20Prepared%20for%20FSCA.pdf> accessed on 10 October 2022.

¹⁰⁴² See Deloitte report op cit note 1001.

¹⁰⁴³ 2021 South African banking fees compared: Capitec vs Absa vs Standard Bank vs Nedbank vs FNB Available at <https://businesstech.co.za/news/banking/456642/2021-south-african-banking-fees-compared-capitec-vs-absa-vs-standard-bank-vs-nedbank-vs-fnb/>. Accessed on 09 November 2021.

¹⁰⁴⁴ Aleta Sprague 'Next generation TANF: reconceptualizing public assistance as a vehicle for financial inclusion' 2015 18 *U.D.C. L. Rev* at 144.

¹⁰⁴⁵ See Matsebula & Yu D op cit note 1040 at 171.

¹⁰⁴⁶ Ibid

¹⁰⁴⁷ Jaco Saunders 'Mobile money has huge potential to change the lives of South Africans' available at <https://www.iol.co.za/the-star/opinion-analysis/mobile-money-has-huge-potential-to-change-the-lives-of-south-africans-4d584c49-806b-40ac-88d4-e85e6210bd9a>. accessed on 21 November 2021.

has been steadily increasing in South Africa, the regulatory environment for mobile financial services does not encourage financial inclusion.¹⁰⁴⁸

As discussed in chapter four of this study, the banking regulatory framework in South Africa limits the banking space to registered banks and requires non-banks to partner with registered banks to provide mobile money services. Hence, Nedbank and mobile operator Vodacom teamed to launch M-Pesa.¹⁰⁴⁹ The Position Paper on e-money requires mobile network operators to conclude sponsoring arrangements with banks for them to issue e-money.¹⁰⁵⁰ Thus mobile network operators must partner with licenced banks to offer mobile money services. This regulatory approach is unnecessarily rigid. It limits innovation and curtails financial advances that would benefit poor consumers.¹⁰⁵¹ Enforced partnership models between banks and mobile network operators increase the cost of mobile money services, making them unattractive to poor consumers. This is because the costs are transferred to consumers, making the services expensive. When MTN discontinued its mobile money service in 2016, it highlighted the high operating costs of providing the service and said that such costs were prohibitive.¹⁰⁵² In addition to operating costs faced by mobile network operators from banks, consumers face further costs in that mobile money services users when they to take their funds from ATMs run by banks, which charge very high fees for access.¹⁰⁵³ As a result, mobile money services are prohibitively expensive for everyone except the banks that cash in on every transaction. On the contrary, informal financial services are increasingly attractive to poor and low-income earners, leading to more financial exclusion.

The NPS Act, like the Banks Act, influences financial inclusion as far as mobile money services are concerned. It limits direct access to the National Payment System to the Reserve Bank, banks, co-operative banks, and branches of foreign institutions. Non-banks need to partner with registered financial institutions to access the National Payment System.¹⁰⁵⁴ This means that mobile network operators who want to provide mobile money services should partner with financial institutions for them to access the National Payment System. The forced partnership

¹⁰⁴⁸ See Lawack V A op cit note 630 at 317.

¹⁰⁴⁹ SARB Directive 1 of 2007 sec 3.

¹⁰⁵⁰ See Lawack V A op cit note 633 at 323.

¹⁰⁵¹ Genna Robb 'Public Platforms on Mobile Money Services' *Working Paper No. 2* (22 July 2015).

¹⁰⁵² Finmark Trust report 'Research Report on Mobile Money in South Africa' (2017) available at <https://finmark.org.za/system/documents/files/000/000/267/original/Final-Report-on-Mobile-Money-in-South-Africa.pdf?1603094540> accessed on 3 July 2021.

¹⁰⁵³ Ibid.

¹⁰⁵⁴ See SARB Directive 1 of 2007 op cit note 1049 sec 3.

model increases the cost of mobile money services. The NPS limits financial inclusion for non-banks who want to participate in the market because such non-banks must enter into sponsorship arrangements with banks, with consequent costs for such non-banks. The costs are transferred to consumers, making mobile money services less attractive.

Technology-based crime patterns can adapt quickly to new technological advances as they are developed.¹⁰⁵⁵ As mobile internet systems grow, Criminals may be able to take advantage of new opportunities provided by them, in general, but also specifically with regards to mobile money services.¹⁰⁵⁶ Mobile money services are a convenient and safe method of transferring money to legitimate customers, as well as to criminals. The legal framework introduced by the AML/ CFT regulations underpins financial integrity and supports the fight against crime. However, improper application of these standards can lead to financial exclusion for millions of poor individuals who are unbanked.¹⁰⁵⁷ AML/CFT regulations have a profound effect on financial inclusion. AML/CFT controls have the potential to prevent low-income families, rural dwellers, and undocumented individuals from getting access to well-regulated financial services.¹⁰⁵⁸ As such, an overly cautious approach to AML/CFT protections could lead to the exclusion of vulnerable and poor people from the financial system.¹⁰⁵⁹ AML regulations follow two distinct approaches, namely, the rule-based and risk-based, which have been discussed. Both approaches are fundamental to the adoption of mobile money services and the improvement of financial inclusion.

The South African government adopted the risk-based approach in 2017 through FICA amendments which require financial service providers to move from the previous rule-based/exemptions approach for managing money laundering and terrorism financing risks to a risk-based assessment approach, especially with regards to KYC and CDD.¹⁰⁶⁰ The amendments mandate the application of a risk-based approach in accountable institutions.¹⁰⁶¹

¹⁰⁵⁵ See Kersop M & Du Toit F S op cit note 35 at 1644.

¹⁰⁵⁶ Ibid

¹⁰⁵⁷ H Nel *Know-Your-Customer measures: Mitigating money-laundering risks in mobile banking transactions* (Unpublished Master's thesis North-West University 2017).

¹⁰⁵⁸ See FATF Guidance op cit note 684.

¹⁰⁵⁹ See FATF Guidance for a Risk-Based Approach available at [https://www.fatf-gafi.org/documents/riskbasedapproach/documents/risk-based-approach-banking-sector.html?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/documents/riskbasedapproach/documents/risk-based-approach-banking-sector.html?hf=10&b=0&s=desc(fatf_releasedate)) accessed on 10 October 2022..

¹⁰⁶⁰ Finmark Trust Report Applying the Risk Based Approach – Undertaking AML/CTF Risk Assessment of low-value remittance and banking products and services in South Africa available at https://finmark.org.za/system/documents/files/000/000/149/original/FMT_Product-Risk-Assessment_v5_final_18092019.pdf?1594736892 accessed on 22 September 2021.

¹⁰⁶¹ Financial Intelligence Centre Amendment Act, 2017 sec 42.

The benefit of moving away from rigid rules-based KYC and CDD requirements to a risk-based approach is that it increases opportunities for financial inclusion by lowering KYC documentation requirements and promoting remote onboarding. It acknowledges that the risks of money laundering and terrorist financing vary by sector.¹⁰⁶² Risk-based approach is based on the idea that scarce resources should be focused on the higher risk.¹⁰⁶³ A risk-based approach to customer due diligence may help achieve financial inclusion goals because it provides for a more flexible application of KYC and CDD measures for customers who have face identification and verification challenges.¹⁰⁶⁴

While the paradigm shift from the rule-based to risk-based approach is a welcome development for mobile money service providers and other proponents of financial inclusion, The requirements for KYC and CDD have not been substantially lowered. South Africa's current implementation of AML regulation may be to some extent characterised as *de jure* risk-based and *de facto* rule-based. It is important to note that South African banks are now offering low risk accounts. However, such accounts have limited functionalities. People who use such accounts do not enjoy the full benefits that comes with banking and are often excluded from important banking functions such as debit orders. If such people want to open traditional bank accounts with all functionalities that allows them to fully enjoy banking services without any limitations, they need to satisfy the KYC requirements. Thus, the minimum requirements for opening a bank account without limited functionality in South Africa are an identity document and proof of residence.¹⁰⁶⁵ All financial institutions require these documents to establish relationships with potential clients for such clients to enjoy all the benefits that comes with owning a bank account. A client's address can be extremely difficult to verify in low-income areas such as informal settlements.¹⁰⁶⁶ About 1 in 7 households in South Africa live in informal settlements.¹⁰⁶⁷ Another hindrance to the verification of the addresses of low-income earners

¹⁰⁶² South Africa National treasury report 'A new approach to combat money laundering and terrorist financing' available at [https://www.fic.gov.za/Documents/A%20NEW%20APPROACH%20TO%20COMBAT%20MONEY%20LAUNDERING%20AND%20TERRORIST%20FINANCING%20\(2\).pdf](https://www.fic.gov.za/Documents/A%20NEW%20APPROACH%20TO%20COMBAT%20MONEY%20LAUNDERING%20AND%20TERRORIST%20FINANCING%20(2).pdf), accessed on 25 September 2021.

