



**Promoting financial inclusion through mobile
money while introducing regulatory
solutions to reduce and control money
laundering in Lesotho**

TE Taole

 **[Orcid.org/0000-0002-0199-7485](https://orcid.org/0000-0002-0199-7485)**

Thesis accepted in fulfilment of the requirements for the
degree

Doctor of Laws in Perspectives on Law at the North-West
University

Promoter: Prof Wian Erlank

Graduation: October 2020

Student number: 25754076

This research was completed on **30 November 2019**. All information used and presented herein is correct and up to date until **30 November 2019** when research for this thesis was concluded. Any later political legal developments relating to the study have not been considered.

“What return shall I make to the Lord for all the good He has done for me?”

Psalm 116:12.

Acknowledgements

I would like to thank God for the strength he gave me to complete this research. It was not easy at all, but I managed to complete it through the power of Christ who gives me power every day.

I owe special thanks to my supervisor, Professor Wian Erlank, who is the best supervisor ever. I owe him my gratitude for supervising this research from start to finish. His words of encouragement kept me going. Many thanks also to the North-West University, Faculty of Law, Potchefstroom Campus for this amazing opportunity. I would like to thank them for the financial assistance they gave me to enrol for this Programme.

I also cannot neglect to thank the many people who gave critical advice throughout my journey in this research; I owe my thanks to Dr Lehlohonolo Ramokanate of the National University of Lesotho. I would also like to thank Dr Isabel Swart, member of the South African Translators' Institute, for language editing this work.

Lastly, I would like to thank my wife, 'M'e 'Manapo Taole, my pillar of strength, for praying for me **EVERY NIGHT**, asking God to give me strength to complete this mammoth task.

ABSTRACT

Mobile money services have considerable potential in modern economies. They have the potential to increase financial inclusion for poor people and people excluded from formal financial services. This is because mobile money services can be accessed simply using a mobile cellular phone and the majority of people nowadays own mobile phones, including people living in the rural areas. Mobile money can therefore solve the problem of financial exclusion because even the people who live in the rural areas without access to formal financial services can now access financial services through mobile money services. Financial inclusion, on the other hand, is simply defined as a situation where every member of the society has access to and is able to use financial services offered by formal financial services institutions, such as banks and insurance companies. Financial inclusion has many benefits, the main benefit being the stimulation of the economy of a country.

For mobile money services to operate smoothly and financial inclusion to be achieved, there must be enabling regulation. Regulation must not be so strict as to prevent mobile money service providers from operating. Regulation must allow for innovation and at the same time maintain financial integrity and stability by ensuring that financial crimes, such as money laundering, do not affect mobile money services. Although mobile money services can increase financial inclusion, regulators must be vigilant to ensure that they stop criminals from using mobile money services to commit money laundering offences.

This research focuses mainly on mobile money services in the Kingdom of Lesotho. The aim is to find out how regulation can be improved to ensure that mobile money services can help to increase financial inclusion. The aim is also to find out how regulation can help to ensure that mobile money services operate smoothly, and that the crime of money laundering is prevented from affecting mobile money services. To achieve this aim, the research is divided into different chapters and in each chapter the aim is to find ways in which the main aim can be achieved. In the research, mobile money and financial inclusion will be defined and their importance in modern economies will be demonstrated

in greater detail. Furthermore, the issues of money laundering will be discussed. The threat of the crime of money laundering will be highlighted. An analysis of the legal regulatory framework of mobile money services and money laundering in Lesotho will be undertaken to determine the extent to which these regulatory frameworks can help realise financial inclusion and promote mobile money services in Lesotho. The same discussion is made in respect of other African countries.

The legal regulatory framework of Lesotho will be compared to the framework of other African countries to ascertain how mobile money services and money laundering and financial inclusion issues are regulated in those countries. The countries discussed in this research are South Africa, Malawi, Kenya, Nigeria, Uganda, Tanzania, and Ghana. Based on these discussions, some shortcomings in the legal regulatory framework of mobile money services and money laundering in Lesotho will be identified and the conclusion will be drawn that the two frameworks have to be revisited to ensure that mobile money services will operate smoothly in the Kingdom of Lesotho. Furthermore, recommendations will be made to address the legal shortcomings identified in the framework.

Key words: Mobile money services, financial inclusion, money laundering, regulatory framework, Lesotho

OPSOMMING

Mobiele gelddienste beskik oor aansienlike potensiaal in moderne ekonomieë. Hulle beskik oor die potensiaal om finansiële insluiting vir arm mense en mense wat uitgesluit is van formele finansiële dienste te verhoog. Dit is omdat toegang tot mobiele gelddienste verkry kan word bloot deur die gebruik van 'n selfoon, en dat die meerderheid mense deesdae selfone besit, insluitende mense wat op die platteland woon. Mobiele geld kan dus die probleem van finansiële uitsluiting oplos, want selfs die mense wat in die landelike gebiede woon, sonder toegang tot formele finansiële dienste, kan nou toegang kry tot die volledige dienste van mobiele geld. Aan die ander kant word finansiële insluiting bloot gedefinieer as 'n situasie waar elke lid van die samelewing toegang het tot die finansiële dienste wat deur formele finansiële diensteinstellings, soos banke en versekeringsmaatskappye aangebied word. Finansiële insluiting het baie voordele, die vernaamste daarvan synde die stimulasie van die ekonomie van 'n land.

Vir mobiele gelddienste om glad te verloop en finansiële insluiting te bewerkstellig, moet regulering moontlik gemaak word. Die regulering moet nie te streng wees nie om te verhoed dat die diensverskaffers van mobiele geld werk. Regulering moet innovasie moontlik maak en terselfdertyd finansiële integriteit en stabiliteit handhaaf deur te verseker dat finansiële misdade, soos geldwassery nie mobiele gelddienste beïnvloed nie. Alhoewel mobiele gelddienste finansiële insluiting kan verhoog, moet reguleerders waaksaam wees om te verseker dat misdadigers hul nie gelddienste gebruik om oortredings, soos geldwassery te pleeg nie.

In hierdie navorsing is die fokus hoofsaaklik op mobiele gelddienste in die Koninkryk van Lesotho. Die doel is om uit te vind hoe regulering verbeter kan word om te verseker dat mobiele gelddienste kan help om finansiële insluiting te verhoog. Die doel is ook om uit te vind hoe regulering kan verseker dat mobiele gelddienste glad verloop, en dat die misdaad van geldwassery nie mobiele gelddienste kan beïnvloed nie. Om hierdie doel te bereik, word die navorsing in verskillende hoofstukke verdeel en is elke hoofstuk bedoel om maniere te vind waarop die hoofdoel bereik kan word. In die navorsing sal mobiele

geld en finansiële insluiting gedefinieer word en die belangrikheid daarvan in moderne ekonomieë sal in meer besonderhede gedemonstreer word.

Verder word kwessies van geldwassery ook in hierdie navorsing aangespreek. Die bedreiging van die misdaad van geldwassery word beklemtoon. 'n Ontleding van die wetlike regulatoriese raamwerk van mobiele gelddienste en geldwassery in Lesotho sal onderneem word om te vas te stel tot watter mate hierdie regulatoriese raamwerke kan help om finansiële insluiting te realiseer en mobiele gelddienste in Lesotho te bevorder. Dieselfde bespreking word oor ander Afrika-lande gevoer.

Die wetlike regulatoriese raamwerk van Lesotho word met die raamwerk van ander Afrikalande vergelyk om te bepaal hoe mobiele gelddienste, geldwassery en finansiële insluiting in daardie lande gereguleer word. Die lande wat in hierdie navorsing bespreek word, is South Africa, Malawi, Kenia, Nigerië, Uganda, Tanzanië en Ghana. Op grond van hierdie besprekings is enkele leemtes in die wetlike regulatoriese raamwerk van mobiele gelddienste en geldwassery in Lesotho geïdentifiseer en die gevolgtrekking is dat die twee raamwerke hersien moet word om te verseker dat mobiele gelddienste in die Koninkryk van Lesotho glad sal funksioneer. Voorts word aanbevelings gedoen om die wetlike leemtes wat in die raamwerk geïdentifiseer is, aan te spreek.

Sleutelwoorde: mobiele gelddienste, finansiële insluiting, geldwassery, regulatoriese raamwerk, Lesotho

LIST OF ABBREVIATIONS

ACH	Automated Clearing House
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
APG	Asia/Pacific Group on Money Laundering
ATM	Automated Teller Machine
BOG	Bank of Ghana
BOT	Bank of Tanzania
BOU	Bank of Uganda
CAK	Communications Authority of Kenya
CBK	Central Bank of Kenya
CBL	Central Bank of Lesotho
CBN	Central Bank of Nigeria
CCK	Communications Commission of Kenya
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CMA	Common Monetary Area

EAC	East African Community
EACO	Eastern African Communication Organisation
EAG	Eurasian Group on Combating Money Laundering and Financing of Terrorism
EFT	Electronic Funds Transfer
E-Money	Electronic Money
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
ETL	Econet Telecom Lesotho
FASs	Financial Stability Assessments
FATF	Financial Action Task Force
FICA	Financial Intelligence Centre Act 38 of 2001
FIU	Financial Intelligence Unit
FNB	First National Bank
FRC	Financial Reporting Centre
FSCA	Financial Sector Conduct Authority
GABAC	Central Africa Anti-Money Laundering Group

GAFILAT	Latin America Anti-Money Laundering Group
GIABA	West Africa Money Laundering Group
GSM	Global System for Mobile Communication
ICASA	Independent Communications Authority of South Africa
ID	Identity Document
IMF	International Monetary Fund
KYC	Know Your Customer
LCA	Lesotho Communications Authority
LTC	Lesotho Telecommunications Corporation
MACRA	Malawi Communications Regulatory Authority
MENAFATF	Middle East and North Africa Financial Action Task Force
MLPCA	Money Laundering and Proceeds of Crimes Act 4 of 2008
MMOs	Mobile Money Operators
MNO	Mobile Network Operator
MNP	Mobile Number Portability
MONEYVAL	Council of Europe Anti-Money Laundering Group

MOU	Memorandum of Understanding
NCA	National Communications Authority
NCC	Nigeria Communications Commission
NPSD	National Payments Systems Division
PIN	Personal Identification Number
POCA	Prevention of Organised Crime Act 121 of 1998
PSOC	Payment Systems Oversight Committee
RBM	Reserve Bank of Malawi
SACU	South African Customs Union
SADC	South African Development Community
SARB	South African Reserve Bank
SFI	Supervised Financial Institutions
SIM	Subscriber Identity Module
SM	Smartel Money Ltd
SMS	Short Message Service
STK	SIM Toolkit

TCRA	Tanzania Communications Regulatory Authority
TNM	Telekom Networks Malawi Limited
UK	United Kingdom
UK DFID	United Kingdom's Department for International Development
UN	United Nations
USSD	Unstructured Supplementary Service Data
VCL	Vital Cellular Link

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Chapter 1 – Introduction

1.1 Introduction

Mobile money has considerable potential to increase financial inclusion and some writers have argued that its potential has not yet been fully appreciated.¹ Services of mobile money are deployed in different countries around Africa.² Noteworthy factors that push the adoption of mobile money services include, but are not limited to, the fact that it is less costly to use mobile money services and even more importantly, it is convenient and faster to use mobile money services.³ Services of mobile money are used for low-value transactions and are deployed in both urban and rural areas.⁴ In recent times, the use and adoption of mobile phones (cellular phones) happened at a very high rate.⁵ Lesotho is no exception. Mobile money services are found in both urban and rural areas and most people in Lesotho have access to cell phones and mobile money services.⁶

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- ¹ Castri 2013 https://www.gsma.com/publicpolicy/wp-content/uploads/2013/02/GSMA2013_Report_Mobile-Money-EnablingRegulatorySolutions.pdf, 1 – 2. Also see *Anti-Money Laundering and Combating the Financing of Terrorism in Certain SADC Countries Finmark Trust Report* July 2015 10.
- ² For instance, there are mobile money services in countries, such as Kenya, Malawi, Tanzania, Zimbabwe, and Nigeria, to mention a few. Kizza had the following to say about mobile money services in Africa: “Africans are running abreast with the rest of the world in the development of some technological milestones, including the mobile money payment system technology” See Kizza 2013 *African Journal of Science, Technology, Innovation and Development* 373.
- ³ Solin & Zerzan 2010 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/03/amlfinal35.pdf> 6. Also see Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1604.
- ⁴ Solin & Zerzan 2010 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/03/amlfinal35.pdf> 4. Buckley, Greenacre and Malady say: “Many banks do not find it economically attractive to make banking infrastructure and financial services available in poor communities” Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 439.
- ⁵ See Jack & Suri 2011 <https://www.nber.org/papers/w16721.pdf>. Also see Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1605 who say, “in 2006 the mobile phone became the first communications technology to have more users in Third World countries than in First World countries.”
- ⁶ See the Introduction of the Central Bank of Lesotho’s *Mobile Money Guidelines* 2013, on page 3, where it is stated that “mobile money in Lesotho includes various components that facilitate the delivery of payments to the banked and non-banked population through mobile phones...”

The term “mobile money” has been defined by different writers across the globe.⁷ The definitions given by these writers boil down to the fact that mobile money or a mobile money service is where financial services and financial products, which are ordinarily accessed through formal financial institutions, such as banks, are conveniently accessed simply through the use of a mobile phone. Jack and Suri⁸ are examples of writers who have defined mobile money. They say it is a tool that allows individuals to make financial transactions using mobile phone technology. Kizza⁹ defines mobile money as technology that lets people to utilise their mobile phones like mobile wallets in the payment system.

On the other hand, Solin and Zerzan¹⁰ define a mobile money service as using the mobile phone in order to have access to financial services. In terms of the definition given by them, it is a service where mobile phones are used by customers to complete a financial event. According to Winn and De Koker,¹¹ mobile money refers to the use of a mobile phone to deposit, withdraw or transfer money; and mobile money holds great promise as a policy instrument for promoting financial inclusion. Another writer, Donovan,¹² defines mobile money service as a service of providing a financial service using a mobile phone. Lawack¹³ defines the term “mobile money” as a form of electronic money that refers to services that connect consumers financially through their mobile phones. Lawack says mobile money permits any mobile phone subscriber, regardless of whether that user is banked or unbanked, to deposit value into their mobile phone account and send that value via their mobile phones to another mobile phone subscriber, and permit the recipient to turn that value back into cash easily and cheaply.¹⁴

⁷ For example, see Whisker and Lokanan 2019 *Journal of Money Laundering Control* 159; Lawack 2013 *Washington Journal of Law, Technology & Arts* 319; Kersop and Du Toit in their article titled: *Anti-Money Laundering Regulations and the Effective Use of Mobile Money in South Africa, Potchefstroom Electronic Law Journal* 1610; Kizza 2013 *African Journal of Science, Technology, Innovation and Development* 376.

⁸ Jack & Suri 2011 <https://www.nber.org/papers/w16721.pdf>.

⁹ Kizza 2013 *African Journal of Science, Technology, Innovation and Development* 376. Kizza defines payments systems as a system that is used for settling payments in any transaction.

¹⁰ Solin & Zerzan 2010 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/03/amlfinal35.pdf> 20.

¹¹ Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156.

¹² Donovan (eds) “Mobile Money for Financial Inclusion” 61.

¹³ Lawack 2013 *Washington Journal of Law, Technology & Arts* 319.

¹⁴ Lawack 2013 *Washington Journal of Law, Technology & Arts* 319.

The definitions of “mobile money service” given by these writers are more or less the same, and it simply shows that financial inclusion could be achieved simply by using a mobile phone. The term "Financial inclusion", on the other hand, can simply be defined as a situation where everyone has access to financial services, as well as ensuring that all people have access to appropriate financial products and services at an affordable cost and in a manner that is most fair and transparent to people.¹⁵

“Financial exclusion” is the opposite of what “financial inclusion” is, and it is said to be a source of risk for the financial system.¹⁶ As a result of being risky to the financial sector, the Global Standard-Setting Bodies (SSBs) are supporting the goals and objectives of financial inclusion, because financial inclusion strengthens the objectives of financial stability, integrity and consumer protection, among other things.¹⁷ Castri argues that mobile money is capable of contributing to all these objectives of financial inclusion by driving economic and social growth through a cash-light economy and digital pathways to financial inclusion.¹⁸ Kersop and Du Toit argue that one of the many things that hinder the progress of reducing poverty is when many people in the society are excluded from the financial systems.¹⁹

Arguments in favour of mobile money include the fact that it can be used to achieve an increased financial inclusion, since it enables the storage of monetary value on a mobile phone.²⁰ Thereafter, the monetary value stored on a mobile phone will then be used for

¹⁵ This definition was given by Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1604. For further discussion on financial inclusion see FATF Guidance: *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion (2013) para 17 (hereafter referred to as FATF Guidance: AML and Financial Inclusion)*.

¹⁶ Castri 2013 https://www.gsma.com/publicpolicy/wp-content/uploads/2013/02/GSMA2013_Report_Mobile-Money-EnablingRegulatorySolutions.pdf 1 - 2.

¹⁷ Castri 2013 https://www.gsma.com/publicpolicy/wp-content/uploads/2013/02/GSMA2013_Report_Mobile-Money-EnablingRegulatorySolutions.pdf 1 - 2.

¹⁸ Castri 2013 https://www.gsma.com/publicpolicy/wp-content/uploads/2013/02/GSMA2013_Report_Mobile-Money-EnablingRegulatorySolutions.pdf 1 - 2.

¹⁹ See Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1603.

²⁰ Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1604.

various purposes, such as purchases, payments, as well as sending the same value to other mobile phones and mobile money users.²¹

The above background shows that mobile money can be used as a tool for financial inclusion, as it can improve access to formal financial services in developing countries.

1.2 Research problem

While it is true that mobile money services contribute to financial inclusion, one cannot ignore the fact that mobile phones are used by almost everyone, including possibly, criminals. As such, mobile money services are capable of being targeted by criminals in the same way that other formal financial institutions are targeted today. It is, therefore, highly possible that mobile money services, however good they are, can be misused by criminals to perpetuate crimes of money laundering.²²

Money laundering is usually linked to the activities of the financial sector, as well as to those of the banking sector.²³ Since mobile money is increasingly utilised as a form of money transfer and is associated with finance, banking and the non-financial telecommunications sectors, it poses a risk that must be addressed by the anti-money laundering laws.²⁴

Efforts are put in place by governments, international bodies, and regional bodies to ensure that mobile money services are effectively regulated to protect them from being misused by criminals for purposes of money laundering and the financing of terrorist activities. These efforts include the enactment and creation of legislation, and guidelines, as well as amendments to the existing laws. These new laws are solely intended to reduce and prevent the risk of mobile money services being used by criminals who may use them for money laundering and terrorist financing. The new legislation may sometimes be

²¹ Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1604.

²² Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156.

²³ Pascal "Legal Issues in Mobile Money Transactions".

²⁴ Pascal "Legal Issues in Mobile Money Transactions".

harsh or non-enabling to the extent that it makes it more difficult for mobile money services to operate smoothly.²⁵

This is a problem common to many countries. Mwega²⁶ discusses this issue of tightening regulation at the expense of financial and economic growth. He warns countries and law makers to be careful and mindful of the fact that in the absence of regulation that is effective, financial systems may become unstable, thereby causing problems that can negatively affect the real economy.²⁷ Mwega says that this involves a delicate balancing act, as focusing too much on stability will possibly stifle growth while a dash for growth is likely to sow the seeds of future crises.²⁸

Non-enabling regulations are counter-productive and inhibitive because it is said that in order for financial markets to be effective, regulation must be such that it is able to maintain the rights of consumers by encouraging responsible and decent business conduct.²⁹ Regulation must also be able to bring about certainty and innovation and be able to foster competition, as this will help financial markets to be effective.³⁰

Against the above background, the aim of this research is to investigate how mobile money services and money laundering should be regulated so as to determine what regulatory measures need to be pro-actively introduced in Lesotho that may make it simple or smooth for mobile money services to operate effectively to ensure financial

²⁵ Tagoe says: "Emerging evidence suggests that in contexts where institutionally marked barriers in the form of regulations do not allow mobile money operators to design and set up effective distribution network and/or put in mechanisms that can facilitate easy registration and identification of clients (which has investment wisdom) can hamper free flow of operation." See Tagoe 2016 *Journal of Business & Financial Affairs* 1.

²⁶ Mwega *Financial regulation in Kenya* 1. Mwega says in the wake of the global financial crisis, the majority of the countries in the world are tightening regulation in the financial sector as a way of prioritising financial stability. According to him, this is very important, even though in poor developing countries, it is sometimes done to the detriment of the inclusive growth.

²⁷ Since the main objective of finance is to enable productive economy, regulation must be aimed at sustaining financial stability and promoting the growth of the economy. Mwega *Financial regulation in Kenya* 1.

²⁸ Mwega *Financial regulation in Kenya* 1.

²⁹ Burns 2018 *Economic Affairs* 409. See Muthiora 2015 <https://www.gsma.com/mobilefordevelopment/resources/enabling-mobile-money-policies-in-kenya-fostering-a-digital-financial-revolution/> 19.

³⁰ Burns 2018 *Economic Affairs* 413.

inclusion for the unbanked. This aim will be achieved by investigating different ways of regulating financial institutions in other African countries in greater depth, as well as by looking at how mobile money operators are licensed in those countries, and how mobile money services are regulated to ensure that the crime of money laundering is not committed. In the research, the focus will be on how mobile money, specifically in those countries, is used to attain financial inclusion. The aim is to show that with good regulation pertaining to mobile money and mobile money services, the crime of money laundering can be controlled, reduced, or even totally prevented.

1.3 Reasons for specifically focusing on mobile money in the case of Lesotho

Lesotho is a developing country where most people still lack access to financial services. One of the reasons why Lesotho is faced with financial exclusion is because people in this country cannot afford to have access to financial services offered by different banks.³¹ The fact is that as in most countries in Africa and around the world, the majority of the people own mobile phones, including people living in remote areas of the country where financial services are very scarce.³² That being the case, the focus is specifically on mobile money in the case of Lesotho to determine if mobile money is indeed not the right tool for the unbanked population in Lesotho.

1.4 Regulation and licensing of mobile money services in Lesotho

To better appreciate the problem of the study, it is important to start by first investigating how mobile money services are licensed and regulated. According to Chatain,³³ countries

³¹ Sekantsi and Motelle 2016 *Central Bank of Lesotho Research Bulletin 2*. These writers say that “In the case of Lesotho, approximately 38% of the adult population has a bank account, which indicates that the majority of the adult population still lacks access to basic financial services...The mainstream banking sector fails to deliver financial services to millions of consumers especially those residing in rural areas. Banks are biased in favour of affluent consumers due to high costs of physical infrastructure and operational costs as well as low profits associated with serving the low-income consumers... This lack of access to financial services not only limits the ability of the poor to save, repay debts and manage risk responsibly but also indirectly exposes them to poverty.”

³² See Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 33.

³³ Chatain et al *Protecting Mobile Money Against Financial Crimes* 65. The point made by these writers is based on the fact that the type of license given to the mobile network operator is capable

have to be diligent and exercise some level of care when choosing the licence for mobile network operators. The degree or extent of the regulatory responsibility expected of a mobile network operator, as well as the AML/CFT responsibility is usually determined by the type of license given to such a mobile network operator.³⁴

Chatain says there are generally two ways of licensing and regulating mobile money services, namely “Provider-based licenses” and “Service-based licenses”.³⁵ With the “Provider-based license regime”, the mobile money service provider or mobile network operator is not allowed to render mobile money services unless they partner with a certain bank.³⁶

In Lesotho, there is no obligation on mobile network operators to provide mobile money services in partnership with any bank. However, in 2015, Standard Lesotho Bank and Econet Telecom Lesotho entered into a partnership whereby Standard Lesotho Bank account holders can now transfer money to EcoCash³⁷ customers. Recently, similar arrangements have been made by mobile network operators and the banks, though such an arrangement between companies is voluntary and not a result of any requirement imposed by any piece of legislation. The bank still has its obligation to screen its own customers in terms of the relevant money laundering laws and the mobile money service provider also has its own obligations to screen its clients in terms of the laws governing its business operations.

of having an impact in terms of the level with which such a mobile network operator may participate in the mobile money service.

³⁴ Chatain et al *Protecting Mobile Money Against Financial Crimes* 65.

³⁵ Chatain et al *Protecting Mobile Money Against Financial Crimes* 66.

³⁶ In this way, the obligation of regulatory compliance (including AML/CFT laws) will be assumed by the partnering bank, whereas with the “Service-based license regime”, the mobile network operator or mobile money service provider can still render mobile money services even if it does not partner with any bank. For a detailed discussion, see Chatain et al *Protecting Mobile Money Against Financial Crimes* 65.

³⁷ EcoCash is a mobile money service provided by Econet Telecom Lesotho, while M-Pesa is a mobile money service provided by Vodacom Lesotho.

In Lesotho, some financial services-related laws contain provisions relating to the misuse of mobile money services and new technology.³⁸ Some of the enforceable statutes also have provisions requiring accountable institutions to adopt policies and take reasonable measures necessary to prevent the misuse of technological developments in money laundering or financing of terrorism. These pieces of legislation will be discussed and analysed later in the research.

In terms of the laws that regulate mobile money services in Lesotho, the current pieces of legislation regulating mobile money services are the *Payment Systems Act* of 2014³⁹ and *Payment Systems (Issuers of Electronic Payments Instruments) Regulations 11* of 2017. It is, however, important to note that the Central Bank of Lesotho also issued and published a document containing guidelines called *Mobile Money Guidelines 2013*.⁴⁰ The Guidelines, together with the Payment Systems Regulations, were issued in terms of the *Central Bank of Lesotho Act*,⁴¹ which requires the Central Bank of Lesotho to promote the efficient operation of the payment systems.⁴² The guidelines served a number of purposes, such as authorising the issuers of mobile money and conducting the business of the mobile money issuing to appointing the agents by mobile money issuers and registering those agents.⁴³

One of the objectives of the guidelines was to provide an enabling environment for mobile payments services in Lesotho, as well as to clearly spell out the roles and responsibilities of all the people involved in the provisions and usage of mobile payment services in

³⁸ For instance, the *Payment Systems (Issuers of Electronic Payments Instruments) Regulations 11* of 2017. These regulations will be discussed in more detail in chapter 5 of the research.

³⁹ *Payments Systems Act 11* of 2014.

⁴⁰ These Guidelines were initially published in 2012 and reviewed in 2013 and are now called *Mobile Money Guidelines 2013*. See Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

⁴¹ *Central Bank of Lesotho Act 2* of 2000.

⁴² See section 6 (h) of the *Central Bank of Lesotho Act*. This section obliges the CBL to have policies that are intended to promote regulation, establishment and oversight of the payment system, clearing and settlement system, all of which must be efficient and effective.

⁴³ *Mobile money Guidelines 2013*.

Lesotho.⁴⁴ Another objective was to promote the safety and soundness of mobile money schemes and to enhance the confidence of users in the mobile money service.⁴⁵

It was also a requirement for mobile money service providers to conduct customer due diligence⁴⁶ on prospective merchants who apply to participate in their scheme and to evaluate the applying company's background to determine whether the merchant is both viable and financially sound, with no evidence of criminal or illegal activities.⁴⁷ Mobile money service providers are obliged to adhere to the *Money Laundering and Proceeds of Crimes Act* 4 of 2008,⁴⁸ and all other legislation relating to money laundering and terrorist financing schemes.

To strengthen regulation, the Central Bank of Lesotho repealed the Mobile Money Guidelines to make way for the *Payment Systems (Issuers of Electronic Payments Instruments) Regulations*. The regulations will be discussed in detail in the subsequent chapters.

1.5 Current AML/CFT legislation in Lesotho and efforts to improve them

The main AML/CFT Act in Lesotho is the MLPCA. Under the MLPCA, several laws have been promulgated, namely *Money Laundering (Accountable Institutions) Guidelines*,⁴⁹ and *Money Laundering Proceeds of Crimes (Amendment) Act*.⁵⁰ There is also the *Central Bank of Lesotho Act*,⁵¹ which grants control to the Central Bank of Lesotho and also defines the general objectives of the Central Bank of Lesotho. Additionally, there is also the *Money Laundering and Proceeds of Crime (Amendment) Act* 7 of 2016. This Amendment Act is intended to address deficiencies in the money laundering and terrorist financing framework of Lesotho.

⁴⁴ *Mobile money Guidelines* 2013.

⁴⁵ *Mobile money Guidelines* 2013.

⁴⁶ Hereinafter referred to as CDD.

⁴⁷ *Mobile money Guidelines* 2013.

⁴⁸ Hereinafter referred to as MLPCA.

⁴⁹ Notice 55 of 2013.

⁵⁰ Act 7 of 2016.

⁵¹ Act 4 of 2000.

1.6 Why mobile money should be regulated under its own specific legislation in Lesotho

In Lesotho, there is currently no specific piece of legislation that regulates mobile money services only like the *Mobile Money Guidelines* that were issued by the Central Bank of Lesotho in 2013. It has already been stated that in Lesotho many people use mobile money services.

A regulatory framework should be drafted in such a way that it attempts to promote financial inclusion rather than to encourage financial exclusion. There is, therefore, a need to have specific regulation of mobile money in Lesotho that would help regulators in the country to work closely with government institutions, such as those institutions that deal directly with finance and development, regulators from other sectors, such as telecommunications and the mobile sector.

Since mobile money services are capable of being misused by some people who may take advantage of a certain gap in its service provision, there are associated risks that must be regulated under specific mobile money legislation.

There are distinct laws that govern the use of electronic messages, those that regulate the use of digital signatures and those regulating electronic transactions for the protection of customers. Similarly, specific regulation for mobile money services is needed. Such specific legislation is needed to address those risks associated with the service and to ensure the smooth operation of the service.

1.7 Lessons learned from other jurisdictions

The first country to introduce mobile money services in Africa (and probably in the whole world) is Kenya. Other African countries also followed suit. It is, therefore, important to find out how mobile money services are regulated in Kenya, as well as in other African countries. Lesotho and South Africa share members of different regional trade

agreements such as the Southern African Development Community (SADC) and the Southern African Customs Union (SACU). Lesotho has also pegged its currency to that of South Africa through the Common Monetary Area (CMA) arrangement. Furthermore, South Africa's economic and legal system is strong and also has the financial systems regulatory framework that is far advanced in Africa.⁵² Following the successful launch of Mpesa in Kenya, many African countries launched mobile money services in their countries. Some of those countries were successful while others were not as successful as Kenya. It will therefore be necessary to seek to understand mobile money services in other African countries apart from Lesotho, such as Kenya, South Africa, Tanzania, Malawi, Nigeria, Ghana, and Uganda. These jurisdictions will be discussed in detail later in the research and more specifically in Chapter 4.

1.8 Aims and objectives

The primary aim of the study is to determine what regulatory measures are needed in Lesotho to protect mobile money services in order to control and reduce the crime of money laundering.

In order to achieve the above aim, the following secondary objectives are set:

- to describe and justify the relevance of mobile money and financial inclusion in modern economies, including Lesotho;
- to highlight the threat of the crime of money laundering in financial institutions and financial services;
- to outline and critically analyse the legislative framework for mobile money services and money laundering in other African jurisdictions with a view to distilling lessons for the improvement of the current regulatory framework of Lesotho;

⁵² Madise *The Case of Regulation of Mobile Money in Malawi* 11.

- to outline and critically analyse the legal framework for mobile money services and money laundering in Lesotho; and
- to determine the extent to which the current regulatory legal framework for mobile money and money laundering in Lesotho can help realise financial inclusion and promote mobile money services in Lesotho.

1.9 Points of departure and assumptions

- Mobile phones are used by many people throughout Africa, including in Lesotho.
- Mobile money services can be used to achieve the goal of financial inclusion.
- Proper regulation of mobile money services can help reduce the problem of money laundering.

1.10 Hypothesis

The current regulatory framework of mobile money services in Lesotho has many shortcomings that should be addressed, and once rectified the regulatory framework could address the problems that are identified.

1.11 Research methodology

In this study, the research will be based on a literature review of relevant primary and secondary legal sources relating to mobile money, financial inclusion, and money laundering. Relevant legislation, legal regulations, legal textbooks, journal articles, and reliable and authentic electronic sources will be reviewed. A comparative analysis of the legislative frameworks in other African countries, such as Kenya, South Africa, Nigeria, Malawi, Tanzania, Uganda, and Ghana in addition to Lesotho and that are relevant to this study will be undertaken. The reasons for choosing these countries are provided below.

As explained above, Lesotho is a landlocked country wholly surrounded by the Republic of South Africa and it is also a member of many Regional Trade Agreements, such as the South African Development Community and the Southern African Customs Union. The legislative frameworks of other African countries, such as Kenya, South Africa, Nigeria, Malawi, Tanzania, Uganda and Ghana in addition to Lesotho as they relate to mobile money services and money laundering will be discussed with a view to distilling lessons for Lesotho.

1.12 Relevance to the Research Unit

The proposed study falls within the broad focus of the *Research Unit for Law, Justice and Sustainability*. The study directly relates to banking law and may directly contribute to the South African law by looking at how legislation and regulations may be improved to ensure financial inclusion as another way of eradicating poverty and ensuring that South Africa is a cashless economy. Although the focus is on Lesotho, the nature of mobile banking, financial inclusion and money laundering is of universal importance and generally applicable to most jurisdictions, including the Republic of South Africa.

Due to Lesotho's landlocked location, the developments in Lesotho and South Africa naturally interoperate on each other. Furthermore, the comparative study will strongly feature the laws of the African countries that share business relationships with South Africa. The study can furthermore contribute to the literature by offering a comparative study and analysing legislative frameworks of different jurisdictions to find out how mobile money services are regulated to ensure that they are offered for the benefit of everyone while at the same time observing the international standards pertaining to anti-money laundering. The electronic and technologically innovative issues also place this research within the sub-project of *Trade, finance, and innovation*.

1.13 Chapter outline

Chapter 1 - Introduction and background

Chapter 2 - The evolution and theoretical definition of mobile money (or mobile money services) and financial inclusion in modern economies

In this chapter, mobile money and financial inclusion are discussed in more detail. The history of mobile money is deliberated in this chapter to demonstrate where mobile money services originated. The benefits of mobile money are also noted. The focus will be on different mobile money service models available, such as the mobile network operator-led model and the bank-led model. Financial inclusion is also deliberated at length in this chapter. Components of financial inclusion are addressed. The financial inclusion barriers, such as human barriers are interrogated. The benefits of financial inclusion, such as helping to stimulate the economy of the country and helping to fight money laundering are also highlighted in this chapter.

Chapter 3 - The crime of money laundering specifically, what it involves, its effects and why it is necessary to combat; how mobile money and financial inclusion can help prevent and control the crime of money laundering

In this chapter, the crime of money laundering is discussed in detail. Money laundering, as well as the stages of money laundering, such as placement, layering and integration, are defined. Different techniques of money laundering are also discussed, together with the effects of money laundering. Insight is provided in terms of how to combat money laundering. In the final part of the chapter, ways of how mobile money and financial inclusion can help prevent money laundering are discussed.

Chapter 4 - Analysis of selected African Countries

In this chapter, seven African countries, namely Nigeria, Tanzania, Malawi, South Africa, Uganda, Ghana, and Kenya are discussed. The aim of this chapter is to determine how these countries regulate the provision of mobile money services and how money laundering is controlled through regulation.

Chapter 5 - Lesotho's AML regulatory framework and the Mobile Money Framework

Having discussed the way in which mobile money services and money laundering are regulated in other African countries, the focus in this chapter is solely on the legal regulatory framework of mobile money services and money laundering in Lesotho to establish how they are currently regulated in Lesotho.

Chapter 6 - Comparative Study of Lesotho's Money Laundering and Mobile Money Framework and those of other African countries

In this chapter, an analysis of Lesotho's legal regulatory framework of mobile money and money laundering is undertaken. Based on what is discussed in Chapter 4 and Chapter 5, the weaknesses in the frameworks are identified and recommendations are made accordingly. In the chapter, the mobile money regulatory index is also discussed at length, which includes what enabling regulation must entail.

Chapter 7 – Conclusions and Recommendations

In this chapter, what is discussed in all the chapters is summarised and a way forward for the improvement and smooth operation of mobile money services and regulation of money laundering in Lesotho are discussed. The general conclusion is also discussed here, based on the preceding analysis and discussion.

Chapter 2

The evolution and theoretical definition of mobile money (mobile money services) and financial inclusion in modern economies

2.1 Mobile Money

2.2 Introduction

“Poverty is a humiliation to humanity and efforts globally have been put in place to eradicate it.”⁵³ Living a good life is a dream of every individual in any country. It is every government’s goal and responsibility to ensure that every member of the country lives a good life.⁵⁴ One of the ways that indicates that people enjoy a good life is their access to different services offered by different institutions in the country.⁵⁵ Those services include those offered by financial institutions, such as banks and having access to banking facilities and services, such as bank accounts, being able to afford credit facilities, being able to pay for insurance and being able to access those services is good for a society.

While it is true that having access to services offered by banks and insurance companies simplifies and makes life good for people, it should, however, be noted that not every member of the society or every person in the country is able to access all these services.⁵⁶ There are many reasons for the lack of access of these services to people. Some of the reasons include the fact that people just prefer not to save money because they do not find it necessary to do so.⁵⁷ Some people prefer not to use financial services at all; some

⁵³ Aduda and Kalunda 2012 *Journal of Applied Finance & Banking* 96.

⁵⁴ See Central Bank of Lesotho 2013 *Annual Report* 1 where it is stated that: “The Government of Lesotho (GoL) has been committed to promote and support the development and sustainability of an inclusive financial system in order to convert savings into investment...”

⁵⁵ According to Aduda and Kalunda, poverty can be prevented when financial services are available to all. See Aduda and Kalunda 2012 *Journal of Applied Finance & Banking* 96. Lwanga and Adong 2016 *International Journal of Economics and Management Engineering* 1; Central Bank of Lesotho 2013 *Annual Report* 1 where it is stated that: “Access to financial services has therefore been recognised to play an important role in economic development and poverty alleviation.”

⁵⁶ Sekants’i and Motelle 2016 *Central Bank of Lesotho Research Bulletin* 4.

⁵⁷ Aduda and Kalunda 2012 *Journal of Applied Finance & Banking* 103.

people are not aware that financial services exist (due to a lack of education or ignorance), while some people live very far from places where these services are offered.⁵⁸ They have to travel long distances before reaching places where those services are offered.⁵⁹

On the other hand, the high number of phones invented, coupled with the high number of people using them, has led to many financial innovations, such as mobile money services.⁶⁰ This has contributed significantly to solving the problem of financial exclusion.⁶¹ Mobile money, therefore, addresses these problems by facilitating financial sector inclusion and it is this ability of mobile money that gives it its massive possibility for development impact.⁶² Against this short background, it is important to look more closely at the concept of mobile money.

2.3 Where did mobile money originate? (History of mobile money)

It is still not clear who came up with the innovative idea of a mobile money service or the term “M-Pesa”, as it is commonly known in Africa and abroad. Of all the stories reported, there is an interesting one about a Kenyan man by the name of Nyagaka Anyona Ouko, who claims to be the mobile money innovator or “M-Pesa” innovator.⁶³ M-Pesa, as it is commonly used and called in most Southern African countries, was first launched in Kenya in the 2007 by the cell phone company Vodafone.⁶⁴

⁵⁸ Aduda and Kalunda 2012 *Journal of Applied Finance & Banking* 103; for further discussion on financial exclusion, see Cheng and Wu 2014 *American Journal of Industrial and Business Management* 585-594; Kempson and Whyley *Kept out or opted out? Understanding and Combating Financial Exclusion. Insurance Trends* 18 - 22.

⁵⁹ Danquah 2014 <https://www.modernghana.com/news/571561/1/africas-mobile-money-evolution.html>. Danquah gives one of the reasons why African people do not have bank accounts. He says: “Africa is indeed the last remaining frontier of economic boom. With this in mind, many citizens in Africa care less about owning a bank account.”

⁶⁰ Chogo and Sedoyeka 2015 *International Journal of Computing and ICT Research* 53; Lashitew, Tulder and Liasse *Research Policy* 1201; Buku and Meredith argue that: “The recent and widespread availability of affordable mobile phone technology in developing countries has paved the way for the development of a number of mobile money and electronic remittance services.” See Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 375.

⁶¹ See Jenkins *Developing Mobile Money Ecosystems* 5.

⁶² Jenkins *Developing Mobile Money Ecosystems* 5.

⁶³ MNS Consulting *Mobile Money* 1.

⁶⁴ Hughes and Lonie *Innovations: Technology, Governance, Globalization* 63; Madise *The Case of Regulation of Mobile Money in Malawi* 1.

Ouko claims to be the innovator or the originator of the idea on which the Vodafone Mobile Money Transfer Service is based.⁶⁵ Ouko says, back in 2002, his mother lived in one of the rural areas of Kenya and he struggled to send his poor mother some money as the only legal means of sending money then was by using a Money Order or Express Money Order.⁶⁶ According to Ouko, those legal means, namely a Money Order and Express Money Order, were only offered by the Post Office.⁶⁷

There were also challenges associated with making use of those services offered by the Post Office. One such challenge that his mother encountered was the fact that she lived very far from the Post Office.⁶⁸ She was forced to travel long distances to get her money from the Post Office. He, on the other hand, had to find time to go to the Post Office to send money to his ailing mother.⁶⁹

Another way of sending money home was by using buses travelling to a place where his mother stayed.⁷⁰ He would have to travel to the bus stop, wait for the bus and find a villager that could be entrusted with the money to give to his ailing mother. This was also not a reliable means of sending money, as more often than not, the money never reached his poor mother.⁷¹

Ouko never gave up on his plan of sending money home. He persevered and came up with other ideas, such as just buying airtime, scratching the airtime voucher to reveal the voucher code, and then making a phone call and reading out the numbers to the person at the end of the line.⁷² The person at the end of the line could just jot down the numbers and load them onto the phone later.⁷³ This idea worked for him until he decided to make arrangements with one of the shop owners in the village where his mother resided.⁷⁴ He

⁶⁵ MNS Consulting *Mobile Money* 1.
⁶⁶ MNS Consulting *Mobile Money* 1.
⁶⁷ MNS Consulting *Mobile Money* 1.
⁶⁸ MNS Consulting *Mobile Money* 1.
⁶⁹ MNS Consulting *Mobile Money* 1.
⁷⁰ MNS Consulting *Mobile Money* 1.
⁷¹ MNS Consulting *Mobile Money* 1.
⁷² MNS Consulting *Mobile Money* 1.
⁷³ MNS Consulting *Mobile Money* 1.
⁷⁴ MNS Consulting *Mobile Money* 1.

would send some airtime to the shop owner and the shop owner would give his mother some cash in return. The shop owner only charged a certain percentage for the administration fees.⁷⁵

This agreement between Ouko and the shop owner seemed to work better than the other means of sending money he had been using earlier. Ouko then decided to roll out the same method of money transfer across Kenya.⁷⁶ The plan was to have an agent in every town across Kenya. He then went and set up agents across various towns in Kenya. But like in any other business, he faced some challenges, such as winning the trust of the people in the business system, as it was new to the people of Kenya.⁷⁷

There is, however, another story that contradicts the version given by Ouko. According to the Founder Magazine,⁷⁸ the whole idea of M-Pesa originates from Great Britain and was invented by a British professional who was an architect. The British government also allegedly funded the initial stages of the mobile cash transfer project in Britain.⁷⁹ Paul Makin who is an architect and professional in the UK banking industry claims to have started the project with one Nick Hughes way back in 2004 before the project kick-started in Kenya in 2007.⁸⁰

⁷⁵ MNS Consulting *Mobile Money* 1.

⁷⁶ MNS Consulting *Mobile Money* 1.

⁷⁷ MNS Consulting *Mobile Money* 1.

⁷⁸ The Founder Magazine 2015 <https://thefounder.co.ke/is-m-pesa-really-kenyan-invention-or-british-we-compare-the-stories-to-dig-up-the-truth/>.

⁷⁹ The Founder Magazine 2015 <https://thefounder.co.ke/is-m-pesa-really-kenyan-invention-or-british-we-compare-the-stories-to-dig-up-the-truth/>.

⁸⁰ It is reported that a British technology development company that has its headquarters in Cambridge was engaged to develop the project and to oversee that the project sits within the mobile phone and network company which was Vodafone Safaricom. Makin says they encountered a lot of problems in trying to work the project with Safaricom. He says at some stage the thought of giving up and abandoning the entire project even crossed his mind because of the challenges and problems they had with Safaricom. They were, however, finally successful after being assisted significantly by the then Chief Executive Officer of Safaricom and ultimately their project was accepted by Safaricom. They then marketed the project extensively. Although Makin stated/alleged that the whole idea was his and that it originated in Britain, he, however, admits that "M-Pesa" is the idea that originated in Kenya. He says British companies had agents in different countries, such as Kenya. But the fact that they had agents in Kenya, or any other African country does not in itself mean that those companies belong to those countries. Ouko on the other hand says Vodafone and its representatives stole the mobile cash transfer idea from him. He presented a certificate he obtained from the Copyright Board of Kenya in 2012. The certificate reads as follows: "It is hereby certified that a copyright work in the LITERARY category entitled MOBILE CASH TRANSFER and

2.3.1 M-Pesa, Safaricom and Vodafone in Kenya

As indicated above, M-Pesa originated in Kenya in 2007.⁸¹ The word “Pesa” is the Swahili⁸² word for cash; the “M” is for mobile.⁸³ Many people lived in remote areas and in rural areas where access to banks was not easy and this was one of many contributing factors to financial exclusion.⁸⁴

The executives at Vodafone and Safaricom tried to address the problems caused by financial exclusion.⁸⁵ They then thought a mobile financial service could address the problems of financial exclusion in Kenya’s financial sector. They came up with M-Pesa to address the gap between the unbanked populations from benefiting from financial inclusion.⁸⁶ M-Pesa only sought to address the gap that separated the unbanked population from the advantages of financial inclusion.⁸⁷ The intention of coming up with the idea of M-Pesa was not to replace the then existing payment structure.⁸⁸

At the 2003 World Summit for Sustainable Development, a representative of Vodafone⁸⁹ was approached by the United Kingdom’s Department for International Development

numbered KCB011146 has been registered in the name of NYAGAK ANYONA OUKO of Nairobi” While Makin claims that the whole idea of mobile cash transfer is his, and originated in England, Ouko also says he tried to Patent his Money Transfer System way back in 2003. This is also despite the fact that his copyright certificate from the Kenya Copyright Board was dated 15 June 2012. See The Founder Magazine 2015 <https://thefounder.co.ke/is-m-pesa-really-kenyan-invention-or-british-we-compare-the-stories-to-dig-up-the-truth/>.

⁸¹ Hughes and Lonie *Innovations: Technology, Governance, Globalization* 63; Madise *The Case of Regulation of Mobile Money in Malawi* 1; See ACP 2014

http://publications.iom.int/system/files/pdf/mobile_money.pdf 6.

⁸² Kiswahili is a language commonly spoken in East Africa, especially between people who speak different first languages. See Oxford University Press 2020

<https://www.oxfordlearnersdictionaries.com/definition/english/swahili?q=Swahili>. Swahili is also spoken in Tanzania. see Alamin *Swahili beyond the boundaries* 3-4.

⁸³ See Hughes and Lonie *Innovations: Technology, Governance* 63; also see Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3.

⁸⁴ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 383.

⁸⁵ Wambari *Mobile Banking in Developing Countries* 23.

⁸⁶ Wambari *Mobile Banking in Developing Countries* 23; Proudly Made in Africa 2014 *M-Pesa: The Safaricom Story* 2.

⁸⁷ Hinz *M-PESA: The Best of Both Worlds* 1.

⁸⁸ Jack and Suri 2011 <https://www.nber.org/papers/w16721.pdf>.