¹⁰⁶³ FAFT report Guidance for a risk-based approach The banking sector, available at <http://www.fatf-gafi.org/media/fatf/documents/reports/risk-based-approach-banking-sector.pdf> accessed on 2 October 2022. R

¹⁰⁶⁴ David A. Chaikin 'Risk-Based Approaches to Combating Financial Crime' (2009) 8 *Journal of Law and Financial Management* at 20.

¹⁰⁶⁵ Standard Bank website available at <https://www.standardbank.co.za/southafrica/personal/about-us/financial-education/opening-a-bank-account/customer-identification>, accessed on 25 November 2021.

¹⁰⁶⁶ Finmark Trust Report 'Applying the Risk Based Approach' op cit note 1053.

¹⁰⁶⁷ Hopolang Selebalo and Dennis Webste 'Monitoring the right of access to adequate housing in South Africa' (2017) Studies in poverty and inequality institution Working paper 16 available at http://spii.org.za/wp-content/uploads/2018/02/Right-to-Housing_2017.pdf accessed on 25 November 2021.

and poor people in South Africa is that most of them prepay their utilities. Thus, they do not have water, electricity and telephone bills to confirm residential addresses. Prepaid systems do not create audit trails as done by post-paid systems.¹⁰⁶⁸

Notwithstanding the difficulties faced by the poor and low-income earners, it is encouraging that the risk-based approach allows financial institutions and mobile money providers discretion in deciding whether individual clients must provide proof of residence to open accounts. MTN mobile money clients no longer have to show proof of residence to open accounts.¹⁰⁶⁹ A risk-based analysis considers mobile money services as low risk. As mobile network operators relaunch their mobile money services, it remains to be seen if this approach will result in the success of mobile money services and ultimately a higher degree of financial inclusion for the poor. Arguable, relaxing one aspect while maintaining other requirements will not help the people who need mobile money services the most. Mobile money interoperability rules are equally important to financial inclusion. In order for mobile financial services to expand and promote access to finance and development, sharing of information among banks and non-bank mobile service providers offers potential to reduce compliance costs.¹⁰⁷⁰

5.2.2 Financial integrity

Mobile money is less appreciated when it comes to financial integrity. Regulatory bodies around the world are concerned about the financial integrity risks associated with mobile financial services, since they are generally perceived as presenting unique risks compared with traditional financial services.¹⁰⁷¹ It is worth noting that mobile money increases transaction velocity. They are faster than cash transactions in many cases since they are instant or near instant. These factors have led to the argument that mobile money undermines financial stability. There is an impression that it increases risk, and this has reinforced the idea that financial inclusion and financial integrity are at odds with each other.¹⁰⁷²

¹⁰⁶⁸ Bester, H., Hougaard, C. & Chamberlain, D. *Reviewing the Policy Framework for Money Transfers*. (2010). Belville: FinMark Trust & Cenfri, at 18.

¹⁰⁶⁹ MTN launches Mobile Money in South Africa available at <https://businesstech.co.za/news/telecommunications/369420/mtn-launches-mobile-money-in-south-africa/> accessed on 25 November 2021.

¹⁰⁷⁰ See Chatain, P et al op cit note 44.

¹⁰⁷¹ See Kersop M & Du Toit F S op cit note 35 at 1644.

¹⁰⁷² Alexandre C and Eisenhart L C op cit note at 288.

A World Bank report has observed that there are perceived and proven financial integrity risks of mobile financial services. Among the perceived mobile money risks identified in the report are unknown identity of the user, false identification, smurfing, fast transaction speeds, and pooling and delegation.¹⁰⁷³ The report identifies anonymity, elusiveness, rapidity, and poor oversight as proven inherent mobile money integrity risk. Each of these will be briefly discussed below.

5.2.3 Perceived financial integrity risks of mobile financial services

(i) Unknown identity

When opening a mobile money account, clients do not have to interact with their financial service providers face-to-face, as is the case with traditional financial services.¹⁰⁷⁴ In this way, one can conceal their identity, which may be beneficial to criminals and terrorist financiers. This is the greatest financial integrity concern for many regulators because of lack of information about the client's identity. Moreover, transactions can be carried out without any names attached to them. Money launderers and terrorist financiers would benefit from a lack of customer information.¹⁰⁷⁵

(ii) Smurfing

Smurfing in a financial transaction context occurs when several smaller transactions are deliberately split up to make one large transaction fall below a minimum threshold required for reporting to the authorities.¹⁰⁷⁶ It has been argued that mobile money solutions are more vulnerable to smurfing because it enables a large amount of money that is being transferred to be hidden as smaller, more inconspicuous amounts.¹⁰⁷⁷ Furthermore, mobile financial services in general provide a very convenient means for "layering" funds to conceal the illegal sources of those funds. This is made possible by their affordability in comparison to traditional banking services, which are much more expensive.¹⁰⁷⁸

¹⁰⁷³ See See Chatain, P et al op cit note 44 at 11. See also Perlman L J op cit note 41 at 348, see also Kersop M & Du Toit F S op cit note 35 at 1645.

¹⁰⁷⁴ See See Chatain, P et al op cit note 44 at 11.

¹⁰⁷⁵ Ibid.

¹⁰⁷⁶ See Perlman L J op cit note 41 at 348.

¹⁰⁷⁷ See Kersop M & Du Toit F S op cit note 35 at 1645.

¹⁰⁷⁸ Ibid.

(iii) Transaction Speed

Risks are embodied in the speed, geographic independence, and speed of transaction settlement, even when transactions cross jurisdictional lines. The fact that mobile money transactions can be performed quickly, virtually anytime and anyplace, is perceived to be a boon to terrorist financiers and money launderers.¹⁰⁷⁹

(iv) False identification

A grave risk in mobile financial services is the use of counterfeit documents by money launderers to avoid detection.¹⁰⁸⁰ The requirements to attain a mobile money account are often very different than those to open a bank account. Money launderers make use of pseudonyms or third-party names and personal particulars. In some cases, a mobile phone linked to a mobile money account may be provided to money launderers by a third party who is supportive of their criminal activities. Theft of mobile phones also poses a threat in the case of terrorists or money launderers who use a third-party's phone to transfer funds in the hope of going undetected.¹⁰⁸¹

(v) Pooling and delegation

A pooling or delegation process occurs when many individuals share one mobile device, such as in a village.¹⁰⁸² There are concerns that money launderers' identities may be easily concealed because the mobile phone used to commit a crime may not be registered on the perpetrator's name.

(vi) Lack of regulation

There are no regulatory measures in place for mobile money service providers as there are for other financial institutions, which is perceived as problematic by some. World Bank observed that in contrast to traditional financial institutions like banks, insurance companies, and securities brokers, mobile money companies do not fully follow AML/CFT controls.¹⁰⁸³ This is especially true for the operator-centric mobile money model, where the service provider is not a bank but a mobile network operator.¹⁰⁸⁴ Mobile money providers work with retail outlets and agents as well as third-party billing processors. There are concerns that even if an operator

¹⁰⁷⁹ See Chatain, P et al op cit note 44.

¹⁰⁸⁰ See Kersop M & Du Toit F S op cit note 35 at 1645.

¹⁰⁸¹ See Chatain, P et al op cit note 44 at 11.

¹⁰⁸² Ibid.

¹⁰⁸³ Ibid.

¹⁰⁸⁴ See Kersop M & Du Toit F S op cit note 35 at 1645.

complies with AML measures, these partners may not. The partners may not be fully trained or familiar with AML and CFT protocols, making them less effective. It is believed that gaps like these allow criminals and terrorists to conceal their acts from law enforcement.

5.2.4 Proven financial integrity risks of mobile financial services

(i) Anonymity

Anonymity is the risk that relates to not knowing a customer's actual identity, which could result in the unauthorised use of an existing mobile money services account by means, for example, of the theft of a mobile phone. The Bangladesh Institute of Bank Management (BIBM) observed that payment transactions made anonymously through mobile services are considered the most vulnerable due to their potential to facilitate money laundering.¹⁰⁸⁵ It also poses the risk of facilitating the opening of multiple accounts to conceal the true value of deposits.¹⁰⁸⁶ Having no knowledge of a client's identity also makes dirty money easy to withdraw. Financial integrity issues associated with anonymity can be mitigated by implementing robust identification and verification procedures.¹⁰⁸⁷ However, proponents of mobile money services argue that due to the ability to link mobile transactions to a unique mobile number, and the fact that transactions are recorded and traceable, mobile transactions are less anonymous than cash transactions.¹⁰⁸⁸

(ii) Elusiveness

Mobile transactions are opaque, they can be disguised from their origins and destinations as well as the total amount of the transaction. This has been termed as elusiveness. The accounts may allow money launderers to conceal the original source of illicitly obtained funds by using multiple accounts to carry out untraceable transactions. In addition, mobile money allows large transfers of funds to be divided into several smaller amounts, causing transactions to be less suspicious and making it harder for mobile money providers and authorities to detect money laundering activities exactly as regulators fear.¹⁰⁸⁹ Therefore, the perception that mobile money services are vulnerable to smurfing is not unfounded. The service in question has the potential

¹⁰⁸⁵ Bangladesh Institute of Bank Management (BIBM) available at <http://www.bibm.org.bd/> accessed on 24 March 2022.