⁸⁹ See Hughes and Lonie *Innovations: Technology, Governance, Globalization* 66; where Nick Hughes had the following to say: “I started my M-PESA journey at the World Summit for Sustainable Development in 2003. After spending an afternoon contributing to a debate about how private

(DFID).⁹⁰ The reason was that the UK DFID wanted private organisations to invest heavily in international poverty alleviation efforts, as the poverty alleviation programmes demanded a more significant investment.⁹¹ The UK DFID was convinced that private organisations did not do that. They had failed to generate financial returns commensurate with that investment.⁹²

Vodafone then partnered with the Safaricom team in Kenya to launch the M-Pesa service. This was after Vodafone won the bid to head up the DFID's programme.⁹³ The Kenyan government was very supportive of Safaricom during the development stages of M-Pesa. There was a financial access survey held in 2006, during which low access to financial services throughout Kenya was identified as an issue.⁹⁴ The Central Bank of Kenya then announced its intention and commitment to discover all available and reasonable options to correct the financial access imbalance.⁹⁵ That was when the Central Bank of Kenya worked closely with the two companies, Safaricom and Vodafone, to ensure the success of M-Pesa.⁹⁶

sector organizations are driven by short term goals and thus don't typically address long-term sustainable development, I was approached by a representative of the UK government who controlled a challenge fund project set up by the Department for International Development (DFID)."⁹⁰ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 385; Also see Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho*; See Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 67.

⁹¹ Proudly Made in Africa 2014 *M-Pesa: The Safaricom Story 2*; Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 385.

⁹² The UK DFID believed that poverty alleviation could be a profitable endeavour to unleash the creative energies and logistical resources of some of the UK's largest companies, such as Vodafone, if the amount of money necessary for a programme's initial investment were to be reduced. As a result, UK DFID came up with the use for the UK's challenge funds in order to achieve the United Nation's Millennium Development Goal of reducing poverty by 50% by 2015. The goal was to subsidize private companies' investments in poverty alleviation efforts. UK DFID then proposed partnerships to Vodafone whereby private property alleviation efforts in African countries like Kenya would be more financially attractive to investors. This would be achieved by using the UK's challenge funds as a subsidy. M-Pesa was a result of the many partnerships proposed by DFID. See Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 385.

⁹³ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 386; See also Wambari *Mobile Banking in Developing Countries* 23. Wambari says: "Vodafone was successful in winning funds from the Financial Deepening Challenge Fund competition established by the UK Government's Department for International Development to encourage private sector companies to engage in innovative projects to deepen the provision of financial services in emerging economies".

⁹⁴ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 386.

⁹⁵ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 386.

⁹⁶ Mwaura *Mobile Banking in Developing Countries* 23. Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 386.

To avoid stifling the growth of the M-Pesa industry, the Central Bank of Kenya did not do any premature regulation of the M-Pesa programme, so there were almost no regulatory safeguards on M-Pesa during those early stages.⁹⁷

Around October 2005, Vodafone and Safaricom officially launched the M-Pesa pilot programme in Kenya, consisting of eight agent stores.⁹⁸ Initially, it began as a means used by micro-finance institutions to give loans to their customers and for customers to use their mobile phones to repay the loans. This led Vodafone to partner with a microfinance company called Faulu Kenya that provided individual customers and small companies with loan facilities.⁹⁹

Vodafone and Safaricom later realised that M-Pesa could be used beyond just paying micro-loans.¹⁰⁰ Vodafone and Safaricom then allowed their customers to buy airtime at a discount with their deposited e-money.¹⁰¹

2.4 Mobile money in Lesotho

There is low access to banking in Lesotho owing to many factors, such as limited banking infrastructure in the form of bank branches and device infrastructure, such as Automated Teller Machines (ATMs) and Point-of-Sale (POS) devices¹⁰².

In Lesotho, there are four major banks legally licensed and recognised by the Central Bank of Lesotho.¹⁰³ They are Standard Lesotho Bank, Nedbank Lesotho Limited, First

⁹⁷ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 386.

⁹⁸ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 386; See also Mwaura *Mobile Banking in Developing Countries* 23.

⁹⁹ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3; Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 386.

¹⁰⁰ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 385.

¹⁰¹ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology* 385.

¹⁰² See Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 51; Marcussen *Women and Mobile Money in Lesotho* 9. Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin*; Also see UNDP Report 2014 *Support to Financial Inclusion Lesotho* 8.

¹⁰³ Wade Publications CC 2015 <http://www.lesothoreview.com/>; See Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin*; Also see Central Bank of Lesotho 2013 *Annual Report* 6; UNDP Report 2014 *Support to Financial Inclusion Lesotho* 8.

National Bank (FNB) Lesotho and the Lesotho Post Bank. These four major banks form the core of the financial system in Lesotho.¹⁰⁴ Three of these banks, namely Standard Lesotho Bank, Nedbank Lesotho Limited and First National Bank (FNB) Lesotho are subsidiaries of South African Banks, while the Lesotho Post Bank is fully owned by the government of Lesotho.¹⁰⁵

Apart from the four major banks there are other credit-only Micro Financial Institutions.¹⁰⁶ There are also formal money lenders, and insurance brokers. All these are also formally and legally recognised and licensed by the Central Bank of Lesotho.¹⁰⁷

A large proportion of the banking infrastructure in Lesotho is situated mainly in the urban areas.¹⁰⁸ The mountainous terrain of Lesotho makes it difficult for financial services to be distributed to people and this makes banking infrastructure difficult and expensive.¹⁰⁹ In spite of the fact that there is low access to banking in Lesotho, the possibility of increasing the number of bank branches, Automated Teller Machines and Point-of-Sale devices is very small.¹¹⁰

¹⁰⁴ Central Bank of Lesotho 2013 *Annual Report 2*; Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin 14*.

¹⁰⁵ Central Bank of Lesotho 2013 *Annual Report 2*.

¹⁰⁶ These institutions are regulated and supervised by Central Bank of Lesotho in terms of the *Financial Institutions (Credit Only and Deposit Taking Micro-Finance Institutions) Regulations 51 of 2014* as amended by *Financial Institutions (Credit Only and Deposit Taking Micro-Finance Institutions) (Amendment) Regulations 43 of 2018*.

¹⁰⁷ Money Lenders in Lesotho are regulated by Central Bank of Lesotho in terms of the *Money Lenders (Amendment) Act No. 6 of 1993*, whereas the Insurance Companies and Insurance Intermediaries which include insurance brokers are regulated by Central Bank of Lesotho in terms of the *Insurance Act 12 of 2014* and *Insurance (Licensing of Insurance Intermediaries) Regulations 123 of 2016* respectively.

¹⁰⁸ Marcussen *Women and Mobile Money in Lesotho 9*.

¹⁰⁹ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho 1*; See Lesotho Diagnostic report 2014 *Demand, Supply, Policy and Regulation 31*, where it is stated that: "The country has a high elevation and the terrain is largely mountainous. Although distances are not large, the mountainous terrain makes transport and communications difficult. Many people live in areas that are considered "remote" due to inaccessibility. Many people in the rural areas are unable to access markets, schools and even health facilities".

¹¹⁰ This is due to the fact that it has been stated that there are "low population densities, financial viability, small financial markets and the mountainous terrain of the country." See Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin 14*.

According to Sekants'i and Motelle's analysis of Lesotho's level of financial inclusion, 80.9% of the Lesotho's population uses traditional measures of financial inclusion.¹¹¹ The writers say in the region of SADC, Lesotho has a financial inclusion level exceeded only by South and Africa and Namibia.¹¹²

The concept of mobile money was introduced in Lesotho in September 2012.¹¹³ The mountainous terrain of the country makes it difficult for people living in the highlands and rural areas to participate actively in the formal economy of the country.¹¹⁴ It is this reason that makes it difficult for people in the highlands and rural areas to be engaged and participate actively in the formal economy of the country.¹¹⁵ As a result, Lesotho adopted modern technology solutions that were already used by other African countries that had a problem with financial exclusion, such as Lesotho.¹¹⁶

Vodacom Lesotho and Econet Telecom Lesotho are two major mobile network operators (MNOs) in Lesotho.¹¹⁷ Vodacom Lesotho, previously known as Vital Cellular Link (VCL), first operated in Lesotho in 1996.¹¹⁸ One of the shareholders of VCL was the government of Lesotho. The government was represented through a company called the Lesotho

¹¹¹ Sekants'i and Motelle note that 45.8% of Lesotho's adult population makes use of banks and non-bank formal services, but only 38% has bank accounts at formal financial services. 62.4% of Lesotho's adult population accesses financial services, such as funeral insurance. See Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin* 15.

¹¹² Ranooe 2018 *Lesotho Times*; Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin* 15; Alliance for Financial Inclusion 2018 <https://www.afi-global.org/news/2018/11/lesothos-financial-inclusion-day-highlights-strong-call-collaboration-fintech>.

¹¹³ Central Bank of Lesotho 2013 *Annual Report* 38; Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 26;

¹¹⁴ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 1; Lesotho Diagnostic report 2014 http://www.finmark.org.za/wp-content/uploads/2016/01/MAP_Lesotho_Synthesis_2014_FNL1.pdf 31; Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin* 17.

¹¹⁵ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 2.

¹¹⁶ Mobile Money became the easier solution because mobile money services make use of the already present mobile network operator's (MNOs) infrastructure. Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 2; Also see Central Bank of Lesotho 2013 *Annual Report* 1.

¹¹⁷ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3.

¹¹⁸ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3. See Vodacom Lesotho 2017 <http://www.vodacom.co.ls/ls-about-us/company-profile>.

Telecommunications Corporation (LTC).¹¹⁹ LTC then sold and privatised its shares and the shares were sold to another company called Sekha-Metsi Consortium.¹²⁰

In 2014, Vodacom Lesotho managed to have over one million subscribers.¹²¹ This enabled Vodacom Lesotho to expand its mobile network footprint.¹²² Vodacom Lesotho offers a mobile money product called M-Pesa, which is similar to that offered in Kenya by Safaricom.¹²³

The other mobile network company in Lesotho is Econet Telecom Lesotho which is the subsidiary of the Econet Group. In 2008, Telecom Lesotho and Econet Ezi-Cell Lesotho merged to form one company called Econet Telecom Lesotho. This company owns the remaining 20% of the market share in Lesotho.¹²⁴

Although Vodacom Lesotho is the leading mobile network operator in Lesotho and the first network company to operate in Lesotho since 1996, Econet Telecom Lesotho became the first mobile network company to launch a mobile money product called *Eco-cash Sepachefono* in 2012. *Sepachefono*, like M-Pesa, translates to a mobile wallet.¹²⁵ Vodacom followed suit in 2013 and launched its mobile money product called M-Pesa.¹²⁶

¹¹⁹ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3.

¹²⁰ Sekha-Metsi Consortium owns 20% shares in Vodacom Lesotho and the rest of the shares are owned by Vodacom Group. See Vodacom Lesotho 2017 <http://www.vodacom.co.ls/ls-about-us/company-profile>; also see Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3.

¹²¹ That helped Vodacom Lesotho to top the market and become a top mobile network operator in Lesotho. It has been reported that at that time, Vodacom owned about 80% of the market. Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3.

¹²² It has been stated that Vodacom managed to expand its penetration by about 65%. Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3.

¹²³ See Lesotho Diagnostic report 2014 http://www.finmark.org.za/wp-content/uploads/2016/01/MAP_Lesotho_Synthesis_2014_FNL1.pdf 16; Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3.

¹²⁴ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3. See Econet Telecom Lesotho 2017 http://www.etl.co.ls/index.php?option=com_content&view=article&id=23&Itemid=105.

¹²⁵ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 6.

¹²⁶ See Vodacom Lesotho (2017) About Vodacom Lesotho. It is stated that: "In July 2013, Vodacom Lesotho launched M-Pesa, a revolutionary financial service and driver of financial inclusion and economic empowerment. Through M-Pesa, Basotho can send and receive money, buy airtime, be able to pay for utility bills and in the near future, perform international money transfers. In the six months Vodacom M-Pesa has been around, over 325 000 people have registered on the service.

2.5 The mobile money platform

Nowadays, mobile money is a service and no longer a product.¹²⁷ A mobile money platform is different from an airtime recharge platform.¹²⁸ A person who receives a mobile money transfer does not use it up as with an airtime transfer. The receiver transfers the money to a different person, business, or payment recipient. It has more use cases, and many stakeholders and transactions take place differently and on a different aspect.¹²⁹

Mobile money transactions have to be done very quickly, very correctly and they must also be completed fully because of the sensitivity involved in the mobile money service.¹³⁰ Because of this sensitivity, the entire M-PESA system is administered by a web interface which provides the real-time status of the transactions that take place in the accounts of the customers.¹³¹ It enables customer care administration, float management such as cash and e-money, and transaction audits.¹³² This web interface also produces different reports that are used by super agents¹³³ to monitor how the retail agents operate.¹³⁴ Head office also monitors the transactions that go through the system with the intention of identifying any suspicious transactions that are likely to take place in the process.¹³⁵ If there are any erroneous transactions, such as the agent depositing money into the

Vodacom has trained and approved over 1 000 M-Pesa agents countrywide to date, and the numbers continue to rise exponentially. Vodacom M-Pesa services can be Person-to-Person, Customer-to-Business, Business-to-Customer, and Business-to-Business.” Vodacom Lesotho 2017 <http://www.vodacom.co.ls/ls-about-us/company-profile>.

¹²⁷ McGrath & Lonie 2013 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/06/2013_MMU_Platforms-for-Successful-Mobile-Money-Services.pdf 5.

¹²⁸ McGrath & Lonie 2013 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/06/2013_MMU_Platforms-for-Successful-Mobile-Money-Services.pdf 5.

¹²⁹ McGrath & Lonie 2013 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/06/2013_MMU_Platforms-for-Successful-Mobile-Money-Services.pdf 6.

¹³⁰ McGrath & Lonie 2013 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/06/2013_MMU_Platforms-for-Successful-Mobile-Money-Services.pdf 6.

¹³¹ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

¹³² Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

¹³³ Flaming defines super agents as “banks that have agreed to operate a special facility for agents to rebalance their cash and e-float. This takes place in existing bank branches.” See Flaming 2011 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/06/agentmanagement_tg22.pdf 22.

¹³⁴ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

¹³⁵ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

account of a wrong subscriber or customer, the web interface is used to correct those mistakes.¹³⁶

Short Message Service (SMS)¹³⁷ and the Unstructured Supplementary Service Data (USSD)¹³⁸ are used to communicate with the customer, subscriber or mobile money service users.¹³⁹ SMS technology enables the subscriber to send and receive messages with the help of a store-and-forward facility.¹⁴⁰ In Kenya, an application called the SIM Toolkit (STK) is used to run M-Pesa.¹⁴¹ SIM Toolkit is the technology that consists of a set of instructions that are programmed into the Subscriber Identity Module (SIM)¹⁴² card.¹⁴³ This is installed on the mobile phone of a subscriber, and it enables and makes it easier to change or upgrade menu options.¹⁴⁴

A mobile money transactional request or response communicated through an SMS must be delivered without any waste of time.¹⁴⁵ This is simply because before the mobile money agent gives cash to a customer, the agent must have received an SMS notification or confirmation that a cash-out transaction has been successfully completed.¹⁴⁶ This is also because when there are many customers and the queues are long, customers will be

¹³⁶ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

¹³⁷ Hereinafter referred to as SMS.

¹³⁸ Hereinafter referred to as USSD. Tsemame says: "USSD is a service offered by the MNOs which provides for fast communication between the subscriber's mobile station (cell phone) and the mobile money system (application). USSD is session-based, whilst SMS is transaction-based. That is to say that a session with a lifespan is created when a USSD communication is initiated, usually through the use of the "*" key on the mobile station. The initiation string often ends with "#" (i.e. *191# for mobile money options). The communication is in real-time as the system expects user interaction during the session. However, for SMS communication, the SMS is first stored and then forwarded to the mobile station at a later stage if needed. Both these technologies usually complement each other for a complete mobile money transaction..."

¹³⁹ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 20.

¹⁴⁰ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 20.

¹⁴¹ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services*.

¹⁴² Hereinafter referred to as SIM card.

¹⁴³ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

¹⁴⁴ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

¹⁴⁵ McGrath & Lonie 2013 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/06/2013_MMU_Platforms-for-Successful-Mobile-Money-Services.pdf 6.

¹⁴⁶ McGrath & Lonie 2013 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/06/2013_MMU_Platforms-for-Successful-Mobile-Money-Services.pdf 6.

inconvenienced if they have to wait for the mobile money agent to receive SMS notification or confirmation.¹⁴⁷

It is very important to ensure at the onset that there is perfectly functioning technology for a mobile money service.¹⁴⁸ The importance of technology in mobile money services cannot be overemphasised.¹⁴⁹ The mobile money platform interfaces with the mobile network operators' information technology infrastructure.¹⁵⁰ For a mobile money platform to be successful, there must be servers from the mobile network operators' information technology infrastructure that must host the mobile money data, such as account balance and customer information.¹⁵¹ These services interface with the core Global System for Mobile (GSM) networks. Cellular phones are then used to access the mobile money service by inserting the SIM card into that cellular phone.¹⁵²

In the case of Safaricom in Kenya, for instance, Morawczynski¹⁵³ says customers or subscribers initiate mobile money transactions through a menu that is available on their mobile phones. This menu is offered in two languages being English¹⁵⁴ and Kiswahili. As soon as the customer is registered, the menu is uploaded onto his/her SIM card on his/her mobile phone.¹⁵⁵ The menu prompts users to enter information such as the transaction type, transaction amount, Personal Identification Number (PIN)¹⁵⁶ or any other information necessary for the transaction to be completed.¹⁵⁷ When all the information need is collected, it is processed via a text message.¹⁵⁸

¹⁴⁷ McGrath & Lonie 2013 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/06/2013_MMU_Platforms-for-Successful-Mobile-Money-Services.pdf 6.

¹⁴⁸ McGrath & Lonie *Platforms for Successful Mobile Money Services* 7; See Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 40.

¹⁴⁹ McGrath & Lonie 2013 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/06/2013_MMU_Platforms-for-Successful-Mobile-Money-Services.pdf 6.

¹⁵⁰ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 20.

¹⁵¹ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 20.

¹⁵² Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 20.

¹⁵³ See Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

¹⁵⁴ English and Kiswahili (or Swahili) are two official languages of Kenya. Alamin *Swahili beyond the boundaries* 4.

¹⁵⁵ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

¹⁵⁶ Hereinafter referred to as PIN.

¹⁵⁷ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

¹⁵⁸ Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 63.

2.6 Different mobile money service models

2.6.1 Introduction

The way in which a business is designed to create, deliver and capture value can be defined as a business model.¹⁵⁹ There are various mobile payments business models that have surfaced, dependent on the regulatory climate applicable, customer background and demographics.¹⁶⁰ Most mobile money business models have many similarities in the approach taken to service delivery.

Common mobile money business models include the Mobile Network Operator-led model, Bank/Financial Institutions-led model and Third Party-led model, among others. There is also the peer-to-peer model and the hybrid model. These models will be discussed in more detail immediately below.

2.6.2 Mobile Network Operator-led model

This model is also sometimes referred to as *the operator-centric model*.¹⁶¹ In a mobile network operator-led business model, the participation of the financial firm in the payment delivery, clearing, and settlement is very limited and in some cases, it is completely eliminated.¹⁶² Mobile network operators' models succeed in developing markets because they are able to reach large numbers of the unbanked population in remote and rural areas where there is no banking infrastructure.¹⁶³ With this model the MNO provides the

¹⁵⁹ Lüchinger *An Analysis of Business Models for Delivering Mobile Savings Services* 11. Lüchinger notes that most mobile money businesses are classified according to the identity of the provider who offers a mobile money platform.

¹⁶⁰ Merritt *Mobile Money Transfer Services* 9.

¹⁶¹ Chaix et al *Which economic model for mobile payments* 5. See Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1615 where the Operator-Centric Model is discussed in detail by the writers.

¹⁶² See Kersop and Du Toit state that; "...MNO acts autonomously in providing a mobile money service... This is often done by means of a mobile wallet which operates separately from the client's mobile account"; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1615. See Merritt *Mobile Money Transfer Services* 10.

¹⁶³ Merritt *Mobile Money Transfer Services* 10.

technology, controls the transactions and manages the system.¹⁶⁴ The geographic reach of this model may be extended with the help of bilateral and multilateral agreements with other wireless carriers, in order to expand their remittance services outside of their own geographic borders and beyond their regulatory jurisdictions.¹⁶⁵ With this model, MNOs ordinarily have an already-existing agent-distribution network, although sometimes the network may be limited in its geographical reach.¹⁶⁶ Most MNOs operate without a banking license and as a result they must be connected to a licensed financial institution in order for them to provide mobile money financial services.¹⁶⁷ MNOs have to deposit their funds with a licensed financial institution into a trust account.¹⁶⁸

2.6.3 Bank/financial institution-led model

In this model, it is not the MNO that initiates the provision of mobile money services to its customers, but a bank or financial institution takes that initiative to provide its clients with a mobile banking service.¹⁶⁹ Although the initiative to provide a mobile banking service is taken by the bank/financial institution and not the MNO, the financial institution relies on the infrastructure of the MNO to transfer the data of the transactions to its clients, but it uses its own branches or partners for the distribution network.¹⁷⁰ In some instances, depending on the design of the system used by the bank/financial institution, it may be necessary for the bank/financial institution and MNO to enter into a partnership in order for the MNO to pre-load the SIM with a special application that would enable the bank/financial institution's user of a mobile banking service to access the menu directly

¹⁶⁴ Chaix et al *Which economic model for mobile payments* 5.

¹⁶⁵ Merritt *Mobile Money Transfer Services* 10.

¹⁶⁶ Yousif 2012 https://www.imtfi.uci.edu/files/grameen_microfinance_white_paper.pdf 13.

¹⁶⁷ See Debray, Kwon and Gill *Mobile Money Opportunities for Mobile Operators* 4; See Yousif 2012 https://www.imtfi.uci.edu/files/grameen_microfinance_white_paper.pdf 13; See Lal and Sachdev *Mobile Money Services* 5 and 13.

¹⁶⁸ Yousif 2012 https://www.imtfi.uci.edu/files/grameen_microfinance_white_paper.pdf 13; See Lal and Sachdev *Mobile Money Services* 13.

¹⁶⁹ Yousif 2012 https://www.imtfi.uci.edu/files/grameen_microfinance_white_paper.pdf 14; See Lal and Sachdev *Mobile Money Services* 14; According to Kersop and Du Toit; "This model entails that a bank is the entity which offers mobile financial services to clients, with MNOs merely playing an assisting role and addressing quality concerns by means of experience..." See Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1615.

¹⁷⁰ Yousif 2012 https://www.imtfi.uci.edu/files/grameen_microfinance_white_paper.pdf 14; See Lal and Sachdev *Mobile Money Services* 14.

from his/her cellular phone, tablet or any mobile device he/she uses.¹⁷¹ The bank/financial institution-led models are less prevalent than the mobile network operator-led models.¹⁷² This is probably because MNOs have some advantages over banks, as they hold the technology and they usually frequently compete with a fewer number of partners as opposed to banks that have many competitors.¹⁷³

2.6.4 The collaborative model

In this business model, the institution that provides the mobile financial service is one that is created specifically for the purpose of providing a mobile financial service.¹⁷⁴ This model is sometimes referred to as the partnership model,¹⁷⁵ or the third-party-led model.¹⁷⁶ This model is called the collaborative model because it involves collaboration amongst banks/financial institutions, MNOs, and a third party connecting the bank and the MNO.¹⁷⁷ In this model, the financial institutions or banks, MNO and third-party service providers collaborate and partner to provide payment services to their customers.¹⁷⁸ Services, such as registering of clients, deposit taking, and paying out cash to complete mobile money transactions are rendered by MNOs or other retail outlets.¹⁷⁹ The financial institutions or banks, MNOs and third-party service providers may take advantage of each other's individual strong point in respect of offering customer service, establishing innovation, and guaranteeing an environment of sound regulatory compliance.¹⁸⁰

¹⁷¹ Kwon and Gill *Mobile Money Opportunities for Mobile Operators* 4; See Yousif 2012 https://www.imtfi.uci.edu/files/grameen_microfinance_white_paper.pdf 14; See Lal and Sachdev *Mobile Money Services* 14.

¹⁷² Chaix et al *Which Economic Model for Mobile Payments* 10.

¹⁷³ Chaix et al *Which Economic Model for Mobile Payments* 10.

¹⁷⁴ Yousif 2012 https://www.imtfi.uci.edu/files/grameen_microfinance_white_paper.pdf 15; See Lal and Sachdev *Mobile Money Services* 15.

¹⁷⁵ Merritt *Mobile Money Transfer Services* 11.

¹⁷⁶ See Debray, Kwon and Gill *Mobile Money Opportunities for Mobile Operators* 4; Yousif 2012 https://www.imtfi.uci.edu/files/grameen_microfinance_white_paper.pdf 15; See Lal and Sachdev *Mobile Money Services* 15.

¹⁷⁷ See Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1616.

¹⁷⁸ Merritt *Mobile Money Transfer Services* 11.

¹⁷⁹ See Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1616.

¹⁸⁰ Merritt *Mobile Money Transfer Services* 11.

2.7 The benefits and characteristics of mobile money services

2.7.1 Process speed

It was stated earlier in this chapter that mobile money transactions have to be done very quickly and very correctly.¹⁸¹ It was also stated that SMS and the USSD are used to communicate with the customer, subscriber or mobile money service users.¹⁸² Mobile money transactions take place quickly and are completed at an “SMS speed”.¹⁸³ This means the time taken to complete transactions through mobile money is very quick.¹⁸⁴ It is easy, convenient and very fast to send money to people who live very far from each other.¹⁸⁵ Depositing cash into a mobile money account and converting cash into mobile money also takes place quickly.¹⁸⁶

2.7.2 Versatility

Compared to some cards, such as plastic cards that can be used at specific service providers only, mobile money users can use one device, namely a cellular phone and a mobile money account for many different services through many different service providers.¹⁸⁷

¹⁸¹ See section 2.5 para 3.

¹⁸² Section 2.5 para 3.

¹⁸³ See Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 30; Jenkins *Developing Mobile Money Ecosystems* 13.

¹⁸⁴ Donovan (eds) “Mobile Money for Financial Inclusion” 64, Donovan explains that in using mobile money services, money can be transferred to longer distances at a speed of a text message.; See Jenkins *Developing Mobile Money Ecosystems* 13.

¹⁸⁵ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 30.

¹⁸⁶ This can be done with minimal effort and expense. Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1613.

¹⁸⁷ Jenkins *Developing Mobile Money Ecosystems* 13.

2.7.3 Security

It is safer and more convenient to use mobile money than handling cash because the value is not physically present.¹⁸⁸ This enables mobile money users to receive cash, send it and to spend it without handling it.¹⁸⁹ It is safe to use mobile money and the completed transaction can easily be traced.¹⁹⁰ It is much easier to trace electronic transactions than cash transactions; as a result, mobile money helps in promoting and contributing to transparency.¹⁹¹ A person is obliged to enter a Personal Identification Number for any mobile money transaction. This means that mobile money also promotes privacy and security.¹⁹²

2.7.4 A primary account in its own right

A mobile money account does not depend on a bank account to function and be active.¹⁹³ A mobile phone is the only device needed by clients in order to be financially linked.¹⁹⁴ Unlike a bank account that requires clients to go to the bank in order to open a bank account, clients can open mobile money accounts and be financially included by simply using their mobile phones without going to the MNO.¹⁹⁵

2.7.5 Lower costs

Another benefit of using mobile money is that it is very inexpensive.¹⁹⁶ Mobile money is cheap because it facilitates the flow of money from one user to another using the mobile

¹⁸⁸ Donovan (eds) "Mobile Money for Financial Inclusion" 63; See Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 30.

¹⁸⁹ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 30.

¹⁹⁰ Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1636.

¹⁹¹ Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1614.

¹⁹² Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 30.

¹⁹³ Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1613. The writers state that for a mobile money account to be activated, it is not necessary for one to have a bank account in existence.

¹⁹⁴ Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1613.

¹⁹⁵ See Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1613

¹⁹⁶ Donovan (eds) "Mobile Money for Financial Inclusion" 63. Donovan states that the reason why mobile money is successful is because it is cheaper than other alternatives to cash.

infrastructure that is already available to and used by almost everyone.¹⁹⁷ The number of people who own mobile phones is more than the number of people who have bank accounts.¹⁹⁸ As stated earlier, unlike as with bank accounts, clients do not need to go to the bank or the MNO premises to open mobile money accounts. Therefore, this means that there are practically no costs associated with opening mobile money accounts.¹⁹⁹ After opening a bank account, one needs to keep maintaining it and there are charges even when the account is not being used, but a mobile money account is free.²⁰⁰ There are no monthly charges on mobile money accounts.

2.7.6 Reduces the risk of money laundering

Mobile money has the potential and capability of reducing and controlling the risk of money laundering and financing terrorism. It has been stated earlier that mobile money promotes and contributes to transparency because of the fact that electronic transactions can be traced.²⁰¹ The risk of money laundering is reduced by lowering the rate of financial exclusion and improving financial integrity through electronic transactions that can be easily monitored and traced as opposed to the use of cash.²⁰²

2.7.7 Promotes financial inclusion and helps to eradicate poverty

Mobile money has the ability to facilitate financial sector inclusion.²⁰³ Poverty is not only about a lack of money.²⁰⁴ It is also about a lack of access to the tools, resources and

¹⁹⁷ Jenkins *Developing Mobile Money Ecosystems* 5.

¹⁹⁸ Jenkins *Developing Mobile Money Ecosystems* 5.

¹⁹⁹ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 27. Morawczynski says many people choose to manage their finances by using M-Pesa because the service is cheaper than other services provided by other financial services and is also more accessible. See Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 183. Also see Perlman *Legal and Regulatory Aspects of Mobile Financial Services* 35.

²⁰⁰ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 27.

²⁰¹ Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1614.

²⁰² Castri 2013 https://www.gsma.com/publicpolicy/wp-content/uploads/2013/02/GSMA2013_Report_Mobile-Money-EnablingRegulatorySolutions.pdf 5 - 6.

²⁰³ Jenkins *Developing Mobile Money Ecosystems* 5.

²⁰⁴ Donovan (eds) "Mobile Money for Financial Inclusion" 62.

means that can help poor people improve their lives.²⁰⁵ With the use of mobile money, people, including the poor, have access to financial services using their mobile phones and thereby leading to financial inclusion. Mobile money promotes financial inclusion and also increases the rate of saving.²⁰⁶ It has been stated that being excluded from the formal financial system has been found to be one of the obstacles to a world without poverty.²⁰⁷

Roughly more than half of homes in many developing countries lack an account with a financial institution.²⁰⁸ Some people cite difficulty in gaining access to and affording financing as the main constraint on their growth and development.²⁰⁹ This, however, does not essentially mean that poor people do not have active financial lives.²¹⁰ Mobile money therefore addresses these problems by facilitating financial sector inclusion and it is this ability or characteristic of mobile money that gives it its massive possibility for development impact.²¹¹

2.8 Financial inclusion

2.8.1 Definition of financial inclusion

²⁰⁵ Donovan (eds) "Mobile Money for Financial Inclusion" 62. This is supported by Kersop and Du Toit who say that: "Exclusion from the financial system is also one of the most substantial obstacles preventing the eradication of poverty" See Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1603. Also see Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 9.

²⁰⁶ Ouma, Odongo and Were 2017 *Review of Development Finance* 2; Ky, Rugemintwari, Sauviat 2018 *Journal of African Economies* 287.

²⁰⁷ Donovan (eds) "Mobile Money for Financial Inclusion" 62. See Perlman *Legal and Regulatory Aspects of Mobile Financial Services* 22. Perlman notes further that one other possible source of poverty is the fact that people do not know about and do not access traditional banking institutions. Morawczynski also states that if people are given financial products, such products are vital to eliminate poverty. See Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 65.

²⁰⁸ Donovan (eds) "Mobile Money for Financial Inclusion" 62.

²⁰⁹ Donovan (eds) "Mobile Money for Financial Inclusion". Perlman *Legal and Regulatory Aspects of Mobile Financial Services* 22.

²¹⁰ Donovan (eds) "Mobile Money for Financial Inclusion" 62.

²¹¹ For more detailed reading on the benefits of mobile money also see Ssettimba "Mobile Money in Uganda" 20 - 23. Jenkins *Developing Mobile Money Ecosystems* 5.

There is consensus regarding the importance of financial inclusion, but how it is defined can vary depending on the national context and on the stakeholders involved.²¹² Financial inclusion is a situation whereby everyone in the country has access to services offered by financial institutions. Different writers define financial inclusion in different ways.

According to the definition given by Sekants'i and Motelle, when a formal financial system can be easily accessed and used by all members of the economy, then there is financial inclusion.²¹³ According to these writers, a formal financial system must also afford the poor and disadvantaged social groups access to financial services, like payment services, remittance facilities, loans, as well as insurance services offered by the formal financial system at costs that are reasonable and affordable.²¹⁴

2.8.2 Components or measurements of financial inclusion

Measuring financial inclusion is an issue of concern for many people like researchers, governments as well as policy makers.²¹⁵ Financial inclusion is a concept that has many components, all or some of those components of financial inclusion may be applicable to a certain country's plan.²¹⁶ The most commonly used components through which financial inclusion can be defined or measured are Access, Quality, Usage, and Welfare.²¹⁷ These components, including what they entail will be discussed in more detail in the section that follows immediately below.

²¹² FATF Guidance 2013 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 12.

²¹³ Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin* 3.

²¹⁴ Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin* 3.

²¹⁵ Cámara and Tuesta *Measuring Financial Inclusion* 6.

²¹⁶ Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and> 4.

²¹⁷ Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 12. Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and> page 4. These components are also discussed in detail by Triki and Faye (eds) *Financial Inclusion in Africa* 26.

2.8.2.1 Access

Access is about the possibility and the ability of individuals to use available financial services and products that are offered by different formal financial institutions.²¹⁸ In order to understand the levels of access to financial services and products offered by different formal financial institutions, it may be necessary to have insight into and to analyse potential barriers to opening and using a bank account.²¹⁹ Those barriers may include, but are not limited to, the costs of opening the bank account which sometimes includes even travelling to the bank and physical nearness of bank service points, such as bank branches and their ATMs.²²⁰

It should, however, be noted that having greater access to formal financial services does not necessarily indicate that there is a higher level of financial inclusion.²²¹ It might boost regularity in the use of financial services and products by improving the margin of usage, but it does not necessarily also expand wide margin, in respect of higher percentages of accounts that are owned or any other financial service.²²²

One way of determining whether there is access to financial services and products offered by different formal financial institutions is by considering the number of active accounts in the financial institutions and assessing the percentage of the population having a bank account.²²³ The reliable information on this can be obtained from financial institutions,

²¹⁸ Cámara and Tuesta *Measuring Financial Inclusion* 9; See also Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and> page 4. See Triki and Faye (eds) *Financial Inclusion in Africa* 26.

²¹⁹ Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 13.

²²⁰ See Tsemame says: "...a customer must travel to the bank to perform the action of opening an account, which in itself adds to the total cost of opening an account..." See Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 27. Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>.

²²¹ Cámara and Tuesta *Measuring Financial Inclusion* 9.

²²² Cámara and Tuesta *Measuring Financial Inclusion* 9.

²²³ Hafisdeen says: "In determining the level of access, the most essential determinant would be to measure the extent of the populace that have access to a formal bank account" See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 13. Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>.

such as banks.²²⁴ For instance, according to Zins and Weill, 62 percent of the adult population worldwide has an account at a bank or with a mobile money provider.²²⁵ Because of new innovations, such as mobile banking, the number of people owning bank accounts in developing countries has increased to 54 percent of the population of the developing countries.²²⁶

2.8.2.2 Usage

Usage is about the permanence and depth of financial services or the use of financial products.²²⁷ In order to determine whether there is usage, regard must be had to the regularity, frequency, as well as the duration of use of financial service and products over time.²²⁸ Usage is also about determining the combination of financial products that are used by any one person or by one household.²²⁹ In order to determine the level of usage of formal financial services by people, three indicators are used, namely the holding of at least one financial product²³⁰ offered by a formal financial institution, keeping savings at a formal financial institution and having a loan in a formal financial institution.²³¹

2.8.2.3 Quality

²²⁴ Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>.

²²⁵ Zins and Weill 2016 *Review of Development Finance* 46. Hafisdeen says that the majority of the people patronising financial services and financial products may own more than one bank account with either a single or multiple bank. See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 13.

²²⁶ Zins and Weill 2016 *Review of Development Finance* 46.

²²⁷ Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 13; Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>.

²²⁸ Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>; Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 13.

²²⁹ Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>.

²³⁰ Examples of financial products offered by financial institutions, such as banks include loans, current accounts, savings accounts, life cover, and other funeral insurance cover provided by insurance companies, credit cards and many others.

²³¹ Cámara and Tuesta *Measuring Financial Inclusion* 7.

Quality is about the customers' experience, their attitudes and opinions regarding the current and available products and services of the formal financial institutions made available to them.²³² The level and nature of the relationship that customers have with the formal financial service provider could be determined by the quality of products and services of financial institutions made available to customers.²³³ The choices presented to customers by financial institutions and the level of understanding of those products and services by customers can also help determine quality.²³⁴

2.8.2.4 Welfare

Welfare is about measuring the impact and effect, as well as the outcome of a financial product or financial service on the lives of users and customers of the financial institution.²³⁵ It is not easy to determine the role played by financial products and financial services on the lives of people, without misjudging it for some other concurrent factor, such as customers' or users' increased income.

2.8.3 Financial inclusion barriers

In order to be able to assess and measure the level of financial inclusion, it is necessary to understand why some people are excluded from the formal financial system.²³⁶

²³² What is also important in determining quality is to find out whether the financial product matches the lifestyle of the customer who is given that particular financial product. See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 13; Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>.

²³³ Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>.

²³⁴ Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 13. Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>.

²³⁵ This also entails any changes in the usage, business activity and wellness of the customers or users. See Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and>. Hafisdeen says it is not easy to quantify the impact of financial inclusion. See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 14.

²³⁶ Cámara and Tuesta *Measuring Financial Inclusion* 7; According to Hafisdeen, there are many different challenges that prevent people from being financially included and such reasons differ between nations and regions. See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 15.

Financial exclusion may be categorised into two types, namely voluntary or self-exclusion and involuntary exclusion.²³⁷ Voluntary exclusion or self-exclusion is a reflection of lack of use of formal financial services by individuals.²³⁸ It entails a situation where individuals decide that they do not want to use formal financial institutions for specific reasons.²³⁹ Involuntary exclusion means lack of access to formal financial services by poor people.²⁴⁰ It entails a situation where individuals are forced by certain circumstances to be excluded or to be barred from using formal financial services and products. As a result of these categories, some challenges or barriers faced in implementing financial inclusion are identified. These are human barriers, infrastructural barriers, as well as cost barriers.²⁴¹ These barriers are discussed in more detail.

2.8.3.1 Human barriers

Human barriers can include the fact that people are not aware that financial services exist or they are aware, but they do not know how to use them.²⁴² This may be due to limited financial literacy.²⁴³ Human barriers also include things, such as a absence of legal identity, financial position of persons, their age and gender issues.²⁴⁴ Another possibility is that because of cultural reasons, some people do not believe in using formal financial institutions.²⁴⁵ According to Kunt and Klapper, the fact that people do not have trust in banks may be a tough barrier to overcome.²⁴⁶ This may be a result of cultural norms and beliefs, discrimination against some individuals or population groups, or economic crises

²³⁷ Cámara and Tuesta *Measuring Financial Inclusion* 8.

²³⁸ Adeyemi, Pramanik and Meera 2012 *Journal of Islamic Finance* 1.

²³⁹ These reasons vary from person to person. They include the fact that people are not comfortable using the financial institution's services.

²⁴⁰ Adeyemi, Pramanik and Meera 2012 *Journal of Islamic Finance* 1.

²⁴¹ Gupta 2015 *International Journal of Engineering Technology, Management and Applied Sciences* 173.

²⁴² Subbarao *Financial Inclusion Challenges and Opportunities* 10; Gupta 2015 *International Journal of Engineering Technology, Management and Applied Sciences* 173.

²⁴³ Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 20; Gupta 2015 *International Journal of Engineering Technology, Management and Applied Sciences* 173.

²⁴⁴ Gupta *International Journal of Engineering Technology, Management and Applied Sciences* 173.

²⁴⁵ Cámara and Tuesta *Measuring Financial Inclusion* 5.

²⁴⁶ Allen says, "Male and wealthier adults are more likely to report that they do not have an account because they do not trust banks" See Allen *The Foundations of Financial Inclusion* 26; Also see Kunt et al *Measuring Financial Inclusion* 21.

and uncertainty.²⁴⁷ As a result of being illiterate, people may not be aware of the benefits of formal financial institutions.²⁴⁸ They may not be aware of benefits, such as financial services' ability to manage risk, savings for the future, as well as the affordability of different investments.²⁴⁹

2.8.3.2 Infrastructural and institutional barriers

Infrastructural barriers include the fact that financial institutions, financial services and financial products are located very far from where some people live and as a result it becomes difficult for people to access them.²⁵⁰ According to Kunt and Klapper,²⁵¹ distance from a bank is a much greater barrier in rural areas. Technological and other innovations that address this barrier of physical distance could pay off by potentially increasing the number of the adult population using a formal account.²⁵² Some of the technology used by financial institutions may not be easy for some people to be able to use.²⁵³ Subbarao says that most of the financial products are not suitable for the poor people and nothing is done to design products that can suit the needs²⁵⁴ of those poor people.²⁵⁵

Another barrier could be caused by documentation.²⁵⁶ Documentation requirements for opening an account at a formal financial institution may exclude certain individuals from

²⁴⁷ Kunt et al *Measuring Financial Inclusion* 21.

²⁴⁸ Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 20.

²⁴⁹ Hafisdeen notes that: "Poor financial literacy limits the capacity of people to be aware of financial services and products, make informed choices and take effective actions that could improve their financial prosperity." See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 21. Cámara and Tuesta *Measuring Financial Inclusion* 8.

²⁵⁰ Cámara and Tuesta *Measuring Financial Inclusion* 10.

²⁵¹ Kunt et al *Measuring Financial Inclusion* 4; Lesotho Diagnostic report 2014 *Demand, Supply, Policy and Regulation* 31.

²⁵² Kunt et al *Measuring Financial Inclusion* 4.

²⁵³ Cámara and Tuesta *Measuring Financial Inclusion* 10.

²⁵⁴ One of the basic needs of most poor people living in the rural areas is education. If poor people do not have proper and sufficient education, it becomes difficult for them to use some of the products and services offered by formal financial institutions because they do not have the necessary education to understand how to use them. Financial products must therefore meet the needs of poor uneducated people.

²⁵⁵ Subbarao *Financial Inclusion Challenges and Opportunities* 10.

²⁵⁶ Allen *The Foundations of Financial Inclusion* 29; Triki and Faye (eds) *Financial Inclusion in Africa* 26; Cámara and Tuesta *Measuring Financial Inclusion* 8.

opening bank accounts.²⁵⁷ For example, not everyone has a payslip.²⁵⁸ People in the rural areas or informal sector are unlikely to possess a payslip or formal proof of residence as required by most banks or financial institutions for verification purposes.²⁵⁹ Studies reveal a noteworthy correlation between subjective and objective measures of documentation obligations as an obstacle to account use.²⁶⁰ The Financial Action Task Force²⁶¹ has emphasised the need by formal financial institutions, such as banks to ensure that AML/CFT safeguards also support financial inclusion.²⁶² This is after recognising that overly cautious AML/CFT safeguards may have the unintended consequence of rejecting legitimate and genuine businesses and consumers from the formal financial system.²⁶³

2.8.3.3 Cost barriers

One of the challenges faced by people involved in formal financial institutions is the costs involved in making use of the formal financial services and products. Lack of enough money to use a formal bank account provided by a formal financial institution has been cited by adults as the common reason for not owning a formal account at a formal financial institution.²⁶⁴ As stated above, even the costs involved in travelling to distant financial institutions also affects poor people and prevents them from using them.²⁶⁵

²⁵⁷ According to Hafisdeen, the national and international requirements that financial institutions compel their customers to adhere to may cause these problems. See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 20; also see Kunt et al *Measuring Financial Inclusion* 20.

²⁵⁸ Kunt et al *Measuring Financial Inclusion* 20.

²⁵⁹ Kunt et al *Measuring Financial Inclusion* 20.

²⁶⁰ Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 20; Kunt et al *Measuring Financial Inclusion* 20.

²⁶¹ Hereinafter referred to as FATF. Financial Action Task Force (FATF) has been defined by Ian Roberge as “the principal organisation for dealing with money laundering and terrorist financing at the international level.” See Hale and Held *The Handbook of Transnational Governance: Institutions and Innovations* 3.

²⁶² Kunt et al *Measuring Financial Inclusion* 20.

²⁶³ Kunt et al *Measuring Financial Inclusion* 20.

²⁶⁴ Subbarao *Financial Inclusion Challenges and Opportunities* 11; Kunt et al *Measuring Financial Inclusion* 3.

²⁶⁵ See Donovan (eds) “Mobile Money for Financial Inclusion” 69; Triki and Faye (eds) *Financial Inclusion in Africa* 26; See Allen *The Foundations of Financial Inclusion* 27. Allen says: “Distance is significantly more likely to be cited as a barrier by rural residents, as well as by less educated, married, or poor adults, who may find it more costly and difficult to travel long distances to access financial services.”

2.8.4 Benefits of financial inclusion

2.8.4.1 Savings and investment

Financial inclusion can benefit poor families by improving their lives and enhancing their economic activities.²⁶⁶ One of the ways in which financial inclusion can help people is by helping them to save.²⁶⁷ Financial inclusion helps poor people by providing an avenue for bringing their savings into the formal financial intermediation system and channels them into investment that will benefit them in the future.²⁶⁸ Through savings, families and individuals are able to manage cash flow and also build working capital.²⁶⁹

Ouma explains how mobile phones as well as financial inclusion can promote and help people to save. He says:

It is more difficult for poor families who do not have access to savings mechanisms to resist immediate spending temptations, than it is for families and individuals who have access to saving mechanisms. Financial inclusion therefore enables people to save.²⁷⁰

²⁶⁶ At the International Forum for Financial Inclusion, the Managing Director of the International Monetary Fund (IMF), Christine Lagarde, said: “For the poor, access to basic financial services such as payments, savings and insurance holds out the potential to generate huge benefits. With improved financial access, families can smooth out consumption and increase investment, including in education and health. They can also insure against unfavorable events and therefore avoid falling deeper into poverty, which is often the case with such incidents.” See Lagarde “*Empowerment through Financial Inclusion*”; also see Cull *Financial Inclusion and Development* 1.

²⁶⁷ Lagarde “Empowerment through Financial Inclusion”.

²⁶⁸ Subbarao *Financial Inclusion Challenges and Opportunities* 3.

²⁶⁹ Cull, Ehrbeck and Holle 2014 <https://www.cgap.org/sites/default/files/FocusNote-Financial-Inclusion-and-Development-April-2014.pdf> 7. Ouma explains how mobile phones as well as financial inclusion can promote and help people to save. He says: “...availability and usage of mobile phones to provide financial services promotes the likelihood of saving at the household level. Not only does access to mobile financial services boost the likelihood to save, but also has a significant impact on the amounts saved, perhaps due to the frequency and convenience with which such transactions can be undertaken using a mobile phone. Both forms of saving, that is, basic mobile phone savings stored in the phone and bank-integrated mobile savings are likely to be promoted by use of mobile phones. Thus, growing and deepening the scope for mobile phone financial services is an avenue for promoting savings mobilization, especially among the poor and low-income groups with constrained access to formal financial services...” See Ouma, Odongo and Were 2017 *Review of Development Finance* 1.

²⁷⁰ See Ouma, Odongo and Were 2017 *Review of Development Finance* 1.

2.8.4.2 Growth of the country's economy

It was stated earlier in this chapter that mobile money promotes financial inclusion. It was also mentioned that one of the advantages of mobile money is that it is cheap to use because it facilitates the flow of money from one user to another using the mobile infrastructure that almost everyone has. Financial inclusion is said to be an enabler of development.²⁷¹ When people have access to financial services there will be economic opportunities.²⁷² This access to financial services is important because it provides opportunities to poor people accumulate savings, make investments and avail themselves of credit.²⁷³ Access to financial services also enables poor individuals to insure themselves against income blows and prepares them to meet difficulties, such as illness, death in the family or loss of employment.²⁷⁴

Financial innovations, such as mobile money reduce transaction costs and expand reach, thereby allowing new private sector business models that assist to address other development priorities.²⁷⁵ The presences of many businesses that are developing as a result of the benefits of mobile money help the economy of the country to grow.²⁷⁶

2.8.4.3 Insurance

²⁷¹ Chen and Jin say "...access to and use of a broad range of financial services have been linked to the financial well-being of individuals as well as to the economic growth and stability of nations." See Chen and Jin 2017 *Journal of Family and Economic Issues*, Springer 1.

²⁷² Lagarde says: "Access to credit is a key link between economic opportunity and economic outcome. By empowering individuals and families to cultivate economic opportunities, financial inclusion can be a powerful agent for strong and inclusive growth" See Lagarde "Empowerment through Financial Inclusion"; Subbarao *Financial Inclusion Challenges and Opportunities* 3.

²⁷³ Cull, Ehrbeck and Holle 2014 <https://www.cgap.org/sites/default/files/FocusNote-Financial-Inclusion-and-Development-April-2014.pdf> 4.

²⁷⁴ Barasa and Lugo Is M-PESA a model for financial inclusion and women empowerment in Kenya?; Cull, Ehrbeck and Holle 2014 <https://www.cgap.org/sites/default/files/FocusNote-Financial-Inclusion-and-Development-April-2014.pdf> 5.

²⁷⁵ This way the economy grows. For example, in Kenya, where mobile money services such as M-PESA reach more than 80 percent of the country's population, second-generation innovative businesses are developing on the M-PESA infrastructure. See Cull, Ehrbeck and Holle 2014 <https://www.cgap.org/sites/default/files/FocusNote-Financial-Inclusion-and-Development-April-2014.pdf> 6.

²⁷⁶ Cull, Ehrbeck and Holle 2014 <https://www.cgap.org/sites/default/files/FocusNote-Financial-Inclusion-and-Development-April-2014.pdf> 5.

According to Hannig and Jansen, half of the world's population²⁷⁷ is still living without access to important amenities, such as savings accounts and insurance.²⁷⁸ One of the benefits of financial inclusion is the fact that people have access to many services, including insurance.²⁷⁹ Having access to and using more sophisticated financial products and services, such as insurance can be beneficial to the poor people and needy families.²⁸⁰ Poor individuals and needy families can use insurance to manage and mitigate any risk and shocks that face them at any time.²⁸¹ It has been stated that in countries like Kenya, for instance, people use index insurance²⁸² to protect and guard themselves against any negative impacts of natural disasters.²⁸³ Being vulnerable to risk and external shocks makes it difficult for poor people and needy families to escape poverty.²⁸⁴ With the availability of insurance and access made easy by financial inclusion, life becomes somewhat easier for the poor.

2.8.4.4 Access to credit

One of the most important benefits of financial inclusion is that it enables the poor to have access to credit.²⁸⁵ In order to inform policy design and interventions that are intended to improve financial inclusion, it is important to have a clear understanding of the

²⁷⁷ World population is estimated at 7.5 billion. This means that approximately 3.1 billion people do not have access to bank accounts. See <http://www.worldometers.info/world-population/>.

²⁷⁸ Hannig and Jansen 2010 <https://www.adb.org/sites/default/files/publication/156114/adbi-wp259.pdf> 8.

²⁷⁹ Hannig and Jansen 2010 <https://www.adb.org/sites/default/files/publication/156114/adbi-wp259.pdf> 1.

²⁸⁰ See Donovan (eds) "Mobile Money for Financial Inclusion".

²⁸¹ Cull, Ehrbeck and Holle 2014 <https://www.cgap.org/sites/default/files/FocusNote-Financial-Inclusion-and-Development-April-2014.pdf> 5.

²⁸² Channa has the following to say about index insurance: "The key difference between the Index based insurance and other insurance products is that index-based insurance products payouts are based on movement of certain index which should be correlated with overall loss in a specified region but independent of actual loss that an individual might experience (or at least not able to be influenced by individual action)." See Channa 2018 *Pakistan Journal of Applied Economics* 3.

²⁸³ Cull, Ehrbeck and Holle 2014 <https://www.cgap.org/sites/default/files/FocusNote-Financial-Inclusion-and-Development-April-2014.pdf> 5.

²⁸⁴ Cull, Ehrbeck and Holle 2014 <https://www.cgap.org/sites/default/files/FocusNote-Financial-Inclusion-and-Development-April-2014.pdf> 5.

²⁸⁵ Barasa and Lugo *Is M-PESA a model for financial inclusion and women empowerment in Kenya?* 102; Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 13.

socioeconomic characteristics accompanying the use of credit.²⁸⁶ According to Lagarde, the reduction of poverty is key for economy around the world.²⁸⁷ Access to financial services and the use of a broader range of financial services and products have been linked to the financial well-being of people and it contributes to the economic growth of the country, as well as to the stability of nations.²⁸⁸

Access to financial services also contributes particularly to access to credit and to external funds, thereby enabling economically disadvantaged groups of people to take advantage of and make use of opportunities that would otherwise not be available to them.²⁸⁹ Access to credit, therefore, promotes economic empowerment, as well as income equality.²⁹⁰ Access to credit is also regarded as a human right due to the fact that it enables poor people to generate income, which income is also used to improve access to other basic human needs, such as access to education and health care services.²⁹¹ Although access to credit is very important, a large portion of the population of the world still does not have access to formal credit and does not get credit from formal financial institutions, such as banks.²⁹² This is especially so in many developing countries and even some developed countries.²⁹³

2.8.5 Promoting financial inclusion

2.8.5.1 A collective responsibility

²⁸⁶ Chen and Jin 2017 *Journal of Family and Economic Issues* 1.

²⁸⁷ See Lagarde “Empowerment through Financial Inclusion”.

²⁸⁸ Chen and Jin 2017 *Journal of Family and Economic Issues* 1.

²⁸⁹ Chen and Jin 2017 *Journal of Family and Economic Issues* 1; Hafisdeen says that access to credit is essential in developing countries. See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 13.

²⁹⁰ Chen and Jin 2017 *Journal of Family and Economic Issues* 1; Triki and Faye note as follows: “Rural populations need access to credit, payment services and insurance products. Credit allows them to invest and grow their business.” See Triki and Faye (eds) *Financial Inclusion in Africa* 84; Also see Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 9.

²⁹¹ Chen and Jin 2017 *Journal of Family and Economic Issues* 1; Hafisdeen says access to credit is essential, like eating or basic education. See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 1.

²⁹² Chen and Jin 2017 *Journal of Family and Economic Issues* 1.

²⁹³ Chen and Jin 2017 *Journal of Family and Economic Issues* 1.

According to Lagarde, it is the collective responsibility of the government, private sector and the civil society to promote financial inclusion.²⁹⁴ The role of the private sector in promoting financial inclusion is to harness technology and to adapt to the needs of the consumers.²⁹⁵ Lagarde suggests that private sector initiatives must be complemented by government policies.²⁹⁶ The government's role in promoting financial inclusion is to make an enabling environment for greater financial inclusion.²⁹⁷ The other role in promoting financial inclusion is played by the civil society in ensuring an informal support and oversight.²⁹⁸

2.8.5.2 The role of the private sector - harnessing technology and adaptability

Technological innovation advances financial inclusion by lowering the costs of serving low-income and poor customers.²⁹⁹ In this way, the provision of financial services to suppliers and users becomes viable and affordable.³⁰⁰

An example of technological innovation that lowers the costs of serving low-income and poor people is mobile banking.³⁰¹ Mobile banking has the greatest potential to expand

²⁹⁴ Lagarde "Empowerment through Financial Inclusion". This is also supported by Hafisdeen who states that most governments around the world are now advocating for financial inclusion when they realised that it is important. See Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 1.

²⁹⁵ Lagarde "Empowerment through Financial Inclusion". *Triki and Faye note that: "DFIs contribute to promote financial inclusion by supporting the development of financial infrastructure (i.e., accounting, credit reporting, and payment systems that underlie the functioning of financial markets and intermediaries)." DFIs are Development Finance Institutions. See Triki and Faye (eds) Financial Inclusion in Africa* 122.

²⁹⁶ Lagarde "Empowerment through Financial Inclusion".

²⁹⁷ Barasa and Lugo *Is M-Pesa a Model for Financial Inclusion and Women Empowerment in Kenya?* 103; Lagarde "Empowerment through Financial Inclusion"; Hafisdeen *Financial Inclusion and the Threat of Collapsing Microfinance Institutions in Kumasi Metropolis* 1.

²⁹⁸ Lagarde "Empowerment through Financial Inclusion".

²⁹⁹ Lagarde "Empowerment through Financial Inclusion".

³⁰⁰ Triki and Faye (eds) *Financial Inclusion in Africa* 102; Lagarde "Empowerment through Financial Inclusion".

³⁰¹ Lagarde "Empowerment through Financial Inclusion". *Triki and Faye also state that: "...if properly developed, and considering appropriate changes to existing legal frameworks, mobile technology could help address issues of financial inclusion in African fragile states."* See Triki and Faye (eds) *Financial Inclusion in Africa* 102. Also see Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1603.

financial inclusion.³⁰² Mobile phone diffusion exceeds bank network distribution because it facilitates the flow of money from one user to another using the mobile infrastructure (mobile phone) that almost everyone has.³⁰³ A typical example of this is the Kenyan mobile payment service, M-Pesa.³⁰⁴ As explained earlier, M-Pesa is operated by Safaricom which is a private telecommunications or mobile network operator whose nationwide coverage is independent of the traditional banks.³⁰⁵ With the help of M-Pesa, more than 75 percent of the population of Kenya can access financial services and products and this is the highest number in sub-Saharan Africa.³⁰⁶

2.8.5.3 The role of the government - creating an enabling environment for financial inclusion

Short-term reliefs, such as interest rate subsidies or directed lending granted to the borrowers can lead to financial exclusion or be regarded as some of the barriers to financial inclusion.³⁰⁷ These measures often cause distortions in the economy. They can harm competition and thereby lead to financial instability in the long run.³⁰⁸ It is therefore important for government policies to focus on creating an enabling environment for financial inclusion.³⁰⁹ This can be achieved by focusing on the following areas suggested by Lagarde:

³⁰² Lagarde “Empowerment through Financial Inclusion”.

³⁰³ Kersop and Du Toit have stated that “The reason why mobile money is so uniquely positioned to drive change in terms of financial inclusion is because the mobile phone is the most widely adopted form of modern technology in history” See Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1605. Also see Lagarde “Empowerment through Financial Inclusion”.

³⁰⁴ M-Pesa is operated through a private telecommunications provider and has nationwide coverage independent of traditional banks. Lagarde “Empowerment through Financial Inclusion”.

³⁰⁵ Lagarde “Empowerment through Financial Inclusion”.

³⁰⁶ Lagarde “Empowerment through Financial Inclusion”; Muthiora 2015 <https://www.gsma.com/mobilefordevelopment/resources/enabling-mobile-money-policies-in-kenya-fostering-a-digital-financial-revolution/>.

³⁰⁷ Lagarde “Empowerment through Financial Inclusion”.

³⁰⁸ Lagarde “Empowerment through Financial Inclusion”.

³⁰⁹ Staschen and Nelson “The Role of Government and Industry in Financial Inclusion” 72.

Healthy competition: Encouraging healthy competition among suppliers inspires the development of new, technological and innovative financial products.³¹⁰ It also empowers consumers and protects them; they have more options and the choice of products that serve them best.³¹¹ This will also benefit and empower consumers because they will have a variety of the best products from which to choose.³¹²

Enabling regulatory environment: In order to support financial inclusion, there must be a prudent and uncomplicated regulatory framework for products.³¹³ Policy makers should focus on those that allow exemptions from time-consuming documentation requirements or require banks to offer basic accounts.³¹⁴

Strengthening financial infrastructure: An important requirement for financial inclusion to prosper is appropriate information.³¹⁵ Policies that assist banks to have access to information of the borrowers, including through credit information systems and legal registries for movable security are helpful in that they increase lending to small and medium enterprises.³¹⁶

2.8.6 Financial inclusion and financial stability

The financial crisis facing the entire world has brought the attention and emphasis on financial stability to the foreground.³¹⁷ The debate on financial stability is comprehensive

³¹⁰ Staschen and Nelson “The Role of Government and Industry in Financial Inclusion” 74.; Lagarde “Empowerment through Financial Inclusion”.

³¹¹ Staschen and Nelson “The Role of Government and Industry in Financial Inclusion” 74.

³¹² Lagarde “Empowerment through Financial Inclusion”.

³¹³ Lagarde “Empowerment through Financial Inclusion”.

³¹⁴ The Consultative Group to Assist the Poor (CGAP) 2013 Annual Report <https://www.cgap.org/sites/default/files/organizational-documents/FY2013-CGAP-Annual-Report-Jan-2014.pdf>; also see Lagarde “Empowerment through Financial Inclusion”.

³¹⁵ Lagarde “Empowerment through Financial Inclusion”; The Consultative Group to Assist the Poor (CGAP) 2013 Annual Report <https://www.cgap.org/sites/default/files/organizational-documents/FY2013-CGAP-Annual-Report-Jan-2014.pdf> 18.

³¹⁶ For further reading on the role played by government in providing infrastructure for financial inclusion, see Staschen and Nelson “The Role of Government and Industry in Financial Inclusion” 73; Lagarde “Empowerment through Financial Inclusion”.

³¹⁷ Khan *Financial inclusion and financial stability* 1.

and covers, among other things, the definition of financial stability³¹⁸ and the implication that financial stability has for growth and welfare of the people.³¹⁹ From this comprehensive debate on financial stability, different lessons have been learnt: The first lesson learnt is that financial stability can still be at risk and exposed, even when there is price and macroeconomic stability in place.³²⁰ Secondly, financial stability must move from being an implicit variable to an explicit variable of economic policy.³²¹ Thirdly, anything that threatens financial stability anywhere in the world will potentially be a threat to financial stability everywhere around the globe.³²² Fourthly, and most importantly, even the most advanced economies can still be affected by financial instability and this can also severely damage poor and developing economies.³²³

Financial inclusion contributes to financial stability.³²⁴ Financial inclusion has the advantage of creating opportunities for people who had previously been excluded from financial markets and financial services.³²⁵ Financial inclusion and credit expansion can undermine financial stability and cause financial instability if not well managed.³²⁶ This can take place, for example, when funding and giving credit to unproductive or useless

³¹⁸ According to Morgan and Pontines, "...there is no generally agreed definition of financial stability, because financial systems are complex with multiple dimensions, institutions, products, and markets. Indeed, it is perhaps easier to describe financial instability than stability." However these two writers define financial stability as: "... a condition in which the financial system—comprising of financial intermediaries, markets and market infrastructures—is capable of withstanding shocks, thereby reducing the likelihood of disruptions in the financial intermediation process which are severe enough to significantly impair the allocation of savings to profitable investment opportunities." See Morgan and Pontines *Financial inclusion and financial stability* 3; also see Schinasi who defines financial stability as "...ability to facilitate and enhance economic processes, manages risks, and absorbs shocks." See Schinasi 2004 Defining Financial Stability. Available at <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Defining-Financial-Stability-17740>.

³¹⁹ Khan *Financial inclusion and financial stability* 1.

³²⁰ Khan *Financial inclusion and financial stability* 1; Hannig and Jansen 2010 <https://www.adb.org/sites/default/files/publication/156114/adb-wp259.pdf> 22.

³²¹ Khan *Financial inclusion and financial stability* 1.

³²² Khan *Financial inclusion and financial stability* 1.

³²³ Khan *Financial inclusion and financial stability* 1.

³²⁴ Staschen and Nelson "The Role of Government and Industry in Financial Inclusion" 72.

³²⁵ Lagarde "Empowerment through Financial Inclusion".

³²⁶ Morgan and Pontines *Asian Development Bank Institute*. 4; Lagarde "Empowerment through Financial Inclusion".

projects or giving credit to clients that do not meet credit requirements and may subject the lenders to very high risks.³²⁷

2.8.6.1 Interactions between financial inclusion and financial stability

It has been suggested that financial stability could be affected by an increase in financial inclusion.³²⁸ One could therefore ask whether an increase in financial stability automatically leads to an increase in financial inclusion.³²⁹

Morgan and Pontines discuss three ways in which financial stability can be assisted positively by greater financial inclusion.³³⁰ First of all, greater diversification of bank assets due to an improved lending to smaller firms could lessen the general risk of a bank's loan portfolio.³³¹ Secondly, if the number of small savers is increased, the size, as well as the stability of the deposit base will also increase, thereby reducing the bank's dependence on non-core financing which becomes volatile when there is a crisis.³³² Thirdly, transmission of monetary policy could be made even better by greater financial inclusion and this will also contribute to financial stability.³³³

Low-income groups and poor people are fairly immune to economic cycles; they will therefore contribute to the stability of deposits and loans if they are included in the financial sector.³³⁴ Financial institutions that cater for low-income groups and the poor are

³²⁷ Lagarde "Empowerment through Financial Inclusion"; Morgan and Pontines *Asian Development Bank Institute* 3.

³²⁸ Triki and Faye (eds) *Financial Inclusion in Africa* 131.

³²⁹ Chatain advises policy makers to be careful and flexible and to ensure that while pushing for financial inclusion, this must not be at the expense of financial stability and financial integrity. See Chatain et al *Protecting Mobile Money Against Financial Crimes* xiv. Morgan and Pontines *Asian Development Bank Institute* 6.

³³⁰ Morgan and Pontines *Asian Development Bank Institute* 6.

³³¹ Morgan and Pontines *Asian Development Bank Institute* 6. This would both reduce the relative size of any single borrower in the overall loan portfolio and reduce its instability. This would therefore lessen the inter-connectedness risks posed to the financial system. Sahay states that "Indirectly, financial inclusion can provide clients of financial firms with better risk management tools, boosting their resilience (for example, more resilient borrowers imply more resilient banks)."

³³² Morgan and Pontines *Asian Development Bank Institute* 6.

³³³ Morgan and Pontines *Asian Development Bank Institute* 6.

³³⁴ Morgan and Pontines *Asian Development Bank Institute* 6.

able to sustain economic activity.³³⁵ It was stated earlier in this chapter that one of the benefits of financial inclusion is that it affords poor people access to credit. Employment growth is affected negatively when there is an absence of sufficient access to credit for small and medium-size businesses, including scale entrepreneurs.³³⁶ This is because these enterprises are more labour intensive in their daily operations.³³⁷

Other different examples by which increased financial inclusion may have negative effects on financial stability include expanding the pool of borrowers which may result in reduction in lending standards.³³⁸ Reputation risks of banks could also be increased if banks outsource various functions, such as credit assessments for potential customers as a way of assisting smaller borrowers and low-income earners.³³⁹ This will therefore affect financial stability.³⁴⁰ Microfinance institutions, if not effectively and properly regulated, could dilute the general effectiveness of regulation in the economy because those institutions will lend to a lot of people.³⁴¹

2.9 Conclusion and analysis

³³⁵ Morgan and Pontines *Asian Development Bank Institute* 6.

³³⁶ Triki and Faye (eds) *Financial Inclusion in Africa* 84; Morgan and Pontines *Asian Development Bank Institute* 6.

³³⁷ Morgan and Pontines *Asian Development Bank Institute* 6.

³³⁸ Morgan and Pontines *Asian Development Bank Institute* 6.

³³⁹ Morgan and Pontines *Asian Development Bank Institute* 6.

³⁴⁰ Morgan and Pontines *Asian Development Bank Institute* 6.

³⁴¹ Morgan and Pontines *Asian Development Bank Institute*. Lagarde explains the relationship between financial inclusion and financial stability as follows: She says “Responsible financial inclusion requires balancing opportunity and innovation in financial markets with safeguards to prevent excesses, both the supply and demand side. It means helping consumers, especially the most vulnerable, to benefit from access in a responsible way, without diving deeper into debt. Having in place well-designed financial regulations can ensure that loans are channeled to their most productive use. Effective consumer protection and market conduct regulations are key aspects of a responsible finance agenda. Consumer protection is particularly important because it ensures responsible access to credit. Policies that improve transparency in financial markets through disclosure requirements can also help by increasing information available and making it easier to understand. By the same token, financial literacy can also support responsible financial inclusion. And here I see a role for everyone...the government, private sector, and civil society in building financial capacity. To access credit, young and micro-entrepreneurs often need support to build capacity in accounting, record keeping and project planning. Such help can be critical in supporting both an expanded and responsible access to credit. Financial literacy can also reduce gender gaps in access to finance, especially when the driver is lower education of women.” See Lagarde “Working Together to Fight Money Laundering & Terrorist Financing”.

In this chapter, mobile money and financial inclusion came under the spotlight. The focus was on the evolution and theoretical definition of mobile money, as well as financial inclusion in modern economies. It emerged that mobile money was first introduced in Kenya in 2007 by a mobile network company called Safaricom.³⁴² Safaricom and Vodafone officials came up with the idea of M-Pesa in Kenya in order to address the problem caused by financial exclusion.³⁴³ They then came up with the idea of a mobile financial service to address that problem. The mobile financial service was then called M-Pesa which means mobile money. M in M-Pesa stands for mobile while Pesa refers to money or cash. Pesa is derived from the Swahili language in Kenya which means cash.³⁴⁴

It was further discussed in the chapter that mobile money was introduced in 2012 in Lesotho, five years after being introduced in Kenya.³⁴⁵ Lesotho still faces the problem of financial exclusion and that is why mobile money was introduced to address the problems caused by financial exclusion.³⁴⁶ It was shown in the chapter that the two mobile network companies in Lesotho, namely Vodacom Lesotho and Econet Telecom Lesotho offer mobile money services.³⁴⁷ M-Pesa, which is similar to that offered by Safaricom in Kenya, is offered by Vodacom Lesotho while Econet Telecom Lesotho offers a mobile money service called EcoCash or Sepachefono.³⁴⁸

Different mobile money models were discussed. It was found that because mobile money models are classified according to the identity of the provider who offers a mobile money platform, some mobile money payments business models have emerged, depending on the regulatory climate, consumer culture and demographics.³⁴⁹ These models include

³⁴² Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology*; See Ernst and Young 2015 *Mobile Money*; See Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 1; See also Suárez *Telecommunications Policy* 952.

³⁴³ Hinz *M-PESA: The Best of Both Worlds* 1; Wambari *Mobile Banking in Developing Countries* 23.

³⁴⁴ Hughes and Lonie *Innovations: Technology, Governance, Globalization* 62; Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 3.

³⁴⁵ Central Bank of Lesotho 2013 *Annual Report* 38; Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 26.

³⁴⁶ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 2; Also see Central Bank of Lesotho 2013 *Annual Report* 1.

³⁴⁷ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 6.

³⁴⁸ Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 6.

³⁴⁹ Merritt *Mobile Money Transfer Services* 9.

mobile network operator-led models, bank/financial institution-led models and the collaborative model.³⁵⁰

There are many advantages to mobile money services that were discussed in this chapter. Such advantages include the fact that it is very fast and convenient to use the service, it is safe and convenient and the costs of using mobile money services are low.

Financial inclusion was also discussed in detail. From the discussion, it appears that financial inclusion can be measured by many factors, such as access of financial services and products by people, usage, as well as the quality of the financial services and products.³⁵¹

It was also found that there are factors that make it difficult for or prevent people from being financially included.³⁵² These factors include human barriers, such as beliefs that people have towards financial services, and infrastructural, as well as institutional barriers, such as the fact that people live very far from the services and it becomes difficult to access those services.³⁵³ Another factor that prevents people from using financial services is the cost involved in using the financial services and products.³⁵⁴

It was also determined that there are benefits to be derived from financial inclusion, such as investment, savings, insurance, economic growth, as well as access to credit. How financial inclusion can be promoted by government and by the private sector through technology was also discussed. Lastly, the financial stability and how it is related to financial inclusion was interrogated.

³⁵⁰ Merritt *Mobile Money Transfer Services* 9.

³⁵¹ Alliance for Financial Inclusion 2010 <https://www.afi-global.org/news/2010/03/afi-policy-paper-financial-inclusion-measurement-regulators-survey-design-and.4>.

³⁵² Gupta 2015 *International Journal of Engineering Technology, Management and Applied Sciences* 173.

³⁵³ Gupta 2015 *International Journal of Engineering Technology, Management and Applied Sciences* 173.

³⁵⁴ Gupta 2015 *International Journal of Engineering Technology, Management and Applied Sciences* 173.

From the discussion and analysis, it is concluded that mobile money is important and relevant in modern economies. Lesotho can also benefit substantially from mobile money services. This is based on the benefits of mobile money, such as speed, lower costs and convenience. The same conclusion is drawn regarding financial inclusion; the benefits, such as stimulating the economy of the country can also benefit Lesotho and financial inclusion is therefore relevant in modern economies.

Chapter 3

The crime of money laundering: How can mobile money and financial inclusion help prevent and control the crime of money laundering?

3.1 Introduction

In the previous chapters, the evolution of mobile money services, as well as how financial inclusion is relevant in modern economies was dealt with in greater detail. It was also discussed in chapter one, as well as in previous chapters, that mobile money has plenty of potential and that its services have been deployed in different markets around the world.³⁵⁵

Highlighted reasons for the adoption of mobile money services at the fastest rate include the fact that the costs of using mobile money services are relatively low due to the fact that people use a device that almost every individual has, which is a mobile phone.³⁵⁶ It was stated that mobile phones have been adopted at the fastest rate and to the deepest level of any consumer level technology in history.³⁵⁷

Even though mobile money could be used to promote financial inclusion, there are concerns raised about the possibility that mobile technology may be exploited for illegal

³⁵⁵ Castri 2013 https://www.gsma.com/publicpolicy/wp-content/uploads/2013/02/GSMA2013_Report_Mobile-Money-EnablingRegulatorySolutions.pdf 1 - 2. Also see *Anti-Money Laundering and Combating the Financing of Terrorism in Certain SADC Countries* FinMark Trust Report July 2015 10.

³⁵⁶ Jenkins *Developing Mobile Money Ecosystems* 5; Solin & Zerzan *Mobile Money: Methodology for Assessing Money Laundering and Terrorist Finance Risk* 6. Also see Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1605.

³⁵⁷ See Jack & Suri *Mobile Money: The Economics of M-Pesa*. Also see Kersop & Du Toit who say "in 2006 the mobile phone became the first communications technology to have more users in Third World countries than in First World countries... the mobile phone is the most widely adopted form of technology in history as half of the people in the world own a mobile phone..." Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1605.

means.³⁵⁸ Even though the intention is to use mobile money as a tool to promote financial inclusion, it is important that financial integrity is upheld.

It has been stated that mobile money could pose a threat to the integrity of the financial system due to the speed at which transactions take place.³⁵⁹ The integrity of financial systems is the interest that must be protected against certain threats, as well as risks.³⁶⁰ One of the possible threats or risks against which financial integrity must be protected is money laundering. Because mobile money services are used by many people, it is highly possible that its services may be misused by criminals who may use it for purposes of money laundering.

Against this background, the crime of money laundering will be discussed in detail; what it involves, what its effects are and why it is necessary to combat. How mobile money and financial inclusion can help prevent and control the crime of money laundering will also be discussed.

3.2 What is money laundering?

3.2.1 Introduction

De Koker gives a brief background of money laundering and the money laundering legislative framework.³⁶¹ He says that criminals have been associated with the acts that are now called “money laundering” for many years.³⁶² Criminals disguise the true nature of the proceeds of the crimes they committed with the intention of avoiding incrimination,

³⁵⁸ See Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1607.

³⁵⁹ Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 287.

³⁶⁰ Van Duyne *Money Laundering Policy* 5.

³⁶¹ See De Koker *South African Money Laundering and Terror Financing Law* 2.

³⁶² De Koker *South African Money Laundering and Terror Financing Law* 2.

as well as to protect the proceeds of their crime from being forfeited.³⁶³ Law enforcement systems did not cover or cater for those acts.³⁶⁴

3.2.2 Money laundering defined

The term “money laundering” has been defined by many authors. De Koker says that any criminal act that disguises the illegal nature or the presence, location or usage of proceeds of crime is referred to as money laundering.³⁶⁵ According to McDonell,³⁶⁶ money laundering can be defined in lay terms as the “turning of dirty money into clean money”. In the process of laundering money, concealing and converting is considered very important.³⁶⁷ That is to say, to convert cash or any property that is obtained through a criminal act with the intention of making it appear as though it was obtained from a legal or legitimate source, is a process that can be defined as money laundering.³⁶⁸ The process of altering the profits of criminal acts into seemingly legal money is also defined as money laundering.³⁶⁹ Jayasree and Balan state that the term money laundering is now a combined term which is used in numerous legal and regulatory systems to also include the misuse of the financial system.³⁷⁰

³⁶³ De Koker *South African Money Laundering and Terror Financing Law 2*; Amali *Curbing Money Laundering* 10; Cox *An Introduction to Money Laundering Deterrence* 2.

³⁶⁴ De Koker says that the law was mainly about the crime that gave rise to the proceeds while the acts in relation to the proceeds were ignored or the investigation would be intended to link the criminal to the original crime. This, however, changed over the years as law enforcement now focused on the flow of criminal funds. Money laundering control was now a major strategy for the combating of crime and terrorism. It was now a requirement for law enforcement to reconsider ways in which economic crimes and organised crimes were investigated and prosecuted. Because of these new changes, the business community had to review old practices and old principles concerning client services, as well as client confidentiality. See De Koker *South African Money Laundering and Terror Financing Law 2*.

³⁶⁵ De Koker *South African Money Laundering and Terror Financing Law 2*; Also see Amali *Curbing Money Laundering* 10.

³⁶⁶ McDonell *Money laundering Methodologies and International and Regional Countermeasures* 2; Madinger *Money Laundering* 6 says money laundering in simple terms refers to “...a process to make dirty money appear to be clean...”

³⁶⁷ McDonell *Money laundering Methodologies and International and Regional Countermeasures* 2;

³⁶⁸ McDonell *Money laundering Methodologies and International and Regional Countermeasures* 2.

³⁶⁹ Jayasree and Balan 2017 *Journal of the Association of Arab Universities for Basic and Applied Sciences* 96.

³⁷⁰ Jayasree and Balan 2017 *Journal of the Association of Arab Universities for Basic and Applied Sciences* 96.

Madinger says that money laundering is the usage of money obtained from unlawful activity by hiding the identity of people who obtained and converted that money into the assets that will appear to be from a legitimate source.³⁷¹ Cox explains this money laundering process by giving an example that shows how money obtained from illegal means can be turned into assets that will appear legitimate.³⁷²

He says:

The person who has received some form of ill-gotten gains will seek to ensure that they can use these funds without people realizing that they are the result of inappropriate behaviour. To do this they will need to disguise the proceeds such that the original source of the proceeds is hidden and therefore the funds themselves appear to be legitimate. Given that it was often cash that was needed to be disguised, then the criminal would often seek out legitimate cash-based businesses to enable them to disguise the source of their illegitimate cash. By mingling legitimate and illegitimate funds the entire amount could potentially appear to be legitimate, and therefore laundered.³⁷³

3.2.3 Stages of money laundering

From the definitions of the term money laundering discussed above, it appears that money laundering is a criminal act. Criminals illegally obtain money from somewhere and then find ways to introduce that money through legal channels and means so that ultimately, money that was obtained illegally becomes legal. To do all these things takes time, and the money must go through certain stages. Some of the stages are legal. The stages of laundering money are placement, layering and integration.

³⁷¹ Madinger *Money Laundering* 6;

³⁷² See Cox *An Introduction to Money Laundering Deterrence* 2 – 3.

³⁷³ See Cox *An Introduction to Money Laundering Deterrence* 2 – 3. For other definitions of Money Laundering, see Turner *Money Laundering Prevention* 2 – 4; Unger and Linde *Research Handbook on Money Laundering* 3; Ryder *Financial Crime in the 21st Century* 10; Rider *Research Handbook on International Financial Crime* 8. A definition of money laundering was also given in the case of *S v Van der Linde* (2016) 3 All SA 898 para 108 and *S v Meyer and Others* (204/2012) [2017] ZAGPJHC 286 para 371 and para 376.

3.2.3.1 Placement

This is the stage where the proceeds derived from the criminal act find their way into the financial sector.³⁷⁴ The proceeds or the illegitimate funds may have been derived from theft, or drug trafficking.³⁷⁵ It may also be any sales of legal or illegal products, acceptance of bribery or whatever source, as long as the result of this is cash which could implicate people if they do not disguise the origin.³⁷⁶ These illegal proceeds or cash have to be placed or introduced into the banking environment in order for the process of money laundering to start.³⁷⁷ In most cases, money is deposited into a bank account, investment firm, or insurance companies.³⁷⁸ Normally, a person who has large amounts of cash in his/her possession moves that cash to different places; so the placement stage starts.³⁷⁹ Normally, this large amount of cash is divided into small amounts which the owner will normally deposit into different bank accounts with the intention of not raising any suspicion.³⁸⁰ By doing this, the money has changed its form and is a step ahead of its illicit origin.³⁸¹

Movement of cash into a financial institution, such as a bank account is not only what placement is about, but this initial placement means that funds are moved from their illegal origin to a form that allows the criminal to undertake layering and disguise the amounts.³⁸² Cash could also be shipped to foreign financial organisations³⁸³ An example is where a criminal or launderer buys an asset (a car, for instance), and sells that asset to release money that appears legitimate.³⁸⁴ Clearly, this is not placing cash into a financial

³⁷⁴ Demetis *Technology and Anti-Money Laundering* 12; De Koker *South African Money Laundering and Terror Financing Law* 4.

³⁷⁵ Cox *An Introduction to Money Laundering Deterrence* 10.

³⁷⁶ Turner *Money Laundering Prevention* 8.

³⁷⁷ Cox *An Introduction to Money Laundering Deterrence* 10.

³⁷⁸ Turner *Money Laundering Prevention* 9.

³⁷⁹ De Koker *South African Money Laundering and Terror Financing Law* 4.

³⁸⁰ De Koker *South African Money Laundering and Terror Financing Law* 4; Madinger *Money Laundering* 7.

³⁸¹ Madinger *Money Laundering* 8.

³⁸² Cox *An Introduction to Money Laundering Deterrence* 11.

³⁸³ Turner *Money Laundering Prevention* 9.

³⁸⁴ Cox *An Introduction to Money Laundering Deterrence* 11. Fergusons says that the illicit money is used to buy in the legitimate economy. See Ferguson *Global Corruption* 308.

institution's bank account; it is the initial transfer of an asset into another form.³⁸⁵ Criminals take advantage of people or companies that are in need of cash for the placement stage.³⁸⁶

3.2.3.2 Layering

This is the stage where the criminals or the launderers use complex transactions with the main aim of separating the illicit proceeds of crime from their original source.³⁸⁷ As the name implies, launderers impose layers of financial transactions, business entities, as well as any other concealment mechanisms between the funds and their illicit origin.³⁸⁸ The layers mean that different financial transactions are conducted by the criminals through multiple bank accounts to separate the original funds from their sources.³⁸⁹ The launderer blurs the audit trail by creating sets of financial transactions that are very complex and difficult to trace.³⁹⁰ Because the main aim is to hide the proceeds from their criminal source, it becomes difficult to prove the illicit basis for the funds if more layers are added to this process of laundering.³⁹¹

The launderers in a layering stage will normally shift money from one account to another, splitting the funds and depositing them into the bank accounts in three different banks.³⁹² The layers could involve countries, as well as some places where it is not easy and possible to follow the trail of money due to the bank secrecy.³⁹³ It is easy to move money around the whole world if the need arises once it has been placed in the financial

³⁸⁵ Cox *An Introduction to Money Laundering Deterrence* 11.

³⁸⁶ An example is if a bank is desperate to increase its deposit base, or struggling to maintain its liquidity, or a salesman who needs to reach a target. For a detailed discussion of this see Cox *An Introduction to Money Laundering Deterrence* 11.

³⁸⁷ See Ferguson *Global Corruption* 308; De Koker *South African Money Laundering and Terror Financing Law* 4.

³⁸⁸ Madinger *Money Laundering* 9.

³⁸⁹ Whisker and Lokanan 2019 *Journal of Money Laundering Control* 160.

³⁹⁰ Demetis *Technology and Anti-Money Laundering* 12.

³⁹¹ Turner *Money Laundering Prevention* 9.

³⁹² Turner *Money Laundering Prevention* 9; De Koker *South African Money Laundering and Terror Financing Law* 4.

³⁹³ Madinger *Money Laundering* 9.

system.³⁹⁴ The layers can be costly, subject to the privacy that is preferred, as well as the complexity of the movements.³⁹⁵ It is cheaper to move funds from account to account, but the money can also be easily traced.³⁹⁶ Launderers incur the costs of buying and selling by shifting the funds through various types of asset, but that move is more effective in concealing the source of the funds.³⁹⁷ Depending on the method of investing the money that launderers prefer, they normally face varying difficulties during the layering stage.³⁹⁸

3.2.3.3 Integration

This is the final stage of the process of money laundering. Illegal proceeds are, at this stage, re-integrated into a legitimate financial sector and assimilated with other assets in the financial system.³⁹⁹ Illegal proceeds now appear to be from the legitimate source and the result of a normal business activity.⁴⁰⁰ The money launderer will now make use of these disguised illicit proceeds which will now appear to be legitimate funds.⁴⁰¹ This “cleaned” money will appear to be earned in a legitimate way by the launderers because they will put the funds in the normal economy.⁴⁰² These illicit funds will now survive any

³⁹⁴ Turner *Money Laundering Prevention* 9; Amali says that, at this layering stage, money launderers use electronic funds transfers or wire transfers to move money because of its advantage of speed. See Amali *Curbing Money Laundering* 33.

³⁹⁵ Turner *Money Laundering Prevention* 9.; Kumar says that the audit trail must be concealed to provide anonymity. See Kumar 2015 *International Journal of Research in Humanities & Soc. Sciences* 54. Kersop and Du Toit explain this by saying that: “Layering entails the severance of proceeds from their unlawful origin by making use of several intricate financial transactions to obscure the audit trail and conceal the proceeds, usually by passing such proceeds through various institutions and jurisdictions in order to disguise the origin thereof.” See Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1621.

³⁹⁶ Turner *Money Laundering Prevention* 9.

³⁹⁷ Turner *Money Laundering Prevention* 9.

³⁹⁸ Cox gives a clear example of this and says: “...antiques, paintings and stamps can all be legitimately acquired privately, and thus have a low level of risk for the money launderer. You can purchase them at antique markets, shops, auctions or even car boot sales or flea markets. They can be inherited, found or gifted. Some of these routes maintain formal records of the purchase or sale, whereas others do not. If no questions are asked, then the money launderer is clearly at a significant advantage. A riskier method of layering would be the purchase of property as lawyers may become involved, who may be alerted to concerns as a result of their own due diligence, which will be carried out when larger transfers of money are made. They may also be under an obligation to report inappropriate activity.” See Cox *An Introduction to Money Laundering Deterrence* 12.

³⁹⁹ Cox *An Introduction to Money Laundering Deterrence* 13.

⁴⁰⁰ The funds at this stage are untraceably in the legitimate economy. See Ferguson *Global Corruption* 308; Demetis *Technology and Anti-Money Laundering* 12.

⁴⁰¹ Cox *An Introduction to Money Laundering Deterrence* 13.

⁴⁰² Cox *An Introduction to Money Laundering Deterrence* 13.

scrutiny.⁴⁰³ Here, the original illicit funds, minus the costs⁴⁰⁴ the launderer incurred in the whole process of laundering, are combined and put under the launderer's control as if they are the legitimate funds from his business.⁴⁰⁵

3.3 Methods and techniques of money laundering

In order for any measures against the crime of money laundering to be effective, appropriate and to be on time, money laundering in all its forms must be monitored on a continuous basis.⁴⁰⁶ As stated earlier, there are different stages of money laundering, namely placement, integration and layering.⁴⁰⁷ Launderers can use channels, such as banks, wire transfers, car dealers, property sellers, trusts and offshore entities when moving their dirty money.⁴⁰⁸

In the earlier stages, illicit money was moved through the traditional banking sector, but because international bodies, such as the FATF issued a number of Recommendations⁴⁰⁹ that countries had to implement in their local legislative frameworks, many governments around the globe had to introduce certain anti-money laundering requirements to which most banks had to adhere.⁴¹⁰ This tempted the launderers to find different channels

⁴⁰³ Turner *Money Laundering Prevention* 9.

⁴⁰⁴ The costs of the money laundering process according to De Koker include taxes, costs of the banks and charges as well as commission that was payable for the transactions. See De Koker *South African Money Laundering and Terror Financing Law* 4.

⁴⁰⁵ De Koker *South African Money Laundering and Terror Financing Law* 4.

⁴⁰⁶ Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴⁰⁷ Turner *Money Laundering Prevention* 2 – 4; Unger and Linde *Research Handbook on Money Laundering* 3; Ryder *Financial Crime in the 21st Century* 10; Rider *Research Handbook on International Financial Crime* 8.

⁴⁰⁸ Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴⁰⁹ It has been stated that: "The FATF Recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Countries have diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats." See FATF 2019 <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>

⁴¹⁰ De Koker *South African Money Laundering and Terror Financing Law* 9; Madinger *Money Laundering* 100; De Koker *South African Money Laundering and Terror Financing Law* 9; Cox *An Introduction to Money Laundering Deterrence* 16; Ryder *Financial Crime in the 21st Century* 16; Unger and Linder *Research Handbook on Money Laundering* 38; Turner *Money Laundering Prevention* 12; McDonnell *Money Laundering Methodologies and International and Regional Counter-Measures* 5.

through which to move illicit funds.⁴¹¹ Apart from using the traditional banking sectors to move illicit money, launderers also use non-banking institutions, as well as non-financial businesses and professions.⁴¹² This is why it is important to continuously monitor the crime of money laundering in all the various forms it may take, in order to be up to date with the understanding of methods of money laundering and to remain relevant in order to respond to the crime.⁴¹³

The various methods and techniques that money launderers use to move the illicit money will be discussed next. These techniques and methods are used in different money laundering stages. Haingner, Schneider and Wakolbinger⁴¹⁴ have argued that in order to determine which of these techniques is most frequently adopted by launderers is dependent on many factors, such as the type of criminal activity, and the specific institutional arrangements available in the country where illicit proceeds are earned.

3.3.1 Banks and other depository institutions

The banking system is usually used by criminals to move their illicit funds.⁴¹⁵ Banks are common tools used by launderers to move the illicit money from one place to another and from one country to another.⁴¹⁶ This has been happening for a long time and it continues

⁴¹¹ McDonnell *Money Laundering Methodologies and International and Regional Countermeasures* 5. FATF *Annual Report 2015-2016* 19; Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴¹² Launderers now prefer these institutions because they provide more attractive services than banks and they are not subjected to stricter regulatory requirements as with banks. See McDonnell *Money Laundering Methodologies and International and Regional Countermeasures* 5; Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴¹³ FATF *Annual Report 2015-2016* 19.

⁴¹⁴ Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series* 31.

⁴¹⁵ Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series* 32. The Basel Committee on Banking Supervision also noted in its preamble that banks and other financial institutions may be abused for money laundering purposes and activities.

⁴¹⁶ This is so because as explained in the money laundering stages, launderers in the placement stage place the illicit funds in the financial institutions and one of the common financial institution they use is a bank. Even in the layering stage, they make different complex bank transactions from one account to another. See De Koker *South African Money Laundering and Terror Financing Law* 9; Madinger *Money Laundering* 100; De Koker *South African Money Laundering and Terror Financing Law* 9; Cox *An Introduction to Money Laundering Deterrence* 16; Ryder *Financial Crime in the 21st Century* 16; Unger and Linder *Research Handbook on Money Laundering* 38.

to happen even in this modern age.⁴¹⁷ Banks have many products and services that criminals use to dispose of their criminal proceeds, such as Electronic Funds Transfers.⁴¹⁸ Banks also have international relationships with other international banks called correspondent banks.⁴¹⁹ These products and services used by criminals to launder money through banks will be discussed in more detail immediately below.

3.3.2 Electronic funds transfers

Launderers are able to move illicit funds easily between countries and between different bank accounts, thanks to EFT.⁴²⁰ This enables the launderers to mix their criminal proceeds together with the legitimate money that is also moved daily using systems such as Fedwire, SWIFT and CHIPS.⁴²¹ EFTs also take place when they are not authorised, for example in a situation where criminals or the money launderers fraudulently acquire or steal a credit card and then open an account where cash advances from that stolen credit card may be deposited.⁴²² In order to ensure that money is not easily traced, money launderers sometimes use EFT to transfer funds from one bank account to another, one country to another and between different banks.⁴²³ In this way, it becomes very difficult for authorities to trace the origin of the funds, as the launderers may sometimes vary the amounts they sent, as well as keep them relatively small and sometimes they even use reputable institutions.⁴²⁴ This is where the layering stage of money laundering comes

⁴¹⁷ Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴¹⁸ Electronic Funds Transfers are commonly known as EFT.

⁴¹⁹ Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴²⁰ McDonell *Money Laundering Methodologies and International and Regional Countermeasures* 5; Amali *Curbing Money Laundering* 34.

⁴²¹ Amali *Curbing Money Laundering* 34; Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴²² Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴²³ Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25; Amali *Curbing Money Laundering* 33.

⁴²⁴ Kumar says that launderers conceal the audit trail of the funds. See Kumar 2015 *International Journal of Research in Humanities & Soc. Sciences* 54; Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

in.⁴²⁵ Even though EFTs are easily used for money laundering purposes, there are software and systems designed to detect the use of EFT for money laundering.⁴²⁶

3.3.3 Electronic money

Technological advancement contributes to a great extent to the development of new payment methods.⁴²⁷ The invention of new technology used for payments also attracts money launderers.⁴²⁸ One example of the newer payment systems is electronic money.⁴²⁹ Systems, such as e-money, are designed to function internationally and in different currencies, and this poses a problem for law enforcement because it becomes difficult to determine jurisdictional authority.⁴³⁰ Criminals use these new technological payment systems to hide the origin of their illicit money and move money without it being easily traced.⁴³¹

E-money is vulnerable to use in money laundering in the following ways: As stated above, with the use of e-money, large amounts of money can be transferred faster and easily because of the fact that e-money is free from the disadvantages that launderers encounter when using other means of transferring money.⁴³² For instance, a launderer who transfers his illicit profits by cash from one country to another, may spend more time doing so and may also be considered suspicious and be subjected to numerous questions by customs officials about the destination to which he is transferring the money.⁴³³ If he decides to transfer money using banks, it might also prove disadvantageous due to some

⁴²⁵ Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴²⁶ Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25; DTIC-OCA *Information Technologies for the Control of Money Laundering* 51.

⁴²⁷ Popovska-Kamnar *The Use of Electronic Money and Its Impact on Monetary Policy* 79.

⁴²⁸ Fung *Electronic Money and Payments* 2.

⁴²⁹ Hereinafter referred to as the e-money.

⁴³⁰ McDonell *Money Laundering Methodologies and International and Regional Countermeasures* 7.

⁴³¹ European Central Bank 1998 <https://www.ecb.europa.eu/pub/pdf/other/emoneyen.pdf>; McDonell *Money Laundering Methodologies and International and Regional Countermeasures* 7. Anon 2012 <http://www.jmlsg.org.uk/download/7491>.

⁴³² EAG 2010 www.eurasiangroup.org/emoney_eng_2010.pdf; Fung says, "Many of the features relevant to the convenience and security of e-money may increase its attractiveness for money laundering and other criminal activities." See Fung *Electronic Money and Payments* 19; Also see Amali *Curbing Money Laundering* 33.