¹⁰⁸⁶ Ibid

¹⁰⁸⁷ FATF Report (2010) Money Laundering Using New Payment Methods available at <https://www.fatf-gafi.org/media/fatf/documents/reports/ML%20using%20New%20Payment%20Methods.pdf> accessed on 24 March 2022.

¹⁰⁸⁸ Simone di Castri op cite note 125.

¹⁰⁸⁹ See Kersop M & Du Toit F S op cit note 35 at 1645.

to become a powerful tool in money laundering operations because of its elusiveness. Limits on mobile money amounts, balances, frequency and number of transactions, and real-time monitoring are instrumental in mitigating risk associated with mobile money elusiveness.¹⁰⁹⁰

(iii) Rapidity

Rapidity refers to the speed and frequency with which illicit transactions can happen. Due to their rapidity, mobile money services pose a money laundering risk, as illicitly obtained funds can be transferred in a very short period of time from one account to another.¹⁰⁹¹ Due to the rapidity of transactions, financial institutions do not have enough time to suspend suspicious transactions until more information becomes available. Rapidity risk can be controlled by flagging certain kinds of transactions and managing third-party risks.¹⁰⁹²

(iv) Lack of oversight

Mobile money services blur the lines between a bank and that of a non-bank actor, creating a regulatory oversight vacuum that cannot be filled if the appropriate authorities have, in effect, abdicated their responsibilities in the interest of creating more efficient or more profit-enhancing business.¹⁰⁹³ In the absence of proper oversight, mobile financial services may pose a systemic risk. However, Kersop and du Toit argue that lack of oversight does not on its own constitute a substantial risk, but rather contributes to the aforementioned three risks and exacerbates them. The lack of oversight can be alleviated by transparent guidelines on mobile services, clear licensing, regulation of providers, and effective risk supervision of bank and mobile money providers.

Considering the above, it can be argued that that all perceived risks are actual risks since each perceived risk can be linked to one of the aforementioned proven risks. Further, all risk posed by mobile money services can be managed, whether perceived or proven. As a result, advocates of mobile money services argue that mobile money services are low-risk products, from the viewpoint of financial integrity. Accordingly, Alexandre and Eisenhardt observed that mobile money services -

¹⁰⁹⁰ Simone di Castri op cit note 125 at 19.

¹⁰⁹¹ Kersop M & Du Toit F S op cit note 35 at 1645.

¹⁰⁹² World Bank report xiv, see also Kersop M & Du Toit F S op cit note 35 at 1645.

¹⁰⁹³ Maria C. Stephens 'Promoting responsible financial Inclusion: A risk-based approach to supporting mobile financial services expansion' (2009) *Banking & Finance Law Review* at 337.

Rather than being the apple of discord between financial inclusion and financial integrity, mobile money actually serves both objectives by (1) helping to reduce dependency on cash, which is the common enemy of both financial inclusion and financial integrity, (2) generating data which is instrumental to the health and growth of both financial inclusion and financial integrity, and (3) accelerating the development of accounts, which are the backbone of financial inclusion and financial integrity.¹⁰⁹⁴

For these benefits to be realised, an effective and appropriate policy and regulation is required to advance financial inclusion, integrity, and stability.¹⁰⁹⁵ As mobile money grows, regulatory frameworks must encourage inclusivity, while simultaneously minimizing fraud and risk.¹⁰⁹⁶ Monitoring by financial regulators, including protection against fraud and failure, is essential.

5.3.1 Mobile financial integrity in South Africa

South Africa has no regulation or statute specifically promulgated for mobile money services. However, mobile money services are not exempt from financial regulations. This is due to the need to avoid financial risk and maintain financial integrity. In financial services, systemic risk has a crucial role to play since risks in one financial institution can quickly spread through the financial system.¹⁰⁹⁷ Notwithstanding, mobile payments have little risk since, unlike banks, mobile money operators keep the funds sent by customers in trust accounts and do not lend them out. Firms engaged in banking and quasi-banking services are exposed to more systemic risk than others. The absence of specific legislation and regulations for non-banks that provide e-money in South Africa means that all payment providers are treated as banks and subject to full compliance requirements that apply to banks and other financial institutions.¹⁰⁹⁸

(i) Anonymity risk in South Africa

South Africa has one of the robust KYC and CDD requirements in Africa. Regarding mobile money services, it can be argued that users undergo a two-phase KYC assessment. The first stage is initiated through RIC Act during registration of a SIM card and the second one through FIC Act. This means that mobile transactions are less anonymous because they can be

¹⁰⁹⁴ Ibid.

¹⁰⁹⁵ Lorna Katusiime ‘Mobile Money Use: The Impact of Macroeconomic Policy and Regulation’ (2021)9 *Economies* at 3.

¹⁰⁹⁶ See Donavan K op cit note 32 at 65.

¹⁰⁹⁷ Olivier de Bandt & Philipp Hartmann Systemic risk: A survey (2020) *European Central Bank Working Paper No 35* available at <https://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp035.pdf> accessed on 27 November 2021.

¹⁰⁹⁸ See Robb G et al op cit note 161.

connected to a unique mobile number registered in someone's name, and they are recorded and traceable. However, in South Africa RIC Act process has been criticized because it can be circumvented quite easily. Perlman point out that

SIM card resellers exploited an effective loophole in the RICA process which allowed up to 100 SIM cards to be registered to one person, the rationale for this being that users may have multiple mobile devices requiring a SIM card. These resellers sell the SIM cards registered under their names and under the names of other accomplices at a premium to those who did not wish to be identified via RICA, an apparent contravention of s40(5) of the RICA.¹⁰⁹⁹

While such a loophole present AML/CFT risk that are associated with mobile money services. This challenge is nonetheless mitigated by the FIC Act regulations.

(ii) Elusiveness risk in South Africa.

Loosening rules for mobile money operators to improve financial inclusion has not been given priority on the regulatory agenda.¹¹⁰⁰ To protect the financial system from risk, financial institutions are generally regulated and supervised by more than one regulator. Regulators fall under different ministries. This means that if one ministry fails to detect risk, other ministries and regulators will act as a safety net. This partly explains why the South African financial system is regarded as strong and robust. However, this multi-regulatory approach is detrimental to innovation and financial inclusion. This thesis concludes that overlapping regulations make it difficult for mobile network operators to provide mobile money services, affecting their contribution to the fight against financial exclusion. Broadly speaking, South Africa's regulations protect the country's financial system from risk at the cost of financial inclusion.

5.4.1 Financial inclusion in Zimbabwe

¹⁰⁹⁹ See Leon Joseph Perlman op cit note 41 at 547.

¹¹⁰⁰ Norman Mugarura 'The use of 'mobile phones' in changing the banking regulatory landscape in Africa' <https://www-euppublishing-com.ezproxy.uct.ac.za/doi/pdfplus/10.3366/ajicl.2019.0274> accessed on 25 November 2021.

In Zimbabwe, the advent of mobile money dismantled several barriers that kept the poor, unbanked and low-income earners outside the mainstream financial system.¹¹⁰¹ More than two decades of economic meltdown and catastrophic bank failure led Zimbabwe to experience high levels of financial exclusion. Between 1998 and 2009, Zimbabwe experienced the second-worst hyperinflation which resulted in a massive devaluation of the Zimbabwean dollar and loss of trust in financial institutions.¹¹⁰² Due to the lost trust, many Zimbabweans avoided banks and financial institutions. In 2016, the RBZ reported that out of 14 million Zimbabweans, 2 million had formal bank accounts, pointing to high financial exclusion.¹¹⁰³ Zimbabwe then introduced a National Financial Inclusion Strategy, 2016-2020, to combat financial exclusion.¹¹⁰⁴ One of the key objectives of this policy was to identify barriers to financial inclusion and to suggest ways to increase access to financial services for everyone, including the poor, unbanked and low-income earners.¹¹⁰⁵ In line with this policy, regulators supported mobile money services.

The introduction of mobile money services made it possible for the poor and unbanked and low-income earners to participate in Zimbabwe's mainstream financial sector. They began to benefit from real-time money transactions and the convenience to send and receive money instantly at a very low cost.¹¹⁰⁶ Unlike in South Africa, millions of poor and low-income earners in Zimbabwe adopted mobile money and can access their savings, insurance, credit and other financial tools.¹¹⁰⁷ A variety of factors contributed to Zimbabwe's success on the roll-out of mobile money services. In this section, only the regulatory approach to mobile money services is explored.

Despite its rigid statutory approach to financial regulation, Zimbabwe used a test-and-learn approach that permitted mobile network operators to offer mobile money services. The RBZ granted regulatory exemptions to mobile money operators and issued directives and policies that permitted mobile network operators to enter the financial services industry, which it had

¹¹⁰¹ See Chitimira H and Torerai E op cit note 786 at 1.