⁴³³ EAG 2010 www.eurasiangroup.org/emoney_eng_2010.pdf.

countries having strict currency laws that mandate clients to produce certain documents before undertaking certain transactions.⁴³⁴

Criminals may also use e-money for effecting international transfers and that complicates economic investigations because of the many jurisdictions that might be involved.⁴³⁵ Due to electronic money being formerly oriented for use online, its use takes on a truly international character.⁴³⁶ As mentioned by the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG), “This way, the victim of a crime can be located in one jurisdiction, and the criminal in the other, while the used system of electronic money can be registered in the third one.”⁴³⁷ This will be more complicated even further if e-money systems are located in jurisdictions with very weak money laundering frameworks.⁴³⁸

3.3.4 Correspondent banking

Correspondent banking is a relationship established between banks based in different jurisdictions and countries whereby one bank, known as the correspondent bank renders banking services to another bank, known as the respondent bank.⁴³⁹ A bank is able to perform international transactions for itself and for its customers in countries and in places

⁴³⁴ Amali explains why launderers choose to use electronic money rather than cash to avoid being subjected to countless questions from the law enforcement authorities and banks when they are handling cash. He says: “Criminals make use of the internet for electronic transfer of funds or wire transfers mostly at the layering stage of a laundering scheme because technological advancements mean that one smartcard or computer can store an immeasurable sum of electronic money. This process is quick and bridges the miles of distance and makes it difficult for regulators to make use of the customer identification policy as the complex nature of laundering money over the internet makes it difficult to be supervised.” See Also see Amali *Curbing Money Laundering* 35; EAG 2010 www.eurasiangroup.org/emoney_eng_2010.pdf.

⁴³⁵ Amali *Curbing Money Laundering* 35; EAG 2010 www.eurasiangroup.org/emoney_eng_2010.pdf.

⁴³⁶ EAG 2010 www.eurasiangroup.org/emoney_eng_2010.pdf.

⁴³⁷ See EAG 2010 www.eurasiangroup.org/emoney_eng_2010.pdf.

⁴³⁸ EAG 2010 www.eurasiangroup.org/emoney_eng_2010.pdf; Fung also supports this where he says: “...the cross-border nature of some e-money schemes makes this a particularly challenging issue requiring international coordination and co-operation.” See Fung *Electronic Money and Payments* 2.

⁴³⁹ FATF Guidance *Correspondent Banking Services* 7; Collin et al *Correspondent Banking* 1; Cox *An Introduction to Money Laundering Deterrence* 85; Erbenová et al *IMF Staff Discussion Note* 8.

where neither the bank nor its employees are physically present.⁴⁴⁰ Prominent international banks establish relationships with other foreign banks⁴⁴¹ around the world and become correspondents for many different banks around the world.⁴⁴²

According to Erbenová, the three main ways in which correspondent banking services may be provided are:

First, in the most traditional form of correspondent banking, a respondent bank enters into an agreement with the correspondent bank to execute payments on behalf of the respondent bank and its customers. Second, “nested” correspondent banking refers to the use of a banks’ correspondent relationship by several respondent banks. Third, payable-through accounts, also known as “pass-through” or “pass-by” accounts, are similar to nested correspondent banking, but in the case of these accounts the respondent bank allows its customers to access the correspondent account directly to conduct business on their own behalf.⁴⁴³

When acting as correspondents for other international banks, large international banks have to rely on the information provided by a foreign bank (respondent bank).⁴⁴⁴ This means that a correspondent bank does not use its own measures to identify customers of the respondent bank, or even to monitor transaction accounts for customers of a respondent bank on whose behalf it is acting.⁴⁴⁵ This creates serious money laundering

⁴⁴⁰ Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25 These international transactions that a bank is able to provide for its clients include foreign exchange services, international wire transfer services and cash management services, such as those in a variety of foreign currencies. See FATF Guidance 2016 *Correspondent Banking Services* 7; Collin et al *Correspondent Banking* 1; Cox *An Introduction to Money Laundering Deterrence* 85.

⁴⁴¹ Examples of these foreign banks according to Collins are “(a) Shell banks with no physical presence in any country for conducting business with their clients; (b) offshore banks with licenses limited to transacting business with persons outside the licensing jurisdiction; or (c) banks licensed and regulated by jurisdictions with weak anti-money laundering controls that invite banking abuses and criminal misconduct.” See Collin et al *Correspondent Banking* 1.

⁴⁴² FATF Guidance 2016 *Correspondent Banking Services* 7.

⁴⁴³ Erbenová et al *IMF Staff Discussion Note* 8.

⁴⁴⁴ Volkov 2016 <https://blog.volkovlaw.com/2016/05/aml-risks-foreign-correspondent-banking/>.

⁴⁴⁵ Volkov 2016 <https://blog.volkovlaw.com/2016/05/aml-risks-foreign-correspondent-banking/>. Correspondent bank renders services for customers of a foreign respondent bank which it has neither verified the identities of nor obtained any first-hand knowledge of such clients. See Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

and terrorist financing risks because a respondent bank has its own money laundering compliance requirements and systems that are designed to suit its local country of operation and are not necessarily applicable and suitable in the correspondent bank's country of operation.⁴⁴⁶ This sometimes results in a situation where a correspondent bank has to force and dictate anti-money laundering requirements on a foreign respondent bank's customers.⁴⁴⁷ This obviously does not always become an effective step or measure because it has to depend on the respondent's bank's anti-money laundering compliance program.⁴⁴⁸ The correspondent bank also processes very large transactions which are not easily traced on behalf of a respondent bank's customers.⁴⁴⁹

3.3.5 Tax havens and offshore banks

Jurisdictions with weak anti-money laundering measures attract money launderers to move their illicit money.⁴⁵⁰ Launderers mainly target the financial havens and offshore centres whose primary purpose is to service the needs of less privileged individuals.⁴⁵¹

Offshore banks are located in foreign countries.⁴⁵² Countries with high tax rates blame the offshore banks for being instrumental in tax evasion because people resort to these banks to avoid high tax rates.⁴⁵³ There are many jurisdictions around the world where offshore banks are found.⁴⁵⁴ Countries with weak foreign exchange and limited natural

⁴⁴⁶ Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* VI-9; Volkov 2016 <https://blog.volkovlaw.com/2016/05/aml-risks-foreign-correspondent-banking/>.

⁴⁴⁷ Volkov 2016 <https://blog.volkovlaw.com/2016/05/aml-risks-foreign-correspondent-banking/>.

⁴⁴⁸ Volkov 2016 <https://blog.volkovlaw.com/2016/05/aml-risks-foreign-correspondent-banking/>.

⁴⁴⁹ Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁴⁵⁰ McDonell *Money Laundering Methodologies and International and Regional Countermeasures* 5; Rogers *The Process of Money Laundering* 79.

⁴⁵¹ A bank that accepts deposits on behalf of non-residents is regarded as an offshore bank. Rogers *The Process of Money Laundering* 79.

⁴⁵² Offshore Bank Directory 2016 www.offshorebanksdirectory.com/download/The-ABCs-of-Offshore-Banks.pdf. Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1621; Reuter and Truman *Chasing Dirty Money* 30.

⁴⁵³ Offshore Bank Directory 2016 www.offshorebanksdirectory.com/download/The-ABCs-of-Offshore-Banks.pdf.

⁴⁵⁴ These countries include Cayman Islands, Switzerland, Singapore, Germany and Belize to name a few. See Thorup 2019 <https://www.escapeartist.com/blog/5-best-countries-to-open-offshore-bank-accounts/>. Rogers *The Process of Money Laundering* 79.

resources, as well as weak chances of economic prospects become safe havens for those evading tax in their home countries.⁴⁵⁵

3.3.6 Arranging corporate loans as an integration tool

Launderers are very smart. One of the methods that they use is to go to the bank to bring the laundered money home in the form of a loan,⁴⁵⁶ business loans to be specific. Launderers normally use the same money in the offshore bank to be “lent” to their local business.⁴⁵⁷ This money will obviously be non-taxable because it comes to the launderer in the form of a loan.⁴⁵⁸ This is normally seen in the layering stage of money laundering.⁴⁵⁹

3.3.7 Other money laundering techniques

3.3.7.1 Money laundering through the back door

According to Haingner, Schneider, and Wakolbinger,⁴⁶⁰ the above money laundering techniques can be described as laundering money through “the front door”. According to these writers, this is mainly because criminals use an official financial institution to move the illicit funds, as they try, by all means, to conceal the origin of those illicit funds.⁴⁶¹ Money laundering through the back door takes place by simply mispricing the internationally traded goods.⁴⁶² This could be, for example, by overvaluing or overpricing

⁴⁵⁵ Rogers *The Process of Money Laundering* 80.

⁴⁵⁶ McDonell *Money Laundering Methodologies and International and Regional Countermeasures* 5; Rogers *The Process of Money Laundering* 85.

⁴⁵⁷ Rogers *The Process of Money Laundering* 85.

⁴⁵⁸ Rogers *The Process of Money Laundering* 85. Also see Australian Government publication where an example of is given of launderers using mortgages and loans as one of the methods of laundering money. See Australian Government https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate_0.pdf page 7.

⁴⁵⁹ Rogers *The Process of Money Laundering* 85.

⁴⁶⁰ Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series* 33.

⁴⁶¹ Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series* 33.

⁴⁶² Zdanowicz says money laundering through the backdoor takes place when there is abnormal international trade pricing. See Zdanowicz *Communications of the ACM* 53. Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series* 33.

the imported goods or undervaluing or under-pricing exported goods.⁴⁶³ Overpricing the imported goods means that the transaction costs of the imported goods will be cheaper and it is therefore easier for the importer to move goods to the foreign country and laundering the money by so doing.⁴⁶⁴ Undervaluing or under-pricing exported goods could take place where for instance, criminals use their criminal proceeds to buy domestic products and sell such products to the foreign importer below the true market value of those goods.⁴⁶⁵

3.4 Effects of money laundering

Money laundering has a negative effect on many things, including the economy of the country, the government, and social well-being of the people.⁴⁶⁶ Because of money laundering, business decisions get distorted; banks face high risk of failure and the control of economic policies is taken away from the government.⁴⁶⁷ The reputation of the country in which money laundering is committed is affected negatively.⁴⁶⁸ Money laundering also exposes people to other crimes, such as drug trafficking, smuggling, and other criminal activities.⁴⁶⁹

3.4.1 Effects of money laundering on the economy of the country

The penetration and saturation of dirty money into legitimate financial institutions and bank accounts can damage economic and political stability.⁴⁷⁰ Economic crimes, such as

⁴⁶³ Zdanowicz *Communications of the ACM* 54; Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series* 33.

⁴⁶⁴ Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series*; Zdanowicz *Communications of the ACM* 54. Zdanowicz discussed in more detail how money laundering through the backdoor takes place and gives many examples.

⁴⁶⁵ Zdanowicz *Communications of the ACM* 54; Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series*.

⁴⁶⁶ Amali *Curbing Money Laundering* 61; McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 6; Kumar 2012 *European Journal of Business and Management* 116.

⁴⁶⁷ Amali *Curbing Money Laundering* 62. McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 6.

⁴⁶⁸ McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 6.

⁴⁶⁹ McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 6.

⁴⁷⁰ Kumar 2012 *European Journal of Business and Management* 118.

money laundering even affect people who are not necessarily the victims of the crime.⁴⁷¹ Because money laundering has a damaging effect on the financial institutions,⁴⁷² distortion of investment⁴⁷³ and the fact that it facilitates crime, as well as corruption, it therefore impacts negatively on the economy of any country.⁴⁷⁴ The crime that is intermingled with money laundering dampens economic growth of the country.⁴⁷⁵ That means it is not the flow of money from money laundering that damages the economy, but the criminals that follow the money.⁴⁷⁶

It is not easy to quantify the negative effects of money laundering on the economic growth of a country.⁴⁷⁷ However, it is clear that money laundering negatively affects the financial sector institutions that are critical to the growth of the economy of the country.⁴⁷⁸ Money laundering reduces productivity, output and efficiency in the economy's real sector because it diverts resources and encourages crime and corruption.⁴⁷⁹ Long-term economic development can be negatively affected when the economy's external sector, international trade and capital flows are distorted by crime and corruption from money laundering.⁴⁸⁰

Sometimes front companies are used by money launderers who mix the proceeds of money laundering with the legitimate funds of their businesses in order to hide the illegal

⁴⁷¹ Kumar gives an example of this and says: "...tax evasion results in loss of government revenue, thus affecting the potential of the government to spend on development schemes thereby affecting a large section of the population who could have benefited from such government expenditure. A company fraud not only results in cheating of the people who have invested in that company but may also adversely affect investors' confidence and eventually the growth of the economy." See Kumar 2012 *European Journal of Business and Management* 115.

⁴⁷² McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 6.

⁴⁷³ For effect of money laundering on investment see Nugraha 2013 *Jurnal Ekonomi Kuantitatif Terapan* 108.

⁴⁷⁴ Amali *Curbing Money Laundering* 61; McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 6; Unger and Linder *Research Handbook on Money Laundering* 42; Kumar 2012 *European Journal of Business and Management* 116.

⁴⁷⁵ Unger and Linder *Research Handbook on Money Laundering* 42.

⁴⁷⁶ Unger and Linder *Research Handbook on Money Laundering* 42.

⁴⁷⁷ Kumar 2012 *European Journal of Business and Management* 116; McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 6.

⁴⁷⁸ Kumar 2012 *European Journal of Business and Management* 116.

⁴⁷⁹ Amali *Curbing Money Laundering* 62; Kumar 2012 *European Journal of Business and Management* 116.

⁴⁸⁰ Kumar 2012 *European Journal of Business and Management* 116.

gains.⁴⁸¹ This affects the economy of the country and distorts the market because in some cases, front companies have advantage over other legitimate companies in that they offer their goods and services at prices that are way below what it may cost the manufacturer to produce.⁴⁸² These front companies, therefore, enjoy an unfair competitive advantage over legitimate firms that rely on financial markets to source their funds.⁴⁸³ This unfair competitive advantage makes it even more difficult for legitimate companies and businesses to compete in the market.⁴⁸⁴ This, therefore, contradicts the traditional free market principles of legitimate business and therefore results in negative macro-economic effects.

Oluwadayisi and Mimiko say that this practice of launderers eventually frustrates the system, leaving the economy of the countries in the hands of launderers.⁴⁸⁵ This results in the economy of the country depending on the launderers who do not have any intention of making profits.⁴⁸⁶ The economic stability of countries is thereby negatively affected in this way.⁴⁸⁷

3.4.2 Increases crime

Money is the lifeblood of every legitimate business as much as it is the lifeblood of any organised crime, such as money laundering.⁴⁸⁸ The crime of money laundering could increase crime rates because it makes criminal activities become worthwhile.⁴⁸⁹ Criminals are able to get money that they use to further increase their criminal activities.⁴⁹⁰ It allows

⁴⁸¹ McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 7.

⁴⁸² McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 7; Oluwadayisi and Mimiko 2016 *Beijing Law Review* 2.

⁴⁸³ McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 7.

⁴⁸⁴ McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 7.

⁴⁸⁵ See Oluwadayisi and Mimiko 2016 *Beijing Law Review* 2.

⁴⁸⁶ Oluwadayisi and Mimiko 2016 *Beijing Law Review* 2.

⁴⁸⁷ Oluwadayisi and Mimiko 2016 *Beijing Law Review* 2.

⁴⁸⁸ Alweendo *Money Laundering, Its economic Consequence and Policy Response* 1.

⁴⁸⁹ Unger and Linder *Research Handbook on Money Laundering* 41; McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 8.

⁴⁹⁰ Unger and Linder *Research Handbook on Money Laundering* 41.

those involved in drug trafficking, smuggling, and other criminal activities to be able to expand their operations.⁴⁹¹

3.4.3 Effects of money laundering on investment

Money laundering distorts investment. Because money laundering is a crime and an act of corruption, no investor wants to invest in a country that is corrupt and where crime rates are high.⁴⁹² A country's foreign direct investment is negatively affected when the commercial and financial sectors are perceived to be controlled and influenced by organised crimes like money laundering.⁴⁹³ This means that a country's reputation is tarnished in the same way that the integrity of the individual financial institution that is seen to be subject to the influence of money laundering crime is tarnished.⁴⁹⁴

Because money laundering is criminalised, criminals spend their laundered money differently from the way other people may spend legitimate money.⁴⁹⁵ When they invest, they do so only for the purposes of money laundering.⁴⁹⁶ The rate at which laundered money flows through the economy is different from the rate at which legitimate money flows when it is not laundered.⁴⁹⁷ For instance, launderers do not buy certain goods, because if they do, it might attract the attention of the authorities.⁴⁹⁸

⁴⁹¹ McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 8.

⁴⁹² Pahuja *Effects of Money Laundering on Economy*; McDonnell *Money Laundering Methodologies and International and Regional Countermeasures* 14.

⁴⁹³ FATF_GAFI *Money Laundering* 2017.

⁴⁹⁴ FATF_GAFI *Money Laundering* 2017; Also see Oluwadayisi and Mimiko who have stated that "On the international level, the socio-economic effect of money laundering on Nigeria is that the reputation of the country has been negatively affected, this imposes some constraints on Nigeria in international economic relations. It has been observed that until recently, Nigerians were treated with disrespect in almost every entry point of western countries on the account of the country's association with money laundering and other crime." See Oluwadayisi and Mimiko 2016 *Beijing Law Review* 3.

⁴⁹⁵ Unger and Linder *Research Handbook on Money Laundering* 38.

⁴⁹⁶ Unger and Linder *Research Handbook on Money Laundering* 38.

⁴⁹⁷ Bartlett *The Negative Effects of Money Laundering on Economic Development* 17.

⁴⁹⁸ Unger and Linder *Research Handbook on Money Laundering* 39.

The illicit money is moved to what is called “sterile” investments, such as real estate, art, and jewellery.⁴⁹⁹ Launderers often invest the proceeds of their illicit funds in investments that do not contribute to the production sector of the bigger economy.⁵⁰⁰ The productivity of the overall economy is negatively affected and reduced by money laundering because the country’s resources are invested in sterile investments and not productive investments.⁵⁰¹ Launderers often purchase assets, such as real estate and the prices of those assets that they buy often rise and cause them to be overvalued in the economy.⁵⁰² The problem of this is that the productive investments are crowded out in favour of less productive uses.⁵⁰³

3.4.4 Effects of money laundering on society at large

Another bad effect of money laundering is the fact that it undermines the society’s democratic and economic basis and also affects people’s confidence in the rule of law.⁵⁰⁴ It deteriorates the social fabric, and collective ethical standards, and in the end it affects the democratic institutions of society.⁵⁰⁵ This is because the launderers sometimes use the illicit funds to sponsor political campaigns during elections to influence governance.⁵⁰⁶ Organised crimes, such as money laundering not only infiltrate financial institutions and take control of large sectors of the country’s economy through investment; public officials,

⁴⁹⁹ Amali *Curbing Money Laundering* 64; Bartlett *The Negative Effects of Money Laundering on Economic Development* 17.

⁵⁰⁰ Bartlett *The Negative Effects of Money Laundering on Economic Development* 17; Alweendo says “This implies therefore that, because of money laundering, the world capital could be invested less optimally than would be the case in the absence of money laundering activities.” See Alweendo *Money Laundering, Its economic Consequence and Policy Response* 1.

⁵⁰¹ Amali *Curbing Money Laundering* 64; Bartlett *The Negative Effects of Money Laundering on Economic Development* 18.

⁵⁰² Bartlett *The Negative Effects of Money Laundering on Economic Development* 18.

⁵⁰³ Bartlett *The Negative Effects of Money Laundering on Economic Development* 18.

⁵⁰⁴ Oluwadayisi and Mimiko 2016 *Beijing Law Review* 4; Alweendo says that: “The consequences of crime, including money laundering, are bad for business, development, and the general rule of law...the social consequences for allowing money launderers to operate unchecked could spell disaster for stability and the rule of law...” See Alweendo *Money Laundering, Its economic Consequence and Policy Response* 4.

⁵⁰⁵ FATF_GAFI *Money Laundering* 2017; Otunsanya says “corruption and money laundering are important not just for the volume of funds that are shifted out, but also because of the damage they do to the integrity of judicial and political institutions” See Otunsanya *The Role of Offshore Financial Centres in Elite Money Laundering Practices* 336-361.

⁵⁰⁶ Oluwadayisi and Mimiko 2016 *Beijing Law Review* 4.

such as ministers or senior government officials are also offered bribes.⁵⁰⁷ This is because politicians in the country also participate in money laundering crimes whilst being entrusted with the country's finances.⁵⁰⁸

3.5 Measures to combat money laundering

3.5.1 The role of the international/global community

Money laundering is a crime that does not only affect one country; it affects all the countries in the world.⁵⁰⁹ It is, therefore, important that any plans put in place by countries to combat money laundering must be well-matched with the international standards and flexible enough to respond to the new money laundering schemes.⁵¹⁰ It has been stated that "...the global AML regime is developing on two fronts, prevention and enforcement, and at three levels: national, regional and international."⁵¹¹ It is, therefore, necessary for the international community to respond and show commitment towards addressing this problem.⁵¹² Institutions and task forces, such as the International Monetary Fund, the United Nations, the World Bank, as well as the Financial Action Task force make an effort to ensure that they fight and counter money laundering.⁵¹³

The global institutions dealing with problems, such as money laundering, face challenges, such as the lack of monitoring mechanisms to deal with the problem.⁵¹⁴ Availability of such monitoring mechanisms helps policy makers at the national, regional and global level in assessing and identifying their successes and failures in dealing with the problem.⁵¹⁵

⁵⁰⁷ FATF_GAFI *Money Laundering* 2017.

⁵⁰⁸ Oluwadayisi and Mimiko 2016 *Beijing Law Review* 4.

⁵⁰⁹ Ryder *Financial Crime in the 21st Century* 13; Sujee *A study of the anti-money laundering framework in South Africa and the United Kingdom* 3.

⁵¹⁰ Turner *Money Laundering Prevention* 11.

⁵¹¹ Ryder *Financial Crime in the 21st Century* 13.

⁵¹² Ryder *Financial Crime in the 21st Century* 13.

⁵¹³ Madinger *Money Laundering* 99; Ryder *Financial Crime in the 21st Century* 13; Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series*.

⁵¹⁴ Unger and Linder *Research Handbook on Money Laundering* 194.

⁵¹⁵ Unger and Linder *Research Handbook on Money Laundering* 194.

3.5.1.1 The Financial Action Task Force

The Financial Action Task Force⁵¹⁶ was established in July 1989.⁵¹⁷ It is an international organisation/intergovernmental body that was established at the G7 Summit in Paris.⁵¹⁸ The FATF operates as a body that makes policies and it was established to protect the global financial systems against the crime of money laundering by encouraging the adoption of such policies.⁵¹⁹ Among the many things for which the FATF was established, is the promotion of national and international regulatory change, as well as legislative change by using its political strength.⁵²⁰ The international money laundering deterrence policies which are locally in place in each and every member country are assessed against the international money laundering deterrence guidelines by the staff of the FATF.⁵²¹ The relevant and responsible body of each country will then get a report from the staff of the FATF, as well as the recommendations regarding the implementation of their individual policy framework.⁵²²

The FATF issues international standards to countries in respect of the anti-money laundering measures and it expects countries to implement such measures.⁵²³ These international standards and anti-money laundering measures issued by the FATF comprise the 40 Recommendations plus another nine Special Recommendations.⁵²⁴ The FATF was established in 1989 and because of the terrorist attacks that took place in the United States of America on 11 September 2001 the FATF issued the additional nine

⁵¹⁶ Hereinafter referred to as FATF.

⁵¹⁷ De Koker *South African Money Laundering and Terror Financing Law* 9; Madinger *Money Laundering* 100; De Koker *South African Money Laundering and Terror Financing Law* 9; Cox *An Introduction to Money laundering Deterrence* 16; Ryder *Financial Crime in the 21st Century* 16; Unger and Linder *Research Handbook on Money Laundering* 38; Turner *Money Laundering Prevention* 12.

⁵¹⁸ Ryder *Financial Crime in the 21st Century* 16; Madinger *Money Laundering* 100.

⁵¹⁹ Cox *An Introduction to Money laundering Deterrence* 16; Ryder *Financial Crime in the 21st Century* 16; Turner *Money Laundering Prevention* 21.

⁵²⁰ Cox *An Introduction to Money laundering Deterrence* 16.

⁵²¹ Cox *An Introduction to Money laundering Deterrence* 16.

⁵²² Turner *Money Laundering Prevention* 12; Cox *An Introduction to Money laundering Deterrence* 16.

⁵²³ Thereafter, the FATF uses those international standards as a point of reference in order to assess whether each country's anti-money laundering policy framework is in line with the FATF Recommendations. See Cox *An Introduction to Money laundering Deterrence* 16.

⁵²⁴ Ryder *Financial Crime in the 21st Century* 16; Cox *An Introduction to Money laundering Deterrence* 16.

Recommendations the main objective of which was to deal with the financing of terrorism by detecting, preventing and suppressing the financing of terrorism, as well as the terrorist acts.⁵²⁵ As with the 40 Recommendations that were issued,⁵²⁶ countries are still expected to implement these additional nine Recommendations in their domestic frameworks.⁵²⁷

The 40 Recommendations plus additional nine recommendations were revised between 2010 and 2012.⁵²⁸ The 40 and nine Recommendations were consolidated into one set of 40 Recommendations, resulting into the current 2012 Recommendations.⁵²⁹

The FATF currently has 37 member jurisdictions and 39 members in total as well as 2 regional organisations.⁵³⁰ Member countries and the regional organisations are the European Commission and the Gulf Co-operation Council.⁵³¹ The FATF can only put a country onto a list of countries that are noncompliant because in its capacity, it does not have the power or capability of enforcing its Recommendations.⁵³² As a result, countries are expected to implement these Recommendations on a national level in their anti-money laundering policy frameworks in order for them to be recognized and legally binding.⁵³³

⁵²⁵ Madinger *Money Laundering* 100; Cox *An Introduction to Money laundering Deterrence* 17; De Koker says the FATF also "...supports the combatting of other serious offences, for instance corruption and it supports the suppression of financing of weapons of mass destruction." See De Koker *South African Money Laundering and Terror Financing Law* 9.

⁵²⁶ The 40 Recommendations were issued in 1990. See De Koker *South African Money Laundering and Terror Financing Law* 9.

⁵²⁷ Cox *An Introduction to Money laundering Deterrence* 17.

⁵²⁸ See Amali *Curbing Money Laundering* 97; De Koker *South African Money Laundering and Terror Financing Law* 9.

⁵²⁹ De Koker *South African Money Laundering and Terror Financing Law* 9.

⁵³⁰ See FATF 2020 <https://www.fatf-gafi.org/faq/membercountriesandobservers/>. The 39 FATF Members play a big role in the global efforts to fight money laundering and terrorist financing. FATF also has 31 international and regional organisations which are its Associate Members or Observers and participate in the work of FATF.

⁵³¹ Turner *Money Laundering Prevention* 20; De Koker *South African Money Laundering and Terror Financing Law* 9.

⁵³² Cox *An Introduction to Money laundering Deterrence* 16; Ryder says: "Members of the FATF are clearly committed to implementing the Recommendations and have agreed to be subject to multilateral surveillance, peer review and the publication of the Non-cooperative Countries and Territories list." See Ryder *Financial Crime in the 21st Century* 17.

⁵³³ The FATF monitors the progress of member countries in implementing these Recommendations. See Amali *Curbing Money Laundering* 97; Also see Cox *An Introduction to Money laundering Deterrence* 16.

It is important to note that a country that has been put on a list of noncompliant countries faces the risk of not being able to do any international cross-border business.⁵³⁴ Over and above being on the list of noncompliant countries, some additional due diligence procedures, as well as some further controls may be applied against such a country.⁵³⁵

Cross-country reviews are undertaken by the FATF to ascertain if countries have indeed implemented the Recommendations in their domestic frameworks. Even though countries are put onto the list of noncompliant countries if they do not implement the FATF recommendations in their local frameworks, the FATF cannot publish that list because it does not want to run the risk of losing its authority of being recognised as the global anti-money laundering agency.⁵³⁶

FATF and FSRBs produce public mutual evaluation reports on all participating jurisdictions and the findings may inform the public listing of a country as a jurisdiction of concern if the outcome is unsatisfactory.⁵³⁷

The FATF style regional bodies are discussed briefly in the sections below.

3.5.1.1.1 The Financial Action Task Force Style Regional Bodies⁵³⁸

The FATF has established the nine style regional bodies which are as follows according to the Asia/Pacific Group on Money Laundering:

⁵³⁴ Cox *An Introduction to Money laundering Deterrence* 16; Kobor says that over and above coming up with the AML/CFT standards for its member countries, the FATF is also responsible for promoting and assessing compliance and, when need arises, the FATF coordinates diplomatic pressure and countermeasures through its member governments. See Kobor 2013 *Washington Journal of Law Technology and Arts* 311.

⁵³⁵ Cox *An Introduction to Money laundering Deterrence* 16.

⁵³⁶ The FATF last published a list in 2000 and the said list was regarded as controversial by some international organisations, such as the International Monetary Fund and the World Bank. Some people regarded the list as disturbing and some as extraterritorial bullying of countries by the FATF. See Ryder *Financial Crime in the 21st Century* 17.

⁵³⁷ See FATF 2019 <https://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf>.

⁵³⁸ Hereinafter referred to as the FSRB.

1. Asia/Pacific Group on Money Laundering (APG) based in Sydney, Australia;
2. Caribbean Financial Action Task Force (CFATF) based in Port of Spain, Trinidad and Tobago;
3. Eurasian Group (EAG) based in Moscow, Russia;
4. Eastern & Southern Africa Anti-Money Laundering Group (ESAAMLG) based in Dar es Salaam, Tanzania;
5. Central Africa Anti-Money Laundering Group (GABAC) based in Libreville, Gabon;
6. Latin America Anti-Money Laundering Group (GAFILAT) based in Buenos Aires, Argentina;
7. West Africa Money Laundering Group (GIABA) based in Dakar, Senegal;
8. Middle East and North Africa Financial Action Task Force (MENAFATF) based in Manama, Bahrain;
9. Council of Europe Anti-Money Laundering Group (MONEYVAL) based in Strasbourg, France (Council of Europe).⁵³⁹

3.5.1.1.1.1 The Eastern and Southern African Anti-Money Laundering Group (ESAAMLG)

The Eastern and Southern African Anti-Money Laundering Group⁵⁴⁰ was established in 1999 with its Secretariat in Dar es Salaam, Tanzania.⁵⁴¹ It became an associate member of the FATF in June 2010.⁵⁴² It has 19 member states.⁵⁴³ The aim of the ESAAMLG is to implement the Recommendations of the FATF, thereby also playing a role in combating money laundering.⁵⁴⁴ The ESAAMLG assesses and monitors member countries' level of compliance with the international standards against money laundering.⁵⁴⁵ Its efforts in combating money laundering include, among other things, associating itself with other

⁵³⁹ See APG 2017 <http://www.apgml.org/fatf-and-fsrb/page.aspx?p=94065425-e6aa-479f-8701-5ca5d07ccfe8>.

⁵⁴⁰ Hereinafter referred to as the ESAAMLG.

⁵⁴¹ FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/easternandsouthernafricaanti-moneylaunderinggroupesaamlg.html>; EAG 2010 <http://www.eurasiangroup.org/esaamlg.php>.

⁵⁴² FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/easternandsouthernafricaanti-moneylaunderinggroupesaamlg.html>.

⁵⁴³ Angola, Botswana, Comoros, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, South Africa, Swaziland, Seychelles, Tanzania, Uganda, Zambia, Zimbabwe See EAG 2010 <http://www.eurasiangroup.org/esaamlg.php>.

⁵⁴⁴ FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/easternandsouthernafricaanti-moneylaunderinggroupesaamlg.html>.

⁵⁴⁵ HLS PILAC 2015 <https://pilac.law.harvard.edu/africa-region-efforts//eastern-and-southern-africa-anti-money-laundering-group-esaamlg>.

international organisations that are also involved in fighting money laundering.⁵⁴⁶ It also coordinates technical assistance where necessary.⁵⁴⁷

3.5.1.1.1.2 The Intergovernmental Action Group Against Money-Laundering in Africa (GIABA)

The Intergovernmental Action Group Against Money-Laundering in Africa (GIABA)⁵⁴⁸ was established on 10 December 1999.⁵⁴⁹ GIABA is a member or an institution belonging to the Economic Community of West African States (ECOWAS) and was formed by the authority of the governments and Heads of States of the ECOWAS.⁵⁵⁰ GIABA is one of the FATF's FSRBs that complies fully with all the Recommendations of the FATF.⁵⁵¹ It was created mainly as the ECOWAS's way of contributing and responding to the efforts made by the global organisations and institutions to fight and combat money laundering.⁵⁵² It plays a role in combating money laundering by ensuring adoption and implementation of the measures aimed at combating money laundering and terrorist

⁵⁴⁶ For example, on 30 May 2017, the ESAAMLG joined hands with the Common Market for Eastern and Southern Africa (COMESA) to fight money laundering. The COMESA Regional Maritime Security Programme (MASE) is "designed to address maritime insecurity by targeting the financial aspects, such as money laundering to fight piracy." See Gakunga 2017 <http://www.comesa.int/comesa-esaamlg-sign-mou-to-fight-money-laundering/>; See also FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/easternandsouthernafricaanti-moneylaunderinggroupesaamlg.html>.

⁵⁴⁷ FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/easternandsouthernafricaanti-moneylaunderinggroupesaamlg.html>; EAG 2010 <http://www.eurasiangroup.org/esaamlg.php>.

⁵⁴⁸ Hereinafter referred to as the GIABA.

⁵⁴⁹ EAG 2010 <http://www.eurasiangroup.org/giaba.php>.

⁵⁵⁰ ECOWAS 2016 <http://www.ecowas.int/institutions/the-inter-governmental-action-group-against-money-laundering-and-terrorism-financing-in-west-africa-giaba/>; GIABA 2012 <http://www.giaba.org/>.

⁵⁵¹ ECOWAS 2016 <http://www.ecowas.int/institutions/the-inter-governmental-action-group-against-money-laundering-and-terrorism-financing-in-west-africa-giaba/>.

⁵⁵² ECOWAS 2016 <http://www.ecowas.int/institutions/the-inter-governmental-action-group-against-money-laundering-and-terrorism-financing-in-west-africa-giaba/>; "GIABA members acknowledge that money laundering and financing of terrorism are issues of critical importance to the world community which require global action. Further, that the economies and financial systems of the countries need to be protected from laundered money and proceeds from terrorist activities. GIABA members recognize that West Africa needs to address these issues and find global solutions to them."

financing in the West African region of Africa.⁵⁵³ It works with its member states to ensure that the AML/CFT standards are adhered to.⁵⁵⁴ It has 16 member states.⁵⁵⁵

3.5.1.1.1.3 The Caribbean Financial Action Task Force (CFATF)

The Caribbean Financial Action Task Force⁵⁵⁶ is another FSRB which was formed in May 1990. The CFATF, through its Council,⁵⁵⁷ implements measures aimed at combating money laundering.⁵⁵⁸ The primary aim of the CFATF is to attain efficient functioning of and conformity with its recommendations to control money laundering and to combat the financing of terrorism.⁵⁵⁹ Members of the CFATF aim to combat money laundering because their main priority is to protect the Caribbean region against any criminal activity.⁵⁶⁰ The member countries of the Caribbean region are fully committed to comply with the international standards aimed at fighting money laundering, as they are well-regulated countries.⁵⁶¹ They strive to protect the best interest of the region.⁵⁶²

⁵⁵³ GIABA 2012 <http://www.giaba.org/>.

⁵⁵⁴ GIABA 2012 <http://www.giaba.org/>.

⁵⁵⁵ Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Sao Tome and Principe, Togo. GIABA's mission is stated as to: "Protect the banking and financial systems of the member states from being penetrated by criminal proceeds; Ensure harmonization and implement measures to combat money laundering and terrorist financing; Help the member states to implement the recommendations of the FATF and relevant international conventions and resolutions; Strengthen international cooperation between the member states; and to assess the progress and the effectiveness of measures taken to combat money laundering and terrorist financing." See GIABA 2012 <http://www.giaba.org/>.

⁵⁵⁶ Hereinafter referred to as the CFATF.

⁵⁵⁷ The Council of the CFATF is made up of at least one representative, such as a Minister from each member country. Its member states are Anguilla, Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Curacao, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saint Maarten, Surinam, Trinidad and Tobago, Turks and Caicos Islands, Venezuela. See EAG 2010 <http://www.eurasiangroup.org/cfatf.php>; CFATF-GAFIC 2017 <https://www.cfatf-gafic.org/>.

⁵⁵⁸ EAG 2010 <http://www.eurasiangroup.org/cfatf.php>.

⁵⁵⁹ See HLS PILAC 2017 <https://pilac.law.harvard.edu/americas-region-efforts/caribbean-financial-action-task-force-cfatf>.

⁵⁶⁰ Wilson and Rattray 2007 *Journal of Financial Crime* 227.

⁵⁶¹ Member countries of the Caribbean region are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. See <https://www.britannica.com/topic/Caribbean-Community>; Wilson and Rattray 2007 *Journal of Financial Crime* 227.

⁵⁶² Wilson and Rattray 2007 *Journal of Financial Crime* 227.

3.5.1.1.1.4 The Middle East and North African Financial Action Task Force (MENAFATF)

The Middle East and North Africa Financial Action Task Force⁵⁶³ is an FSRB formed on 30 November 2004, also with the main purpose of combating money laundering.⁵⁶⁴ The MENAFATF was founded after agreement was reached by the governments of its members.⁵⁶⁵

Even though the main aim of establishing the MENAFATF is to combat money laundering, its members are mindful of the cultural differences in their region.⁵⁶⁶ The MENAFATF was not established based on any international treaty.⁵⁶⁷ It does not depend on any organisations or international body for its rules, regulations, and procedures as well as work, as it sets its own.⁵⁶⁸

3.5.1.1.1.5 The Eurasian Group (EAG)

The Eurasian Group was founded on 6 October 2004 in Moscow, Russia.⁵⁶⁹ The plan for the Eurasian region countries that are not members of any FSRB is still to combat money

⁵⁶³ Hereinafter referred to as the MENAFATF.

⁵⁶⁴ EAG 2010 <http://www.eurasiangroup.org/menafatf.php>.

⁵⁶⁵ AOAV 2017 <https://aoav.org.uk/2016/middle-east-north-africa-financial-action-task-force-menafatf/>. MENAFATF member countries are Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

⁵⁶⁶ AOAV 2017 <https://aoav.org.uk/2016/middle-east-north-africa-financial-action-task-force-menafatf/>.

⁵⁶⁷ Low 2017 <https://aml-cft.net/library/middle-east-north-africa-financial-action-task-force-menafatf/>.

⁵⁶⁸ Low 2017 <https://aml-cft.net/library/middle-east-north-africa-financial-action-task-force-menafatf/>. The objectives of MENAFATF are: “to adopt and implement the FATF 40 Recommendations on combating money laundering and financing of terrorism and proliferation; to implement the relevant UN treaties and agreements and United Nations Security Council Resolutions; to co-operate among each other to raise compliance with these standards within the MENA Region and to cooperate with other international and regional organizations, institutions and agencies to improve compliance worldwide; to work jointly to identify issues of regional nature related to money laundering and terrorist financing, and to share relevant experiences and to develop solutions for dealing with them; and to take measures throughout the region to effectively combat money laundering and terrorist financing in a way that does not contradict with the cultural values, constitutional frameworks and legal systems in the member countries.” See MENAFATF 2017 <http://www.menafatf.org/about/objective>.

⁵⁶⁹ FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/eurasiangroupeag.html>.

laundering and also to ensure that the financial system within the Eurasian region is safe and transparent.⁵⁷⁰

3.5.1.1.1.6 Council of Europe Anti-Money Laundering Group (MONEYVAL)

The Council of Europe Anti-Money Laundering Group, commonly known as the MONEYVAL was founded in 1997.⁵⁷¹ It is a body of the Council of Europe whose main duties are to assess and monitor the level of compliance with the international standards of combating money laundering.⁵⁷² The MONEYVAL is also entrusted with the work of monitoring and assessing whether the international standards of combating money laundering have been implemented effectively.⁵⁷³ Based on its assessments and monitoring that was conducted, the MONEYVAL recommends some improvements that the national authorities can implement in their systems.⁵⁷⁴

The MONEYVAL's main aim is to ensure that its member states adhere to the relevant international money laundering standards and that member states implement adequate and effective money laundering systems to combat money laundering.⁵⁷⁵

⁵⁷⁰ FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/eurasiangroupeag.html>; Members of the EAG are Belarus, China, India, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan, Uzbekistan. The objectives of the Eurasian Group (EAG) are: "to facilitate implementation of international standards; carry out joint programs within the FIU sphere of competency; conduct evaluations of the effectiveness of existing AML/CFT mechanisms; coordinate technical assistance cooperation; and analyze trends (typologies) in the AML/CFT sphere and exchange experience in combating these crimes"

⁵⁷¹ Council of Europe 2017 <https://www.coe.int/en/web/moneyval/home?> FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/moneyval.html>.

⁵⁷² FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/moneyval.html>.

⁵⁷³ FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/moneyval.html>. Council of Europe 2017 <https://www.coe.int/en/web/moneyval/home>.

⁵⁷⁴ Council of Europe 2017 <https://www.coe.int/en/web/moneyval/home?>

⁵⁷⁵ Council of Europe 2017 <https://www.coe.int/en/web/moneyval/home?> In order to achieve its aim, the MONEYVAL sets the following objectives: "assess its members' compliance with all relevant international standards in the legal, financial and law enforcement sectors through a peer review process of mutual evaluations, including assessment of effectiveness of the implemented measures in practice; formulate recommendations on ways to improve the effectiveness of domestic regimes to combat money laundering and terrorist financing and states' capacities to cooperate internationally in these areas; conduct thematic typologies research of money laundering and terrorist financing methods, trends and techniques and issue reports thereabout; conduct other research into issues relating to money laundering and the financing of terrorism, including horizontal reviews of the progress of evaluated States in meeting the international standards in each evaluation round; undertake activities to raise awareness of major global policy and

3.5.1.1.1.7 Asia/Pacific Group on Money Laundering (APG)

The Asia/Pacific Group on Money Laundering⁵⁷⁶ was established by 13 countries, though it currently has 41 active members.⁵⁷⁷ It was formed to ensure that member states implement the international standards of combating money laundering effectively.⁵⁷⁸

3.5.1.1.1.8 Latin America Anti-Money Laundering Group (GAFILAT)

The Latin America Anti-Money Laundering Group⁵⁷⁹ is the FSRB for the Latin American countries.⁵⁸⁰ It was established in 2000 as the Financial Action Task Force of South America (GAFISUD).⁵⁸¹ Based on the Recommendations of the FATF, the GAFILAT aims

operational initiatives to counter money laundering and the financing of terrorism; after consultation with the European Committee on Crime Problems (CDPC), propose recommendations for adoption by the Committee of Ministers which would improve the international fight against money laundering and the financing of terrorism; and contribute actively to the global fight against money laundering and the financing of terrorism by working closely with other key international partners, including the FATF, the IMF, the World Bank, the United Nations, the European Union and other FATF-Style Regional Bodies (FSRBs) in the global network of AML/CFT assessment bodies.” See Council of Europe 2017 <https://www.coe.int/en/web/moneyval/home?>

⁵⁷⁶ Hereinafter referred to as the APG.

⁵⁷⁷ EAG 2010 <http://www.eurasiangroup.org/apg.php>; APG 2017 <http://www.apgml.org/about-us/page.aspx?p=91ce25ec-db8a-424c-9018-8bd1f6869162>.

⁵⁷⁸ APG 2017 <http://www.apgml.org/about-us/page.aspx?p=91ce25ec-db8a-424c-9018-8bd1f6869162>. The primary functions of the APG are as follows: “1. Mutual evaluations: The APG assesses the compliance by its members with the global AML/CFT standards through a mutual evaluation (peer review) programme; 2. Technical assistance and training: The APG Secretariat coordinate bi-lateral and donor-agency technical assistance and training in the Asia/Pacific region for many of its members in order to improve compliance with the global standards; 3. Typologies research: Research and analysis into money laundering and terrorist financing methods and trends is a key component of the APG to assist its members and the general public to identify and respond to new and emerging trends, methods, risks and vulnerabilities. 4. Global engagement: The APG contributes to international AML/CFT policy development and actively engages with the global network of FSRBs and the FATF. The APG also participates in a number of FATF processes on behalf of its members; and 5. Private sector engagement: Private sector engagement is critical to the APG's overall objectives. The APG actively engages with financial and non-financial institutions, NPOs and academia to better inform the general public and specialists about global issues relating to money laundering, terrorist financing and proliferation financing.”

⁵⁷⁹ Hereinafter referred to as GAFILAT.

⁵⁸⁰ HLS PILAC 2017 <https://pilac.law.harvard.edu/americas-region-efforts/latin-america-anti-money-laundering-group-gafilat>.

⁵⁸¹ FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/financialactiontaskforceofsouthamericaagainstmoneylaunderinggafisud.html>. Its name was officially changed from GAFISUD to GAFILAT on 7 July 2014 in order to show that it has included all countries within the region of Latin America.

to come up with the strategies in order to counter money laundering.⁵⁸² The GAFILAT conducts training and educational sessions for its members in the Latin American region.⁵⁸³

3.5.1.1.1.9 Central Africa Anti-Money Laundering Group (GABAC)

The Central Africa Anti-Money Laundering Group⁵⁸⁴ is described as “a body of the Economic and Monetary Community of Central Africa.”⁵⁸⁵ It was founded in the year 2000. Like all other FSRBs discussed above, it was founded with the main purpose of combating money laundering as well as assessing and monitoring that its members⁵⁸⁶ adhere to the FATF standards.⁵⁸⁷

3.5.1.1.2 FATF’s Risk Review and Monitoring Processes – the FATF Mutual Evaluations

Countries that are members of the FATF have an obligation to comply with the FATF’s AML/CFT regulatory standards. The FATF performs mutual evaluations of its members’ levels of application of the FATF Recommendations on an ongoing basis.⁵⁸⁸ Should a country fail to do so or to comply adequately and implement the FATF measures adequately, it runs the risk of being publicly listed as a jurisdiction of concern.

⁵⁸² HLS PILAC 2017 <https://pilac.law.harvard.edu/americas-region-efforts//latin-america-anti-money-laundering-group-gafilat>; FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/financialactiontaskforceofsouthamericaagainstmoneylaunderinggafisud.html>.

⁵⁸³ HLS PILAC 2017 <https://pilac.law.harvard.edu/americas-region-efforts//latin-america-anti-money-laundering-group-gafilat>. GAFILAT members are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Uruguay.

⁵⁸⁴ Hereinafter referred to as GABAC.

⁵⁸⁵ FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/gabac.html>.

⁵⁸⁶ The GABAC member states are Cameroon, Central African Republic, Chad, and Republic of the Congo, Democratic Republic of the Congo (DRC), Equatorial Guinea, and Gabon.

⁵⁸⁷ The GABAC also provides technical assistance to its members where necessary. It was admitted as an associated member of the FATF in October 2015. See FATF-GAFI 2017 <http://www.fatf-gafi.org/pages/gabac.html>.

⁵⁸⁸ FATF-GAFI 2020 <https://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html>.

The mutual evaluations are the FATF member country reports that comprehensively analyse the country's implementation and effectiveness of measures to fight money laundering and terrorist financing.⁵⁸⁹ A country is assessed by members from different countries and they provide a report on their analysis of a country's systems for fighting criminal abuse of the financial system.⁵⁹⁰ The report also focuses on the recommendations to a country to tighten its money laundering systems. The onus rests on a country to prove that it is compliant and once it proves successfully, it will be deemed compliant.⁵⁹¹

The FATF identifies countries with weak measures to fight money laundering and terrorist financing (AML/CFT) in its two public documents that are issued three times a year.⁵⁹² The process of publicly listing countries with weak AML/CFT regimes has proven to be an efficient exercise for the FATF.⁵⁹³

Countries that are placed under increased monitoring by the FATF are actively working with the FATF to resolve their strategic weaknesses in their systems to combat money laundering, terrorist financing, and proliferation financing. When a country is placed under increased monitoring, it means that the country has committed to resolve quickly the identified strategic deficiencies within agreed timelines and is subject to increased monitoring.⁵⁹⁴

⁵⁸⁹ FATF-GAFI 2020 [https://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc(fatf_releasedate)).

⁵⁹⁰ FATF-GAFI 2020 [https://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc(fatf_releasedate)).