¹¹⁰² Tatenda Tenday 'The inadvertent rise of digital transactions in Zimbabwe' available at <https://www.dlapiper.com/en/uk/insights/publications/2019/04/africa-connected-issue-2/the-inadvertent-rise-of-digital-transactions-in-zimbabwe/>. accessed on 20 December 2021.

¹¹⁰³ See National Financial Inclusion Strategy (2016-2020) 2016 op cite note <https://www.rbz.co.zw/documents/BLSS/FinancialInclusion/National-Financial-Inclusion-Strategy.pdf>.

¹¹⁰⁴ Ibid.

¹¹⁰⁵ Ibid.

¹¹⁰⁶ Kendall and Voorhies 'The Mobile-Finance Revolution; How Cell Phones Can Spur Development' available at <https://www.foreignaffairs.com/articles/africa/2014-02-12/mobile-finance-revolution>, accessed on 02 December 2021 see also See Chinakidzwa M et al op cit note 7 at 129.

¹¹⁰⁷ See Chitimira H & Torerai E op cit note 786.

previously reserved for banks.¹¹⁰⁸ This made it possible for mobile network operators to offer mobile money services without having to partner with banks, as is the case in South Africa. The RBZ also permitted mobile network operators to partner with other financial firms. Mobile network operators that had trouble establishing partnerships with banks used ZimSwitch, Zimbabwe's national payments system. Opening of the financial space to mobile network operators played a crucial role in combating financial exclusion. It enhanced financial inclusion by extending financial coverage to previously unreachable remotest parts of the country and people who were previously excluded from the financial sector.¹¹⁰⁹ All mobile money providers had agents in locations where traditional banks could not operate.

Dube and Chaumm estimate that in 2018, there were about 23,000 mobile money agents in Zimbabwe.¹¹¹⁰ As a result of the widespread availability of mobile money agents and services, financial inclusion significantly increased. Dube and Chaumm concluded that before mobile money services began to be widely used, rural people used informal channels to send money, such as bus drivers.¹¹¹¹ Traditional informal methods such as storing cash under the mattress or using a relative were very popular with rural households. However, there was a drastic change from traditional methods of remitting funds and saving/storing funds when mobile money services were introduced. Access to financial services increased from 32% in 2016 to 55% in 2020 due to mobile money services. It is estimated that 40% of Zimbabweans who use mobile money do so exclusively without access to banking services.¹¹¹²

Along with the above, the presence of mobile money agents in remote and rural areas and the relaxing of KYC and CDD requirements for mobile money services contributed to the fight against financial exclusion in Zimbabwe. It extensively enhanced financial inclusion, rapidly extending financial coverage to many people who had been excluded. Zimbabwe's financial inclusion was also boosted by regulations allowing mobile money interoperability.¹¹¹³ Kumar and Tarazi assert that interoperability enhances financial inclusion because it allows customers

¹¹⁰⁸ See Bara A op cit note 39 at 349. See also Chitimira H & Torerai E op cit note 786 at 7. See also Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations, 2020 [Chapter 24:20].

¹¹⁰⁹ See Barugahara F op cit note 854.

¹¹¹⁰ Dube, Thulani and Chummun, Bibi Zaheenah 'Mobile Money access and usage among the rural communities in Zimbabwe' (2019) available at https://mpira.ub.uni-muenchen.de/97578/1/MPRA_paper_97578.pdf accessed on 02 December 2021.

¹¹¹¹ Ibid.

¹¹¹² See Masiyandima N et al op cit note 337 at 9.

¹¹¹³ Cinderella Dube & Victor Gumbo 'A Model for Financial Inclusion: The case of the Retail Industry in Zimbabwe' (2017) 3 *Business and Management Studies* at 3.

to access their accounts via the infrastructures of multiple service providers.¹¹¹⁴ Before mandatory interoperability, the mobile money industry in Zimbabwe operated in silos for a very long time in a country that has high financial exclusion levels. As discussed in this thesis, through Statutory Instrument 80 of 2020 RBZ made it mandatory for financial providers to integrate into a single payment system. Following that, Zimbabwe saw an increase in mobile money subscriptions. Reports from POTRAZ indicate that mobile money subscriptions have increased by 3% since the Statutory Instrument was issued which implies an increase in financial inclusion.¹¹¹⁵

5.4.2 Mobile financial integrity in Zimbabwe

In Zimbabwe, just as in South Africa, financial regulations are designed to protect the whole financial sector from systemic risks. Part of the purpose of the NPS Act, the Banking Act, the Reserve Bank of Zimbabwe Act, and all AML and CFT regulations is to maintain financial integrity. Section 6(1)(c) of the NPS Act gives the RBZ power to withdraw recognition of a payment system if the RBZ has reasonable grounds to believe that the system is designed or implemented in a way that does not adequately protect the financial system against systemic risk.¹¹¹⁶ The AML and CFT regulations, such as the Money Laundering and Proceeds of Crime Act, are intended to protect the financial system against the risk of criminal abuse. Unnecessarily relaxing these regulations and failing to follow them properly exposes the whole financial system to a high risk of systematic failure. Therefore, each player in the financial sector should adhere to the regulations to protect the system from such risk.

Despite risks, Zimbabwe relaxed some of the financial regulations to make room for mobile money services as a strategy to combat financial exclusion. It exempted mobile network operators who provide mobile money services from some of the requirements of financial regulations.¹¹¹⁷ However, this opened a window for abuse of the system. A forensic audit conducted by the RBZ found that mobile money providers were not adhering to KYC requirements. They were creating mobile money accounts using fictitious and unverified

¹¹¹⁴ Kabir Kumar, Michael Tarazi Interoperability in Branchless Banking and Mobile Money (2012) CGAP available at <https://www.cgap.org/blog/interoperability-branchless-banking-and-mobile-money> accessed on 19 March 2022.

¹¹¹⁵ See POTRAZ report op cit note 800.

¹¹¹⁶ National Payment Systems Act 21 of 2001 sec 6(1)(c).

¹¹¹⁷ Supra note 1101 Banking Regulations, 2020. See also Alex Bara op cit note 39.

identification particulars.¹¹¹⁸ The report further highlighted that mobile money providers were creating money on the platforms using overdrafts and fraudulent and fictitious credits, which was not backed by balances in the mobile money trust accounts. The employees of mobile money operators connived with customers to delay and illegally bypass account freeze orders.¹¹¹⁹ Mobile money services have been blamed by the Central Bank for fuelling foreign exchange fraud, and money laundering through the use of cash-in and cash-out services.¹¹²⁰ Due to these factors, Zimbabwe experienced inflation, cash shortages and financial instability.

The RBZ tightened some mobile money regulations to curb risks caused by mobile money services. In 2020, it introduced a daily mobile money transfer limit of ZW\$5,000 (US\$50).¹¹²¹ To prevent illegal foreign currency dealers from using multiple individual accounts to circumvent transaction limits and continue illicit transactions, the RBZ directed all mobile money providers to close all multiple accounts and allow only one mobile money account per person.¹¹²² In addition, the government banned all mobile money agents.¹¹²³ More than 50,000 mobile money agents were closed in 2020.¹¹²⁴ These measures were taken to protect the financial system from threats posed by mobile money services. However, the banning of mobile money agents reversed the gains of mobile money services. Critics argue that the decision adversely affects customers in rural Zimbabwe who depend on agents to access mobile money services. Agents gave rural consumers the opportunity to be part of the financial system. To reap the benefits of mobile money services, Zimbabwe must balance the perils of relaxing financial regulations with risk. The recent regulations are likely going to stifle innovation among mobile money operators and make access to financial services more difficult for many Zimbabweans.

¹¹¹⁸ Reserve Bank of Zimbabwe 2021 Mid-term monetary policy statement Available at <https://www.rbz.co.zw/documents/mps/2020/MPS--MID-TERM.pdf>, accessed on 05 December 2021

¹¹¹⁹ Ibid.

¹¹²⁰ Marcia Kwaramba 'Zimbabwe's restrictions on mobile money transfers are a blow to financial inclusion' available at <https://theconversation.com/zimbabwes-restrictions-on-mobile-money-transfers-are-a-blow-to-financial-inclusion-147109> accessed on 18 December 2021.

¹¹²¹ Ibid.

¹¹²² See Reserve bank of Zimbabwe statement op cit note 1118.

¹¹²³ Ibid.

¹¹²⁴ Farai Mudzingwa Agent lines banned by RBZ as "they no longer serve any legitimate purpose" (2020) available at <https://www.techzim.co.zw/2020/08/agent-lines-banned-by-rbz-as-they-no-longer-serve-any-legitimate-purpose/> accessed on 15 December 2021.

5.5.1 IMPACT OF MOBILE MONEY REGULATIONS ON M-INSURANCE PROVISION AND FINANCIAL INCLUSION

The provision and accessibility of insurance services is also part of financial inclusion. A growing number of African mobile operators are entering the insurance sector and using their enormous subscriber bases to offer insurance products.¹¹²⁵ M-insurance rapidly achieves scale in comparison with traditional insurance models and channels. Mobile network providers have introduced millions of people to insurance and given them access to a wide range of insurance products. The GSMA's Mobile Insurance Survey found that in June 2017, at least 61 million policies had been issued by mobile-enabled microinsurance providers across 27 countries.¹¹²⁶ Therefore, mobile network operator-based insurance, which leverages the brands of mobile network operators and facilitates a positive experience for customers, could enable financial inclusion and change the perception of insurance in the market.¹¹²⁷

The discussion in chapter four revealed that South Africa does not have regulations specifically designed for m-insurance. M-insurance is regulated by general insurance statutes, such as the Insurance Act and the Prudential Authority (PA).¹¹²⁸ The Insurance Act makes it easy for mobile network operators to provide insurance services as a controlling company, a holding company, or another juristic person that controls an insurance group.¹¹²⁹ This enables MTN and Vodacom to provide insurance services. Vodacom offers insurance as a controlling company and provides life, funeral, and health insurance. MTN acts as an agent for Sanlam. While the entry of these two mobile network operators made it easy to access insurance services in South Africa, it has failed to capture the interest of the poor and other vulnerable low-income earners. This is attributed to the fact that these insurance services are not freemium, or loyalty based. Freemium insurance and loyalty-based insurance are transformational because they are free and relatively cheaper as compared to paid insurance. The introduction of m-insurance did

¹¹²⁵ Fortune Moyo 'In Zimbabwe, Funeral, Car and Health Insurance Comes Via Mobile Phone (Newspaper). available at <https://globalpressjournal.com/africa/zimbabwe/zimbabwe-funeral-car-health-insurance-comes-via-mobile-phone/> accessed on 15 December 2021.

¹¹²⁶ GSMA report 'Spotlight on mobile-enabled insurance services' (2017) available at <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2018/09/2017-SOTIR-Spotlight-on-mobile-enabled-insurance-services.pdf> accessed on 12 December 2021.

¹¹²⁷ Leach J and Ncube S op cit note 755.

¹¹²⁸ The Prudential Authority is a juristic person operating within the administration of the Reserve Bank. Its function is to regulate and supervise banks in accordance with the financial sector laws. It oversees financial institutions that provide financial products, securities services and market infrastructures. It co-operates with and assists the Reserve Bank, the Financial Stability Oversight Committee, the Financial Sector Conduct Authority, the National Credit Regulator and the Financial Intelligence Centre.

¹¹²⁹ Supra Insurance Act [Chapter 24:07] sec 22.

not make insurance more affordable to the poor. About 17 of 100 South Africans have medical insurance.¹¹³⁰ The Association for Savings and Investments South Africa stated that in 2021, 10.5 million South Africans had funeral insurance.¹¹³¹ High-income and middle-income households account for most policyholders. As such, one may argue that m-insurance has made little difference in South Africa's struggle against the financial exclusion of the poor and vulnerable. Compared to South Africa, the provision of m-insurance in Zimbabwe is transformative. The 2014 Finscope Consumer Survey reported that approximately 70% of Zimbabweans were uninsured prior to m-insurance being introduced and of those who were covered, medical aid and funeral coverage were the most prevalent types of insurance.¹¹³² Regulatory authorities in Zimbabwe, as discussed in chapter four, allow mobile network operators to offer insurance products either as the insurer or as an agent. Additionally, the adoption of a risk-based approach to capital requirements that requires local insurers to have capital aligned to the risks that they cover eliminated fixed capital requirements that were a barrier to entry for microinsurance providers. Consequently, all mobile network providers in Zimbabwe provide insurance services and are relatively cheaper than their counterparts in South Africa. Econet's EcoSure, for instance, offers funeral plans for as little as US\$ 0.50 per month for each insured person.¹¹³³ The provision of insurance services by mobile network providers expanded insurance services and increased accessed.

5.6 CONCLUSION

A closer look at the above shows there is a correlation between access to financial services and the way financial regulations are implemented within a country. Maintaining financial integrity and preventing risk requires a rigid and inflexible regulatory approach. The drawback of this approach is that it limits financial innovation, which is pivotal to the fight against financial exclusion. To ensure financial integrity, the South African regulatory authorities did not relax their financial regulations to allow mobile money services. Institutions offering mobile money services are required to abide by current financial regulations. Therefore, it has been difficult for mobile network operators to provide the banking services in question, affecting their ability

¹¹³⁰ Stats SA 'Public healthcare. How much per person?' Available at <http://www.statssa.gov.za/?p=10548> accessed on 13 December 2021.

¹¹³¹ FA news - funeral insurance Available at https://www.fanews.co.za/magazines/pdf/pdf_246_fanewsfuneral2021.pdf accessed on 13 December 2021.

¹¹³² See Moyo F op cit note 1125. See also 'In Zimbabwe, Funeral, Car and Health Insurance Comes Via Mobile Phone' (newspaper) available at <https://globalpressjournal.com/africa/zimbabwe/zimbabwe-funeral-car-health-insurance-comes-via-mobile-phone/> accessed on 13 December 2021.

¹¹³³ Ibid.

to combat financial exclusion. In contrast, a flexible approach to financial regulation can increase access to financial services while also putting them at risk. A case in point is Zimbabwe's regulation of mobile money. In order to make way for mobile money services, the country's regulators relaxed some of its financial regulations. As a result, more people had access to formal financial services. MMOs are now the single largest provider category of formal financial services to Zimbabweans by number of users.¹¹³⁴

¹¹³⁴ Hennie Bester, Christine Hougaard, Wadzanai Machena, Catherine Denoon-Stevens, Waqas Rana, Comfort Phelane, & Jaco Weideman Zimbabwe financial inclusion country report. available at https://cenfri.org/wp-content/uploads/2016/01/MAP-Zimbabwe_Diagnostic-report_Cenfri-finMark-trust-UNCDF_October-2016.pdf accessed on 10 January 2022.

CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

6.1 INTRODUCTION

This chapter summarises the arguments raised in the previous chapters and proffers recommendations on how South Africa and Zimbabwe could improve their financial regulations to create a conducive environment for mobile money services and to enhance financial inclusion.

6.2 CONCLUSIONS

The fast pace of economic digitalization in the financial sector is changing the way people access and use financial services, with new digital financial products and platforms emerging rapidly. Mobile money is an early front-runner of such fintech innovations. Mobile money is a form of mobile payment service typically offered by an mobile network operator or another entity in partnership with an mobile network operator using mobile money accounts.¹¹³⁵ The new technology is bound to disrupt incumbent financial service providers and have the potential to foster broad transformation while expanding their accessibility and efficiency.¹¹³⁶ It includes various initiatives such as long-distance remittance, micro-payments, and informal air-time recharge schemes that aim to bring financial services to the unbanked using mobile technology. Through nonbanking tools, it expands financial services to subscribers who cannot be reached by banks.¹¹³⁷ The service is used to receive payments for goods and services sold. It is a cheap method of transacting as the charges for sending and receiving money are low and affordable. They are so minimal that other money remittance services are in danger of disappearing. The mobile money platform is built on the same telecommunication system as the mobile network operators, and the interface is similar to the one mobile phone users are

¹¹³⁵ Esha Chhabra 'Is Mobile Money Part of Money? Understanding the Trends and Measurement' (2021) *IMF Working Paper*

¹¹³⁶ See Alexandre C and Eisenhart L C op cit note at 288

¹¹³⁷ See Ramadhan B. Malinga & Gilbert Maiga 'A model for mobile money services adoption by traders in Uganda' (2018) *Electronic Journal of Information Systems in Developing Countries* at 2.

familiar with. Utility service providers have collaborated with mobile money providers to encourage customers to pay their bills via mobile money. Electricity and water utilities are among the utility companies that are part of the mobile money ecosystem.

In response to the significant role mobile money services can play in fostering financial inclusion and economic growth, more regulators are providing enabling regulatory frameworks for the service. This thesis demonstrates that a country's regulatory structure significantly affects the success of its policy initiatives and socio-economic development. It highlights those regulations developed with good intentions may have unintended negative consequences. This paradox is illustrated by the effects of the adoption of some financial regulations in most countries. It is common cause that financial regulations are designed to avoid financial risk and maintain financial integrity. They are aimed at preventing the emergence of entities who have doubtful reputations and who do not possess the necessary financial capacity.¹¹³⁸ They are also meant to protect customers against exploitation by unscrupulous financial institutions, thus contributing to the maintenance of overall financial health and robustness.¹¹³⁹ However, in some cases, regulations stifle financial innovation. This has negative effects on socio-economic development. Thus, there is a need to strike the right balance between allowing the development of financial innovations that are beneficial to the system and preventing innovations that could adversely affect financial stability. Regulatory approaches to mobile money services in Zimbabwe and South Africa illustrate how failure to strike the right balance can be detrimental to financial innovation and financial inclusion.

This thesis sought to examine the influence of financial regulations on the development of mobile money services and financial inclusion in South Africa and Zimbabwe. It shows that most successful mobile money deployments operate in countries where regulators allow mobile network operators to provide mobile money services (Kenya, Zimbabwe, Tanzania Ghana). Mobile money has had a difficult time reaching the critical growth point in countries where banks established the services and mobile network operators were prohibited from becoming the leading provider. The fortunes of mobile money services in South Africa differ from those in Zimbabwe. Zimbabwe successfully integrated mobile network operator-led mobile money within its financial system, while South Africa's mobile network operators struggled.