⁵⁹¹ FATF-GAFI 2020 [https://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc(fatf_releasedate)).

⁵⁹² FATF-GAFI 2020 <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html>.

⁵⁹³ FATF-GAFI 2020 <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html>.

⁵⁹⁴ As of 21 February 2020, the following countries were placed under the FATF's increased monitoring: Albania, The Bahamas, Barbados, Botswana, Cambodia, Ghana, Iceland, Jamaica, Mauritius, Mongolia, Myanmar, Nicaragua, Pakistan, Panama, Syria, Uganda, Yemen and Zimbabwe. See FATF-GAFI 2020 <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html>.

3.5.1.1.3 Recommendation 1 and 10 of the FATF

3.5.1.1.3.1 Recommendation 1 - Assessing risks and applying a risk-based approach

In terms of the Recommendation 1, countries must identify, assess, and understand their money laundering and terrorist financing risks, and must take appropriate action, including appointing an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring that the risks are mitigated effectively.⁵⁹⁵

Countries must undertake a national risk assessment to be aware of the money laundering and terrorist financing risks present in their countries.⁵⁹⁶ De Koker⁵⁹⁷ says that the risk-based approach is very important to mobile money and other financial inclusion initiatives. According to De Koker, Recommendation 1 addresses the risk assessment and the risk-based approach principles that countries and institutions must implement.⁵⁹⁸ He submits that this approach is now compulsory for countries and institutions, but it should be noted that its application is restricted to certain aspects of the AML/CTF framework. It can be used to expand the regulatory sphere or to ascertain the nature of the CDD measures to be applied regarding a particular client, products or services. However, it cannot be used to argue that a country's overall money laundering risk is so minimal that it does not need to criminalize money laundering and terrorist finance.⁵⁹⁹

3.5.1.1.3.2 Recommendation 10 – Customer due diligence and record-keeping

Recommendation 10 stipulates that financial institutions must maintain, for a minimum period of five years, all necessary records on transactions, both domestic and

⁵⁹⁵ FATF 2012 – 2019 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

⁵⁹⁶ Kobor 2013 *Washington Journal of Law, Technology & Arts* 312.

⁵⁹⁷ De Koker 2013 *Washington Journal of Law, Technology & Arts* 173.

⁵⁹⁸ De Koker 2013 *Washington Journal of Law, Technology & Arts* 173.

⁵⁹⁹ De Koker 2013 *Washington Journal of Law, Technology & Arts* 173.

international, to allow them to comply swiftly with information requests from the competent authorities.⁶⁰⁰

3.5.1.2 The United Nations

The United Nations⁶⁰¹ is one of the global bodies committed to fighting and combating money laundering. This is evident in the UN's many Conventions and Instruments whose aim is to regulate and control the use and abuse of drugs and to combat money laundering.⁶⁰² The first international legal instrument/convention to criminalise money laundering and embody the aspect of money laundering is the 1988 *Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances*.⁶⁰³ Other important conventions/instruments are the *Convention against Transnational Organized Crime*⁶⁰⁴ and the *Convention against Corruption*⁶⁰⁵ which widen the scope of money laundering by stating that it should also cover the proceeds of all serious crimes⁶⁰⁶ and not apply only to the proceeds of illicit drug trafficking.⁶⁰⁷ These two instruments urge member countries

⁶⁰⁰ FATF 2012 – 2019 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

⁶⁰¹ Hereinafter referred to as the UN.

⁶⁰² For example, there is the International Opium Convention 1912; the Convention Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs 1931; the Convention for Suppression of the Illicit Traffic in Dangerous Drugs (1939); the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, the UN Convention against Transnational Organized Crime 2000, the UN Convention against Corruption 2005, etc.

⁶⁰³ UNODC 2017 <https://www.unodc.org/unodc/en/money-laundering/Instruments-Standards.html>. The main purpose of this Convention is stated in Article 2 thereof as: "...to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems." Article 3 of this Convention states the offenses which also cover money laundering and article 5 is specific that the proceeds of illicit drugs must be confiscated. This article is available at https://www.unodc.org/pdf/convention_1988_en.pdf.

⁶⁰⁴ Article 1 of this Convention states its purpose as: "...to promote cooperation to prevent and combat transnational organized crime more effectively."

⁶⁰⁵ The purpose of this Convention is stated in Article 1 as to, among others; "...promote and strengthen measures to prevent and combat corruption more efficiently and effectively..." This Convention is available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁶⁰⁶ See Articles 2, 6, 12, 13, and 14 of the UN Convention against Transnational Organized Crime and Articles 2, 23, 31, 37, 52, and 55 of the UN Convention against Corruption.

⁶⁰⁷ See Article 2 of the United Nations Convention against Transnational Organized Crime which provides for the definition of Organised Crime. It provides that: Organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with

to create their domestic regulatory and supervisory framework in order for member states to be able to supervise and regulate institutions, such as banks and non-banking institutions whose facilities are likely to be used by criminals for purposes of money laundering.⁶⁰⁸ They also urge countries to establish Financial Intelligence Units (FIUs).⁶⁰⁹

The UN's Office on Drugs and Crimes has a Global Programme against money laundering which, among other things, aims to combat money laundering.⁶¹⁰ This UN Office on Drugs and Crimes was formed in 1997 with the aim of assisting member states to observe and adhere to the UN Conventions and other instruments that deal with money laundering and terrorist financing.⁶¹¹ The UN Global Programme against money laundering has been instrumental and of great benefit to the UN member states in many respects.⁶¹²

the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.” It further defines proceeds of crimes as “any property derived from or obtained, directly or indirectly, through the commission of an offence”

⁶⁰⁸ See Article 7 of the United Nations Convention against Transnational Organized Crime and Article 14 of the United Nations Convention Against Corruption.

⁶⁰⁹ Article 58 of the United Nations Convention against Corruption provides that: “State Parties shall...consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions...” See also article 7 of the United Nations Convention against Transnational Organized Crime.

⁶¹⁰ Ryder *Financial Crime in the 21st Century* 14.

⁶¹¹ The objective of the Global Programme is “to strengthen the ability of Member States to implement measures against money-laundering and the financing of terrorism and to assist them in detecting, seizing and confiscating illicit proceeds, as required pursuant to United Nations instruments and other globally accepted standards, by providing relevant and appropriate technical assistance upon request.” See UNODC 2017 <https://www.unodc.org/unodc/en/money-laundering/index.html?ref=menuaside>; Also see INCSR Report 2015 <https://www.state.gov/j/inl/rls/nrcrpt/2015/vol2/239471.htm>. The UN's Office on Drugs and Crimes, through its Global Program is said to, among other things: “provide(s) Governments, law enforcement authorities and financial intelligence units with strategies to counter money-laundering, advises on improved banking and financial policies and assists national financial investigation services. Strategies include granting technical assistance to authorities from developing countries, organizing training workshops, providing training materials and transferring expertise between jurisdictions.” See UNODC 2017 <https://www.unodc.org/unodc/en/money-laundering/index.html?ref=menuaside>.

⁶¹² For instance, according to the INCSR Report; “In 2014, GPML provided long-term assistance in the development of AML/CFT programs to 66 jurisdictions. GPML also conducted 32 training, policy development, and awareness raising activities worldwide; seven were at the international level, often in close partnership with regional or multilateral organizations. GPML trained 1,117 representatives of law enforcement agencies, financial intelligence units (FIUs), judicial authorities, and reporting entities.” See INCSR Report 2015 <https://www.state.gov/j/inl/rls/nrcrpt/2015/vol2/239471.htm>.

3.5.1.3 The International Monetary Fund

The International Monetary Fund⁶¹³ has for a long time been involved in developing and formulating money laundering and terrorist finance policy frameworks both at domestic and international level.⁶¹⁴ This was, among other things, through designing and implementing measures intended to attain financial integrity in its fund-supported programmes.⁶¹⁵ Measures towards ensuring financial integrity include research undertaken by IMF, staff as well as by evaluating countries' level of compliance with the international money laundering standards and providing guidance on how to address any shortcomings if identified.⁶¹⁶ The IMF also examines and evaluates international and countries' money laundering and terrorist financing policy frameworks to see how those regimes interact with issues, such as costs of and strategies for `limiting corruption, as well as the retraction of correspondent banking relationships.⁶¹⁷

⁶¹³ Hereinafter referred to as the IMF.

⁶¹⁴ IMF Factsheet 2017 <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism>; Lagarde says that the IMF understands that countries cannot work alone to build defenses against money laundering and terrorist financing and therefore the IMF is committed to helping countries build defenses against those money laundering and terrorist financing through the AML/CFT standards. See Lagarde "Working Together to Fight Money Laundering & Terrorist Financing".

⁶¹⁵ IMF Factsheet 2017 <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism>.

⁶¹⁶ IMF Factsheet 2017 <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism>.

⁶¹⁷ IMF Factsheet 2017 <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism>. The following aptly summarizes how the IMF has endeavored to fight money laundering and terrorist finance through its many projects. "In line with a growing recognition of the importance of financial integrity issues for the IMF, the AML/CFT program has evolved over the years. In 2004, the Executive Board agreed to make AML/CFT assessments and capacity development a regular part of IMF work. In 2011, the Board discussed a report on the evolution of the AML/CFT program over the previous five years. Directors supported the mandatory coverage of financial integrity issues in specific circumstances and further specified in the 2012 Guidance Note on the inclusion of AML/CFT in surveillance and financial stability assessments (FSAs). Staff is required to discuss AML/CFT issues in the context of Article IV consultations in cases where money laundering, terrorism financing, and related crimes (such as corruption or tax crimes) are serious enough to threaten domestic stability, balance of payments stability, or the effective operation of the international monetary system. In the 2014 review of the Fund's AML/CFT strategy, the Board encouraged staff to continue its efforts to integrate financial integrity issues into its surveillance and in the context of Fund-supported programs, when financial integrity issues are critical to financing assurances or to achieve program objectives. The Board also decided that AML/CFT should continue to be addressed in all FSAPs but on a more flexible basis...In 2009, the IMF launched a donor-supported trust fund—the first in a series of Topical Trust Funds to finance capacity development in AML/CFT that complemented the IMF's existing financing accounts. The first phase ended in April 2014. Considering the success of the program

One of the things that can threaten the stability of a country's economy is money laundering.⁶¹⁸ The IMF has, therefore, been supporting countries in promoting the AML/CFT efforts based on the FATF standards.⁶¹⁹ Lagarde says that: "Both FATF and the IMF are forward-thinking organizations designed to help our members address some of the most pressing global issues of our time."⁶²⁰ The IMF has been supportive to countries in order for countries to stay connected to the global financial system.⁶²¹ The global financial systems such as correspondent banking relationships are very important, especially for developing countries like those in Africa.⁶²² It was mentioned earlier in this chapter that one of the methods that launderers may use to move their illicit profits is through the correspondent banks.⁶²³

Due to some global financial crimes correspondent banking relationships have been terminated in some countries.⁶²⁴ The FATF ensures that while it urges countries to adopt and apply AML/CFT frameworks in their domestic AML/CFT regimes, such application does not lead to a withdrawal of the correspondent banking relationships, as they are very important to some developing countries to assist them to have access to the financial markets of some developed countries.⁶²⁵ Economic and financial stability will, therefore,

and continuing high demand for capacity development in this area, a new five-year phase started in May 2014. Donors (France, Japan, Luxembourg, the Netherlands, Norway, Qatar, Saudi Arabia, Switzerland and the United Kingdom) have pledged more than \$25 million to support this new phase. The contribution to the Topical Trust Fund has helped deliver \$6.5 million annually in direct technical assistance and training to more than 40 countries." See IMF Factsheet 2017 <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism>.

⁶¹⁸ Amali *Curbing Money Laundering* 62; Lagarde "Working Together to Fight Money Laundering & Terrorist Financing"; Kumar 2012 *European Journal of Business and Management* 116.

⁶¹⁹ Lagarde "Working Together to Fight Money Laundering & Terrorist Financing"; Amali also states that: "The implementation of the FATF Recommendations have been enhanced through their endorsement as AML/CFT international standards by the Executive Boards of the International Monetary Fund (IMF)" See Amali *Curbing Money Laundering* 98.

⁶²⁰ One of the ways that this has been done has been by maintaining correspondent banking relationships. See Lagarde "Working Together to Fight Money Laundering & Terrorist Financing".

⁶²¹ Lagarde "Working Together to Fight Money Laundering & Terrorist Financing".

⁶²² Lagarde "Working Together to Fight Money Laundering & Terrorist Financing".

⁶²³ Erbenová et al *IMF Staff Discussion Note 8*; Volkov *AML Risks and Foreign Correspondent Banking* <https://blog.volkovlaw.com/2016/05/aml-risks-foreign-correspondent-banking/>; Byrne and Martinez *Study Guide for the CAMS Certification Examination* 25.

⁶²⁴ Erbenová et al *IMF Staff Discussion Note 5*.

⁶²⁵ Lagarde "Working Together to Fight Money Laundering & Terrorist Financing".

be maintained.⁶²⁶ Global banks will maintain their correspondent banking relationships even when there is some regulatory uncertainty.⁶²⁷

3.5.1.4 The Basel Committee on Banking Supervision

The Basel Committee on Banking Supervision, formerly known as the Committee of Banking Regulations and Supervisory Practices, was formed in 1974 by the Central Bank Governors of the group of 10 countries⁶²⁸ after the banking market and international currency were negatively affected by Bankhaus Herstatt West Germany's failure and collapse. The Basel Committee is an international body which sets standards for the banking sector, with an intention of strengthening the regulation, supervision as well as the banking practices of banks. The standards and rules of the Basel Committee are not legally binding on members. Central Banks, as well as banking regulators and supervisors, do not have power to initiate new laws on banking matters.

Even though the rules of the Basel Committee are not legally binding on members, they have a strong impact on members due to the undertaking by members to implement such rules in their domestic legislation. The Basel Committee enforces adoption of its standards through monitoring that members meet the timelines and monitoring to ensure that members meet the timelines. It also ensures that members implement the standards in their domestic regulations, as well as that the implementation is consistent and complete.

⁶²⁶ Lagarde "Working Together to Fight Money Laundering & Terrorist Financing".

⁶²⁷ Muthiora says: "Effective financial markets require regulations that bring certainty, foster competition, sustain innovation, and promote ethical and responsible business conduct that upholds the rights of customers." See Muthiora *Enabling Mobile Money Policies in Kenya* 18; Min Zhu, Deputy Managing Director of the IMF says: "Effective anti-money laundering and combating the financing of terrorism regimes are essential to protect the integrity of markets and of the global financial framework as they help mitigate the factors that facilitate financial abuse." See <https://www.imf.org/external/np/leg/amlcft/eng/>.

⁶²⁸ About the History of G10, Kenton says: "The GAB was formed in 1962, when the governments of eight IMF members, Belgium, Canada, France, Italy, Japan, the Netherlands, the United Kingdom, and the United States and the central banks of Germany and Sweden, agreed to make resources available to the IMF." See Kenton 2019 <https://www.investopedia.com/terms/g/groupoften.asp>.

Money launderers' main challenge in the money laundering process is how they disguise or hide the origin of the illicit money so that it appears legitimate.⁶²⁹ Launderers use many different means, resources and tools to "clean" their dirty money.⁶³⁰ One of these tools is the banking system.⁶³¹ Banks are vulnerable to being misused for money laundering activities.⁶³² Banks must therefore be able to detect any suspicious transactions which may lead to money laundering.⁶³³

Failure by banks to detect money laundering and thus appearing to be involved in money laundering acts, could lead to such banks losing their reputation, getting fines and penalties from the Regulators, as well as incurring losses resulting from fraud committed by criminals.⁶³⁴ Banks must, therefore, introduce appropriate and adequate measures to guard against the risk of being used for money laundering purposes.⁶³⁵

In 1989, the Basel Committee on Banking Supervision issued a statement in relation to what measures banks must adopt to avoid being used for money laundering purposes.⁶³⁶ The Basel Committee on Banking Supervision noted in its preamble that banks and other financial institutions may be abused for money laundering purposes and activities.⁶³⁷ It notes further that measures to prevent money laundering were taken mostly by countries

⁶²⁹ Hong Kong Monetary Authority 1997 www.hkma.gov.hk/media/eng/publication-and-research/quarterly.../fa03.pdf.

⁶³⁰ Hong Kong Monetary Authority 1997 www.hkma.gov.hk/media/eng/publication-and-research/quarterly.../fa03.pdf.

⁶³¹ See De Koker *South African Money Laundering and Terror Financing Law* 9; Madinger *Money Laundering* 100; De Koker *South African Money Laundering and Terror Financing Law* 9; Cox *An Introduction to Money laundering Deterrence* 16; Ryder *Financial Crime in the 21st Century* 16; Unger and Linder *Research Handbook on Money Laundering* 38.

⁶³² Hong Kong Monetary Authority 1997 www.hkma.gov.hk/media/eng/publication-and-research/quarterly.../fa03.pdf.

⁶³³ Amali says the importance of banks in combating money laundering cannot be overemphasized. See Amali *Curbing Money Laundering* 168.

⁶³⁴ Hong Kong Monetary Authority 1997 www.hkma.gov.hk/media/eng/publication-and-research/quarterly.../fa03.pdf.

⁶³⁵ Hong Kong Monetary Authority 1997 www.hkma.gov.hk/media/eng/publication-and-research/quarterly.../fa03.pdf.

⁶³⁶ Hong Kong Monetary Authority 1997 www.hkma.gov.hk/media/eng/publication-and-research/quarterly.../fa03.pdf.

⁶³⁷ Basel Committee on Banking Supervision 1988 <https://www.imolin.org/pdf/imolin/basle98.pdf>.

at the domestic level, but due to criminals exploring further means to launder money, measures to fight and prevent money laundering were extended to international level.⁶³⁸

The reputation of the bank, as well as the confidence that members of the public have in banks may be affected negatively by the mere fact that the bank is associated with criminal activities.⁶³⁹ This may also result in loss and fraud committed against the bank due to its association with money laundering activities.⁶⁴⁰ It is for these reasons that the Basel Committee saw it appropriate and fitting that another role of banking supervisors should have oversight of the professional conduct among banks and other financial institutions.⁶⁴¹

In order to fulfil this goal, the Basel Committee found it appropriate to issue a statement to which all countries should adhere.⁶⁴² In terms of the statement, the management of the bank has to ensure that all customers of the bank are properly identified, that customers conduct only genuine and legitimate transactions and that banks cooperate with law enforcement agencies.⁶⁴³

In terms of the statement, the best practices to which banks have to adhere are the following: customer identification, compliance with laws, cooperation with law enforcement authorities, and adherence to the statement.⁶⁴⁴

⁶³⁸ Basel Committee on Banking Supervision 1988 <https://www.imolin.org/pdf/imolin/basle98.pdf>.

⁶³⁹ The committee found it necessary to minimise the reputational risk of banks inadvertent associations with money launderers or criminal proceeds. *Amali Curbing Money Laundering* 94.

⁶⁴⁰ Basel Committee on Banking Supervision 1988 <https://www.imolin.org/pdf/imolin/basle98.pdf>.

⁶⁴¹ While relieving bank supervisors of the fundamental duty in the event of illegitimate transactions, the committee was still adamant that the role of the banks includes to make sure that money launderers do not misuse the financial institutions still falls within the bank's remit and as a result banks cannot be indifferent to that threat. *Amali Curbing Money Laundering* 95. Basel Committee on Banking Supervision 1988 <https://www.imolin.org/pdf/imolin/basle98.pdf>.

⁶⁴² Basel Committee on Banking Supervision 1988 <https://www.imolin.org/pdf/imolin/basle98.pdf>.

⁶⁴³ *Amali Curbing Money Laundering* 95; Basel Committee on Banking Supervision 1988 <https://www.imolin.org/pdf/imolin/basle98.pdf>.

⁶⁴⁴ In terms of Customer identification, Banks must endeavour as much as possible, to try to identify all customers it conducts business with. Customers must be requested to furnish the bank with their identification documents. Banks must refuse to conduct business transactions with any customer who refuses to provide the bank with his/her identification documents. As far as compliance with the laws is concerned, the management of the bank is enjoined at all times to ensure that the bank complies with the national laws, and especially the financial institutions' related legislation. The Basel Committee is mindful of the fact that it may not be easy to obtain customers' identification

3.6 How mobile money and financial inclusion can help prevent and control the crime of money laundering

To better understand how financial inclusion can help prevent and control the crime of money laundering, it is important to revisit the definition of financial inclusion discussed earlier in Chapter 2. This will help to understand what financial inclusion means, what it entails, as well as what the benefits of financial inclusion are. It was stated earlier that financial inclusion is affording every member of the country access to appropriate formal financial services in an affordable manner.⁶⁴⁵

Access to financial services, as well as to the AML/CFT standards, are dependent on one another for maintaining the integrity of the financial system and for the protection of customers.⁶⁴⁶ Shehu notes that the integrity of the financial sector is promoted by, amongst others, AML/CFT standards.⁶⁴⁷ But if those AML/CFT standards are not implemented appropriately, more especially so in developing countries, there may be a

documents in a case where another person is acting on behalf of the customer. In the same manner, it may not be easy to obtain the identification of a customer in a situation where a cross-border transaction is undertaken on behalf of a customer. However, in such circumstances, banks must exercise caution and strive to obtain the identity and ownership of accounts and not allow transactions where the bank forms a reasonable suspicion that there is a money laundering activity involved. Another duty is cooperation with law enforcement authorities. In terms of that duty, banks must endeavour to have good relations with the local law enforcement authorities by cooperating with such authorities. But, in so doing, banks must observe the principles of customer confidentiality as may be prescribed in legislation. A bank must desist from assisting a customer whose intention is to deceive law enforcement authorities by providing incorrect and illegitimate information. Where a bank forms a reasonable suspicion or becomes aware that an illegitimate transaction has taken place in the bank, a bank must take reasonable steps consistent with the law to stop such transaction. Banks must also adhere to the statement. In terms of this duty, banks must always and at all times comply with this statement and have policies and procedures consistent with this statement. Banks must also conduct training for their employees to ensure that they are aware of the principles and requirements of the statement. Banks must have procedures for identifying customers and retain records of customers' transactions and audits must be conducted to ensure that the bank adheres to the statement. For more information on this statement and what the banks have to adhere to, see Blair, Brent and Grant (eds) *Banks and Financial Crime 4*; Amali *Curbing Money Laundering* 94 – 95.

⁶⁴⁵ Shehu 2012 *Crime, Law and Social Change* 305.

⁶⁴⁶ Shehu 2012 *Crime, Law and Social Change* 306.

⁶⁴⁷ Shehu 2012 *Crime, Law and Social Change* 306. Amali also notes that: "Economic systems rely on the integrity of those who administer and regulate them and when these key roles are shown to have been suborned by bankers in smart suits, crooks and conmen, all participants in the economic system are weakened" See Amali *Curbing Money Laundering* 70.

risk in that they may exclude people from the formal financial sector.⁶⁴⁸ This is especially the case where the AML/CFT standards are poorly designed.⁶⁴⁹ The AML/CFT standards, as well as measures to promote financial inclusion, should seek to attain one common goal; they must complement one another.⁶⁵⁰ The best course of action is to determine what levels of AML/CFT standards are appropriate and suitable for a particular financial environment.⁶⁵¹

Financial inclusion may be viewed as attracting financial crimes such as money laundering and terrorist financing.⁶⁵² However, the aim of striving to attain financial inclusion is to try and enable people who are excluded from the formal financial services to have access to those services especially people who do not have identification documents.⁶⁵³ The aim is to bring such people to a transparent and protective financial sector.⁶⁵⁴ This is also the main aim of AML/CFT standards.⁶⁵⁵

It becomes difficult to attain the AML/CFT objectives of financial integrity when many people are still financially excluded and are not part of the community that enjoys formal

⁶⁴⁸ Shehu 2012 *Crime, Law and Social Change* 306; Chatain et al *Protecting Mobile Money against Financial Crimes* 145.

⁶⁴⁹ Shehu 2012 *Crime, Law and Social Change* 306.

⁶⁵⁰ Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 157; Chatain et al *Protecting Mobile Money against Financial Crimes* xxix; Shehu 2012 *Crime, Law and Social Change* 306.

⁶⁵¹ Shehu 2012 *Crime, Law and Social Change* 306.

⁶⁵² Chatain et al *Protecting Mobile Money Against Financial Crimes* 145.

⁶⁵³ Chatain et al *Protecting Mobile Money Against Financial Crimes* 145.

⁶⁵⁴ Chatain et al *Protecting Mobile Money Against Financial Crimes* 145.

⁶⁵⁵ Bester says: "The pursuit of financial inclusion and the pursuit of an effective AML/CFT regime are complementary and not conflicting financial sector policy objectives. The objective with financial inclusion is that individual clients, particularly low-income clients currently excluded from using formal financial services, must be able to access and on a sustainable basis use financial services that are appropriate to their needs and provided by registered financial service providers. Without a sufficient measure of financial inclusion, a country's AML/CFT system will thus safeguard the integrity of only a part of its financial system – the formally registered part – leaving the informal and unregistered components vulnerable to abuse. Measures that ensure that more clients use formal financial services therefore increase the reach and effectiveness of the AML/CFT controls." See Bester et al. *Implementing FATF standards in developing countries and financial vi.*

and regulated financial services.⁶⁵⁶ It is for this reason that financial inclusion and AML/CFT standards are dependent on one another.⁶⁵⁷

Financial inclusion is one of the key components of effective AML/CFT standards.⁶⁵⁸ Mobile money and financial inclusion form part of the AML standards. People must get rid of the belief that financial integrity and financial inclusion are two separate and completely different goals.⁶⁵⁹ If not, the objectives of AML/CFT will not be realised if poor people are still financially excluded.⁶⁶⁰

In order to accomplish the objectives of both financial inclusion and financial integrity, the AML/CFT standards must be implemented sensitively and be customised to meet local requirements.⁶⁶¹ The reference here is to the requirements where those standards are intended to be implemented.⁶⁶² They must cover each and every area of the financial system.⁶⁶³ They must ensure that the financial system is formalised, accessible and used by all people and that it is regulated.⁶⁶⁴

Against the above background, it is evident that financial inclusion and money laundering standards complement one another. Contrary to the belief that financial inclusion exposes

⁶⁵⁶ According to Chatain, any country that does not take measures to solve the problems of financial inclusion undermine the broader objectives of AML/CFT. See Chatain et al *Protecting Mobile Money Against Financial Crimes* 146.

⁶⁵⁷ Chatain et al *Protecting Mobile Money Against Financial Crimes* xxx.

⁶⁵⁸ Shehu 2012 *Crime, Law and Social Change* 306; FATF-GAFI 2011 <http://www.fatf-gafi.org/publications/financialinclusion/documents/fatfguidanceonanti-moneylaunderingandterroristfinancingmeasuresandfinancialinclusion.html>.

⁶⁵⁹ Shehu says that when poor people do not have access to financial services, the AML/CFT requirements and goals thereof cannot be attained. Shehu 2012 *Crime, Law and Social Change* 320.

⁶⁶⁰ Shehu 2012 *Crime, Law and Social Change* 320.

⁶⁶¹ FATF-GAFI 2011 <http://www.fatf-gafi.org/publications/financialinclusion/documents/fatfguidanceonanti-moneylaunderingandterroristfinancingmeasuresandfinancialinclusion.html>. Shehu 2012 *Crime, Law and Social Change* 320.

⁶⁶² Shehu 2012 *Crime, Law and Social Change* 320.

⁶⁶³ Shehu 2012 *Crime, Law and Social Change* 321.

⁶⁶⁴ Shehu says that: "The issue of financial inclusion presents a multi-dimensional challenge of which AML/CFT requirements are an essential element...strategies to overcome the inertia of financial inclusion will still need to be developed in the areas of accessibility and affordability of financial services and design of adaptable products and services for the vulnerable and low-income segment of our societies." See Shehu 2012 *Crime, Law and Social Change* 321.

the country to financial crimes, such as money laundering, and the belief that financial inclusion and money laundering standards serve completely two different objectives, the true position is that the two cannot operate in isolation.⁶⁶⁵ They are complementary financial policy objectives, in conjunction with stability and consumer protection. The objectives of the AML/CFT will not be realised when poor people are still financially excluded. Therefore, mobile money is used as another tool to attain financial inclusion and it serves the same purpose.⁶⁶⁶

3.7 Conclusion

In this chapter, the crime of money laundering in general and how mobile money, as well as financial inclusion can help prevent and control money laundering were discussed. It was demonstrated that money laundering is an act by criminals to hide the proceeds of their illegal activities so that the origin of those illegal activities cannot be traced easily by authorities.⁶⁶⁷

It was also shown that for criminals to successfully achieve their goal of concealing the origin of illegally obtained money, they have to go through various stages in the process. The stages of money laundering are placement, layering and integration.⁶⁶⁸ In all the

⁶⁶⁵ Financial inclusion and money laundering are complementary policy objectives. See Shehu 2012 *Crime, Law and Social Change* 320; Chatain et al *Protecting Mobile Money Against Financial Crimes* 145.

⁶⁶⁶ The financial inclusion modes, such as mobile money services help the society and ensure proper governance in that: "They help increase social inclusion and combat poverty, thereby decreasing related terrorist-financing risks and the level of poverty-linked crimes; they reduce the use of cash and increase the traceability of transactions; they increase the ability to protect consumers against fraud and other financial abuses that generate illegitimate proceeds and undermine public trust in the formal financial system." See Chatain et al *Protecting Mobile Money Against Financial Crimes*. Chatain *Protecting Mobile Money Against Financial Crimes: Global Policy Challenges and Solutions* 145.

⁶⁶⁷ For more discussion on the definitions of money laundering see Turner *Money Laundering Prevention* 2 – 4; Unger and Linde *Research Handbook on Money Laundering* 3; Ryder *Financial Crime in the 21st Century* 10; Rider *Research Handbook on International Financial Crime* 8; De Koker *South African Money Laundering and Terror Financing Law* 2; McDonell *Money Laundering Methodologies and International and Regional Counter-Measures* 2; Madinger *Money Laundering* 6; Jayasree and Balan 2017 *Journal of the Association of Arab Universities for Basic and Applied Sciences* 96; Cox *An Introduction to Money Laundering Deterrence* 2 – 3.

⁶⁶⁸ Demetis *Technology and Anti-Money Laundering* 12; De Koker *South African Money Laundering and Terror Financing Law* 4; Cox *An Introduction to Money Laundering Deterrence* 13.

money laundering stages, criminals use different methods and techniques in order for their goal of concealing the funds to be successful. Some of the methods and techniques used by launderers include depositing or placing such funds in their different bank accounts and using EFTs to transfer funds from one bank account to another and varying the amounts, keeping them relatively small thus making it difficult for authorities to trace the funds.⁶⁶⁹

It was discovered that money launderers take advantage of the correspondent relationships of banks. In correspondent banking relationships, one bank performs international transactions for itself and for its customers in places and countries where neither the bank, its employees nor its customers are physically present.⁶⁷⁰ Because of the nature of correspondent banking relationships, it becomes easier for money launderers to launder funds because banks rely on the information provided by a foreign bank. This creates problems because money laundering standards are sometimes designed to suit different countries. The effects that money laundering has on the economy of the country, on investment, as well as on society by increasing the rate of crime in countries became evident.⁶⁷¹

Measures to combat money laundering and the role played by the international community in combating money laundering were also discussed in this chapter.⁶⁷² It became evident that because money laundering affects not only one country, but many different countries, the international community plays a major role in ensuring that money laundering is prevented and controlled. For instance, the FATF makes Recommendations to which countries are expected to adhere. Countries also need to incorporate measures into their domestic legislation to implement the FATF Recommendations. The FATF has

⁶⁶⁹ Haingner, Schneider and Wakolbinger *Economics of Security Working Paper Series* 31.

⁶⁷⁰ Erbenová et al *IMF Staff Discussion Note* 8; Volkov *AML Risks and Foreign Correspondent Banking*.

⁶⁷¹ See Unger and Linder *Research Handbook on Money Laundering* 42; Kumar 2012 *European Journal of Business and Management* 115; McDowell and Novis *The Consequences of Money Laundering and Financial Crime* 7; Oluwadayisi and Mimiko 2016 *Beijing Law Review* 3.

⁶⁷² See Alweendo *Money Laundering, Its economic Consequence and Policy Response* 4; FATF_GAFI *Money Laundering* 2017; Otunsanya *The Role of Offshore Financial Centres in Elite Money Laundering Practices* 336 - 361; Ryder *Financial Crime in the 21st Century* 13; Turner *Money Laundering Prevention* 11.

established the Style Regional Bodies with the aim of ensuring that member states and non-member states increase their efforts of combating money laundering.⁶⁷³

The United Nations is also one of the international bodies that is committed to fighting money laundering. The UN has many conventions that regulate and control abuse of drugs and combat money laundering. The IMF also shows its commitment towards combating money laundering. It was learnt that the IMF staff undertakes some research, as well as evaluating and monitoring countries' levels of compliance with international money laundering standards and makes recommendations accordingly.

It further emerged that the banks also play a major role in combating money laundering by, amongst other things, implementing measures recommended by the Basel Committee on Banking Supervision. The Basel Committee Recommendations include those that were made in its 1989 Statement, such as obtaining sufficient documents in order to identify customers, complying with national laws, especially financial institution-related legislation, cooperating with law enforcement authorities and establishing good relations with such authorities while still observing principles of customer confidentiality as may be prescribed in legislation.⁶⁷⁴

Lastly, the discussion centred on how mobile money and financial inclusion can help prevent and control money laundering. From the discussion, it was found that the aims of the AML/CFT and those of financial inclusion cannot be separated from each other because both financial inclusion and the AML/CFT seek to attain a similar objective, which is to bring people into a transparent and protective financial sector.⁶⁷⁵ The AML/CFT

⁶⁷³ The FATF-SRBs include “The Eurasian Group (EAG); Asia/Pacific Group on combating money laundering (APG); Caribbean Financial Action Task Force (CFATF); Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of the Council of Europe (MONEYVAL); Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); Financial Action Task Force on Latin America (GAFILAT); Intergovernmental Action Group against Money-Laundering in West Africa (GIABA); Middle East and North Africa Financial Action Task Force (MENAFATF); and The Task Force on Money Laundering in Central Africa (GABAC).” See EAG 2010 <http://www.eurasiangroup.org/fsrb.php>.

⁶⁷⁴ See Basel Committee on Banking Supervision 1988 <https://www.imolin.org/pdf/imolin/basle98.pdf>.

⁶⁷⁵ See Shehu 2012 *Crime, Law and Social Change* 320; Chatain et al *Protecting Mobile Money Against Financial Crimes* 145.

standards should not be too stringent because that might push poor people away from the financial sector.

From the discussion and findings, it became clear that money laundering is indeed not good for the financial sector and must therefore be eradicated. This is evident in the number of disadvantages and negative effects that money laundering has. It was shown and discussed that money laundering increases crime and affects the economy of the country. These negative effects of money laundering must therefore be prevented so that criminals do not take advantage of the mobile money technology to engage in money laundering activities. Money laundering must therefore be prevented in Lesotho.

The next chapter will investigate the best practices that are adopted in some selected African countries with the intention of seeing how mobile money, financial inclusion and money laundering activities are regulated.

Chapter 4

Analysis of the best mobile money, financial inclusion and money laundering control practices in African jurisdictions: A focus on Nigeria, Malawi, South Africa, Uganda, Tanzania, Ghana and Kenya.

4.1 Introduction

In Chapters 2 and 3 of this research, the evolution and theoretical definition of mobile money and financial inclusion in modern economies were discussed. The crime of money laundering, what it involves, and measures to combat money laundering were also discussed. It was also stated in previous chapters that services of mobile money are deployed in different markets around the world;⁶⁷⁶ and that “In developing countries, mobile telecom networks have emerged as major providers of financial services, bypassing the sparse retail networks of traditional banks.”⁶⁷⁷ This means that different African countries have deployed mobile money services to alleviate financial exclusion. With all the points discussed in previous chapters in mind, the aim in this chapter is to analyse and discuss the best practices in different selected African jurisdictions in as far as mobile money, financial inclusion and money laundering control is concerned.

Economides and Jeziorski have stated that:

Developing economies are often characterized by institutional voids...that is, deficiencies in their institutional and regulatory environments compared to developed economies. These deficiencies often result in insufficient infrastructure and under-development of core industrial sectors that are crucial for economic growth. Recent technological innovations created new markets and institutions...and revealed opportunities to mitigate institutional voids. Despite the potential significance of alleviating institutional voids by the new technology-enabled markets, there is only scarce economic and marketing literature

⁶⁷⁶ Lal and Sachdev *Mobile Money Services* 15.

⁶⁷⁷ Economides and Jeziorski *Marketing Science* 1.

studying the efficacy of this process. Moreover, little is known about which regulatory and firm policies are effective in facilitating this transition...⁶⁷⁸

Against the above background, the aim is to discuss how mobile money services are provided and regulated in different African jurisdictions, as well as to determine how mobile money helps to attain the goal of financial inclusion. The intention is also to establish what measures are employed in those jurisdictions to attain financial inclusion while ensuring that the crime of money laundering is controlled. The jurisdictions to be discussed in this chapter are Nigeria, Malawi, Tanzania, South Africa, Uganda, Ghana and Kenya.

4.2 The Republic of South Africa

4.2.1 Mobile Money Services in South Africa

Mobile money services were launched in South Africa for the first time in 2004.⁶⁷⁹ The mobile money services were terminated in 2016 in South Africa when Vodacom discontinued its M-Pesa services.⁶⁸⁰

M-Pesa was terminated in South Africa because it was not as successful as it was in other countries like Kenya.⁶⁸¹ Different writers have discussed the reasons behind the failure of mobile money services in South Africa. Madise⁶⁸² says the main reason why M-Pesa did not succeed in South Africa is because the South African Reserve Bank considered M-Pesa to be part of the banking institutions and tried to regulate it as such.

⁶⁷⁸ Economides and Jeziorski *Marketing Science* 1.

⁶⁷⁹ Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 762.

⁶⁸⁰ Chigada and Hirschfelder 2016 *South African Journal of Information Management* 2; Madise *The Case of Regulation of Mobile Money in Malaŵi* 146; FinMark Trust 2017 <http://finmark.org.za/research-report-on-mobile-money-in-south-africa/>.

⁶⁸¹ Garapo *Investigating Mobile Money Transfer adoption in South Africa* 54; Madise *The Case of Regulation of Mobile Money in Malaŵi* 142; Chigada and Hirschfelder 2016 *South African Journal of Information Management* 5; FinMark Trust 2017 <http://finmark.org.za/research-report-on-mobile-money-in-south-africa/>.

⁶⁸² Madise *The Case of Regulation of Mobile Money in Malaŵi* 142; FinMark Trust 2017 <http://finmark.org.za/research-report-on-mobile-money-in-south-africa/> page 20; Roberts 2016 *The African Journal of Information and Communication* 5.

Burns⁶⁸³ emphasizes the importance of enabling regulatory environment and mentions countries like South Africa, Nigeria and Ghana as countries whose mobile money services collapsed due to a stiff regulatory environment. Garapo⁶⁸⁴ attributes the failure of mobile money in South Africa to the advanced banking system. He says that mobile money services offered through M-Pesa are similar to those offered by banks.⁶⁸⁵ In addition to the advanced banking system in South Africa, the other reasons include the fact that many people, approximately three quarters of the population, in South Africa own bank accounts.⁶⁸⁶ Another reason that has been mentioned for failure of M-Pesa in South Africa is the bank-led model of mobile money that was used.⁶⁸⁷ Madise says this model is, by its nature, within the clutches of the banking regulator and, as a result, it leaves the mobile money service providers with very little or no room at all for innovative maneuver unless granted approval by the banking regulator.⁶⁸⁸

4.2.2 Mobile Money Regulatory Framework in South Africa

Having discussed the history of mobile money services in South Africa, it is important to discuss the regulatory framework of mobile money services in South Africa. South Africa has no specific legal provisions regulating mobile money, however, it is argued by Alexandre and Eisenhart⁶⁸⁹ that in terms of the "mobile" element, there is no need for specific "mobile money" regulation per se, but instead for rules on electronic money that also apply to mobile money services.⁶⁹⁰

⁶⁸³ Burns 2018 *Economic Affairs* 415.

⁶⁸⁴ Garapo *Investigating Mobile Money Transfer adoption in South Africa* 54.

⁶⁸⁵ Garapo *Investigating Mobile Money Transfer adoption in South Africa* 54; also see Chigada and Hirschfelder 2016 *South African Journal of Information Management* 5. Chigada and Hirschfelder note that the financial systems in South Africa provide the unbanked population with money transfer services similar to M-Pesa and they give Shoprite as an example which provides money transfers nationwide for R15 per transaction. According to these writers, this similarity in the services offered by the banks and the financial services and M-Pesa resulted in M-Pesa having only 1 million users at the end of March 2015 despite M-Pesa being launched in 2010. See Chigada and Hirschfelder 2016 *South African Journal of Information Management* 5. FinMark Trust 2017 <http://finmark.org.za/research-report-on-mobile-money-in-south-africa/> page 19.

⁶⁸⁶ FinMark Trust 2017 <http://finmark.org.za/research-report-on-mobile-money-in-south-africa/> page 19.

⁶⁸⁷ See Madise *The Case of Regulation of Mobile Money in Malawi* 162.

⁶⁸⁸ See Madise *The Case of Regulation of Mobile Money in Malawi* 162.

⁶⁸⁹ Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 297.

⁶⁹⁰ Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1617.

The main regulator for the financial services sector in South Africa is the South African Reserve Bank.⁶⁹¹ There are also other regulators that play important role in ensuring that the financial system in South Africa is sound. Those regulators include the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) that were established in 2018.⁶⁹² The South African Reserve Bank derives its power to regulate financial services sector or the financial institutions in South Africa through the power vested in it by the *South African Reserve Bank Act*.⁶⁹³ The *South African Reserve Bank Act* mandates the SARB to implement rules and procedures and to take necessary steps to establish, conduct, monitor, regulate and supervise payment, clearing or settlement systems in the Republic of South Africa.⁶⁹⁴

In its Policy Paper published in 2018, the SARB noted that a national payment system incorporates the payment process from a payer to a beneficiary, and encompasses all the systems, mechanisms, institutions, agreements, procedures, rules and laws that are involved from the time an end user issues an instruction to pay a beneficiary or a recipient, through to the final interbank settlement of the transaction in the records of the central bank.⁶⁹⁵ The SARB further highlighted that through the national payments system, the parties performing the transactions are able to exchange value in order to complete financial transactions, which is fundamental for the economy to grow and function well.⁶⁹⁶ It is important, therefore, that the payment systems remain stable, safe, efficient and transparent, and to safeguard the systems against any possible potential risks.

In order for the SARB to exercise and execute its powers of managing and controlling the payments systems in South Africa, the *National Payments Systems Act*⁶⁹⁷ was

⁶⁹¹ Hereinafter referred to as the SARB.

⁶⁹² They were established by the *Financial Sector Regulation Act* 9 of 2017.

⁶⁹³ The *South African Reserve Bank Act* 90 of 1989. Hereinafter referred to as the SARB Act. In terms of section 3 of the *South African Reserve Bank Act*, “The primary objective of the Bank shall be to protect the value of the currency of the Republic in the interest of balanced and sustainable economic growth in the Republic.”

⁶⁹⁴ See section 10(1)(c) of the *South African Reserve Bank Act* 90 of 1989.

⁶⁹⁵ South African Reserve Bank 2018 *Policy Paper* 1.

⁶⁹⁶ South African Reserve Bank 2018 *Policy Paper* 1.

⁶⁹⁷ The *National Payments Systems Act* 78 of 1998 as amended.

enacted.⁶⁹⁸ As stated in its preamble, the *National Payments Systems Act* enables the SARB to perform different functions regarding payments systems in South Africa. It enables the SARB to administer, operate, regulate, and supervise payment, clearing and settlement systems in the Republic of South Africa, and to provide for related matters. Against this background, it is clear that the main piece of legislation that provides regulatory framework for mobile money services in South Africa is the *National Payments Systems Act*.⁶⁹⁹

The *National Payments Systems Act* allows any person, as a standard feature of that person's business, to accept money or to accept payments instructions from another person in order to make a payment on behalf of that person to any third person to whom that payment is due.⁷⁰⁰ It has been argued that the services envisaged under section 7 of the *National Payments Systems Act* include those services where a payment obligation exists and those payments where no underlying obligation like e-money payments including mobile money payments are consequently generally excluded from the ambit of the Act.⁷⁰¹ Provision of e-money services including mobile money services is restricted to banks. In order to provide those services in South Africa, one must partner with a bank.

Since a mobile money service provider in South Africa is required to partner with a bank, multiple regulators come into play, namely the SARB for regulation of banking and oversight of payments and the telecommunications regulator for the regulation of the telecommunications service provider.⁷⁰² The problem with multiple regulators is that the possibility exists for regulatory arbitrage, that is, a situation where those involved would take advantage of regulatory lacunae.⁷⁰³

⁶⁹⁸ Lawack argues that the SARB being a neutral agent, is best suited to oversee and supervise the National Payment Systems in South Africa. See Lawack 2013 *Washington Journal of Law, Technology & Arts* 325.

⁶⁹⁹ Powers and functions of the SARB regarding payments systems are clearly articulated in section 2 of the Act.

⁷⁰⁰ See section 7 of the *National Payments Systems Act* 78 of 1998 as amended.

⁷⁰¹ South African Reserve Bank 2018 *Policy Paper* 48.

⁷⁰² Independent Communications Authority of South Africa (hereinafter referred to as "ICASA") is the telecommunications Regulator in South Africa.

⁷⁰³ Lawack 2013 *Washington Journal of Law, Technology & Arts* 328.

It has been argued that this does not offer enough regulatory power to focus on domestic remittances or money transfers provided by money transfer operators, as most remittance payments to third parties are not always classified as payments due.⁷⁰⁴ These regulatory constraints have been identified as one of the main things that contributed to the failure of mobile money products such as M-Pesa and MTN mobile products in South Africa.⁷⁰⁵ Although South African regulatory framework is regarded non-enabling for mobile money services, MTN relaunched its mobile money product called MTN *MoMo-it* in 2019. This is still in partnership with the bank, the Ubank.

4.2.3 South African AML/CFT regulatory framework regarding mobile money services

South Africa is one of the 39 members of the FATF.⁷⁰⁶ As highlighted in chapter 3, the FATF ensures that the financial integrity risks are tackled efficiently. The FATF's responsibility includes to make sure that financial inclusion does not weaken effective AML/CFT measures.⁷⁰⁷ The FATF, however, admits that overly cautious approach to AML/CFT measures can cause financial exclusion. Countries must, therefore, design their AML/CFT laws in a way that will not lead to financial exclusion.⁷⁰⁸

South Africa has been acknowledged as one of the leading countries as far as financial inclusion is concerned. While a supportive framework for mobile money has been developed in South Africa, this framework is not fully inclusive.⁷⁰⁹

Money laundering in South Africa is criminalized through the *Prevention of Organised Crime Act*⁷¹⁰ which covers the conversion or transfer, concealment or disguise, possession, and acquisition of property in a manner that is largely consistent with the 1988 *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic*

⁷⁰⁴ South African Reserve Bank 2018 *Policy Paper 22*.

⁷⁰⁵ South African Reserve Bank 2018 *Policy Paper 22*.

⁷⁰⁶ FATF was discussed at length in Chapter 3. See 3.5.1.1 above.

⁷⁰⁷ Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156; see Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1617.

⁷⁰⁸ Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1617.

⁷⁰⁹ Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 161.

⁷¹⁰ *Prevention of Organised Crime Act* 121 of 1998. Hereinafter referred to as the POCA.

Substances (Vienna Convention) and the 2000 *U.N. Convention against Transnational Organised Crime (Palermo Convention)*.