¹¹³⁸ Ibid.

¹¹³⁹ Mads Andenas and Iris H-Y Chiu *The Foundations and Future of Financial Regulation Governance for Responsibility* (2014) at 4.

Presently, Zimbabwe estimates to have 7.5 million active mobile money subscribers.¹¹⁴⁰ By contrast, South African mobile operators recently relaunched their mobile money services following initial failures. This directly impacted the two countries' efforts to reduce the levels of financial exclusion. The disparity can be explained in part by the different regulatory approaches taken by the two countries when it comes to financial innovations. The analysis in this thesis revealed that Zimbabwe adopted a test-and-learn approach before drafting its own mobile money services regulation, while South Africa adopted a no-specific regulation approach, restricting providers of mobile money services to operating within the existing financial regulatory environment. The success and failure of mobile money services in both countries were largely due to these approaches.

In South Africa, mobile network operators that intend to provide mobile money services must comply with financial regulations, the Banks Act, the NPS Act, SARB Act and the AML/CFT regulations. The Banks Act requires anyone who intends to conduct a business of banking to have a banking licence.¹¹⁴¹ Besides registering under the telecommunication regulations, mobile network operators must register under the Banks Act to provide mobile money services. Additionally, the NPS Act limits access to the National Payment System to banks, the SARB, mutual banks, co-operative banks and foreign banks branches.¹¹⁴² As a result, mobile network operators are not allowed to access the South African National Payment System directly, which makes it difficult, if not impossible, for mobile network operators to provide banking services. This creates a system of overlapping regulations that make it difficult for mobile network operators to provide banking services. Mobile network operators must partner with banks and other institutions that have access to the National Payment System to provide mobile money services. Due to this, Vodacom formed a partnership with Nedbank to offer M-Pesa,¹¹⁴³ while MTN teamed with Standard Bank to offer MTN mobile money.¹¹⁴⁴ However, these partnerships failed partly because of management issues and the costs associated with the partnership arrangements. The two mobile network operators discontinued their mobile money

¹¹⁴⁰ See POTRAZ Report op cit note 800.

¹¹⁴¹ Supra Banks Act 94 of 1990, sec 11.

¹¹⁴² Supra National Payment Systems Act sec 78 3(3)

¹¹⁴³ Vodacom relaunches M-Pesa in SA available at <https://businesstech.co.za/news/mobile/64556/vodacom-relaunches-m-pesa-in-sa/>. accessed 21 August 2021.

¹¹⁴⁴ *The Standard Bank of SA v 3MFuture Africa* (47/2013) [2013] ZASCA 157.

services in 2016.¹¹⁴⁵ Nevertheless, they recently relaunched their services.¹¹⁴⁶ It is still too early to tell whether they will succeed this time around. Financial regulations implemented in South Africa have undoubtedly protected the country against financial risks as well as helped maintain financial integrity, as seen from South Africa's resilience during the 2008 global financial crisis. However, these regulations limit mobile network operators from participating in the financial sector meaningfully. This negatively impacts the country's efforts to reduce the level of financial exclusion for the poor and vulnerable.

Conversely, mobile money services are flourishing in Zimbabwe, despite the country's tough economic environment. Zimbabwe's financial regulations, like their South African counterparts, aim to protect its financial system against risks. As such, the country's financial regulations restrict mobile network operators from participating in the financial sector. Zimbabwe's Banking Act and NPS Act prohibit mobile network operators from providing banking services. However, regulators allow them to provide mobile money services through a series of regulatory exemptions. Circulars and directives issued by the RBZ allow mobile network operators to offer mobile money services in conjunction with banks and other financial institutions such as ZimSwitch. These directives help mobile network operators who face challenges in establishing partnerships with registered banks. Econet, which is the biggest mobile money service provider in Zimbabwe, established its own bank, which it used as a vehicle to drive its mobile money service - Ecocash. According to the Reserve Bank of Zimbabwe, there are about 15.3 million mobile money users with 5.3 million active accounts, as of April 2020.

Zimbabwe's regulators closely monitored the evolution of the mobile money market before developing more detailed regulations. In 2020, Zimbabwe introduced a Statutory Instrument that recognises mobile money service providers as financial institutions.¹¹⁴⁷ In terms of the statutory instrument, mobile network operators offering mobile money services are considered as financial institutions by the Banking Act.¹¹⁴⁸ The regulation makes it possible for money to

¹¹⁴⁵ Vodacom pulls plug on mobile money service M-Pesa in South Africa available at <https://www.reuters.com/article/vodacom-group-mpesa-idUSL5N1862FF> accessed on 21 August 2021.

¹¹⁴⁶ Toby Shapshak MTN "Stubbornly Optimistic" Relaunched Mobile Money Will Work In South Africa (newspaper) available at <https://www.forbes.com/sites/tobyshapshak/2020/01/31/mtn-stubbornly-optimistic-relaunched-mobile-money-will-work-in-south-africa/?sh=51c53117492a> accessed on 21 August 2021, see also Tage Kene-Okafor After its failed stint with M-Pesa, Vodacom is planning to launch another fintech service in SA available at <https://techpoint.africa/2020/07/23/vodacom-super-app-plans-alipay/> accessed on 21 August 2021.

¹¹⁴⁷ Supra note 1101 Banking Regulations, 2020.

¹¹⁴⁸ Ibid.

move seamlessly between mobile money accounts operated by different service providers, as well as between mobile money platforms and bank accounts.¹¹⁴⁹ Through these measures, the country witnessed massive uptake of mobile money services and a significant increase in the level of financial inclusion among the poor and vulnerable. Before the advent of mobile money, poor, unbanked, and low-income Zimbabweans paid their bills in cash and sent cash to family members in distant places via bus drivers or friends.¹¹⁵⁰ The poor, unbanked and low-income earners can now send money, even small amounts, in a safer, faster and cheaper way than they had been able to previously.¹¹⁵¹ With mobile wallet services, Zimbabwe's unbanked and poor can now access the mainstream financial sector since they can keep their money in their mobile wallets and make real-time transactions. It is mainly the use of delegated powers by the Minister of Finance that has contributed to the difference in mobile money adoption between the two countries. In Zimbabwe, regulators used the powers delegated to the Minister of finance under the banking act to permit mobile network operators to provide banking services through various statutory instruments. Despite having such delegated powers, the Minister of finance in South Africa is reluctant to use such powers. He has never used them to allow non-banking institutions to offer banking services except in the case of the Teba Trust Fund.

This thesis also reveals that a country's AML/CFT regulatory approach plays a significant role in the success of mobile money services. It shows how different approaches to AML/CFT regulations, the rule-based approach, and the risk-based approach negatively or positively affect the adoption of mobile money services. The former is rigid and formalistic and has restricted the access of the poor and vulnerable to mobile money services, while the latter is flexible and allows institutions to take mitigation measures according to applicable levels of risk. Risk-based regulation makes mobile money services more accessible for a variety of reasons, including the tendency for mobile money services to be viewed as less risky and thus requiring less strict KYC and CDD procedures.

This thesis further reveals that it is difficult for the poor, vulnerable, and undocumented to open bank accounts due to strict compliance with these regulations. Considering that mobile money services are geared towards the poor and vulnerable, compliance with these regulations poses a challenge. Most of the poor do not meet KYC and CDD requirements. The slow uptake of mobile money services in South Africa is partly attributed to this. However, there is a shift

¹¹⁴⁹ See Chitimira H & Torerai E op cit note 786.

¹¹⁵⁰ See Chinakidzwa M at el op cite note 7 at 129.

¹¹⁵¹ See Chitimira H & Torerai E op cit note 786.

towards a risk-based approach, as mobile money services are now exempted from some KYC and CDD requirements. Zimbabwe, on the other hand, adopted the risk-based approach to mobile money services. The RBZ relaxed KYC and CDD requirements for opening mobile money accounts. To open a mobile money account, customers only need to present a copy of a government-issued national identification document. Mobile money has been a success in Zimbabwe in part because of this. Through exemptions and relaxation of KYC and CDD regulations, Zimbabwe witnessed a dramatic increase in the number of mobile money accounts, ultimately reducing the country's high level of financial exclusion.

Mobile money has a far-reaching impact. For the financially excluded, mobile money enables formal entry into a financial system while making it easier to pay for goods and services. By enabling unbanked or informal businesses to establish a digital footprint, mobile money transaction records can be used to access other financial services, such as savings, credit, and insurance. Mobile money services have rapidly expanded across emerging and developing economies and enabled new ways through which households and firms can conduct payments, save and send remittances. They are becoming an important tool against financial exclusion. The introduction of this type of financial innovation transformed the lives of many poor people who had no access to formal financial services. It enables more efficient payments for goods and services, reduces the informal economy, creates employment and protects vulnerable segments of society from financial shocks. The incorporation of this form of banking into the financial system is inevitable. In regulating the South African financial system, a paradigm shift is required so that this service is recognised and promoted as the case in Zimbabwe. This will increase financial access to everyone and help to combat financial exclusion.

Furthermore, mobile money can deliver on its promises for both financial inclusion and financial integrity only as long as it is not stifled by overregulation. Achieving both objectives of maintaining financial integrity and promoting financial inclusion requires an appropriate regulatory balance. In addition to promulgating a mobile money specific regulation, offering flexible AML/CFT regulations, adapting to risk-based approaches to AML, and shifting the focus from the regulation of institutions to the regulation of activity, service, or product is instrumental in the success of mobile money services

6.3 RECOMMENDATIONS

For mobile technology to facilitate access to finance for the poor, policymakers, faced with the emergence of new and non-traditional service providers and changing market structures, are challenged to create an enabling environment for the sustainable growth of mobile financial services.¹¹⁵² This involves designing a balanced regulatory framework that facilitates innovation while minimizing any risks to its advancement.¹¹⁵³ The world is undergoing a technological revolution spearheaded by the Fourth Industrial Revolution. The financial sector must keep up with the technological revolution so that its systems do not become obsolete. The mobile money services concept discussed in this thesis is one of the manifestations of the technological revolution. The thesis reveals that a technological revolution is occurring inside of a static regulatory environment. Regulations have been unable to keep up with technological innovations. They have, to some extent, become an impediment to financial innovation. This thesis illustrates how financial regulations in South Africa and Zimbabwe affect the adoption of mobile money services. There is a strong need to do away with rigid regulations. However, regulators should not adopt an entirely hands-off approach. They should give the new financial instruments and activities the attention and scrutiny they deserve. Thus, the following measures are recommended to reduce the negative effects of regulations on mobile money services.

6.3.1 General recommendations

This thesis has shown that mobile money is a powerful tool in the fight for financial inclusion with inherent financial integrity risks if not suitably regulated. Thus, it is imperative to establish an appropriate regulatory balance between preserving financial integrity and promoting financial inclusion through mobile money in a way that does not compromise financial integrity.

The challenge in financial technology is to have a regulatory system flexible enough to enable innovations with high potential of economic welfare improvement of populations, whilst still protecting the end-users from potential pitfalls of these innovations. It is thus important to establish a regulatory framework that encourages the development of financial products that contribute to the system while restricting innovations that could lead to instability.¹¹⁵⁴ However,

¹¹⁵² See Chatain, P et al op cit note 44 at vii.

¹¹⁵³ Ibid.

¹¹⁵⁴ Baicu C G 'The impact of financial innovation on banking regulation. Evidence from the global financial crisis' (2011) *Annals of Spiru Haret University, Economic Series* at 38.

the process of distinguishing beneficial from harmful innovations at an early stage is not an easy one for policymakers. This imbalance can be addressed by creating a regulatory institution that registers and evaluates any new financial products. The institution would evaluate innovations on a case-by-case basis using a standardised framework based on the financial landscape in which the innovations will be implemented.¹¹⁵⁵ In other words, all new financial products should be approved before they are marketed and should undergo continuous evaluation and monitoring in addition to enforcement mechanisms. The food and drug administration, operating in every country, has employed this practice for years.¹¹⁵⁶ In many cases, biological innovations cannot be introduced to the market until certain clinical trials are completed. Consequently, regulations which require financial innovations to pass a test before commercialisation may be useful in resolving the conflict between regulations and innovation.

There is a need to incorporate a precautionary financial principle¹¹⁵⁷ into the financial regulatory framework. Under the precautionary financial principle, financial innovators would be required to receive permission before launching their products into the market.¹¹⁵⁸ The principle allows financial innovation while mitigating its negative effects. For new financial products to be sold, issuers should demonstrate their safety to buyers and the entire financial system.¹¹⁵⁹ An important part of the precautionary financial principle is setting a risk tolerance level and taking action to ensure that the risk tolerance is not exceeded. This is achieved by placing the burden of proof on persons who want to sell the products. Some researchers advocate for ring-fenced experimental zones. These are specialised and supervening niches in which experimentation is allowed without compromising the stability and integrity of the financial system.¹¹⁶⁰ These zones may be created by exempting certain types of innovations or entities from standard regulations under certain conditions.

¹¹⁵⁵ Stephen A. Lumpkin 'Regulatory issues related to financial innovation' (2009) 2 *OECD Journal: financial market trends* at 4.

¹¹⁵⁶ See also Claudia Gabriela Baicu op cite note 1154 at 32.

¹¹⁵⁷ The principal provides that financial products should be approved before they are marketed and should also be subject to ongoing evaluation and monitoring in conjunction with enforcement mechanisms throughout the lifecycle of these products.

¹¹⁵⁸ James Crotty & Gerald Epstein 'A Financial Pre-Cautionary Principle: New Rules for Financial Product Safety' available at http://policydialogue.org/files/events/Crotty_Epstein_precautionaryprinciples.pdf. accessed on 7 October 2021.

¹¹⁵⁹ Ibid.

¹¹⁶⁰ David Porteous 'The Regulator's Dilemma' available at http://www.finmark.org.za/wp-content/uploads/2016/01/Rep_RegulatorsDilemma_2006.pdf accessed on 7 October 2021.

6.3.2 South Africa

(i) Exempting mobile money providers from Section 11 of the Banks Act

This thesis has shown that the Banks Act is one of the legislations in South Africa limiting the development of mobile money service. Under the Act, there is still no option to issue electronic money without being a bank, buying a bank, or applying for a banking license. Under Section 11 of the Banks Act, anyone who wishes to conduct the business of a bank must be registered under the Act.¹¹⁶¹ However, there is an exception to this requirement in section 92 of the Act.¹¹⁶² It allows the Registrar to designate, with the approval of the Minister, any activity of a public sector, government or other institution, or person or category of persons, to be exempted from registration as banks and to accept deposits, provided such activity is performed following any conditions as may be determined. Some institutions are exempt from registering as banks and are allowed to provide banking services. Examples include the Teba Savings Fund and some mining houses. Mobile money providers should benefit from the same exemption. It will also eliminate the need for mobile network operators to partner with registered banks in the provision of mobile money services, whose success in Zimbabwe is largely attributable to regulatory exemptions.

(ii) Mobile money providers should have access to the National Payment System

The NPS Act has also been identified as one of the legislations preventing the growth of mobile money services. The South African NPS Act is structured in a way that limits access to mobile money providers. It does not permit mobile money providers to clear or settle payments by themselves. To access the NPS, mobile money providers must partner with NPS participants. Unfortunately, these arrangements have proven inefficient and costly. Therefore, it is recommended that the regulators should give mobile money providers direct access to the NPS for clearing and settlement, subject to capital requirements and other safety and soundness criteria. This will allow seamless integration of mobile money services with banks and other mobile money providers.

(iii) Strengthening the risk-based approach to AML and CFT

¹¹⁶¹ Supra Banks Act 94 sec 11.

¹¹⁶² Supra Banks Act 94 sec 92.

Concerns on money laundering and terrorist financing risks have made identifying the actual risks an even more daunting task. The need to comply with international standards to mitigate these risks has further created market fears that the cost of regulatory compliance could be prohibitive, creating a disincentive to expand mobile financial services and, resultantly, undermine development.¹¹⁶³ This thesis demonstrates that AML/CFT is increasingly shifting to a risk-based approach from a rule-based one. A one-size-fits-all approach is not proportionate to the risks of the different accounts. A low-value account ought to have less scrutiny than an account that can be used to transfer or hold more. Applying a disproportionately high level of KYC to some accounts and/or transactions does not make them safer in any way but simply more expensive. Finding the right level of KYC is a matter of efficiency for the service providers and for the whole system. In 2017, South Africa issued Guidance Note 7 on the implementation of various aspects of the Financial Intelligence Centre Act.¹¹⁶⁴ The Guidance incorporates a risk-based approach to compliance elements such as CDD into the regulatory framework. There is little emphasis on following the new approach, as most institutions still adhere to FICA KYC and CDD requirements for one to have an account with all banking functionalities. The low-risk account introduced under the risk-based approach have limited functionalities which has an effect of keeping low-income earners on the periphery of financial services.

(iv) Promulgation of regulations specific to mobile money services

South Africa needs to develop regulations that are specific to mobile money services to bring more focus and certainty to mobile banking. It is critical that the government comes up with tailor made regulations that suit the mobile money transfers facility. Currently, there is a gap in South Africa's financial regulations because mobile money providers are regulated by overlapping regulations. The overlapping regulations make it difficult for mobile money service providers to operate. They also cause compliance issues. Lessons can be drawn from Zimbabwe, which introduced specific regulations for mobile money services.

(v) Deregulation of financial services

Policymakers should amend legislation to remove regulatory impediments so that the uptake of mobile money services can increase. Such an increase will enhance financial inclusion, particularly for the previously disadvantaged. South Africa's regulatory regime is inflexible

¹¹⁶³ See Chatain, P et al op cit note 44 vii.