South Africa has implemented some comprehensive AML/CFT preventative measures through the application of the *Financial Intelligence Centre Act*⁷¹¹ and the *Money Laundering and Terrorist Financing Control Regulations*.⁷¹² While the POCA is the main piece of legislation for outlining the activities that constitute money laundering offences, it is silent in terms of the measures that must be applied to combat and detect money laundering, those measures are provided for in the FICA.⁷¹³

South African money laundering laws affect mobile money through the customer due diligence (CDD) requirements that financial institutions are subjected to.⁷¹⁴ Accountable institutions must establish and verify the identity of their clients.⁷¹⁵ Steps must be taken by such accountable institutions to verify the identity of their clients before establishing any business relationship.

The regulator in South Africa was aware of the fact that the need to present an identity document could prevent individuals who do not have any identity document from having access to formal financial services and consequently created room for exclusion.⁷¹⁶ The *Money Laundering and Terrorist Financing Control Regulations* consequently allow financial institutions, in circumstances where it is deemed to be reasonably acceptable for a person to be unable to provide an identity document, to rely on another document issued to that person.⁷¹⁷

⁷¹¹ *Financial Intelligence Centre Act* 38 of 2001. Hereinafter referred to as the FICA.

⁷¹² *Money Laundering and Terrorist Financing Control Regulations*, 2002, promulgated by Government Notice No. R. 1595 of 20 December 2002 as amended by GN R456 in Government Gazette 27580 of 20 May 2005. See Lawack 2013 *Washington Journal of Law, Technology & Arts* 331.

⁷¹³ Lawack 2013 *Washington Journal of Law, Technology & Arts* 331.

⁷¹⁴ Lawack 2013 *Washington Journal of Law, Technology & Arts* 331.

⁷¹⁵ See section 21 of the *Financial Intelligence Centre Act* 38 of 2001.

⁷¹⁶ Lawack 2013 *Washington Journal of Law, Technology & Arts* 334.

⁷¹⁷ See Regulation 4(a)(ii) of the *Money Laundering and Terrorist Financing Control Regulations*; Lawack 2013 *Washington Journal of Law, Technology & Arts* 334.

The requirement for verification of a customer's address in South Africa has had some challenges.⁷¹⁸ People living in rural and informal settlements encounter challenges when verifying their residential address, and as a result, the FICA provides for some exceptions in such situations.⁷¹⁹

The FATF now calls for a risk-based approach where a country must "identify, assess and understand" their money laundering risks.⁷²⁰ South Africa has been hailed for adopting a flexible approach to identification and verification through Exemption 17 of the FICA.⁷²¹ Workable KYC procedures must take into account the living conditions for most African households.⁷²² The Universal Postal Union guesstimates that around 21% of African families receive mail at home, 49% have mail access and 30% have no access to mails at all.⁷²³

⁷¹⁸ Lawack 2013 *Washington Journal of Law, Technology & Arts* 334.

⁷¹⁹ The exception from the requirement to provide a residential address is provided for under Exemption 17. Exemption 17 is contained within the Schedule to the *Money Laundering and Terrorist Financing Control Regulations*, 2002.

⁷²⁰ See Recommendation 1 of the FATF; Madise *The Case of Regulation of Mobile Money in Malaŵi* 113.

⁷²¹ Madise *The Case of Regulation of Mobile Money in Malaŵi* 113.

⁷²² Madise *The Case of Regulation of Mobile Money in Malaŵi* 113.

⁷²³ Madise *The Case of Regulation of Mobile Money in Malaŵi* 113.

4.3 Uganda

4.3.1 Brief history and background of Uganda

Uganda is located in the eastern part of the African continent.⁷²⁴ It is a landlocked country that gained its independence and its republic status on 9 October 1962.⁷²⁵ It is a former British colony, having been a British Protectorate for almost seven decades between 1894 and 1962 when it acquired its independence.⁷²⁶ The legal system of Uganda consists of English Common Law and Customary Law.⁷²⁷ Customary law cannot be applied whenever it is inconsistent with statutory law.⁷²⁸ The sources of law in Uganda are statutory law, common law, doctrines of equity and customary law, all stated in the *Judicature Act*.⁷²⁹ The supreme law of the country is the Constitution,⁷³⁰ and if there are any laws, enactments, practices and customs inconsistent with the Constitution, such shall be declared invalid to the extent of the inconsistency.⁷³¹

4.3.2 Mobile money services in Uganda

Services of mobile money were introduced for the first time in Uganda in March 2009.⁷³² Customers purchase electronic value with cash from the mobile money agents.⁷³³ The two regulatory authorities in Uganda, the Bank of Uganda and the Uganda Communications Commission, are responsible for overseeing the mobile money service

⁷²⁴ Ministry of Finance Uganda *National Report For the Implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010* 3.

⁷²⁵ Ministry of Finance Uganda *National Report For the Implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010* 3; Mahoro 2013 <http://www.mcgeorge.edu/documents/samplecaseshistoryuganda.pdf>.

⁷²⁶ Mahoro 2013 <http://www.mcgeorge.edu/documents/samplecaseshistoryuganda.pdf> 2.

⁷²⁷ Mahoro 2013 <http://www.mcgeorge.edu/documents/samplecaseshistoryuganda.pdf> 2; Law Teacher 2018 <https://www.lawteacher.net/free-law-essays/common-law/the-republic-of-uganda.php>.

⁷²⁸ Mahoro 2013 <http://www.mcgeorge.edu/documents/samplecaseshistoryuganda.pdf> 2.

⁷²⁹ Mahoro 2013 <http://www.mcgeorge.edu/documents/samplecaseshistoryuganda.pdf> 2.

⁷³⁰ *The 1995 Constitution of the Republic of Uganda*.

⁷³¹ Kanobe, Alexander and Bwalya 2017 *Electronic Journal of Information Systems in Developing Countries* 5. Mahoro 2013 <http://www.mcgeorge.edu/documents/samplecaseshistoryuganda.pdf>.

⁷³² See Ssettimba "Mobile Money in Uganda" 3; Mutebile "The development in mobile banking in Uganda" 1.

⁷³³ Ssettimba "Mobile Money in Uganda" 3.

in Uganda.⁷³⁴ This was also confirmed in the case of *Katuntu vs MTN Uganda Ltd and Another*,⁷³⁵ that the Bank of Uganda and the Uganda Communications Commission are regulatory authorities and the regulation of mobile money services falls within the scope of their regulatory power under the *Financial Institutions Act 2004* and the *Uganda Communications Commission Act cap 106*.

4.3.3 Legal regulatory framework of mobile money services in Uganda

Currently, *Mobile Money Services Guidelines of 2013*⁷³⁶ remain the only piece of legislation in Uganda.⁷³⁷ Letters of no objection⁷³⁸ were issued by the Bank of Uganda by giving permission to MNOs to provide mobile money services in partnership with licensed commercial banks.⁷³⁹ The requirement is for those banks to have balances recorded in the mobile wallet in an escrow account.⁷⁴⁰

The safety of electronic value purchased by customers is the main regulatory concern for the Bank of Uganda.⁷⁴¹ In order for the Bank of Uganda⁷⁴² to approve any mobile money operations in Uganda, such mobile money services must be conducted in partnership with an institution supervised by the BOU (Supervised Financial Institutions – SFI).⁷⁴³ This is to ensure that customer funds are protected, as it is a requirement for the mobile money service providers to hold an account known as an escrow account⁷⁴⁴ in a Supervised

⁷³⁴ Macmillan, Paelo, Paremoer 2016 *African Journal of Information and Communication* 7.

⁷³⁵ *Katuntu vs MTN Uganda Ltd & Another* (HCCS NO 248 OF 2012) [2015] UGCOMMC 83 (29 May 2015).

⁷³⁶ *Bank of Uganda Mobile Money Guidelines 2013*. The Guidelines came into operation on 1 October 2013.

⁷³⁷ Macmillan, Paelo, Paremoer 2016 *African Journal of Information and Communication* 7.

⁷³⁸ See Madise for a definition of a letter of no objection. Madise *The Case of Regulation of Mobile Money in Malawi* 5.

⁷³⁹ Macmillan, Paelo, Paremoer 2016 *African Journal of Information and Communication* 7.

⁷⁴⁰ Macmillan, Paelo, Paremoer 2016 *African Journal of Information and Communication* 7.

⁷⁴¹ Ssettimba “Mobile Money in Uganda” 2.

⁷⁴² Hereinafter referred to as the BOU.

⁷⁴³ Article 6 (a) (ii) of the Mobile Money Guidelines 2013.

⁷⁴⁴ An Escrow Account is defined as “...a temporary pass through account held by a third party during the process of a transaction between two parties. This is a temporary account as it operates until the completion of a transaction process, which is implemented after all the conditions between the buyer and the seller are settled.” See The Economic Times 2018 <https://economictimes.indiatimes.com/definition/escrow-account>.

Financial Institution⁷⁴⁵ to ensure that the equivalent of all money issued to mobile money customers is safely kept in that account.⁷⁴⁶

The *Mobile Money Guidelines* regulate and stipulate the roles of the mobile money services providers, customers of mobile money, supervised financial institutions, mobile money agents and everybody involved in the provision of the service of mobile money in Uganda.⁷⁴⁷ The Guidelines clearly state the roles of all parties involved in the provision of mobile money services.⁷⁴⁸ These Guidelines provide and serve as the regulatory framework for mobile money in Uganda.⁷⁴⁹

The Guidelines were developed to guard against the regulatory concerns, as well as the risks that are associated with mobile money in Uganda.⁷⁵⁰ They regulate and apply to all the customers of mobile money, BOU institutions that partner with mobile money service providers to render the service, and all agents of mobile money services together with all the service providers of mobile money.⁷⁵¹ One of the key aims of the Guidelines is the promotion of financial inclusion.⁷⁵²

⁷⁴⁵ Hereinafter referred to as the SFI.

⁷⁴⁶ See article 6 (b) (i) of the Mobile Money Guidelines 2013. In terms of article 6 (b) (ii) of the Guidelines, “The arrangement governing the escrow account must ensure the licensed institution’s authority to distribute the funds in the escrow account to mobile money account holders in case of insolvency or bankruptcy of the mobile money service provider.”

⁷⁴⁷ This is one of the objectives of the Guidelines stated in section 3 of the Guidelines; Also see sections 6 and 7 of the Guidelines; Ssettimba “Mobile Money in Uganda” 8.

⁷⁴⁸ These are stated in Part II, section 6 of the Guidelines. Some of the interesting provisions of section 6 are that “If not a Bank of Uganda licensed institution, must partner with a licensed institution, which must apply to Bank of Uganda seeking approval for the provision of mobile money services in partnership with the mobile money service provider...and must also have in place appropriate and tested technology systems” See section 6 (ii) and 6 (iv) of the Guidelines.

⁷⁴⁹ Macmillan, Paelo and Paremoer 2016 *African Journal of Information and Communication* 3. Ssettimba “Mobile Money in Uganda” 8;

⁷⁵⁰ Ssettimba says that the risk and concerns associated with mobile money services in Uganda are, amongst others, to ensure that the funds of the customers are safe in the platform of mobile money. The other concern relates to money laundering and financing of terrorism that may be associated with mobile money operations. All transactions on the platform of mobile money can be traced and the accounts at the SFI, particularly banks, can be fully audited. See Ssettimba “Mobile Money in Uganda”.

⁷⁵¹ Ssettimba “Mobile Money in Uganda” 110.

⁷⁵² Section 3 (f) of the Guidelines.

4.3.3.1 AML/CFT, systems interoperability and competition

It is a requirement for the mobile money service providers to ensure that their systems can become interoperable.⁷⁵³ There must be systems that are adequate to ensure business continuity, and to fight and reduce the crimes of fraud and theft.⁷⁵⁴ Mobile money providers are also prevented from engaging in any anti-competitive practices.⁷⁵⁵

In order to combat money laundering and financing of terrorism, mobile money service providers must perform customer due diligence when on-boarding clients.⁷⁵⁶ That means that all customers must be registered and copies of their identification documents' must be retained by the service providers.⁷⁵⁷ Another measure is to set limitations on the transactions' value and volume performed by customers.⁷⁵⁸ There must also be adequate control to prevent money laundering and to identify and monitor all suspicious transactions.⁷⁵⁹

4.3.3.2 Customer protection

To ensure that mobile money customers or potential customers are protected, and the stakeholders involved are well regulated and supervised, there are the *BOU Financial Protection Guidelines of 2011*⁷⁶⁰ that must be applied. In terms of these Guidelines, the supervisory role and powers are vested in the BOU.⁷⁶¹

The mobile service providers, as well as supervised financial institutions partnering with mobile money service providers must periodically provide reports to the BOU in a

⁷⁵³ Section 8 of the Guidelines; Ssettimba "Mobile Money in Uganda" 11.

⁷⁵⁴ Section 9 of the Guidelines.

⁷⁵⁵ Section 10 of the Guidelines.

⁷⁵⁶ Section 11 of the Guidelines.

⁷⁵⁷ Ssettimba "Mobile Money in Uganda" 11.

⁷⁵⁸ Ssettimba "Mobile Money in Uganda" 11.

⁷⁵⁹ See section 11 of the Guidelines.

⁷⁶⁰ *Bank of Uganda Financial Consumer Protection Guidelines, 2011*. These Guidelines came into effect on 1 June 2011.

⁷⁶¹ Ssettimba "Mobile Money in Uganda" 12.

standardised format.⁷⁶² The mobile money service providers are also mandated to submit audited financial statements to the BOU annually.⁷⁶³

The mobile money records kept by the SFI, together with those of the mobile money service providers must also be kept and maintained accurately and completely for a minimum period of ten years from the date of on-boarding mobile money customers. The BOU is also empowered to exercise its supervision powers by issuing directives, suspending any approval, as well as imposing any conditions it deems appropriate to the SFIs, as well as to mobile money service providers.

⁷⁶² Ssettimba “Mobile Money in Uganda” 12.

⁷⁶³ Ssettimba “Mobile Money in Uganda” 12.

4.4 Ghana

4.4.1 Brief history and background of Ghana

The Republic of Ghana is a small country on the coast of the Gulf of Guinea, in the western part of the African continent.⁷⁶⁴ Ghana was colonised by Britain and obtained its independence on 6 March 1967.⁷⁶⁵ It, however, attained its republic status on 1 July 1960.⁷⁶⁶ Having been a British colony like Uganda, its law and legal system is based on the British Common Law System.⁷⁶⁷

In terms of section 11 of the 1992 *Constitution of the Republic of Ghana*,⁷⁶⁸ the sources of law are its Constitution, all the enactments that are made by the Parliament of Ghana or that are made under the authority of the Parliament of Ghana, rules, regulations, and any orders made by any person or authority which derives such power from the Constitution or any legislation, all the laws whether written or unwritten that were applicable before its 1992 Constitution, and the common law, as well as customary law.⁷⁶⁹ All laws remain applicable to the extent that they are not explicitly repealed or revoked.⁷⁷⁰

4.4.2 Mobile money services in Ghana

Mobile money services were introduced in Ghana in 2009 by a mobile network company called Airtel, formerly known as Zain.⁷⁷¹ MTN also launched its mobile money product the

⁷⁶⁴ Boateng et al 2018 <https://www.britannica.com/place/Ghana>.

⁷⁶⁵ Essien 2005 <http://www.nyulawglobal.org/globalex/Ghana.html>.

⁷⁶⁶ Essien 2005 <http://www.nyulawglobal.org/globalex/Ghana.html>.

⁷⁶⁷ Embassy of the Republic of Ghana 2018 <http://www.ghanaembassybenin.com/about-us/legal-system-of-ghana>; Out of the black African countries south of the Sahara, Ghana was the first one to attain its independence from Colonial rule. See Boateng et al 2018 <https://www.britannica.com/place/Ghana>.

⁷⁶⁸ The Constitution is available at http://www.ghana.gov.gh/images/documents/constitution_ghana.pdf.

⁷⁶⁹ Afeku 2009 <http://www.law.du.edu/documents/enrgp/ghana.pdf>; Essien 2005 <http://www.nyulawglobal.org/globalex/Ghana.html>; Essien 1994 *Journal of Black Studies* 246.

⁷⁷⁰ Essien 2005 <http://www.nyulawglobal.org/globalex/Ghana.html>.

⁷⁷¹ Amoh *Mobile Money Services Adoption and Customer Behavioural Intentions in Ghana* 44; Frimpong A N K and S A Gyamfi S A “*Mobile Commerce*”; Tagoe NA 2016 *Journal of Business & Financial Affairs* 2; Zain is a mobile network company that operated in Africa and Asia in over 19

same year.⁷⁷² There are six telecommunications companies in Ghana, but four of those companies offer mobile money financial services, namely MTN, Vodafone, Tigo and Airtel.⁷⁷³ The mobile money services models used in Ghana are the bank-led model, mobile network operator-led model and the bank-focused model of mobile money.⁷⁷⁴

To ensure the safety, reliability and efficiency of the banking sector, as well as the payment ecosystem, the role of supervising and overseeing the banks' activities, as well as the activities of specialised deposit-taking institutions⁷⁷⁵ is vested in the Bank of Ghana.⁷⁷⁶ The oversight role is not vested in the Bank of Ghana only. There is also a National Communications Authority,⁷⁷⁷ whose role is the oversight of the data of customers to ensure that it is secure, as well as to see to it that the mobile money technologies offered by the mobile network operators have the necessary integrity.⁷⁷⁸

4.4.3 The role of the Bank of Ghana and the National Communications Authority

The telecommunications industry is regulated by the NCA in Ghana, while the financial system is regulated by the Bank of Ghana. Both regulators work hand in hand to ensure

countries. It was acquired by Airtel in 2010. See Ghana Business News 2010 <https://www.ghanabusinessnews.com/2010/11/23/zain-ghana-now-airtel-ghana/>; Murphy 2016 cashless <https://africa.businesschief.com/technology/2521/How-Ghana-is-using-Mobile-Money-to-go-cashless>.

⁷⁷² Amoh *Mobile Money Services Adoption and Customer Behavioural Intentions in Ghana* 44.

⁷⁷³ Amoh *Mobile Money Services Adoption and Customer Behavioural Intentions in Ghana* 44; Murphy 2016 <https://africa.businesschief.com/technology/2521/How-Ghana-is-using-Mobile-Money-to-go-cashless>; See AFI Publications 2017 https://www.afi-global.org/sites/default/files/publications/2017-11/AFI_AfPI_case%20study_AW_ISBN_digital_0.pdf

⁷⁷⁴ Williams "Regulatory frameworks and Implementation patterns for Mobile Money in Africa" Mobile Money Models have been discussed in more detail in Chapter 2 of this research paper.

⁷⁷⁵ Hereinafter referred to as the SDIs. These are regulated by the Specialised Deposit Taking Institutions Act 930 of 2016.

⁷⁷⁶ Bank of Ghana 2018 https://www.bog.gov.gh/privatecontent/Public_Notices/Impact%20of%20Mobile%20Money%20on%20the%20Payment%20Systems%20in%20Ghana.pdf.

⁷⁷⁷ Hereinafter referred to as the NCA.

⁷⁷⁸ The Bank of Ghana regulates issues, such as AML/CFT, customer protection, liquidity, promotion of competitive practices and solvency, amongst others. Bank of Ghana 2018 https://www.bog.gov.gh/privatecontent/Public_Notices/Impact%20of%20Mobile%20Money%20on%20the%20Payment%20Systems%20in%20Ghana.pdf.

that the mobile money services operate smoothly.⁷⁷⁹ The pleasant working relationship of these two regulators was evident in 2008 when they joined forces in the process of promulgating the *Electronic Transactions Act*⁷⁸⁰ which paved the way for the MNOs in Ghana to be able to render mobile money services.⁷⁸¹

According to the CGAP⁷⁸² survey, financial inclusion rates increased in Ghana because there are many branches of mobile financial services, such as those of the banks.⁷⁸³ As far back as 2008, the MNOs partnered with the banks for the issuing of mobile money services.⁷⁸⁴ These were regulated by the Bank of Ghana through the Branchless Banking Guidelines that were issued in 2008.⁷⁸⁵ The Bank of Ghana forced MNOs to be agents of banks and other regulated financial institutions.⁷⁸⁶ MNOs were not allowed to be leaders in this whole process.⁷⁸⁷

Some two years later in 2010, it came to the attention of the Bank of Ghana that the Branchless Banking Guidelines⁷⁸⁸ and the delivery of mobile money financial services did not serve any common purpose, because the banks were not ready to lead the process of mobile money financial services.⁷⁸⁹

⁷⁷⁹ Clarence B “Mobile Money Financial Services in Ghana” 10.

⁷⁸⁰ Act 772 of 2008.

⁷⁸¹ Clarence B “Mobile Money Financial Services in Ghana” 10.

⁷⁸² CGAP, “The Consultative Group to Assist the Poor is a global partnership of more than 30 leading organizations that seek to advance financial inclusion.” For more information on the role of the CGAP see www.cgap.org/.

⁷⁸³ AFI AFPI Publication 2017 https://www.afi-global.org/sites/default/files/publications/2017-11/AFI_AfPI_case%20study_AW_ISBN_digital_0.pdf 4.

⁷⁸⁴ AFI AFPI Publication 2017 https://www.afi-global.org/sites/default/files/publications/2017-11/AFI_AfPI_case%20study_AW_ISBN_digital_0.pdf 4.

⁷⁸⁵ Notice NO. BG/GOV/SEC/2008/21.

⁷⁸⁶ A list of Regulated Financial Institutions in Ghana is found on the Bank of Ghana website at <https://www.bog.gov.gh/supervision-a-regulation/register-of-licensed-institutions/non-bank-financial-institutions>.

⁷⁸⁷ AFI AFPI Publication 2017 https://www.afi-global.org/sites/default/files/publications/2017-11/AFI_AfPI_case%20study_AW_ISBN_digital_0.pdf 4.

⁷⁸⁸ Notice NO. BG/GOV/SEC/2008/21.

⁷⁸⁹ MNOs were then allowed to lead the process. This is where the gap was noticed as the MNOs were not regulated in that regard. The Bank of Ghana then asked the NCA to regulate the MNO's mobile money financial services operations.

The NCA was reluctant to supervise MNOs in that regard because the MNOs' licenses allowed them to carry on "value-added services" which also covered digital financial services. That was when the NCA felt that the duty to regulate MNOs fell squarely within the duties of the Bank of Ghana. A decision was then reached to the effect that the MNOs must not have the benefit of supervisory arbitrage. That notwithstanding, the structure of the MNOs had to be changed for the Bank of Ghana to supervise and regulate the mobile money financial transaction operations of the MNOs.

It was then agreed that the MNOs must get rid of their mobile money departments in order to have independent non-bank institutions with separate Boards of Directors.⁷⁹⁰ The Bank of Ghana then issued the Electronic Money Issuers and Agent Guidelines⁷⁹¹ in an effort towards formalising the transactions of mobile money departments into non-bank financial institutions to clearly stipulate their scope of transactions, as well as for them to be given laws, rules and regulations to govern them.⁷⁹²

Because the integrity of the mobile money financial services operations is dependent mostly on the integrity of the mobile telecommunications platforms of the MNOs regulated by the NCA, it became inevitable that the Bank of Ghana and the NCA had to work hand in hand.⁷⁹³ The intention to collaborate was, amongst others, to clearly define the jurisdictional responsibility of the Bank of Ghana and the NCA to eliminate the possibility

⁷⁹⁰ AFI AFPI Publication 2017 https://www.afi-global.org/sites/default/files/publications/2017-11/AFI_AfPI_case%20study_AW_ISBN_digital_0.pdf 4.

⁷⁹¹ These Guidelines were issued to Regulated Financial Institutions (RFIs) that are regulated under the *Banking Act 673 of 2004*. They were issued in accordance with the Bank of Ghana's role and duty derived from the *Payment Systems Act 662 of 2003*. Under the Payment Systems Act, the Bank of Ghana is mandated to ensure the promotion and supervision of the electronic as well as other payments, funds transfer, clearing and settlement systems and further to exercise powers vested in it by section 51(A) (3) of the *Banking Act 663 of 2004* together with those vested in it by section 4 (1) (d) and (e) of the *Bank of Ghana Act 612 of 2002*. See Bank of Ghana Notice NO. BG/GOV/SEC/2015.

⁷⁹² AFI AFPI Publication 2017 https://www.afi-global.org/sites/default/files/publications/2017-11/AFI_AfPI_case%20study_AW_ISBN_digital_0.pdf 4.

⁷⁹³ AFI AFPI Publication 2017 https://www.afi-global.org/sites/default/files/publications/2017-11/AFI_AfPI_case%20study_AW_ISBN_digital_0.pdf 4.

of ambiguity.⁷⁹⁴ A decision was then taken to have a Memorandum of Understanding⁷⁹⁵ between the two regulators as a way of having a mechanism for formal cooperation and coordination.

The Bank of Ghana is tasked with the role of ensuring that the financial sector operates smoothly.⁷⁹⁶ Its role is to protect the financial sector. To protect the financial sector, the Bank of Ghana is the regulator and supervisory authority and directs the banking system and the credit system.⁷⁹⁷ The operations and activities of mobile money operators in Ghana are monitored by the Bank of Ghana through its Payments Systems Policy and Oversight Division.⁷⁹⁸ The issuing of licenses, permission to operate the communication system and ensuring good practices, such as fair competition and consumer education are the responsibilities of the NCA.⁷⁹⁹

4.4.4 The Memorandum of Understanding⁸⁰⁰

The Memorandum gives power and authority to the Bank of Ghana to see to it that the financial system of Ghana is sound and stable.⁸⁰¹ The mandate of the Bank of Ghana includes the regulation and supervision of the whole payment system, together with the activities of the MNOs. Regulation of the communications using wire, television, radio, cable, satellite and all like means of technology is vested in the NCA. This is to ensure

⁷⁹⁴ AFI AFPI Publication 2017 https://www.afi-global.org/sites/default/files/publications/2017-11/AFI_AfPI_case%20study_AW_ISBN_digital_0.pdf 4.

⁷⁹⁵ Adams CN and Twumasi D Ghanaian Times; The Memorandum of Understanding was entered into on 20 September 2016. Both parties (The Bank of Ghana and the NCA) held a private official launch and later the launch was announced at the annual National Banking Conference.

⁷⁹⁶ Tagoe NA 2016 *Journal of Business & Financial Affairs* 2

⁷⁹⁷ Tagoe NA 2016 *Journal of Business & Financial Affairs* 2.

⁷⁹⁸ Tagoe NA 2016 *Journal of Business & Financial Affairs* 2.

⁷⁹⁹ Tagoe NA 2016 *Journal of Business & Financial Affairs* 2.

⁸⁰⁰ The aim of the Memorandum is stated as to: "Collaborate in specialized areas in order to enforce and ensure compliance with the financial laws, regulations, directives and guidelines of the BOG, while the NCA on its part seeks to enforce adherence to laid down key performance indicators on quality of service with regards to service delivery for compliance." Tagoe NA 2016 *Journal of Business & Financial Affairs* 2.

⁸⁰¹ Tagoe NA 2016 *Journal of Business & Financial Affairs* 2.

that the development and operation of the communications services takes place efficiently and in an orderly manner in Ghana.⁸⁰²

As a result, the Bank of Ghana found it necessary to enter into the Memorandum with the NCA because it realised that the NCA had the technical know-how in terms of regulating the Information Communications Technology infrastructure of the MNOs, as this would enable the Bank of Ghana to efficiently carry out its supervisory roles. The NCA, on the other hand, found it important because the Memorandum would result in legislation or regulation covering all the MNOs activities and operations.

The responsibilities of each regulator are clearly stated in the Memorandum. One of the key goals of the Memorandum is to see to it that there is a stable financial system in Ghana, through the prevention and detection of fraud and the protection of consumers.⁸⁰³ To ensure that the financial sector and electronic money transactions are secure, the Bank of Ghana requests all the MNOs to be in possession of International Security Certifications.⁸⁰⁴ This is to ensure that the mobile money sector has integrity and that the customers have confidence in the mobile money services.⁸⁰⁵

⁸⁰² Tagoe NA 2016 *Journal of Business & Financial Affairs* 2.

⁸⁰³ Adams CN and Twumasi D *Ghanaian Times*.

⁸⁰⁴ Adams CN and Twumasi D *Ghanaian Times*.

⁸⁰⁵ Adams CN and Twumasi D *Ghanaian Times*. The collaboration between the two Regulators as stated in the Memorandum focuses on the following: “a. Share and exchange information that is necessary to facilitate complaint resolution, fraud investigation, supervision, regulation and monitoring of the Mobile Money Operators (MMOs); b. Technical expertise which may aid the Bank of Ghana’s onsite examination of Mobile Money Operators; c. Consultation on certain laws and regulations which may have a bearing on the operations of MMOs; d. Provision of technical opinions and comments in the drafting and reviews of legal and regulatory instruments; e. Dissemination and sensitization of public information relating to Mobile Network Operators offering mobile money services and digital financial services; f. Implementation of government strategies or policies relating to enhancing access to financial through information and communication technology; g. Monitoring and enforcement of laws and regulations that relate to mobile financial services; h. Consumer awareness and education on the rights and obligations of consumers and MMOs; i. NCA shall notify BoG when suspending the license or authorization or when initiating liquidation procedures against institution it supervise which owns mobile money business.” See Bank of Ghana Payment Systems Oversight Report 2016 available at https://www.bog.gov.gh/privatecontent/Public_Notices/Payment%20Systems%20report%202016%20FINAL%20COPY.pdf.

4.4.5 Interoperability

Ghana's very first mobile money interoperability system was launched by the Bank of Ghana on 10 March 2018.⁸⁰⁶ The system, launched by the Vice President of Ghana, is intended to eliminate the difficulties and inconveniences associated with money across different mobile money networks of various MNOs in Ghana.⁸⁰⁷ There is a rapid growth of mobile money financial services in Ghana and this interoperability will be very useful. The difficulties to be addressed by the interoperability system include those encountered when opening bank accounts, financial literacy, as well as the costs involved in maintaining the bank account relative to customers' levels of income.⁸⁰⁸

⁸⁰⁶ AFI Publication 2018 <https://www.afi-global.org/news/2018/05/ghanas-first-mobile-money-interoperability-system-deepens-financial-inclusion>.

⁸⁰⁷ AFI Publication 2018 <https://www.afi-global.org/news/2018/05/ghanas-first-mobile-money-interoperability-system-deepens-financial-inclusion>.

⁸⁰⁸ AFI Publication 2018 <https://www.afi-global.org/news/2018/05/ghanas-first-mobile-money-interoperability-system-deepens-financial-inclusion>.

4.5 Nigeria

4.5.1 Brief history and background of Nigeria

The Federal Republic of Nigeria, which is a Constitutional Republic, comprised the Northern, Western and the Eastern region at independence.⁸⁰⁹ The Legal System of Nigeria, like that of Uganda and Ghana, is based on the common law of England.⁸¹⁰ The legal system in Nigeria is mainly influenced by English law.⁸¹¹ Accordingly, legal issues emanating from the English common law, although not legislated upon, are applicable in Nigeria. Section 1 of the Constitution⁸¹² of the Federal Republic of Nigeria provides that the Constitution is the supreme law of the country and any law that is inconsistent with the Constitution shall be declared void to the extent of its inconsistency.⁸¹³ The sources of law in Nigeria are Legislation, English Law, Customary Law, Judicial Precedent and International Law.⁸¹⁴

4.5.2 Mobile money services in Nigeria

⁸⁰⁹ Nigeria achieved its independence on 1 October 1960 from British Rule.

⁸¹⁰ “The English common law system is an unwritten practice of legal traditions that are based on precedents set by legal decisions. The English common law system dates back to the Middle Ages. The term common refers to unwritten laws that included the accepted behaviors, local customs, and traditions of Great Britain. This system of legal decisions developed over centuries in England and was the standard in Great Britain as well as British colonies throughout the globe. This system remains in use within Great Britain and other countries that were former British colonies including, Canada, Nigeria, the United States, and Australia.” See Unknown 2003 <https://study.com/academy/lesson/english-common-law-system-definition-history.html>

⁸¹¹ Section 32 (1) of the Interpretation Act says “subject to the provisions of this section and except in so far as other provision is made by any Federal law, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January 1900, shall, in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria.”

⁸¹² Constitution of the Federal Republic of Nigeria 1999.

⁸¹³ Sodipe, Akintola and Adebamowo 2014 <https://elearning.trree.org/mod/page/view.php?id=142>.

⁸¹⁴ Sodipe, Akintola and Adebamowo 2014 <https://elearning.trree.org/mod/page/view.php?id=142>.

Mobile money services were introduced in Nigeria in 2011.⁸¹⁵ Mobile money services in Nigeria are regulated by the Central Bank of Nigeria.⁸¹⁶ It is the role and responsibility of the Central Bank of Nigeria⁸¹⁷ to define and monitor the mobile money systems in Nigeria.⁸¹⁸ There are about 21 MNOs in Nigeria legally licensed by the CBN.⁸¹⁹ Of the 21 MNOs, some are said to be dormant and the CBN has started the process of revoking the licenses of those MNOs that are dormant.⁸²⁰ Mobile money services in Nigeria can only be carried out in three different scenarios which are bank account-based,⁸²¹ card account-based⁸²² and stored value (e-wallet)⁸²³ account-based.⁸²⁴

In an effort to strengthen the mobile money services in Nigeria, the CBN approved the *Mobile Money Services Guidelines*.⁸²⁵ The Guidelines stipulate all the requirements that must be followed by all those involved in the provision of mobile money services to ensure

⁸¹⁵ Adeniji 2015 <http://barcode.stillwaterslaw.com/1.1/2015/12/21/a-guide-to-the-nigerian-mobile-money-market-in-2015/>; also see Egbuta 2013 *Asian Transactions on Science & Technology* 1.

⁸¹⁶ Etomi 2019 <https://www.lexology.com/library/detail.aspx?g=fdfdede-c2fb-4c99-b9fe-3abe7ee339d0>. Also see Ekeke 2018 <https://techpoint.africa/2018/12/10/regulating-fintech-nigeria/>.

⁸¹⁷ Hereinafter referred to as the CBN.

⁸¹⁸ See section 5.0 of the *Regulatory Framework of Mobile Money Services in Nigeria*.

⁸¹⁹ Adeniji 2015 <http://barcode.stillwaterslaw.com/1.1/2015/12/21/a-guide-to-the-nigerian-mobile-money-market-in-2015/>. 15 of those MNOs are non-bank operators while 6 others are bank operators that carry out commercial operations. See Giginyu *Daily Trust*.

⁸²⁰ Adeniji 2015 <http://barcode.stillwaterslaw.com/1.1/2015/12/21/a-guide-to-the-nigerian-mobile-money-market-in-2015/>.

⁸²¹ Bank accounts of customers, such as savings account or current accounts are used for driving the mobile money transactions from the mobile money system.

⁸²² Credit Cards, Debit Cards, and Pre-Paid Cards are the only cards recognised by the Framework in terms of section 6.2.1.

⁸²³ In this scenario, mobile money transactions are driven over a system-based account that must adhere to the standards defined in the Framework.

⁸²⁴ Section 6 of the *Regulatory Framework of Mobile Money Services in Nigeria*.

⁸²⁵ Central Bank of Nigeria *Guidelines on Mobile Money Services in Nigeria 2015*. The Central Bank of Nigeria has the duty to ensure that the financial system of the country is sound, efficient and secure and it issued these Guidelines by its authority and power derived from the Central Bank of Nigeria Act no. 7 of 2007, section 47 (2) thereof. In terms of that section, "...the Bank shall continue to promote and facilitate the development of efficient and effective systems for the settlement of transactions (including the development of electronic payment systems)." See the Preamble of the Guidelines.

that the service is safe and effective.⁸²⁶ The bank-led and non-bank-led models⁸²⁷ are the only two mobile money services models identified and established by the Guidelines.⁸²⁸

4.5.3 The legal regulatory framework of mobile money in Nigeria

This regulatory framework is provided by the CBN. To have an environment that allows mobile payment systems to be introduced in an orderly manner and to be managed efficiently and effectively, the CBN found it fitting to introduce the mobile money regulatory framework.⁸²⁹ Through this framework, the regulatory environment is defined as a policy path that is used to achieve availability, accessibility, as well as the usage of mobile payment services.⁸³⁰ This regulatory framework defines the roles and responsibilities of all those involved in the provision of mobile payment services.⁸³¹ Two mobile money models are identified for mobile money services to be implemented.⁸³² These are bank-led and non-bank-led.⁸³³

Although the CBN is fully aware of the role played by MNOs for the mobile money services to succeed, especially the infrastructure provided by the MNOs, the CBN does not approve the telco-model where the leader in that process of mobile money service is the MNOs.⁸³⁴ This is because the CBN wants the mobile money financial services to be

⁸²⁶ These requirements are covered in many sections of the Guidelines. For instance, section 17 stipulates the Consumer Protection measures with which MNOs must comply; section 15 talks about the KYC and CDD requirements; the requirements relating to the technology that must be applied for the service of mobile money are covered in section 14 and Appendix I talks about the requirements for the license of mobile money.

⁸²⁷ See Section 2.0 of the 2015 *Guidelines on Mobile Money Services in Nigeria*. These kinds of models were discussed in detail in chapter 2 of this research in terms of what each model is about and how each operates.

⁸²⁸ Section 5 of the *Guidelines on Mobile Money Services in Nigeria*.

⁸²⁹ Section 1.0 of the *Regulatory Framework of Mobile Money Services in Nigeria*.

⁸³⁰ Section 1.0 of the *Regulatory Framework of Mobile Money Services in Nigeria*.

⁸³¹ In terms of section 4.0 of the Guidelines on Mobile Money Services in Nigeria, those involved in the service of mobile money (also called participants) are grouped into six categories which are Regulators, Mobile Money Operators, Infrastructure providers, Other Service Providers, Consumers and Mobile Money Agents. This section also defines the roles of each participant.

⁸³² Section 1.0 of the *Regulatory Framework of Mobile Money Services in Nigeria*.

⁸³³ Section 1.0 of the *Regulatory Framework of Mobile Money Services in Nigeria*.

⁸³⁴ Section 1.0 of the *Regulatory Framework of Mobile Money Services in Nigeria*; Llewellyn-Jones 2016 <https://iea.org.uk/blog/why-mobile-money-transformed-kenya-failed-to-take-in-nigeria>.

provided only by those institutions licensed by it in order to be in control of the operations of monetary policy and to reduce the risks.⁸³⁵

4.5.4 Mobile money models in Nigeria

The mobile money models adopted in Nigeria differ from those adopted in most African countries, such as Tanzania, Uganda, and Kenya. Whilst mobile money models in other African countries are driven by the MNOs, mobile money models in Nigeria are driven and regulated by the CBN, the overseer and Regulator of the Nigerian financial sector.⁸³⁶ The models adopted are the following: The bank-focused model, where the whole mobile money process is led by a deposit-taking financial institution licensed by the CBN.⁸³⁷ The second model is the bank-led model which is where the process is led by a licensed deposit financial institution or any of its affiliates.⁸³⁸ The last model is the non-bank-led model which is where the mobile money process is led by a non-deposit-taking corporate organisation.⁸³⁹

The MNOs in Nigeria are regulated and managed by the Nigerian Communications Commission.⁸⁴⁰ The NCC is tasked with many responsibilities, such as ensuring that the services and facilities of telecommunications are supplied properly, and also promoting competition.⁸⁴¹ The NCC further ensures that the MNOs do not handle any financial transactions, but that they only receive pre-paid airtime billing from their subscribers and not any form of deposits other than pre-paid airtime billing.⁸⁴² This model, adopted in Nigeria, has some advantages, such as ensuring that there is compliance with KYC and

⁸³⁵ Section 1.0 of the *Guidelines on Mobile Money Services in Nigeria*; Llewellyn-Jones 2016 <https://iea.org.uk/blog/why-mobile-money-transformed-kenya-failed-to-take-in-nigeria>.

⁸³⁶ Egbuta 2013 *Asian Transactions on Science & Technology* 1.

⁸³⁷ Egbuta 2013 *Asian Transactions on Science & Technology* 2.

⁸³⁸ Egbuta 2013 *Asian Transactions on Science & Technology* 2.

⁸³⁹ Egbuta 2013 *Asian Transactions on Science & Technology* 2.

⁸⁴⁰ Hereinafter referred to as the NCC.

⁸⁴¹ Ondiege 2015 <https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf> 7.

⁸⁴² Ondiege 2015 <https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf> 12.

AML laws.⁸⁴³ It also ensures that there is interoperability of mobile money services.⁸⁴⁴ Although the CBN prefers these models, it, however, does not have regulatory oversight over MNOs in Nigeria and relies heavily on the Regulator of the MNOs, the NCC, to be cooperative.⁸⁴⁵

The CBN prefers the bank-led model over the teleco-led model of mobile money. However, it has been argued that this approach slows down the growth of mobile money services in Nigeria.⁸⁴⁶ The CBN apparently prefers the bank-led model of mobile money because it prefers mobile money services to be provided by those institutions which are licensed directly by it to avoid loss of control over such institutions and to avoid money laundering.⁸⁴⁷

⁸⁴³ Egbuta 2013 *Asian Transactions on Science & Technology* 2.

⁸⁴⁴ Egbuta 2013 *Asian Transactions on Science & Technology* 2.

⁸⁴⁵ Egbuta 2013 *Asian Transactions on Science & Technology* 2.

⁸⁴⁶ Llewellyn-Jones 2016 <https://iea.org.uk/blog/why-mobile-money-transformed-kenya-failed-to-take-in-nigeria>. It has been stated that this approach restricts the role of the MNOs in providing the infrastructure needed to offer mobile money services. See Ondiege 2015 <https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf>.

⁸⁴⁷ Llewellyn-Jones summarises the disadvantage of the bank-led model preferred by the CBN and says that: "Telecommunication companies have been restricted to providing the infrastructure for Mobile Money, through which bank services can be offered. This has proved less attractive to the telecommunication companies and has given them less incentive to develop the technology and infrastructure here in Nigeria. Banks also have less incentive to develop Mobile Money, which may compete with existing products and target typically poor individuals instead of their normal target of wealthy individuals. This is as well as banks not having the distribution model which telecommunication companies have... The NCB has also more heavily legislated the Mobile Money industry making the Nigerian regulatory environment less attractive." See Llewellyn-Jones 2016 <https://iea.org.uk/blog/why-mobile-money-transformed-kenya-failed-to-take-in-nigeria>; Also see Ondiege 2015 <https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf> 12.

4.6 Kenya

4.6.1 Brief history and background of Kenya

As a result of being a British Protectorate, the legal system of Kenya, like that of Nigeria, Uganda and Ghana, depends mostly on applied English law.⁸⁴⁸ The English law was applied in Kenya for the first time during the colonial rule by the British administration through their systematic legislation.⁸⁴⁹

The legal system of Kenya is made up of Kenyan statutory law, as well as the common law of England and that of Kenya with a mixture of tribal and Islamic law.⁸⁵⁰ The supreme law of Kenya is its Constitution,⁸⁵¹ and in terms of the Constitution, any law inconsistent with the Constitution shall be declared null and void to the extent of its inconsistency.⁸⁵² Every Kenyan citizen is obliged to protect and uphold the Constitution as the supreme law of the country.⁸⁵³ The sources of law in Kenya are the Constitution, Acts of Parliament,⁸⁵⁴ Specific Acts of Parliament of the United Kingdom,⁸⁵⁵ Certain Acts of Parliament of India,⁸⁵⁶ English Statutes of General Application in Force in England on 12

⁸⁴⁸ Wabwile 2003 *Oxford University Common Law Journal* 51.

⁸⁴⁹ Most of the law that was applied during the British colonial rule was inherited after Kenya attained its independence, that is why a bulk of English law is applied in the Kenyan legal system. Wabwile 2003 *Oxford University Common Law Journal* 51.

⁸⁵⁰ Anon 2016 <http://www.kenya-advisor.com/kenya-law.html>.

⁸⁵¹ *Constitution of Kenya 2010*.

⁸⁵² See section 2 (4) of the Kenyan Constitution.

⁸⁵³ See section 3 (1) of the Kenyan Constitution.

⁸⁵⁴ These are the Laws and legislation enacted by parliament together with any other subsidiary law that is enacted under the authority of parliament or through the power derived from any Act passed by parliament.

⁸⁵⁵ Those specific Acts are the Conveyancing also known as the *Scotland Act of 1874*, Section 51 thereof; the Admiralty Offences also known as the *Colonial Act of 1849*; the *Evidence Act of 1851*; the Foreign Tribunals Evidence Act of 1856 in particular, sections 7 and 11 thereof; the Evidence by *Commission Act of 1859*; the *British Law Ascertainment Act of 1859*; the Admiralty Offences also known as the *Colonial Act of 1860*; and the Foreign Law Ascertainment Act of 1861.

⁸⁵⁶ In situations involving transfer of land and rights thereof, the *Transfer of Property Act of 1882* of India is applied because it has the necessary procedural law required.

August 1897,⁸⁵⁷ the Substance of Common Law and Doctrines of Equity, African Customary Law, Islamic Law and International Instruments.⁸⁵⁸

4.6.2 Mobile money services in Kenya

“Arguably in terms of mobile money, Kenya is the standard bearer of a successful service.”⁸⁵⁹ Mobile money services were first introduced in Kenya in 2007.⁸⁶⁰ Mobile money services in Kenya are at a stage where they have attained financial inclusivity.⁸⁶¹ The first mobile money service launched in Kenya was M-Pesa by Safaricom.⁸⁶²

Madise gives the following reasons why M-Pesa became successful in Kenya: He says mobile money in Kenya targeted the unbanked population, who were rejected by the banks and as a result of that there were many people ready for mobile money services; secondly, he says the low cost of transacting in mobile money services played a role in its success. He says mobile money has an easy intuitive service design, allowing it to function on the most basic mobile phone, and it built on the existing trust that people already had in the mobile phone generally. It quickly expanded to allow business transactions.⁸⁶³ Madise also says that the fact that registration of customers for M-Pesa

⁸⁵⁷ If any statute in Kenya or any statute of England that is applied in Kenya has not repealed the English statute of general application, then the statutes of England that are of general application, enacted and passed prior to the reception date of 12 August 1897 are regarded as law in Kenya. Those statutes or Acts of parliament which are not limited in their application to certain persons and certain areas and are applied to most inhabitants are regarded as Statues of General Application.

⁸⁵⁸ In terms of section 2 (5) of the Constitution of Kenya, international law is regarded as a source of law in Kenya. Therefore, any treaty or any convention that is ratified by Kenya will form part of the law of Kenya. Also see Ojienda and Aloo 2011 <http://www.nyulawglobal.org/Globalex/Kenya1.html>.

⁸⁵⁹ Madise *The Regulation of Mobile Money* 229.

⁸⁶⁰ See Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology*; See Ernst and Young 2015 *Mobile Money*; See Morawczynski *Examining the Adoption, Usage and Outcomes of Mobile Money Services* 1; See also Suárez *Telecommunications Policy* 952; also see Danquah 2014 <https://www.modernghana.com/news/571561/1/africas-mobile-money-evolution.html>; See also Hughes and Lonie *Innovations: Technology, Governance, Globalization* 63; More details on how and when mobile money was introduced in Kenya are discussed in chapter 2 of this research.

⁸⁶¹ Madise *The Regulation of Mobile Money* 229.

⁸⁶² Munga *The Impact of Mobile Banking* x.

⁸⁶³ Madise *The Case of Regulation of Mobile Money in Malawi* 134.

was made simple played a role in the success of M-Pesa.⁸⁶⁴ He says the only thing required to register a customer for M-Pesa is his/her identification document and all people in Kenya have identification documents.⁸⁶⁵ For this reason, the FATF requirements for customer due diligence were handled easily.⁸⁶⁶

The Communications Authority of Kenya⁸⁶⁷ is responsible for the regulation of the entire sector of communications in Kenya.⁸⁶⁸ The CAK works with the Central Bank of Kenya⁸⁶⁹ to promote the MNO-led model of mobile money to support the goal of financial inclusion in Kenya.⁸⁷⁰

In the case of *Constitutional and Judicial Review Division Petition Number 94 of 2010 between Eric Barare Orina vs. Minister of Finance and Five Others*,⁸⁷¹ the Court had to determine the issue of whether money transfer services could be defined in terms of the definition of banking business under section 2 of the *Kenyan Banking Act*. The Court dismissed the claim preliminarily because of the definition of a bank which encompasses the characteristic of a firm to take money from members of the public on current account and payment upon and accepting cheques, and pays money held on deposit or on current

⁸⁶⁴ Madise *The Regulation of Mobile Money* 232; Madise *The Case of Regulation of Mobile Money in Malawi* 134.