¹¹⁶⁴ Guidance note 7 on the implementation of various aspects of the financial intelligence centre act, 2001 (act 38 of 2001).

and biased towards consumer protection and money laundering while tacitly discouraging the use of mobile money as a tool for financial inclusion. Regulations should strike a balance between eradicating crimes related to digital banking and promoting the use of digital commerce and mobile money. Removing regulatory obstacles will promote innovation in mobile money models and the standardisation of various digital platforms. South Africa should allow mobile network operators who provide mobile money services to partner with each other and other institutions to offer their mobile money services. South Africa could adopt the Zimbabwean position, which allows mobile money providers to partner with financial institutions such as Mastercard and Visa.

(vi) Trust accounts for mobile money services providers

Admittedly, mobile money providers create competition for banks that are not ready to yield deposit-taking functions to non-banking institutions. They have the potential to cannibalise the banks' existing business. To avoid competition between banks and mobile money providers, it is recommended that South Africa should adopt the Zimbabwean approach of requiring all mobile money providers to hold client deposits in trust accounts held at commercial banks under prudential regulations.¹¹⁶⁵ This will protect mobile money funds if the mobile money providers fail and reduce the competition between banks and mobile network providers.

(vii) Deposit Insurance Scheme

This thesis has shown that south Africa does not have deposit insurance scheme. However, such an insurance scheme Bill is being drafted. The draft deposit insurance scheme has been criticised by proponents of mobile money services because like the Banks Act and the NPS Act, it does not recognise mobile money services. The Bill does not include mobile money providers as one of the entities to levied for deposit insurance fund. Mobile money providers are not included in the list of entities that will be taxed for the deposit insurance fund. Unlike banks, mobile money providers such as mobile network operators are not recognised as deposit taking institutions. Therefore, they cannot accept deposits. That will make it even more difficult for mobile money providers to gain traction. Without the assurance that their savings will be safe and protected, few depositors will use money services.

(viii) Mobile money interoperability

¹¹⁶⁵ Chitimira H & Torerai E op cit note 786 at 20.

There is an indisputable need for collaboration among mobile money providers and other relevant authorities to increase financial inclusion. Interoperability provides customers access to financial services irrespective of holding an account with a single service provider. The lack of interoperability between mobile money providers and banks has been attributed to the failure of mobile money services in South Africa. The country should not only encourage but like Zimbabwe make interoperability mandatory.

(ix) Regulatory sandbox.

South Africa need to establish regulatory sandbox for financial innovation. According to the Alliance for Financial Inclusion (AFI), more than 20 countries have implemented regulatory sandboxes. Regulatory sandbox is a ‘safe space’ in which businesses can test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory consequences of engaging in the activity in question.¹¹⁶⁶ They promote more effective competition in the interests of consumers by allowing firms to test innovative products, services and business models in a live market environment, while ensuring that appropriate safeguards are in place. Regulatory sand box has the potential to lower cost of roll out and time-to-market, easier access to investment opportunities by start-ups and small entrepreneurs, and more innovative products reaching the market.¹¹⁶⁷ It must be noted that markets evolve very fast after they have gained a critical number of customers. As the regulators understand more about the nature of a disruptive market solution, they develop carefully considered rules. As more is learned from disruptive solution providers, it may be appropriate for regulators to develop rules based on observed market behavior and to introduce regulation iteratively.

6.3.3 Zimbabwe

(i) Remove or increase mobile money transaction limits

Zimbabwe created a regulatory environment that promotes the use of mobile money. It seems that some gains brought by mobile money services have been reversed. For mobile money services clients, the RBZ implemented a daily transaction limit of US\$50. The new regulations also appear out of proportion to the risk. For instance, a tiered approach to KYC regulation

¹¹⁶⁶ Research Report on Mobile Money in South Africa op cit note 624 at 55

¹¹⁶⁷ Ibid.

could have allowed the regulator to distinguish between risky high-value transactions and low-value transactions.¹¹⁶⁸ Moreover, the transactional limit is incompatible with financial inclusion. Transaction limits are considered by the majority of consumers as being restrictive and a more liberal approach is required when setting these limits so that they do not frighten users of mobile money transfer services.¹¹⁶⁹

(ii) Reintroduce mobile money agents

Over 50 000 mobile money agents were closed in Zimbabwe in 2020. The overall effect is that mobile money accounts can only be used for transacting but not ‘store of value’ purposes. Mobile money agents increased access to financial services in rural and difficult-to-reach areas of Zimbabwe. My recommendation is to reprimand and fine mobile money agents who are found guilty of money laundering or trading foreign exchange without a licence rather than abolish the agents’ role.

(iii) Exempt mobile money providers from tax

In Zimbabwe, the mobile money sector is one of the most taxed. Mobile money services have been made more expensive by the 2% Intermediated Money Transfer Tax (IMTT). Consequently, fewer people can afford to transact electronically, which prevents consumers from using mobile money as a method of payment. In addition, the US\$50 duty imposed on all mobile phones imported into Zimbabwe increases the cost of mobile phones, which are a vital component of mobile money services. As a result of the US\$50 excise duty, very few people will afford to buy a cell phone, ultimately affecting mobile money services. I recommend reducing the IMTT for small transactions and imposing the US\$50 excise duty only on smart phones as in South Africa.

(iv) Clarity on deposit insurance scheme

Zimbabwe has a consumer protection law that protects depositors from bank failures (the Deposit Protection Corporation Act), as discussed in this thesis. The wording of the Act implies

¹¹⁶⁸ Marcia Kwaramba ‘Zimbabwe’s restrictions on mobile money transfers are a blow to financial inclusion available at <https://theconversation.com/zimbabwes-restrictions-on-mobile-money-transfers-are-a-blow-to-financial-inclusion-147109#:~:text=Users%20are%20now%20restricted%20to,lost%20their%20source%20of%20income>. accessed on 18 April 2022.

¹¹⁶⁹ Gerald Munyoro, Parker Kutesera, Jacqueline Rumbidzai Tanhara, Phaeton Mazuvawanda & Blessing Mhere Chigunhah ‘The significance of mobile money transfer facility to Zimbabwean economy: a case study of Ecocash’ (2017) *International Journal of Research in Business Management* at 9.

that it does not cover institutions other than banks, such as mobile network operators. As a result of the Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations, 2020 (Statutory Instrument 80 of 2020), mobile money providers are now regarded as banks. There is, however, no clarification as to whether such an acknowledgment would apply to the deposit protection scheme. It is necessary for regulators to clarify whether mobile money users are protected by the scheme through the SI even though they were not originally part of it. The clarity will bring greater certainty to mobile money users about their funds' safety in case of failure.

Kenya

Important lessons can be drawn from Kenya. In this thesis, it has been noted that Kenya is one of Africa's success stories in mobile money services. Kenya's Central Bank gave Safaricom (Mpesa provider) leeway to create a unique model that suited the Kenyan market, according to the World Trade Organisation (WTO). The bank issued Safaricom with a special licence, whose conditions are more relaxed compared to those of banks and other financial institutions.¹¹⁷⁰ To ensure that customers funds are protected, all mobile money providers in Kenya are required keep all fund deposited in mobile money accounts in a pooled trust account at a reputable bank that cannot be accessed by Safaricom to fund its business.¹¹⁷¹ Consultation played a large role in achieving all of this. Musyimi noted that public consultation between the CBK and Safricom was crucial to the success of mobile money regulation in Kenya.¹¹⁷² For mobile money to succeed, I recommend such consultations between regulators and mobile money providers in both Zimbabwe and South Africa.

6.4 CONCLUDING REMARK

Taking all the above into account, it is apparent that government intervention has the potential to exclude some segments of society from the financial system. Regulatory approaches adopted

¹¹⁷⁰ World Trade Organisation Report M-pesa: regulatory framework available at https://www.wto.org/english/tratop_e/serv_e/wkshop_june13_e/wanjau_e.pdf accessed on 6 October 2022.

¹¹⁷¹ Alliance for financial inclusion report Enabling mobile money transfer The Central Bank of Kenya's treatment of M-Pesa, available at <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/09/enablingmobilemoneytransfer92.pdf> accessed on 6 October 2022.

¹¹⁷² Musyimi Peter Muneeno *Legal and regulatory framework for mobile banking in Kenya: a case for a regulatory impact assessment* (Unpublished thesis University of Nairobi 2018) 45.

in South Africa have stifled the growth of the mobile money sector, limiting the sector's ability to alleviate financial exclusion among the poor and vulnerable. Despite South Africa's sophisticated financial sector, the poor and most vulnerable groups are still at risk of being completely excluded from the country's economy.¹¹⁷³ To ensure that no one is left behind, government intervention need to be pro-poor as the case with Zimbabwe where government relaxed financial regulations through exemptions to pave way for mobile money services.

¹¹⁷³ South African banks need to do more to ensure financial inclusion available at <https://theconversation.com/south-african-banks-need-to-do-more-to-ensure-financial-inclusion-141139> accessed on 28 May 2022.

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