⁸⁶⁵ Madise *The Regulation of Mobile Money* 232; Madise *The Case of Regulation of Mobile Money in Malawi* 134.

⁸⁶⁶ Madise *The Regulation of Mobile Money* 232; Madise *The Case of Regulation of Mobile Money in Malawi* 134.

⁸⁶⁷ Hereinafter referred to as the CAK. The Communications Authority of Kenya is established under section 3 of the *Kenya Information and Communications Act* 2 of 1998. It is the regulator for the communications sector in Kenya.

⁸⁶⁸ Ondiege 2015 <https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf> 10.

⁸⁶⁹ Hereinafter referred to as the CBK. The Central Bank of Kenya is a creation of the 1966 Act of Parliament, and it started operating on 14 September 1966. Article 231 of the 2010 Constitution of Kenya provides that the Central Bank of Kenya is established and states the powers and functions of the Bank as well as the composition of the Bank. Before the Central Bank of Kenya was established and during the period of colonial rule up to the time the country got its independence, the function of issuing currency in the whole of East Africa was undertaken by the East African Currency Board. See Central Bank of Kenya 2017 <https://www.centralbank.go.ke/introduction/>.

⁸⁷⁰ Ondiege 2015 <https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf> 11.

⁸⁷¹ Petition Number 94 of 2010.

account or any part of the money by lending, investment or in any other way for the account.⁸⁷²

In supporting the goal of financial inclusion, the CBK issued the *Agent Banking Guidelines*,⁸⁷³ allowing banks to handle transactions and promote their products.⁸⁷⁴ As a result, the banks made use of the M-Pesa platform and all the outlets of M-Pesa to provide the banking services.⁸⁷⁵

4.6.3 Lessons from Kenya's mobile money experience

Kenya is the very first country in Africa to launch mobile money service through Vodafone's and Safaricom's M-Pesa.⁸⁷⁶ It is therefore important to highlight some of the difficulties the CBK went through to finally make it a success and end up being a role model for other African countries to copy from.

4.6.3.1 Agent of financial inclusion

The CBK has played an important role in ensuring that financial exclusion levels are low in Kenya by implementing policies aimed at improving the levels of financial inclusion.⁸⁷⁷ For instance, the CBK gave permission to non-banking financial service providers to meet the unbanked population of Kenya half-way by providing them with financial services at a lower cost.⁸⁷⁸ An example was allowing a non-bank institution to launch and provide M-

⁸⁷² *Eric Barare Orina vs. Minister of Finance and Five Others* Petition Number 94 of 2010.

⁸⁷³ These Guidelines were issued under the *Banking Circular No. 2 of 2010* by the Central Bank of Kenya in exercising power vested in it under Section 33 (4) of the *Banking Act* Chapter 488 of Kenya.

⁸⁷⁴ Ondiege 2015 <https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf> 11.

⁸⁷⁵ Ondiege 2015 <https://www.cgdev.org/sites/default/files/Background-Paper-Financial-Inclusion-Ondiege.pdf> 11.

⁸⁷⁶ Buku and Meredith 2013 *Washington Journal of Law, Arts and Technology*; Donovan *Mobile Money for Financial Inclusion* 61.

⁸⁷⁷ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 6.

⁸⁷⁸ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 8.

Pesa.⁸⁷⁹ In this way, the CBK acted as an agent for financial inclusion in Kenya and also served as an example to other countries in Africa to come up with policies and reforms eradicating financial exclusion.⁸⁸⁰ By doing so, the CBK was ensuring that the Kenyan financial system and the financial sector as a whole was efficient and that it was supporting innovation and guaranteeing that the operational risks, legal risks, as well as the liquidity risks were well managed and mitigated.⁸⁸¹

4.6.3.2 A regulatory turning point for M-Pesa in Kenya

Around 2005, the financial sector in Kenya was underdeveloped.⁸⁸² The legal and statutory framework was not adequate to enable the innovative ideas and to allow digital financial services to be developed.⁸⁸³ This was a major challenge for the CBK. Financial exclusion levels were very high as most of the adult population was without access to the financial services.⁸⁸⁴

In an effort to address this problem, the CBK was approached by Safaricom, the Vodafone Group and the Commercial Bank of Africa to allow those companies to launch and introduce M-Pesa in Kenya.⁸⁸⁵ Despite not having the legal framework allowing non-bank institutions to render financial services, the CBK approved an application from those

⁸⁷⁹ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 8.

⁸⁸⁰ After mobile money was implemented in Kenya as a way of attaining financial inclusion, many African countries followed in the footsteps of Kenya.

⁸⁸¹ This is also evident from the proliferation of legislation that was enacted to ensure that the financial sector in Kenya operates smoothly. An example of this is the *Proceeds of Crime and Anti-Money Laundering Act* 9 of 2009, *National Payment Systems Act* 39 of 2011 and the *National Payment Systems Regulations 2014* to mention a few.

⁸⁸² Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

⁸⁸³ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

⁸⁸⁴ It was also difficult for the commercial banks to do business due to many factors such as the costs of running the commercial banks, especially in rural areas. It was also not easy for those commercial banks to launch their new products because there was no statutory or legal framework from the CBK to regulate such products. Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

⁸⁸⁵ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

companies to launch a mobile money transfer financial service.⁸⁸⁶ This permission was granted on the strength of the *Central Bank of Kenya Act*.⁸⁸⁷ In terms of that Act, the CBK must "...formulate and implement such policies as best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems..."⁸⁸⁸ Although this permission was granted on the strength of the CBK Act, the CBK Act was not adequate to address the issue of the statutory authority needed to enable the CBK to issue out the payment services regulations.⁸⁸⁹ This gave rise to the promulgation of the National Payment Systems Act 2011.⁸⁹⁰

4.6.3.3 A joint approach to regulation - the CCK and the CBK

The CBK had to work hand in hand with the CCK to regulate mobile money financial services in Kenya.⁸⁹¹ This was due to the fact that as the regulator of the financial sector in Kenya, the CBK had to regulate the financial services provided by Safaricom.⁸⁹² By doing so, the CBK was now regulating the activities of an entity regulated by another regulator, the CCK.⁸⁹³ Both regulators, the CCK and the CBK had to ensure that they perform their duties fairly well towards Safaricom.⁸⁹⁴ This, therefore, meant that the two regulators had to work together closely in discharging their functions to avoid

⁸⁸⁶ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf; Mwega *Financial regulation in Kenya* 9.

⁸⁸⁷ *Central Bank of Kenya Act* 15 of 1966 (as amended on 1st January 2014). Hereinafter referred to as the CBK Act.

⁸⁸⁸ See Article 4A (1) (d) of the CBK Act.

⁸⁸⁹ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

⁸⁹⁰ *National Payment System Act* 39 of 2011. This Act provides guidance on how the supervision and regulation of the payment systems and payment service providers, and other connected purposes should be undertaken in Kenya by the CBK.

⁸⁹¹ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

⁸⁹² Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

⁸⁹³ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

⁸⁹⁴ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

unnecessary overlap or arbitrage.⁸⁹⁵ The problem with many regulators is that the possibility exists for regulatory arbitrage, and that presents a huge problem because those involved would take advantage of regulatory lacunae.⁸⁹⁶

4.6.4 Kenya's mobile money legal regulatory framework

4.6.4.1 *National Payment System Regulations of 2014*⁸⁹⁷

The legal framework for mobile money services in Kenya officially came into operation in 2014 through enactment of the *National Payment Systems Regulation of 2014*.⁸⁹⁸ All the regulatory practices that were adopted in Kenya from 2007 when mobile money was first introduced in Kenya have now been officially collated and made into law in the NPS Regulations.⁸⁹⁹ A functional approach to regulation was preferred over an institutional approach to regulation by the CBK.⁹⁰⁰ This functional approach preferred by the CBK allows both banks and non-banks institutions, such as the MNOs, to render the mobile money financial services in Kenya.⁹⁰¹ In terms of the NPS Regulations, mobile money service providers can either be regarded as payment service providers or e-money

⁸⁹⁵ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 9.

⁸⁹⁶ Lawack 2013 *Washington Journal of Law, Technology & Arts* 328.

⁸⁹⁷ Hereinafter referred to as the *NPS Regulations*.

⁸⁹⁸ The NPS Regulations were made by the Cabinet Secretary for the National Treasury through his power derived from section 31 of the *National Payment Systems Act* 39 of 2011. In terms of Section 31 (1) of the Act, the Minister entrusted with matters of Finance in Kenya has the power and authority to pass regulations generally intended to ensure that there is better carrying into effect of the provisions of this Act.

⁸⁹⁹ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 19.

⁹⁰⁰ The Regulations provide procedures and requirements that must be followed by both commercial banks and non-bank institutions, such as the MNOs.

⁹⁰¹ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 19.

issuers.⁹⁰² The Regulations make it mandatory for the consumer funds to be put in trust in a bank regulated by the CBK.⁹⁰³

The Regulations further prohibit the institutions from either investing or lending those funds of the customers in any manner whatsoever and as such, the customer funds are separated from the funds of the institutions and cannot be claimed by the institutions' creditors.⁹⁰⁴ Service providers can appoint agents and are responsible for the actions of agents.⁹⁰⁵ The NPS Regulations also make provision for the CBK to oversee, inspect and enforce any requirements on the institutions providing mobile money financial services.⁹⁰⁶ The existing mobile money business models in Kenya are recognised under these NPS Regulations and they also strengthen the AML/CFT compliance regimes followed by mobile money service providers in Kenya.⁹⁰⁷ The Regulations also address the following issues discussed below:

4.6.4.1.1 Systems interoperability

In terms of the Regulations, payment service providers are required to ensure that the systems they use to render payment services can be interoperable with other payment systems in Kenya, as well as payment systems in other countries.⁹⁰⁸ Interoperability is not compulsory under the Regulations; however, mobile money payment service providers may have interoperability arrangements if they so wish.⁹⁰⁹ The Regulations define interoperability as “commercial interconnectivity between providers of different payment systems or payment instruments, including the capability of electronic systems

⁹⁰² See section 2 of the *National Payment Systems Act* 39 of 2011 and Section 2 of the NPS Regulations 2014; Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 19.

⁹⁰³ Section 25 (3) of the NPS Regulations; Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 19.

⁹⁰⁴ Section 45 of the NPS Regulations 2014.

⁹⁰⁵ Section 10 (n) and 17 (1) of the NPS Regulations.

⁹⁰⁶ Section 33 of the NPS Regulations.

⁹⁰⁷ Section 60 of the NPS Regulations.

⁹⁰⁸ Section 21 (1) of the NPS Regulations.

⁹⁰⁹ See section 21 (2) of the NPS Regulations.

to exchange messages and ‘interoperable’ shall be construed accordingly”.⁹¹⁰ Under this definition, “commercial” implies the CBK will leave it to the market to determine how players should interoperate.⁹¹¹ Under the Regulations, the CBK is allowed to recognise a Payment Service Provider Management Body (PSPMB) in order to ensure that interoperability amongst the mobile money payment service providers is enabled.⁹¹²

4.6.4.1.2 AML/CFT

During 2007, when mobile money financial services were launched in Kenya, there was no AML/CFT legislation or regulation that was comprehensive.⁹¹³ The only AML/CFT legislation, issued by the CBK through its power derived from the Banking Act, was the Prudential Guidelines on AML⁹¹⁴ that regulated the local commercial banks.⁹¹⁵

The Kenya Proceeds of Crime and Anti-Money Laundering Act⁹¹⁶ defines and criminalises the act of laundering money.⁹¹⁷ It also details the measures that may be taken by the government against money launderers.⁹¹⁸ Under the Act, the reporting institutions have a duty to ensure that their customer identities are verified, records of their customers are well maintained, and they have mechanisms to report any activities of their customers

⁹¹⁰ Section 2 of the NPS Regulations.

⁹¹¹ See Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 20.

⁹¹² Section 22 of the NPS Regulations.

⁹¹³ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 22.

⁹¹⁴ These Prudential Guidelines on AML were introduced by the Central Bank of Kenya in January 2013 to regulate institutions that are licensed by the *Banking Act Chapter 488 of Kenya Act 9 of 1989 (As Amended)*. They are issued under section 33 (4) of the *Banking Act*. The section empowers the CBK to issue guidelines in order to ensure that the financial sector is sound, effective and efficient for prudent Regulation.

⁹¹⁵ The MNOs were regulated by the CCK and as such the CBK could not regulate them through the Banking Act and the Prudential Guidelines on AML. As a result, some MNOs like Safaricom took it upon themselves to implement the AML/CFT measures. They conducted training for their staff members and their agents on AML/CFT issues, implemented the KYC measures, such as identifying clients and controlled the transactions done through their mobile money platforms. Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 22.

⁹¹⁶ *Proceeds of Crime and Anti-Money Laundering Act* 9 of 2009.

⁹¹⁷ See sections 3, 4 and 7 of the *Proceeds of Crime and Anti-Money Laundering Act* 9 of 2009.

⁹¹⁸ Section 16 of the Act.

that may be suspicious.⁹¹⁹ The reporting institutions also have a duty to be registered with the Financial Reporting Centre⁹²⁰ in order to report suspicious activities with the FRC.⁹²¹

In 2013, the AML Regulations were enacted.⁹²² These Regulations flesh out the AML Act and put another obligation on the reporting institutions that adopt new delivery mechanisms, new technologies and new business practices.⁹²³ The reporting institutions are also mandated to do a risk assessment prior to launching any new product business or technology.⁹²⁴

Muthiora has the following to say about the AML Act and the 2013 AML Regulations:

While the AML Act and AML Regulations do not explicitly provide for a risk-based or tiered approach to KYC, it can be inferred that since mobile money providers are permitted to accept additional KYC information incrementally, such as a utility bill, employment or occupational details, or a tax Personal Identification Number, a risk-based approach can be implemented. The AML Act does not discriminate between different classes of reporting institutions, but regulatory authorities may prescribe the extent to which and the circumstances under which incremental KYC documents may be requested.⁹²⁵

⁹¹⁹ See sections 44, 45, 46 and 47 of the Act.

⁹²⁰ Hereinafter referred to as the FRC.

⁹²¹ Section 47A.

⁹²² *Proceeds of Crime and Anti-Money Laundering Regulations* 2013. Hereinafter referred to as the 2013 AML Regulations. Section 134 of the of the main AML Act, the *Proceeds of Crime and Anti-Money Laundering Act* 9 of 2009 gives the minister responsible for matters relating to finance matters in Kenya, power to make Regulations.

⁹²³ See section 7 of the *2013 AML Regulations*. Section 7 puts an obligation on all Reporting Institutions in Kenya to take all steps necessary to see to it that the crime of money laundering is not perpetuated using their technologies. The reporting institutions also have a duty to conduct an AML risk assessment before introducing any new technology or product to the market to ensure that such product or technology will not be vulnerable to use by money launderers.

⁹²⁴ Section 7(2) of *the 2013 AML Regulations*.

⁹²⁵ Muthiora 2015 https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2015/02/2015_MMU_Enabling-Mobile-Money-Policies-in-Kenya.pdf 22.

4.7 Malawi

4.7.1 Brief history and background of Malawi

The Republic of Malawi lies in the south-eastern part of the African continent.⁹²⁶ It is landlocked and surrounded by Zambia in the northwest, by Tanzania in the northeast, whereas its eastern, southern and western parts are bordered by Mozambique.⁹²⁷ The legal system of Malawi, as with many African countries, is based on the English legal system.⁹²⁸

4.7.2 Mobile money services in Malawi

Mobile money services in Malawi began in 2012.⁹²⁹ The mobile money of Malawi is modelled on the mobile money model of Kenya.⁹³⁰ This is so despite the fact that there is only one MNO providing mobile money services in Kenya, namely Safaricom.⁹³¹ Just as in Kenya, the mobile money service model of Malawi is an operator-led model run by telecommunications companies as an add-on service.⁹³² There are currently two mobile money service providers in Malawi, namely Bharti Airtel⁹³³ and Telekom Networks Malawi Limited (TNM).⁹³⁴ Airtel launched its mobile money service on 29 February 2012 while

⁹²⁶ Greenacre, Buckley and Malady 2014
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2491995 11; Kapindu 2009
<https://www.nyulawglobal.org/globalex/Malawi.html>.

⁹²⁷ Kapindu 2009 <https://www.nyulawglobal.org/globalex/Malawi.html>.
Greenacre, Buckley and Malady 2014
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2491995 11.

⁹²⁸ Unknown 2018 https://www.indexmundi.com/malawi/legal_system.html.

⁹²⁹ Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 449.;
Madise in his dissertation says Mobile Money was introduced in 2013. See Madise *The Case of Regulation of Mobile Money in Malawi* 1.

⁹³⁰ Madise *The Regulation of Mobile Money* 229.

⁹³¹ Madise *The Regulation of Mobile Money* 229.

⁹³² Madise *The Case of Regulation of Mobile Money in Malawi* 6.

⁹³³ According to the papers written by Buckley, Greenacre and Malady, Bharti Airtel “is an Indian multinational telecommunications company that purchased the African operations of the Kuwaiti mobile company Zain (including Malawi) in 2010.” See Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 449 and Greenacre, Buckley and Malady 2014 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2491995 11.

⁹³⁴ Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 449.

TNM launched its mobile money service on 2 May 2013.⁹³⁵ As in many other African countries, mobile money services in Malawi have the potential of eradicating the problem of financial exclusion and contributing to the goal of financial inclusion.⁹³⁶

The mobile money services market is, however, still faced by a number of challenges, such as ensuring that appropriate and necessary skills and infrastructure are available for the service to succeed, as well as building sustainable consumer demand.⁹³⁷ Because the mobile money market is still new and undeveloped, Greenacre, Buckley and Malady suggest that it would be best for the mobile money regulators in Malawi to support greater financial inclusion by finding the appropriate balance between providing suitable protection for the end-users of mobile money services and implementing a risk-based approach to regulation.⁹³⁸

MNOs in Malawi face a number of challenges when expanding their business to rural areas as they are required to invest in more resources.⁹³⁹ Issues, such as financial illiteracy, affect the growth of the service in rural areas, especially when it comes to the selection of agents and their training.⁹⁴⁰ Another challenge that MNOs in Malawi face is difficulty in establishing business models that are profitable because most of the customers in Malawi have low incomes.⁹⁴¹

⁹³⁵ Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 450.

⁹³⁶ Greenacre, Buckley and Malady 2014
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2491995 4.

⁹³⁷ Greenacre, Buckley and Malady 2014
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2491995 4.

⁹³⁸ Greenacre, Buckley and Malady 2014
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2491995 4.

⁹³⁹ Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

⁹⁴⁰ This has been identified as one of the things that hinder the growth and expansion of agent networks in mobile money services in Malawi. This issue of financial literacy and limited trust also affects the growth of the customer base. Limited trust is caused by the fact that many people in the rural areas of Malawi have never had the privilege of using banks before and as a result, they lack trust in the mobile money services. Compliance with KYC requirements also becomes an issue in Malawi due to unavailability of the national identification system for agents and MNOs to comply. Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

⁹⁴¹ Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

4.7.3 Mobile money legal regulatory framework in Malawi

There are about five agencies involved in the regulation of mobile money services in Malawi.⁹⁴² The Reserve Bank of Malawi⁹⁴³ is the main regulator, as it is tasked with overseeing and promoting the country's payment systems.⁹⁴⁴ The Malawi Communications Regulatory Authority (MACRA) also plays a key role in the regulation of mobile money services in Malawi. Other regulators involved include the Financial Intelligence Unit, the Consumer Protection Council, and the Competition and Fair-Trading Commission.⁹⁴⁵ Madise argues that these many regulators involved in the regulation of mobile money services in Malawi may likely cause problems related to cross-sanctioning between regulatory regimes.⁹⁴⁶ He says each regulator operates its own industry and even though there are agreements in place to govern the working relationships of the regulators, they are not effective, as each regulator is involved in its own business and is distinct and also has different regulatory approaches.⁹⁴⁷

The RBM is the single regulator of financial institutions in Malawi.⁹⁴⁸ Madise says that the advantage of having one Regulator is that it makes it easy for institutions, as they have only one regulator to be worried about and that the approach to regulation and supervision is contrary to where there is a myriad of regulators.⁹⁴⁹

The Payment Systems Act 2016,⁹⁵⁰ the *Electronic Transactions Act 2016*⁹⁵¹ and the *Reserve Bank of Malawi Guidelines for Mobile Payment Systems 2011*⁹⁵² of Malawi form

⁹⁴² Madise *The Regulation of Mobile Money* 269.

⁹⁴³ Hereinafter referred to as the RBM.

⁹⁴⁴ Section 4 of the *Payments Systems Act* 15 of 2016 of Malawi; Section 4 (e) of the *Reserve Bank of Malawi Act* 1989; Madise *The Regulation of Mobile Money* 269; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

⁹⁴⁵ Madise *The Regulation of Mobile Money* 269.

⁹⁴⁶ Madise *The Regulation of Mobile Money* 269.

⁹⁴⁷ Madise *The Regulation of Mobile Money* 270.

⁹⁴⁸ Madise *The Regulation of Mobile Money* 270; Madise *The Case of Regulation of Mobile Money in Malawi* 216.

⁹⁴⁹ Madise *The Regulation of Mobile Money* 270; Madise *The Case of Regulation of Mobile Money in Malawi* 216.

⁹⁵⁰ *Payment Systems Act* 15 of 2016.

⁹⁵¹ *The Electronic Transactions and Cybersecurity Act* 33 2016.

⁹⁵² *Reserve Bank of Malawi Guidelines for Mobile Payment Systems* 2011.

part of the legal and regulatory framework of financial services, including mobile money services in Malawi. Madise argues that, although those pieces of legislation have endeavoured to bring some clarity regarding the electronic payments in Malawi, neither of them was promulgated with mobile money in mind.

The *Payment Systems Act* of Malawi states in its preamble that it is “An Act to provide for the operation, regulation and supervision of payment, clearing and settlement systems in Malawi and matters connected therewith and incidental thereto.”⁹⁵³ The RBM is empowered by this Act to ensure that the payment systems are in place and are efficient and that all players abide by the rules of those payment systems.⁹⁵⁴ The RBM also has power to order payment systems providers to stop from engaging in any act that may be risky to the system or detrimental to public interest, and if it feels that there are issues of non-compliance, the RBM has the power to compel compliance to the Act, by even approaching a court of law and instituting criminal proceedings.⁹⁵⁵ Where it is of the opinion that the payment system is not operating smoothly, safely and efficiently as it should, the RBM may even approach a court of law for a prohibition order.⁹⁵⁶ This will also apply even when there is some risk to the payment system, general public or risk to other systems providers. The RBM may revoke a license granted to the payment systems provider.⁹⁵⁷

The *Payment Systems Act* of Malawi encourages what may be termed self-regulation on the part of mobile money service providers in that it encourages them to implement their own payments systems as long as those systems are secure, efficient and effective.⁹⁵⁸ However, those systems’ rules must be submitted to the RBM for approval and vetting.⁹⁵⁹

⁹⁵³ See the Preamble of the *Payment Systems Act* 15 of 2016 of Malawi; Madise *The Case of Regulation of Mobile Money in Malawi* 218.

⁹⁵⁴ See section 4 of the *Payment Systems Act* 15 of 2016 of Malawi. Also see Madise *The Case of Regulation of Mobile Money in Malawi* 218.

⁹⁵⁵ See section 10 and 11 of the *Payments Systems Act*; Madise *The Case of Regulation of Mobile Money in Malawi* 218.

⁹⁵⁶ Section 12 (2); Madise *The Case of Regulation of Mobile Money in Malawi* 218.

⁹⁵⁷ Section 15 (1); Madise *The Case of Regulation of Mobile Money in Malawi* 218.

⁹⁵⁸ Section 16 (1).

⁹⁵⁹ Section 16 (3).

The payments instruments which the payments systems providers use must at least have standard security features or at least be up to standards internationally accepted.⁹⁶⁰

There is also a requirement for record retention which must be for at least seven years from the date of the transaction.⁹⁶¹ Madise argues that even though the requirement for record retention and approval is relevant and suitable for banks, it may not be as suitable for non-bank institutions wishing to venture into the mobile money business as it may require them to invest in systems that have greater storage capacity.⁹⁶²

⁹⁶⁰ Section 16 (4).

⁹⁶¹ Section 41 (1).

⁹⁶² Madise *The Case of Regulation of Mobile Money in Malawi* 219.

4.8 The United Republic of Tanzania

4.8.1 Brief history and background of Tanzania

The United Republic of Tanzania is in the eastern part of Africa, about one degree south of the equator.⁹⁶³ It is surrounded by eight countries⁹⁶⁴ and has a coastline on the Indian Ocean.⁹⁶⁵ The legal system of the United Republic of Tanzania is based on the Common law of England.⁹⁶⁶ The Tanzanian legal system's history can be traced back to the colonial period during administration by British rule.⁹⁶⁷ The sources of law in Tanzania are the Constitution, Statutes, Case Law, Received Law, Customary and Islamic Law and International Law (Treaties and Conventions).⁹⁶⁸

4.8.2 Mobile money services in Tanzania

The origin of mobile money in Tanzania dates back to 2005 when airtime credit transfer services from one mobile phone to another were introduced by a company called Airtel.⁹⁶⁹ M-Pesa was later introduced by Vodacom⁹⁷⁰ in 2008.⁹⁷¹ Z-Pesa (now known as Easy Pesa) was also introduced by a mobile network company called Zantel Tanzania in

⁹⁶³ Nyanduga and Manning 2006 <http://www.nyulawglobal.org/globalex/Tanzania.html>; Viji 2016 <https://www.slideshare.net/AkhilaViji/tanzania-legal-system>.

⁹⁶⁴ Uganda and Kenya have borders with Tanzania in the north; on the western side it is bordered by the Democratic Republic of Congo; Burundi, as well as Rwanda; the southern part is bordered by three countries, namely Malawi, Mozambique and Zambia while the Indian Ocean lies along the eastern part of the country.

⁹⁶⁵ Viji 2016 <https://www.slideshare.net/AkhilaViji/tanzania-legal-system>.

⁹⁶⁶ The Common Law of the British used in the United Republic of Tanzania has been modified with some exceptions in order to accommodate and suit the domestic environment of Tanzania. See Viji 2016 <https://www.slideshare.net/AkhilaViji/tanzania-legal-system>.

⁹⁶⁷ Viji 2016 <https://www.slideshare.net/AkhilaViji/tanzania-legal-system>.

⁹⁶⁸ Nyanduga and Manning 2006 <http://www.nyulawglobal.org/globalex/Tanzania.html>; Viji 2016 <https://www.slideshare.net/AkhilaViji/tanzania-legal-system>.

⁹⁶⁹ Chogo and Sedoyeka 2015 *International Journal of Computing and ICT Research* 54; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 2.

⁹⁷⁰ Vodacom Tanzania is owned (subsidiary) by a South African company called the Vodacom Group (Pty) Ltd. The Vodacom Group is owned by the Vodafone Group from the United Kingdom. The Vodacom Group of South Africa owns 65% of the shares of Vodacom Tanzania and another 35% of the shares are owned by one shareholder from Tanzania, called Mirambo Limited. See Vodacom Tanzania Public Limited Company 2018 <https://vodacom.co.tz/aboutus/whoweare>.

⁹⁷¹ Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 2; Chogo and Sedoyeka 2015 *International Journal of Computing and ICT Research* 54.

2008.⁹⁷² Two years later, in 2010, another mobile network company called Tigo introduced its mobile money service and named it Tigo Pesa.⁹⁷³ To date, there are four mobile money services brands in Tanzania, namely M-Pesa, Tigo Pesa, Airtel Money and Easy Pesa.⁹⁷⁴ The first country to introduce interoperability of mobile money operators was Tanzania.⁹⁷⁵ Mobile money services are said to be the key contributor to the steep increase in financial inclusion in Tanzania.⁹⁷⁶

4.8.2.1 Test and learn

The rate at which mobile money services are used in Tanzania is high.⁹⁷⁷ According to Castri, considerable increase in mobile financial services in Tanzania can be attributed to its regulatory environment which is conducive to mobile financial services.⁹⁷⁸ The Bank of Tanzania⁹⁷⁹ and the Tanzania Communications Regulatory Authority⁹⁸⁰ worked together to ensure a regulatory environment sympathetic to the mobile money service providers.⁹⁸¹ MNOs are mandated to partner with a commercial bank and open a trust account at that bank.⁹⁸² The BOT have the management standards for accounts to which the MNOs must adhere.⁹⁸³

⁹⁷² Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 2.

⁹⁷³ Di Castri and Gidvani 2014 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/03/Tanzania-Enabling-Mobile-Money-Policies.pdf>; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 2.

⁹⁷⁴ Kaijage *The Effectiveness of Mobile Banking Phone Companies Strategies on Promoting Safety of Customers Money in Tanzania* 5; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 2; Koloseni and Mandari 2017 *Journal of International Technology and Information Management* 118.

⁹⁷⁵ See Ngwa 2018 <https://www.afrohustler.com/mobile-money-interoperability-africa-telcos/>.

⁹⁷⁶ Koloseni and Mandari *Journal of International Technology and Information Management* 117.

⁹⁷⁷ The key reasons for the adoption of mobile money at a high rate in Tanzania include the fact that mobile money is affordable, usable and it is convenient to use. See Koloseni and Mandari *Journal of International Technology and Information Management* 118.

⁹⁷⁸ Castri & Gidvani 2014 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/03/Tanzania-Enabling-Mobile-Money-Policies.pdf>.

⁹⁷⁹ Hereinafter referred to as the BOT.

⁹⁸⁰ Hereinafter referred to as the TCRA.

⁹⁸¹ Castri & Gidvani 2014 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/03/Tanzania-Enabling-Mobile-Money-Policies.pdf>.

⁹⁸² Section 26 (1) of the National Payment Systems Regulations.

⁹⁸³ Castri & Gidvani 2014 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/03/Tanzania-Enabling-Mobile-Money-Policies.pdf>.

Vodacom M-Pesa will be used in this chapter as an example of a mobile money service provided in the United Republic of Tanzania.

4.8.2.2 M-Pesa - Vodacom

M-Pesa is a mobile money service provided by Vodacom and was introduced in Tanzania in 2008.⁹⁸⁴ Vodacom is the biggest mobile network operator in Tanzania and M-Pesa is the leading and most prominent mobile money system.⁹⁸⁵ As with any mobile money service, customers use mobile phones in order to perform any electronic transaction they may wish to undertake.⁹⁸⁶

4.8.2.2.1 Registration of customers for M-Pesa

Any agent in Tanzania can register customers for M-Pesa services.⁹⁸⁷ Customers of Vodacom M-Pesa can have only one M-Pesa account; that is to say one M-Pesa account per customer.⁹⁸⁸ This applies even to those customers who have more than one Vodacom SIM card.⁹⁸⁹ The registration form which customers need to fill out for M-Pesa onboarding, requires customers to provide their full names, physical address, nationality, birth date, mobile phone numbers, as well as their identification numbers.⁹⁹⁰ All these details provided by customers on the registration form have to be correct, truthful and complete and the customer must sign the registration form after providing that

⁹⁸⁴ Vodacom Tanzania 2018 <https://vodacom.co.tz/aboutus/whoweare>; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 2.

⁹⁸⁵ Vodacom Tanzania 2018 <https://vodacom.co.tz/aboutus/whoweare>; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 2.

⁹⁸⁶ Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 2.

⁹⁸⁷ Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3.

⁹⁸⁸ Article 3.2 of the Vodacom M-Pesa Consumer Terms and Conditions of Use available at https://vodacom.co.tz/templates/uploadedfiles/pdf/M-PESA_Terms_and_Conditions_.pdf.

⁹⁸⁹ Article 3.2.

⁹⁹⁰ See Article 3.5 of the Vodacom M-Pesa Consumer Terms and Conditions of Use available at https://vodacom.co.tz/templates/uploadedfiles/pdf/M-PESA_Terms_and_Conditions_.pdf. Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3; also see Article 10 of the M-Pesa Agents Terms and Conditions available at Vodacom Tanzania Public Limited Company 2018 <https://vodacom.co.tz/M-Pesa/agents>.

information.⁹⁹¹ After completing the M-Pesa registration, a customer is given a secret word that will uniquely identify a customer from other customers.⁹⁹²

4.8.2.2.2 Agents

M-Pesa agents in Tanzania are vested with many roles.⁹⁹³ These roles include to ensure that they register/on-board new customers for M-Pesa, to ensure they facilitate cash transactions, to upgrade SIM cards for potential clients, as well as to educate existing and potential clients.⁹⁹⁴ Notwithstanding these duties of agents, the agents must not provide M-Pesa services to any customer without following the M-Pesa agency manual or without following any written instructions from Vodacom that may be given to the agents from time to time.⁹⁹⁵ Agents are obliged to keep each and every record made when rendering the services of M-Pesa.⁹⁹⁶ They must also capture every detail of customers during registration of customers.⁹⁹⁷ Agents are paid a commission by the mobile network operator after every mobile money transaction that is affected.⁹⁹⁸

However, for one to qualify to be an M-Pesa agent, one must be registered as a company.⁹⁹⁹ One must also own at least two to five M-Pesa outlets to enable one to

⁹⁹¹ Article 3.6 of the Vodacom M-Pesa Consumer Terms and Conditions of Use; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3.

⁹⁹² Article 3.9 of the Vodacom M-Pesa Consumer Terms and Conditions of Use; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3.

⁹⁹³ Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3.

⁹⁹⁴ Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3.

⁹⁹⁵ See Article 4.2.2 of the M-Pesa Agents Terms and Conditions available at Vodacom Tanzania Public Limited Company 2018 <https://vodacom.co.tz/M-Pesa/agents>. Article 13.3 of the Vodacom M-Pesa Consumer Terms and Conditions of Use states that Vodacom cannot be held liable for any misconduct or negligence on the part of an agent. This means a customer cannot sue Vodacom if he/she suffers loss as a result of being on-boarded by a negligent agent. A relationship of agency does not exist between Vodacom and the agents. More duties of agents and warranties are available from Article 4.1 to 4.2.16.

⁹⁹⁶ Article 16.

⁹⁹⁷ Article 10.

⁹⁹⁸ Article 7 of the M-Pesa Agents Terms and Conditions; Vodacom Tanzania Public Limited Company 2018 <https://vodacom.co.tz/M-Pesa/agents>; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3.

⁹⁹⁹ Vodacom Tanzania Public Limited Company 2018 <https://vodacom.co.tz/M-Pesa/agents>; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3.

render M-Pesa services.¹⁰⁰⁰ The company must be compliant with AML standards for Vodacom.¹⁰⁰¹ All agents are also mandated to adhere to the Anti-Bribery Laws of Tanzania.¹⁰⁰² Each active M-Pesa outlet has to have a cash float of a minimum of around TSH 1.000.000 as start-up capital.¹⁰⁰³ Agents are appointed for a period of two years, but this two-year period may be renewed.¹⁰⁰⁴ Big companies, such as banks, supermarkets and hotels are also permitted to become M-Pesa agents.¹⁰⁰⁵

4.8.2.2.3 Security procedures for M-Pesa

The two major authentication mechanisms used for security purposes in the M-Pesa system are the customer identification document (ID), as well as the customer PIN.¹⁰⁰⁶ This PIN is used by Vodacom as concrete proof that permission was granted by the customer for a debit transaction to be effected.¹⁰⁰⁷ A customer cannot withdraw or deposit funds before producing an identification document.¹⁰⁰⁸ Customers' valid passports, drivers' licenses, and voters' cards all suffice as proof of ID.¹⁰⁰⁹ A formal letter bearing a

¹⁰⁰⁰ Article 11 of the M-Pesa Agents Terms and Conditions requires M-Pesa agents to appoint operators located in each and every outlet. Any negligence or misconduct on the part of an Operator committed when rendering M-Pesa services will be deemed to be the actions of the Agent who appointed that Operator and the Agent will have to indemnify Vodacom for any loss that it may incur as a result of negligence of the Operator; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3.

¹⁰⁰¹ Article 19 Vodacom Tanzania Public Limited Company 2018 <https://vodacom.co.tz/M-Pesa/agents>. Vodacom has its Money Laundering Reporting Officer responsible for reporting any money laundering activities committed using the M-Pesa system; see Article 19.5.

¹⁰⁰² See Article 20 of the M-Pesa Agents Terms and Conditions.

¹⁰⁰³ Vodacom Tanzania Public Limited Company 2018 <https://vodacom.co.tz/M-Pesa/agents>.

¹⁰⁰⁴ See Terms and Conditions Applicable to M-Pesa Agents for Provision of M-Pesa Services available at Vodacom Tanzania Public Limited Company 2018 <https://vodacom.co.tz/M-Pesa/agents/terms-and-conditions>.

¹⁰⁰⁵ They must, however, have one outlet operated by them to enable them to render M-Pesa services. As opposed to individual agents, these companies must invest a minimum cash float of at least USD 3700. See Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 3.

¹⁰⁰⁶ Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 4.

¹⁰⁰⁷ Article 8.1 of the Vodacom M-Pesa Consumer Terms and Conditions of Use; Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 4.

¹⁰⁰⁸ Article 8.1 of the Vodacom M-Pesa Consumer Terms and Conditions of Use; Article 8.1 reads: "All Debit transactions from your Account will be effected by Transfer Instructions authorized with the PIN which you choose when you register, or by such other method we may prescribe from time to time. Proof of ID will be required before any transaction can be effected and the ID presented will be recorded by the Agent on each Transaction." See Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 4.

¹⁰⁰⁹ Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 4.

customer's or applicant's full particulars, namely names and address written by a village chief or village executive may be used for identifying customers or applicants.¹⁰¹⁰

4.8.3 Legal and regulatory framework of mobile money service in Tanzania

Mramba and Nditi state that in Tanzania, the Bank of Tanzania and the Tanzania Communications Regulatory Authority are the two regulators responsible for regulating mobile money services to protect customers.¹⁰¹¹

The regulatory roles of the Bank of Tanzania in the mobile money service are derived from the *Bank of Tanzania Act*¹⁰¹² which gives the Bank powers to regulate, supervise and monitor the "payment, clearing and settlement system, including all products and services thereof and to conduct oversight functions on the payment, clearing and settlement systems in any bank, financial institution or infrastructure service provider or company."¹⁰¹³ The Bank of Tanzania is, therefore, empowered to undertake oversight roles on the payment, clearing and settlement systems in any bank, infrastructure service provider, financial institution or any company in the Republic of Tanzania, including the operations of the mobile money operators, but the Bank of Tanzania has not yet made any regulations under section 70 of the Act for operationalisation of its powers.¹⁰¹⁴

In terms of the regulatory roles of the Tanzania Communications Regulatory Authority in the mobile money service, the Tanzania Communication Regulatory Authority Act¹⁰¹⁵ mandates it to perform a number of duties, including the promotion of effective competition and economic efficiency and the protection of the interests of consumers.¹⁰¹⁶

¹⁰¹⁰ Mtaho and Mselle 2014 *International Journal of Computer Science & Network Solutions* 4.

¹⁰¹¹ The fact that there are two mobile money services regulators in Tanzania leaves the customers at crossroads whenever there is a problem. See Mramba and Nditi 2015 *East African Law Journal* 1.

¹⁰¹² *Bank of Tanzania Act* 4 of 2006.

¹⁰¹³ See section 6 (1) of the Bank of Tanzania Act.

¹⁰¹⁴ Mramba and Nditi 2015 *East African Law Journal* 7.

¹⁰¹⁵ *Tanzania Communication Regulatory Authority Act* 12 of 2003.

¹⁰¹⁶ See section 5 of the *Tanzania Communication Regulatory Authority Act* 12 of 2003. This duty also includes to "protect the financial viability of efficient suppliers, to promote the availability of regulated services to all consumers, including low income, rural and disadvantaged consumers." It is also mandated to enhance public knowledge, raise awareness and understanding of the regulated areas, as well as the rights and obligations of customers and regulated suppliers.

4.9 Conclusion

The aim in this chapter was to discuss and investigate how mobile money services are offered in different African countries. The aim was specifically to see how mobile money is used as a tool to attain financial inclusion. The intention was also to see how financial inclusion can be attained whilst ensuring that financial stability and financial integrity are maintained by preventing criminals from using innovative solutions and taking advantage to commit financial crimes, such as money laundering. Different models of mobile money adopted in different countries were discussed, as well as the rationale for opting for those models. The legislation regulating AML/CFT in selected African countries was discussed. Legislation regulating mobile money services and the institutions responsible for rendering mobile money services were discussed.

Different lessons were learnt from different countries. For instance, although mobile money services were introduced for the first time in Africa by Kenya, interoperability of mobile money services were introduced for the first time in Africa by Tanzania.¹⁰¹⁷ The Bank of Tanzania makes it a requirement for MNOs rendering mobile money services to partner with regulated commercial banks to ensure that mobile money service providers are easily regulated and that customer funds are backed with 100% liquidity. They also have to open a trust account at the commercial bank where customer funds are deposited. The same requirement must be observed in Uganda. The Bank of Uganda wants to be satisfied that whoever wants to render mobile money services will be doing so in partnership with a supervised financial institution.

As far as South Africa is concerned, the risk-based approach principle recommended by the FATF in its Recommendation 1 has been applied by Exemption 17 of the 2002 *Money Laundering and Terrorist Financing Control Regulations*.

The *Mobile Money Guidelines* stated that if an institution is not licensed by the Bank of Uganda, mobile money must be rendered in partnership with a licensed institution, and

¹⁰¹⁷ See Ngwa 2018 <https://www.afrohustler.com/mobile-money-interoperability-africa-telcos/>.

that licensed institution should make an application to the Bank of Uganda requesting approval to provide mobile money services in partnership with the mobile money service provider. Further, the Bank of Uganda wants an escrow account to be opened at that supervised financial institution to ensure that customer funds are safely kept. An escrow account is defined as "...a temporary pass through account held by a third party during the process of a transaction between two parties. This is a temporary account as it operates until the completion of a transaction process, which is implemented after all the conditions between the buyer and the seller are settled."¹⁰¹⁸ Interoperability of mobile money services is also recognised in Uganda and it is made mandatory by the *2013 Mobile Money Guidelines*.

Ghana also provides mobile money services and it emerged that the two regulators, the Bank of Ghana and the National Communications Authority of Ghana, work hand in hand to ensure the smooth operation of mobile money services in Ghana. The good working relationship between these two regulators resulted in many positive outcomes for the good of mobile money services. For instance, the two regulators signed a Memorandum of Understanding to outline their responsibilities clearly to ensure that mobile money services operate smoothly. Ghana implemented the interoperability of mobile money services in 2018.

As far as Nigeria is concerned, the bank-led and non-bank-led models are the only two mobile money services models identified and established by the Mobile Money Services Guidelines. The Central Bank of Nigeria issued a regulatory framework for mobile money services in Nigeria. Although there are two models of mobile money recognised in Nigeria, the Central Bank of Nigeria prefers the bank-led model of mobile money because it prefers for mobile money services to be provided by only those institutions that are licensed, supervised and regulated by it. This has been regarded as a disadvantage by other writers who say that the Central Bank of Nigeria does not have the infrastructure necessary for mobile money services to be operated and may therefore limit the goal of

¹⁰¹⁸ See The Economic Times 2018 <https://economictimes.indiatimes.com/definition/escrow-account>.

financial inclusion. This model has advantages, such as ensuring that KYC and AML/CFT-related issues are easily regulated by the Central bank of Nigeria.

Malawi was also discussed in this chapter and it was ascertained that its mobile money model is based on that of Kenya and that it is an operator-led model. It emerged that there are many agencies involved in the regulation of mobile money services in Malawi. The Reserve Bank of Malawi is, however, the main regulator, and the Malawi Communications Regulatory Authority also plays a key role. In terms of the pieces of legislation used for regulation of mobile money services, there is *Payments Systems Act 2016*, the *Electronic Transactions Act 2016* and the *Reserve Bank of Malawi Guidelines for Mobile Payment Systems 2011*.

Lastly, Kenya was discussed in this chapter. Kenya was the very first country in Africa and probably in the world to introduce mobile money financial services. Mobile money services have been successful in Kenya due to the support given by the CBK to the institutions providing mobile money services, for example by issuing different pieces of legislation that were meant to ensure that mobile money services are provided smoothly. As in the case of regulators in other countries, Kenya had to work hand in hand with the Kenya Communications Regulatory Authority to ensure that mobile money services are provided in Kenya.

Having discussed how mobile money services, financial inclusion and money laundering activities are regulated in some selected African countries, the next chapter will focus, specifically on Lesotho. The legal regulatory framework of money laundering and the legal regulatory framework of mobile money in Lesotho will be discussed in detail.

Chapter 5

Lesotho's AML legal regulatory framework and the mobile money legal regulatory framework¹⁰¹⁹

5.1 Introduction

It was discussed in and emerged from the previous chapters that mobile money is indeed a tool that can be used to promote financial inclusion. The crime of money laundering and its effects were also discussed in addition to how criminals can misuse technological innovations for money laundering and terrorist financing purposes. It was also illustrated that different African countries, through their different practices, legislation, and regulation, have different ways of ensuring that mobile money succeeds in their countries.

In this chapter, on the other hand, the focus is on the regulatory framework of money laundering in the context of Lesotho. It also focuses on Lesotho's mobile money framework. The intention is to determine how Lesotho currently regulates the mobile money services, as well as to establish how money laundering activities are tackled in general in order to ascertain if there is any need for improvement based on what has been learned from other jurisdictions.

Lesotho is landlocked by the Republic of South Africa. Most of its practices are influenced by South Africa. It is also a member of many regional trade agreements, amongst others, the South African Development Community¹⁰²⁰ and the South African Customs Union.¹⁰²¹ Additionally, it has also pegged its currency, the Loti, to the South African currency which

¹⁰¹⁹ A framework is described by Ahlers as: "...a system consisting of regulations and how these regulations are to be enforced within a specific designated area. A regulatory framework is typically created by a government with a purpose of regulating selected activities." See Ahlers *The South African Anti-Money Laundering Regulatory Framework* xvii. In this chapter, the focus is on discussing the framework of money laundering and mobile money for Lesotho. The framework in the form of acts, regulations and guidelines used in Lesotho, regionally and globally are discussed.

¹⁰²⁰ Also known as SADC.

¹⁰²¹ Also known as SACU.

is the Rand, and as such it falls into the Common Monetary Area¹⁰²² which is a union of four countries, namely South Africa, Lesotho, Namibia and Eswatini, that have also pegged their currencies to the South African Rand.

As a result of its multi-membership of regional trade agreements, there is much that Lesotho is able to learn and copy from other countries in those regional trade agreements. In the previous chapter, the best mobile money and financial inclusion practices in some selected African countries were discussed to determine if there is anything that Lesotho can learn from the practices of those countries. In this chapter, over and above discussing the mobile money framework of Lesotho, the mobile money framework of the SADC will be discussed. Lesotho is a member of the SADC, and as the SADC has developed certain mobile money guidelines, the Central Banks of the SADC member states are encouraged to align their domestic mobile money laws accordingly.

In the first part of the chapter, a brief background on the law and the legal system of Lesotho will be discussed. This will be followed by a discussion on the mobile money framework in Lesotho whereafter the AML regulatory framework in Lesotho will be interrogated. In the final part of the chapter, analysis of the chapter will be undertaken, followed by a conclusion.

5.2 A brief background on the law and the legal system of Lesotho

5.2.1 Introduction

Before discussing the AML regulatory framework of Lesotho, the law and legal system of Lesotho will be discussed briefly. It is important to discuss the law and legal system here because some of the money laundering and terrorist financing standards applied in Lesotho were influenced and copied from other international bodies and regional

¹⁰²² Commonly known as the CMA.

organisations.¹⁰²³ It was stated in Chapter 3 of this research that money laundering is a crime that does not only affect one country, it affects all the countries in the world.¹⁰²⁴ It is, therefore, important that any plans put in place by countries in combating money laundering must be well-matched with the international standards and flexible enough to respond to the new money laundering schemes.¹⁰²⁵

5.2.2 The sources of law in Lesotho¹⁰²⁶

5.2.2.1 The 1993 Constitution

In terms of section 2 of the 1993 *Constitution of Lesotho*,¹⁰²⁷ the Constitution is the supreme law of the country and any law that is inconsistent with it is declared null and void to the extent of its inconsistency.

5.2.2.2 Legislation by the Parliament of Lesotho

Section 70 of the Lesotho Constitution gives parliament power and authority to make laws, regulations, bylaws, orders, rules or any other instruments that have the force of law. This power to make laws may be delegated to other competent authorities and bodies.

¹⁰²³ For instance, Lesotho still applies the FATF Recommendations and the Basel Committee Standards.

¹⁰²⁴ Ryder *Financial Crime in the 21st Century* 13.

¹⁰²⁵ Turner *Money Laundering Prevention* 11.

¹⁰²⁶ All these sources of law come from different sources as there is no single code containing the laws in Lesotho. See Shale 2014 <http://www.nyulawglobal.org/globalex/Lesotho1.html>.

¹⁰²⁷ Act 1 of 1993 (Hereinafter referred to as the "Lesotho Constitution").

5.2.2.3 Common law

Common Law is also a source of law in the Kingdom of Lesotho. The Common Law of Lesotho is to a large degree like that of the Republic of South Africa and it is a mixture of the Roman-Dutch Civilian law and the Common Law of England.¹⁰²⁸

Shale has the following to say about the Common Law of Lesotho:

Common law, which generally refers to unwritten non-statutory law and excludes customary law, was introduced to Lesotho through General Law Proclamation 2B of 1884. This Proclamation provided that the law to be administered in Basutoland (Lesotho) shall, as nearly as the circumstances will permit, be the same as the law for the time being in force in the Colony of the Cape of Good Hope (now Western Cape, South Africa). The effect of this Proclamation was to create a dual legal system made up of the common law (the received law) and the indigenous customary law. The common law that was applicable in the Cape of Good Hope at the time was a mixture of the Roman-Dutch Civilian law and the English Common Law. Because of this Proclamation, Lesotho's common law is essentially the same as that of South Africa.¹⁰²⁹

The above simply reiterates the point that common law is a legitimate source of law in Lesotho.

¹⁰²⁸ François du Toit gives a clear explanation of where Roman Dutch Law and English law became the common law of South Africa. He says, "Roman-Dutch law, the legal system developed in the Netherlands through the reception (particularly in the sixteenth and seventeenth centuries) of Roman law and its synthesis with Germanic customary law, feudal law and canon law, was introduced at the Cape of Good Hope (present-day Cape Town) by Dutch settlers from the middle of the seventeenth century. English law coalesced with Roman Dutch law in the aftermath of Britain's occupation of the Cape in 1806. The new British rulers retained Roman-Dutch law, but the law at the Cape came under increased English legal influence as the British pursued an aggressive policy of Anglicisation from 1820 onward. In the result, a mixed legal system developed that spread northward as European settlers moved to the southern African interior. Roman-Dutch law remains part of South Africa's common law to this day, although, by reason of legislative and judicial adaptation, not consistently in its original form. Many aspects of modern South African private law are governed exclusively by the common law; South African private law is, therefore, particularly infused with Roman-Dutch law." See Du Toit 2014 <https://pdfs.semanticscholar.org/147c/1f66472afa468f63515c55ecc0bcfa3d0e8b.pdf>.

¹⁰²⁹ Shale 2014 <http://www.nyulawglobal.org/globalex/Lesotho1.html>.

5.2.2.4 Judicial precedent

Judicial precedents or decisions of courts are used as a source of law to ensure that there is uniformity and consistency in the application of the law and legal principles.¹⁰³⁰

5.2.2.5 Customary law

The Customary law of Lesotho is made up of Basotho customs and practices and the Laws of Lerotholi.¹⁰³¹ The Laws of Lerotholi were promulgated as far back as 1903, but still serve as the source of customary law in Lesotho even after more than fifty (50) years of independence. As Juma says, “despite their province getting eroded by piecemeal legislative action, occasional transformative judicial pronouncement by activist judges, and the changing perception of the role of African customary law in multicultural societies, these rules have persisted.”¹⁰³² As such they are still regarded as the source of customary law in Lesotho.

5.2.2.6 Authoritative texts

Legal textbooks are used as authority and source of law in Lesotho.¹⁰³³

5.2.2.7 International law

Being a signatory to many international instruments, International Law is used as a source of law in Lesotho.¹⁰³⁴

¹⁰³⁰ Shale 2014 <http://www.nyulawglobal.org/globalex/Lesotho1.html>.

¹⁰³¹ Dube 2008 <https://www.nyulawglobal.org/globalex/Lesotho.html>.

¹⁰³² Juma *Pace International Law Review* 95-96.

¹⁰³³ Shale 2014 <http://www.nyulawglobal.org/globalex/Lesotho1.html>

¹⁰³⁴ Shale 2014 <http://www.nyulawglobal.org/globalex/Lesotho1.html>

5.3 Lesotho's mobile money legal regulatory framework

5.3.1 Introduction

As discussed earlier in Chapter 2 of this research, mobile money in Lesotho was introduced in 2012 by a telecommunications company called Econet Telecom Lesotho and later by Vodacom Lesotho in 2013.¹⁰³⁵

Mobile money services in Lesotho are regulated by two main regulators, namely the CBL and the Lesotho Communications Authority (LCA). The CBL regulates the whole financial sector in Lesotho; that is why it also regulates mobile money services although they are provided by the MNOs. The LCA is the regulator of the communications sector; that is why it regulates mobile money services provided by the MNOs.

In 2014, the *Payment Systems Act*¹⁰³⁶ was enacted by the Parliament of Lesotho. The CBL licenses companies to operate mobile money services in terms of this Act. For the company to be licensed under this Act, it must be licensed in Lesotho.¹⁰³⁷ The CBL also has power to withdraw such a license if it has valid grounds to do so.¹⁰³⁸ The Act gives the CBL power to oversee the payments systems and the issuance plus use of the payments instruments.¹⁰³⁹ The CBL also has power to make regulations to implement the Act.¹⁰⁴⁰ The CBL, thereafter, enacted the *Payment Systems (Issuers of Electronic Payments Instruments) Regulations*¹⁰⁴¹ in an effort to operationalise the *Payment Systems Act* and tighten the regulation of mobile money in Lesotho.¹⁰⁴² This was also

¹⁰³⁵ See Marcussen *Women and Mobile Money in Lesotho I*; Tsemame *The Impact of Mobile Money on Financial Inclusion in Lesotho* 16; also see Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin*.

¹⁰³⁶ *Payment Systems Act* 11 of 2014.

¹⁰³⁷ Section 10 (2) of the *Payment Systems Act*.

¹⁰³⁸ See section 13 (1) of the *Payment Systems Act*. The CBL has to publish such withdrawal in the Gazette in terms of section 13 (2) of the Act.

¹⁰³⁹ See section 15 of the *Payment Systems Act*.

¹⁰⁴⁰ This is in terms of section 35 of the Act.

¹⁰⁴¹ *Payment Systems (Issuers of Electronic Payments Instruments) Regulations* 11 of 2017 (hereinafter referred to as the "Payment Systems Regulations").

¹⁰⁴² Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

done to ensure that investors are protected, risks are well managed and market confidence is promoted.¹⁰⁴³ These regulations are intended to regulate the provision of licensing and oversee issuers of electronic payment instruments which include the issuing of e-money.¹⁰⁴⁴

5.3.2 The 2013 *Mobile Money Guidelines*

Before the Payment Systems Regulations came into the picture, the mobile money operations in Lesotho were regulated under the *Mobile Money Guidelines of 2012*.¹⁰⁴⁵ These Guidelines were used to address the shortcomings in the regulatory environment after mobile money services were introduced in Lesotho.¹⁰⁴⁶ The CBL followed the same route that was followed by other Central Banks in other jurisdictions by issuing what is called “a letter of no objection” which is a regulatory instrument that allows MNOs to carry on with their operations while the CBL worked with the MNOs and other stakeholders in preparing the regulations in the sphere of payment systems.¹⁰⁴⁷

Although the Guidelines have been superseded by the 2017 regulations, it is important to discuss their provisions in this section to establish what they were intended for.¹⁰⁴⁸

¹⁰⁴³ Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

¹⁰⁴⁴ Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

¹⁰⁴⁵ These Guidelines were reviewed in 2013 and are now called *Mobile Money Guidelines 2013*. See Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

¹⁰⁴⁶ Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74. These Guidelines were issued in terms of section 6 (h) of the *Central Bank Act 2000* which obliges the Central Bank to undertake the responsibility and function of formulating and implementing policies in an effort to promote the establishment, regulation and oversight of the efficient and effective payment, clearing and settlement systems in Lesotho.

¹⁰⁴⁷ Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

¹⁰⁴⁸ In the introduction part of the Guidelines, it is stated that: “This guideline is developed to conform to international best practice and standards. It is also a product of formal engagements and consultations with relevant stakeholders. After identifying person-to-person payments, over mobile money infrastructures, as a practical strategy for financial inclusion of the unbanked, the Central Bank of Lesotho opted for the creation of an enabling regulatory environment as a policy path towards achieving availability, acceptance and usage of mobile payments in Lesotho. Mobile money can be used to substantially increase the financial services outreach to the unbanked communities... Mobile money in Lesotho includes various components that facilitate the delivery of payments to the banked and non-banked population through mobile phones or other similar electronic means. Mobile money can be issued in different forms, such as card-based (e.g. prepaid card) and network-based which can be accessed via the internet, mobile phones or any other similar devices. Electronic money (mobile money) is a payment instrument that contains monetary

The Guidelines only gave authorisation to the MNOs and the banks in Lesotho to conduct the mobile money or issuer business.¹⁰⁴⁹ The role that the mobile money issuer has to play is also stipulated in the Guidelines.¹⁰⁵⁰

5.3.3 The *Payment Systems (Issuers of Electronic Payments Instruments) Regulations* 11 of 2017

These Regulations supersede the 2013 *Mobile Money Guidelines*. To better understand why the regulations, form part of the mobile money framework in Lesotho, it is important to re-visit the definition of mobile money. It was stated that mobile money is simply a service that is about any “mobile-based transactional service that can be transferred electronically using mobile networks.”¹⁰⁵¹ Therefore, mobile money is a subdivision of bigger concepts such as electronic money.¹⁰⁵² Electronic money, in turn, denotes any kind of stored value on an electronic device, such as a pre-paid card, a mobile phone, a chip, or a computer system.¹⁰⁵³ Consequently, whereas some regulations explicitly regulate mobile money, many others target wider payment systems and mobile money becomes simply one topic covered in their provisions.¹⁰⁵⁴

The regulations generally regulate how mobile money services must be conducted in Lesotho. As stated previously, the CBL will only license a company based in Lesotho to provide mobile money services in Lesotho.¹⁰⁵⁵ Issues, such as how a license for mobile money services should be applied, are all covered in the regulations.¹⁰⁵⁶ The regulations

value that is paid in advance by the user to the mobile money issuer. The user of mobile money can undertake payments for purchases of goods and services to agents who accept the mobile money as payment...The overriding vision is to achieve a nationally utilized and internationally recognized payment system.”

¹⁰⁴⁹ The Guidelines define mobile money issuer as “any entity that is responsible for the payment obligation and assumes the liabilities for the mobile money issued.” See Article 2 of the 2013 Mobile Money Guidelines. See article 6 of the 2013 *Mobile Money Guidelines*.

¹⁰⁵⁰ See article 7 of the 2013 *Mobile Money Guidelines*.

¹⁰⁵¹ Anderson et al 2015 *Evans School Policy Analysis and Research* 9.

¹⁰⁵² Anderson et al 2015 *Evans School Policy Analysis and Research* 9.

¹⁰⁵³ Anderson et al 2015 *Evans School Policy Analysis and Research* 9.

¹⁰⁵⁴ Anderson et al 2015 *Evans School Policy Analysis and Research* 9.

¹⁰⁵⁵ Section 10 (2) of the *Payments Systems Act*.

¹⁰⁵⁶ The regulations are aimed at providing for the licensing of issuers of electronic payment instruments and overseeing the issuers of e-money which includes issuance of e-money together with the

deal with various issues, including to ensure that customer funds are managed prudently by ensuring that a mobile money service provider deposits funds into his trust account and does incorporate them with working capital funds.¹⁰⁵⁷ The regulations also deal with obligations to keep records of customers safely for a minimum period of 10 years.¹⁰⁵⁸

To protect payment systems and mobile money against financial crimes, money laundering and terrorist financing is also covered under the regulations. One of the regulations to which an issuer of electronic payment instruments has to adhere, is ensuring that he/she uses payment systems designed and implemented in a way that reduces the chances and opportunities for being abused and such payment systems must provide ways and means to filter out all activities that may be suspicious.¹⁰⁵⁹ An issuer of electronic payment instruments must have the KYC measures and procedures, as well as processes in place as stipulated in the money laundering legislation, such as the *Money Laundering Guidelines*.¹⁰⁶⁰ This also includes a duty to see to it that agents are in compliance with the MLPCA and its implementing regulations.¹⁰⁶¹

Other measures which the regulations impose on the issuer of electronic payment instruments are reporting to the FIU¹⁰⁶² whenever it has knowledge or when it suspects that an offence of money laundering is committed by a certain customer or when there is

general provisions that apply to the issuers of e-money. See section 3 of the Payment Systems Regulations.

¹⁰⁵⁷ Section 35 of the Payment Systems Regulations.

¹⁰⁵⁸ This duty in terms of section 23 of the Payment Systems Regulations also includes to ensure that records of accounts opened are maintained accurately and in a complete manner, such records must include the date the account was first created; e-money holder's identity; e-money customers' individual balances; transactions undertaken by issuers; e-float aggregate and amounts in the trust account.

¹⁰⁵⁹ Section 24 (1) (a) of the Payment Systems Regulations.

¹⁰⁶⁰ *Money Laundering (Accountable Institutions) Guidelines Legal Notice No. 55 of 2013*.

¹⁰⁶¹ Section 24 (1) (b) of the Payment Systems Regulations.

¹⁰⁶² One of the duties of the Financial Intelligence Unit is to receive reports of suspicious transactions from accountable institutions. As will be shown and discussed later in this chapter, the FIU acts as the central agency whose function is to receive, request, analyse and disseminate information to investigatory authorities. The FIU is also responsible for receiving, analysing and assessing the suspicious reports that accountable institutions must send to the FIU, as well as any other information disclosed to it under the Act. The Act in this case refers to the *Money Laundering and Proceeds of Crimes Act of 2008* and the *Money Laundering and Proceeds of Crimes (Amendment) Act 2016*.

a transaction connected to the commission of an offence of money laundering.¹⁰⁶³ One of the ways in which an issuer of electronic payment instruments can assist in fighting money laundering is with the way he/she handles unclaimed funds.¹⁰⁶⁴

The Lesotho Communications Authority and the CBL signed an MOU in terms of how they regulate the mobile money services in Lesotho.¹⁰⁶⁵ The terms of this MOU are not available, but the regulations and *The Payment Systems Act*¹⁰⁶⁶ permit the CBL to have some investigative powers to monitor that payment systems of the mobile money service providers are reliable, sound and efficient.¹⁰⁶⁷ This means that the CBL has power to visit institutions, specifically the MNOs that are regulated by the LCA. These powers of the Central Bank also include conducting a special audit at the premises of the MNOs with the intention of protecting customers.¹⁰⁶⁸

In inspecting and auditing the premises of the MNOs, the CBL will be, amongst others, ensuring that there are customer protection measures in place. These customer protection measures include a duty to ensure that in conducting its business, adherence to consumer protection laws is observed. The duty also includes ensuring that an issuer operates safely, that information of customers is kept private, that its services are reliable and of good quality, ensuring transparency of products and services, responding promptly to customer queries, enquiries, complaints, refunds and any call to resolve disputes.¹⁰⁶⁹ An issuer of electronic payment instruments licensed to issue e-money is also under an

¹⁰⁶³ See section 24 (2) of the Payment Systems Regulations.

¹⁰⁶⁴ For instance, section 25 (1) of the Payment Systems Regulations puts an obligation on the issuer of electronic payments instruments to treat electronic payments instruments as dormant in its books, if such electronic payments instruments account has not been in operation for a period of up to two years. The whole of section 25 gives a clear direction as to how such unclaimed funds must be treated in order to curb money laundering issues.

¹⁰⁶⁵ Unknown 2018 https://www.afi-global.org/sites/default/files/publications/2018-08/AFI_Lesotho_Report_AW_digital.pdf.

¹⁰⁶⁶ *Payment Systems Act* 11 of 2014.

¹⁰⁶⁷ See section 16 of the *Payment Systems Act*. In terms of sections 27 and 28 of the Payment Systems Regulations, In order for the CBL to exercise these investigative powers, it may inspect the premises of an issuer of electronic payments instruments and those of its agents. The CBL may again request an issuer of electronic payments instruments and its agents to produce books of accounts, trust accounts and any other necessary documentation for inspection at any time. This may include requesting any information, by notice, in a manner needed by the CBL.

¹⁰⁶⁸ See section 28 of the Payments Systems Regulations.

¹⁰⁶⁹ Section 33 (1) (a) of the Payment Systems Regulations.

obligation to undertake customer due diligence on potential merchants applying to take part and be involved in its scheme and also observe KYC rules and procedures.¹⁰⁷⁰

5.4 Regional institutional framework for mobile money

Through its National Payment Systems Division,¹⁰⁷¹ the CBL has membership in the Payment Systems Oversight Committee¹⁰⁷² of the SADC, and the Payment System Subcommittee of the SADC.¹⁰⁷³ The CBL is a member of these committees to advance the objectives of the 2006 SADC Protocol on Finance and Investment.¹⁰⁷⁴

The responsibilities vested in the Payment Systems Oversight Committee of the SADC include, but are not limited to, overseeing the SADC Integrated Regional Electronic Settlement System¹⁰⁷⁵ and guiding the development of integrated Regional Payment Systems.¹⁰⁷⁶ One of the responsibilities vested in the SADC PSOC is to align the legal and regulatory frameworks of the payment, clearing and settlement systems of member states. The SADC PSOC reports to the committee of Central Bank Governors of the SADC.¹⁰⁷⁷

As a result of these SADC Committees mentioned above, the SADC PSOC drafted the Payment Systems Model Law of the SADC and the SADC Mobile Money Guidelines with

¹⁰⁷⁰ Section 38 (b) and (c) of the Payment Systems Regulations.

¹⁰⁷¹ Hereinafter referred to as the CBL NPSD.

¹⁰⁷² Hereinafter referred to as the SADC PSOC.

¹⁰⁷³ Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

¹⁰⁷⁴ This Protocol was signed by members on 18 August 2006 and its date of entry into force was 16 April 2010 in Maseru Lesotho. It is available at https://www.sadc.int/files/4213/5332/6872/Protocol_on_Finance__Investment2006.pdf. Also see Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

¹⁰⁷⁵ Hereinafter referred to as the SADC IRESS.

¹⁰⁷⁶ Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

¹⁰⁷⁷ Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74. The SADC Central Bank Governors' Committee is responsible for responding to a necessity for a specialised body that enable close cooperation in the Central Banks of SADC Member countries. The Committee is made up of governors of each member country, and its responsibility is to promote the growth and development of financial institutions and markets through cooperation and consensus on financial, investment, and foreign exchange policies. See SADC 2012 <https://www.sadc.int/themes/economic-development/finance/banking/>.

the help of the SADC Legal Sub-committee.¹⁰⁷⁸ This, therefore, mandates the member countries to ensure that their payment systems laws and mobile money laws are aligned to the SADC model laws and mobile money guidelines.¹⁰⁷⁹

5.4.1 The SADC Mobile Money Guidelines¹⁰⁸⁰

5.4.1.1 Introduction

Annexure 6, Article 4 of the *SADC Protocol on Finance and Investment* is specifically about cooperation and coordination among the Central Banks of the SADC member countries in relation to issues, such as payment systems, clearing systems, as well as the settlement systems in order to merge those payment systems.¹⁰⁸¹ Against this, the SADC legal and payment sub-committees of the Committee of the Central Bank Governors commissioned a review in 2014 with the aim of assessing the laws, regulations, guidelines, , as well as guidance notes that apply to the national payment systems of each of the SADC member states.¹⁰⁸²

After this review was conducted, it was noted that the statutory requirements that regulate mobile money in different SADC member states is very different in many aspects. These different aspects include those relating to how mobile money is defined, whether mobile money includes and is about deposit taking or not, conditions for authorisation, initial capital, own funds, as well as safeguarding requirements.¹⁰⁸³

¹⁰⁷⁸ Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

¹⁰⁷⁹ Sekants'i and Lechesa 2018 *Journal of Payment Strategy and Systems* 74.

¹⁰⁸⁰ SADC Mobile Money Guidelines of 31 March 2016, available at <https://www.finmark.org.za/wp-content/uploads/.../sadc-mobile-money-guidelines.pdf>.

¹⁰⁸¹ See the SADC Protocol on Finance and Investment available at https://www.sadc.int/files/4213/5332/6872/Protocol_on_Finance__Investment2006.pdf.

¹⁰⁸² SADC Mobile Money Guidelines 2016 <https://www.finmark.org.za/wp-content/uploads/.../sadc-mobile-money-guidelines.pdf>.

¹⁰⁸³ SADC Mobile Money Guidelines 2016 <https://www.finmark.org.za/wp-content/uploads/.../sadc-mobile-money-guidelines.pdf>.

Recommendations were made, and the Committee of the Central Bank Governors' legal and payments sub-committee adopted such recommendations.¹⁰⁸⁴ The recommendations were to the effect that all the Central Banks in the region of the SADC be assisted in adopting a consolidated approach to mobile money, that an in-depth study on the concept of mobile money in the SADC should be undertaken, which study should culminate in the drafting of the mobile money guidelines for the region of the SADC.¹⁰⁸⁵

5.4.1.2 Objectives of the Guidelines

The Guidelines were implemented with the aim of assisting the member countries of the SADC with the principles that enable the harmonisation of the member states' legal and regulatory frameworks for mobile money, and to give support for better financial inclusion and market growth in the SADC region.

These Guidelines provide guidance on different aspects in order to help the Central Banks¹⁰⁸⁶ of the member states to align their laws with the Guidelines. For instance, guidance is provided on the requirements for licensing mobile money providers,¹⁰⁸⁷ how the law should be drafted to regulate issues of customer protection, how unclaimed and dormant funds should be regulated, and also that the guidelines recognise the fact that agents are important in the provision of mobile money services. As a result, there is a provision in the Guidelines regarding how the wording of the law dealing with the issue of agents should be drafted. There are also sections in the Guidelines that give guidance in terms of how issues, such as customer protection and education, and the role of the

¹⁰⁸⁴ SADC Mobile Money Guidelines 2016 <https://www.finmark.org.za/wp-content/uploads/.../sadc-mobile-money-guidelines.pdf>.

¹⁰⁸⁵ SADC Mobile Money Guidelines 2016 <https://www.finmark.org.za/wp-content/uploads/.../sadc-mobile-money-guidelines.pdf>.

¹⁰⁸⁶ In terms of the Guidelines, the Central Bank refers to a central bank of a SADC Member Country that is established in terms of the laws of that particular SADC Member Country. See Article 4 of the SADC Mobile Money Guidelines.

¹⁰⁸⁷ Article 6 of the SADC Mobile Money Guidelines gives clear guidance as to how the Central Bank may handle this issue of licensing. It shows that the Central Bank has got some licensing authority over the mobile money service providers. This licensing authority also includes stating the requirements for applying for that license. See article 7 of the Guidelines. The Guidelines also state that Central Banks have powers to state conditions of the licenses, as well as power to give opportunity for appeal where an application for license was rejected.

stakeholders involved in the provision of mobile money services must be drafted. The Guidelines also provide that the telecommunications regulator must be consulted when drafting the mobile money framework.¹⁰⁸⁸

5.5 Lesotho's AML/CFT legal regulatory framework

Lesotho is one of the countries that has made a commitment to comply with money laundering laws.¹⁰⁸⁹ In an effort to combat money laundering and terrorist financing crimes in Lesotho, an institution and a juristic person known as the Financial Intelligence Unit¹⁰⁹⁰ has been established.¹⁰⁹¹ The FIU's responsibilities include working with the law enforcement agencies, such as the Directorate on Corruption and Economic Offences,¹⁰⁹²

¹⁰⁸⁸ See Article 5.2 Guiding Principles of the *SADC Mobile Money Guidelines*. In terms of protecting funds of the customers, the Guidelines give a very clear explanation and rationale behind protecting customers and their funds and how that protection is done is clearly summarized as follows: "Customer protection measures entail safeguarding the customer funds. In most instances customer funds are safeguarded by imposing restrictions on the use of customer funds by the MMSP and isolating funds from institutional risks. In addition, the customer must be protected against the event of insolvency by the MMSP's. The risk of Mobile Money customers losing their money is generally mitigated if: (i) a requirement on the MMSP for initial capital combined with ongoing capital to ensure appropriate level of consumer protection, and sound and prudent operation of an MMSP. The essence of maintaining minimum capital is to protect against credit risk and associated insolvency; (ii) 100% of the cash backing Mobile Money, held in a fully prudentially regulated institution, such as a bank; most Central Banks require that the cash be held in a registered bank in a "Trust Account"; (iii) Customer funds isolated from the issuer's funds (via the Trust Account) and protected from claims by the issuer's creditors, protection against insolvency. The isolation of funds also protects against credit risk and insolvency. The initial and continuing capital requirement and is supplemented by the ring fencing of the funds in addressing customer protection, accordingly Central Banks must be cognisant not to set out stringent capital requirements that may restrict participation by prospective MMSP." See *SADC Mobile Money Guidelines* 2016 <https://www.finmark.org.za/wp-content/uploads/.../sadc-mobile-money-guidelines.pdf>.

¹⁰⁸⁹ Lesotho Risk and Compliance Report 2017
http://www.knowyourcountry.info/files/lesothoamlaug14_1.pdf.

¹⁰⁹⁰ Hereinafter referred to as the FIU.

¹⁰⁹¹ The FIU is established by section 14 of the *Money Laundering and Proceeds of Crimes Act* 4 of 2008 (Hereinafter referred to as the *MLPCA*) as amended by section 8 of the *Money Laundering and Proceeds of Crimes (amendment) Act* 7 of 2016 (Hereinafter referred to as the *MLPC Amendment Act* 2016).

¹⁰⁹² Hereinafter referred to as the DCEO. This is established under section 3 of the *Prevention of Corruption and Economic Offences Act* 5 of 1999. One of its functions is to "assist any law enforcement agency of the Government in the investigation of offences involving dishonesty or cheating of the public" See section 6 of the Act. Section 11 of the *MPPC (Amendment) Act* 2016 establishes the DCEO, LRA, and the LMPS as the Competent Authorities to deal with money laundering cases.

the Lesotho Revenue Authority,¹⁰⁹³ the Lesotho Mounted Police Service¹⁰⁹⁴ and the Central Bank of Lesotho¹⁰⁹⁵ to request, receive, analyse and disseminate information relating to suspicious and alleged money laundering and terrorist financing crimes with the intention of combating such crimes.¹⁰⁹⁶

One of the functions of the FIU is to receive reports from accountable institutions, such as banks, insurance companies, and micro-finance institutions about their clients and to distribute such reports and information received to law enforcement agencies, such as the police to deal with the suspects.¹⁰⁹⁷ The FIU sends this information or the reports to the law enforcement agencies where, after analysing the information it received from the accountable institutions, it forms an opinion that there is money laundering or terrorist financing activity involved.¹⁰⁹⁸

Some acts, regulations and guidelines used by the FIU in discharging all its functions are *Money Laundering & Proceeds of Crime Regulations 51 of 2017*, *Money Laundering and Proceeds of Crime (Amendment) Act 7 of 2016*, *Money Laundering (Politically Exposed Persons) Guidelines 152 of 2015*, *Money Laundering (Accountable Institutions) Guidelines 2013*, and *Money Laundering and Proceeds of Crime Act 4 of 2008*.

¹⁰⁹³ Hereinafter referred to as the LRA. The LRA was established by *the Lesotho Revenue Authority Act 14 of 2001*. One of its functions is to maintain the highest standards of financial integrity in Lesotho and through this function they ensure that tax is paid on all goods except money derived from illegal goods and dealings of money laundering.

¹⁰⁹⁴ Hereinafter referred to as the LMPS. The LMPS's role is to bring suspected money launderers before the law to be prosecuted.

¹⁰⁹⁵ Hereinafter referred to as the CBL. One of the functions of the CBL in terms of section 6 of the *Central Bank of Lesotho Act 2 of 2000* is "to promote the safe and sound development of the financial system."

¹⁰⁹⁶ See FIU 2018 <http://www.fiu.org.ls/aboutUs/overview.php>; See also section 15 of the *MLPCA*

¹⁰⁹⁷ FIU 2018 <http://www.fiu.org.ls/aboutUs/overview.php>.

¹⁰⁹⁸ FIU 2018 <http://www.fiu.org.ls/aboutUs/overview.php>.

5.5.1 *The Money Laundering and Proceeds of Crimes Act 4 of 2008*¹⁰⁹⁹

The primary AML/CFT piece of legislation in place in Lesotho is the *Money Laundering and Proceeds of Crime Act 4 of 2008*. Prior to 2008, before the Financial Intelligence Unit was established in Lesotho, the piece of legislation that was used for regulating AML/CFT was the *Financial Institutions (Anti-Money Laundering) Guidelines*.¹¹⁰⁰ These Guidelines were issued by the Central Bank of Lesotho under section 71 of the *Financial Institutions Act of 1999*.¹¹⁰¹ The purpose of the Act is also to put an obligation on all the accountable institutions in Lesotho to help to combat money laundering by taking all the prudential measures necessary.¹¹⁰²

The MLPCA has established the Competent Authorities¹¹⁰³ and the Financial Intelligence Unit¹¹⁰⁴ whose functions are to prevent, prosecute and investigate matters relating to money laundering and terrorist finance.¹¹⁰⁵ The Act also imposes a duty on accountable institutions¹¹⁰⁶ to do the following: to verify the identity of their customers,¹¹⁰⁷ to establish

¹⁰⁹⁹ The MLPCA will be used interchangeably with the MLPC (Amendment) Act 2016 when discussing the AML/CFT framework in Lesotho.

¹¹⁰⁰ *Financial Institutions (Anti-Money Laundering) Guidelines* Legal Notice 199 of 2000.

¹¹⁰¹ *Financial Institutions Act 6 of 1999*. This Act was repealed in 2012 by the *Financial Institutions Act 3 of 2012*.

¹¹⁰² In terms of the preamble of this Act, its purpose is to establish an Anti-Money Laundering Authority and the FIU in order to identify, trace, seize and confiscate any unlawful proceeds of serious crimes.
¹¹⁰³ Section 3 of the Amendment Act defines these competent authorities as the LMPS, LRA and DCEO.

¹¹⁰⁴ The FIU is also established in terms of the Act and it is responsible for many aspects related to fighting money laundering, such as to receive, request, analyse and disseminate information to investigatory authorities. It is also responsible for receiving, analysing and assessing the suspicious reports that accountable institutions must send to the FIU.

¹¹⁰⁵ These institutions are established in terms of sections 5 of the MLPC (Amendment) Act 2016. Section 3 of the Amendment Act also defines these competent authorities as the LMPS, LRA and DCEO.

¹¹⁰⁶ Accountable institutions are defined in section 2 and schedule 1 of the MLPCA.

¹¹⁰⁷ In terms of Section 16 (1) (a) of the MLPCA and section 11 (a) (ii) of the MLPC (Amendment) Act 2016, Accountable Institutions must perform Customer Due Diligence measures prior to or during the process of: establishing a business relationship; when an occasional wire transfer transaction is carried out; and whenever an occasional transaction above the designated threshold is carried out.

and maintain their customer records,¹¹⁰⁸ to report any suspicious transactions,¹¹⁰⁹ and to establish and maintain internal reporting procedures.¹¹¹⁰ Lastly, accountable institutions are mandated by the Act to establish money laundering offences and also to establish terrorist financing offences.¹¹¹¹

5.6 Conclusion

In this chapter, the focus was mainly on the AML regulatory framework of Lesotho, as well as the framework of mobile money in Lesotho. The SADC mobile money framework was also discussed, in particular the SADC Mobile Money Guidelines. Having discussed the concept of mobile money, as well as the crime of money laundering in previous chapters, the aim of this chapter was to discuss and determine how mobile money is regulated in Lesotho.

As a point of departure, the brief background on the law and the legal systems of Lesotho was discussed to see the sources of law in Lesotho. As discussed, it was learnt that among many sources of law in Lesotho, international law forms part of the sources of law in Lesotho. This is why the regional mobile money framework in the form of the SADC

¹¹⁰⁸ This requires Accountable Institutions to keep up-to-date and relevant, all data, documents or information collected under the CDD process. This should be done by reviewing the records in the accountable institution's possession, high risk clients' records in particular. Accountable institution must also keep, in the true name of the account holder, all customer accounts it has in its possession. See Section 12 (b) (1A) (a) of the MLPC (Amendment) Act 2016.

¹¹⁰⁹ This duty is imposed in terms of 18 (1) of the MLPCA and section 13 (a) of the MLPC (Amendment) Act 2016. Accountable Institutions have to report any transaction or attempted transaction if there are reasonable grounds to suspect that such a transaction or attempted transaction is linked to a serious offense or a terrorist financing crime. The duty of the accountable institution is to report such a suspicious transaction or attempted transaction within the prescribed period after forming the suspicion. In terms of section 19 of the *Money Laundering (Accountable Institutions) Guidelines* 2013 as amended by section 2 of the *Money Laundering (Accountable Institutions) (Amendment) Guidelines* 2014, reporting of suspicious transactions to the Unit must be done "immediately after forming the suspicion, and in any case, not later than 7 days."

¹¹¹⁰ In terms of section 19 (2) of the MLPC (Amendment) Act 2016, people identified as persons to whom employees will report suspicious information must be senior officers who hold relevant qualifications and relevant experience that is necessary to assist and allow them to respond well and sufficiently to queries about the financial institution and how it conducts its business.

¹¹¹¹ Money Laundering was defined clearly in chapter 2 of this research by different writers. Section 25 (1) of the MLPCA amended and replaced by section 20 of the MLPC (Amendment) Act 2016 also gives a detailed definition of money laundering and clearly explains how a money laundering offence is committed.

Mobile Money Guidelines was discussed, as Lesotho is a member of the SADC and the SADC member states are encouraged to align their mobile money laws to the SADC Mobile Money Guidelines.

As discussed in this chapter and in previous chapters, mobile money services were introduced in Lesotho in 2012, and shortly thereafter the CBL introduced the *Mobile Money Guidelines in 2013*. This was done to address the shortcomings in the regulatory environment of mobile money services in Lesotho. To tighten the regulation of mobile money services in Lesotho, the Lesotho parliament enacted the *Payment Systems (Issuers of Electronic Payments Instruments) Regulations in 2017*. The intention or objective of these Regulations is to regulate the provision of licensing and overseeing all issuers of electronic payments instruments, including issuers of mobile money.

It was further established in this chapter that the Financial Intelligence Unit works with other competent authorities, such as the Lesotho Revenue Authority and the Directorate on Corruption and Economic Offenses to fight money laundering in Lesotho. These competent authorities derive power from the *Money Laundering and Proceeds of Crimes Act and its 2016 Amendment Act*.

Chapter 6

Comparative study of Lesotho's mobile money and money laundering legal regulatory framework with those of other African countries

6.1 Introduction

In this chapter, the focus will be on drawing lessons for Lesotho's mobile money regulatory framework and the regulatory framework of money laundering from other African countries. In Chapter 4, the focus was on the best practices of mobile money services and money laundering practices in some selected African countries. As previously stated in that chapter, the aim was to see how mobile money services are provided and regulated in different African countries and how mobile money services play a role in promoting financial inclusion.

The objective of Chapter 4 was further to determine the measures employed in different African countries to help promote financial inclusion while fighting the crime of money laundering. This discussion was followed by Chapter 5 in which the focus was mainly on two issues, namely the regulatory framework of money laundering in Lesotho, as well as the mobile money regulatory framework in Lesotho. Having discussed what other African countries do in as far as mobile money and money laundering are concerned, the aim in Chapter 5 was to establish how Lesotho regulates mobile money and issues of money laundering.

Having discussed Chapter 4 and Chapter 5, and with the main objectives and the research question of this research raised in Chapter 1 in mind, the main aim of this chapter is to identify lessons, if any, that may be learned for Lesotho in as far as provision of mobile money services and regulation and fighting of money laundering are concerned. There will be an analysis of the two frameworks of Lesotho that were discussed in Chapter 5. Thereafter, based on the discussions in Chapter 4, Chapter 5 and discussions to be made in this chapter, recommendations will be made for Lesotho.

As shown in Chapter 1 and previous chapters of this research, mobile money services promote financial inclusion in many emerging markets.¹¹¹² Most people own mobile phones, but most people do not have access to financial services provided by formal financial institutions, such as banks. While mobile money is a safe, convenient, and efficient way of transferring money for the unserved and the underserved population in many countries, studies have shown that enabling regulation¹¹¹³ is key to the success of mobile money services.¹¹¹⁴

It is said that regulation that is enabling has the capacity to influence the outcome of markets, may also help in driving the adoption of mobile money and increase the mobile money transaction volumes.¹¹¹⁵ It is further said that the most successful mobile money service providers operate in markets that have enabling regulation.¹¹¹⁶

Regulation has been categorised as either enabling or non-enabling.¹¹¹⁷ The GSMA has developed a tool that assesses the effectiveness of regulation in different countries to establish which of those regulations create enabling environments for the successful

¹¹¹² Kersop & Du Toit 2015 *Potchefstroom Electronic Law Journal* 1604.

¹¹¹³ Bahia and Muthiora have the following to say about an enabling regulatory framework: "An enabling regulatory framework can be understood as a set of regulations which allow for the development of scalable and responsible mobile money businesses that can sustainably reach the underserved and foster digital financial inclusion." See Bahia and Muthiora *The Mobile Money Regulatory Index* 6. For a detailed and clear discussion on what enabling regulation entails as well as principles of enabling regulation, see Office for Nuclear Regulation 2018 available at <http://www.onr.org.uk/documents/2018/guide-to-enabling-regulation-in-practice.pdf> page 4.

¹¹¹⁴ Tagoe 2016 *Journal of Business & Financial Affairs* 1; Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 4.

¹¹¹⁵ Muthiora 2018 <https://www.gsma.com/mobilefordevelopment/uncategorized/introducing-the-mobile-money-regulatory-index-an-interactive-tool-to-measure-the-effectiveness-of-mobile-money-regulatory-frameworks/> Page 18.

¹¹¹⁶ This is so because regulation that is not enabling can bring about many disadvantages including stifling investment, high costs for consumers, and limit the rollout of new services, to mention a few. See Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 16; Also see Muthiora 2018 <https://www.gsma.com/mobilefordevelopment/uncategorized/introducing-the-mobile-money-regulatory-index-an-interactive-tool-to-measure-the-effectiveness-of-mobile-money-regulatory-frameworks/> page 18.

¹¹¹⁷ See Bahia and Muthiora *The Mobile Money Regulatory Index* 6.

operation of mobile money services.¹¹¹⁸ The result of this GSMA study was coming up with what is called a mobile money regulatory index.

According to Muthiora, the “mobile money regulatory index focusses on the indicators that have the most profound impact on the development of scalable and responsible mobile money businesses that can sustainably reach the underserved and foster digital financial inclusion.”¹¹¹⁹ Indicators here refer to those aspects that are present in regulation that have the effect of allowing mobile money services to succeed in order to reach the underserved population and to promote financial inclusion. The Mobile Money Regulatory Index is an interactive tool that is used in measuring the effectiveness of different mobile money regulatory frameworks of different countries.¹¹²⁰ The index, therefore, analyses six broad regulatory enablers, namely authorisation, consumer protection, transaction limits, KYC, agent networks and investment and infrastructure environment. These six enablers are key facets of regulations.¹¹²¹

This chapter will, therefore, be structured as follows: in the first part of the chapter, the findings of the mobile money regulatory index will be discussed. In the second part of the chapter, an analysis of Lesotho’s mobile money and money laundering frameworks will be undertaken. This analysis will highlight the strong points and weaknesses in the frameworks of Lesotho. This will also be done by highlighting the good, as well as the bad practices of African countries discussed earlier. Thirdly, how those weaknesses will be addressed, based on what is practised in other African countries, as well as what is discussed in the mobile money regulatory index, will be examined. In the fourth and final

¹¹¹⁸ Bahia and Muthiora *The Mobile Money Regulatory Index*; Muthiora 2018 <https://www.gsma.com/mobilefordevelopment/uncategorized/introducing-the-mobile-money-regulatory-index-an-interactive-tool-to-measure-the-effectiveness-of-mobile-money-regulatory-frameworks/>.

¹¹¹⁹ Muthiora 2018 <https://www.gsma.com/mobilefordevelopment/uncategorized/introducing-the-mobile-money-regulatory-index-an-interactive-tool-to-measure-the-effectiveness-of-mobile-money-regulatory-frameworks/>.

¹¹²⁰ Bahia and Muthiora *The Mobile Money Regulatory Index 2*.

¹¹²¹ Each enabler is assessed according to the role it plays in shaping markets where mobile money services can succeed. See Bahia and Muthiora *The Mobile Money Regulatory Index 7*; Muthiora 2018 <https://www.gsma.com/mobilefordevelopment/uncategorized/introducing-the-mobile-money-regulatory-index-an-interactive-tool-to-measure-the-effectiveness-of-mobile-money-regulatory-frameworks/>.

part of the chapter, a conclusion and recommendations based on all the discussion in the whole chapter will be presented.

6.2 The mobile money regulatory index

The mobile money regulatory index conducts an analysis of regulation. The focus is solely on the six facets of regulation that are used in defining enabling regulation to identify indicators having a major impact on establishing enabling regulatory environments. This index provides policy makers and regulators with a truthful and deep understanding of policy areas where focus areas are required to permit development of mobile money services and how they are used.¹¹²²

The index strives to come up with objective indicators of a regulatory framework that are comparable across countries and that can be justified against written mobile money regulation.¹¹²³ This is done in order to prevent duplication with other indices and financial inclusion initiatives and also to give policy makers and regulators precise guidelines to come up with enabling regulation.¹¹²⁴

6.2.1 The six facets of regulation

6.2.1.1 Authorisation

Authorisation, as a facet of regulation, is used in examining eligibility criteria in an effort to give mobile money services appropriate authorisation instruments, such as legislation,

¹¹²² Bahia and Muthiora *The Mobile Money Regulatory Index* 6.

¹¹²³ See Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 4; Bahia and Muthiora *The Mobile Money Regulatory Index* 7.

¹¹²⁴ Bahia and Muthiora *The Mobile Money Regulatory Index* 7. Bahia and Muthiora aptly put this point as follows: "It is widely acknowledged that regulation has a material impact on mobile money adoption and usage. Regulation affects the ease with which new customers can enroll in a mobile money service and the range of services offered, from person-to-person transfer to bill payments, merchant payments, and international remittances, among others. Evidence demonstrates that regulators can be catalysts for increased financial inclusion by adopting policies and regulations that enable greater and easier access to basic financial services."

regulation, guidelines and circulars, and the proportionality of capital requirements.¹¹²⁵ It is used to determine whether a clear legal framework for the provision of mobile money services exists, and also measures the extent of flexibility faced by mobile money services providers along with the proportionality of capital requirements.¹¹²⁶

Authorisation is key in determining the eligibility criteria for non-bank mobile money providers.¹¹²⁷ The top-ten countries¹¹²⁸ that fall under authorisation share a similar process that enables regulations for wide consultation with the stakeholders in the industry to be developed.¹¹²⁹ The authorisation requirements of these countries favour the non-bank institutions, as well as the mobile network operators that need to be licensed to provide mobile money services, even though the capital requirements of these countries are non-prohibitive.¹¹³⁰

An analysis of authorisation also revealed five broad models for authorisation of mobile money business. These broad models or categories are discussed next.

The first model for authorisation is direct authorisation or licensing of banks and non-bank institutions, as well as the MNOs. Under this model, countries that allow non-bank institutions to provide mobile money services in partnership with a well-regulated financial institution whose role in the service is not only to keep funds safely are included.¹¹³¹

¹¹²⁵ Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹²⁶ GSMA 2018 https://www.gsma.com/mobilemoneymetrics/assets/data/MMRI_Methodology.pdf page 4. According to Bahia and Muthiora, an analysis of the mobile money regulatory index made on all facets of regulation show that Authorization is weighted at 30 percent, which is the highest. See Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹²⁷ Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹²⁸ These top-ten countries are Kenya, Malawi, Cambodia, Vietnam, Rwanda, Zimbabwe, Seychelles, Malaysia, Romania and Jordan.

¹¹²⁹ Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹³⁰ Naghavi and Shulist *Success factors for mobile money services* 20; Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹³¹ Countries that practice this include Uganda and Egypt. See Bahia and Muthiora *The Mobile Money Regulatory Index* 10. Evans and Pirchio 2015 *Coase-Sandor Working Paper Series in Law and Economics* 4.

The second category or model deals with authorisation or licensing of institutions that are formed for a specific or special purpose which is to engage in mobile money business or issue electronic money.¹¹³²

The third category is authorisation or licensing of differentiated or narrow banks permitted to take deposits from the public and undertake payment-related services, but not allowed to offer any loans or advances whatsoever to the public.¹¹³³

The fourth model is not favourable to the MNOs willing to provide mobile money services. It only authorises and licenses banks and non-bank institutions, not the MNOs that want to be involved in the provision of mobile money services.¹¹³⁴

The fifth model is licensing and authorisation that is also restrictive and unfavourable for non-banking firms willing to provide mobile money services, as it only licenses prudentially regulated financial firms to provide payments services, as well as to issue of electronic money.¹¹³⁵

In terms of the mobile money regulatory index, it is found that countries that go through frequent reforms of the regulations obtain higher scores as opposed to those countries whose first iterations are still used.¹¹³⁶ These are countries that are flexible when dealing with regulatory changes, such as Rwanda that has had four regulatory instruments in the last ten years.¹¹³⁷ It is said that regulation must adapt to changing dynamics just as mobile

¹¹³² These countries include Ghana, Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹³³ Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹³⁴ This model is available in Nigeria. See Yakub, Bello and Adenuga 2013 *International Journal of Economics and Management Sciences* 102; Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹³⁵ Naghavi and Shulist have the following to say: "The GSMA defines an "enabling regulatory approach" for mobile money as one where the rules set by the regulator Permit non-banks to issue electronic money (or equivalent) by permitting them to be licensed directly, OR arrange a subsidiary for this business, OR apply for a payments bank license, OR provide the mobile money service under a letter of no-objection to the non-bank institution or its partner bank, while awaiting to obtain the approval of a certain regulation." See Naghavi and Shulist *Success factors for mobile money services* 20; Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹³⁶ Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹³⁷ Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

money providers must adapt to innovation, introduction of new and modern technologies, consumer needs and demands, as well as business models.¹¹³⁸

In terms of the index, the analysis reveals that most countries having high rates of mobile money adoption also have high index scores, and this shows that there is progress in the regulator, ensuring an enabling environment for mobile money services.¹¹³⁹ An analysis reveals that under the authorisation dimension, the majority of the countries are weighed down because the minimum capital requirements set for mobile money service providers are high and not proportional to the minimum capital requirements set for the commercial banks having higher risk profiles than mobile money service providers.¹¹⁴⁰ The regulatory model adopted in a particular country determines the level at which the initial capital is set.¹¹⁴¹

Analysis also shows that some countries do not have initial capital requirements at all, while some countries have set the capital requirements at very low levels.¹¹⁴² This is advantageous for the mobile money providers because there is no capital burden.¹¹⁴³ However, where capital requirements are set, an advantage is that operational costs are covered, and there are enough assets to cater for the customers' claims if the mobile money service provider goes insolvent.¹¹⁴⁴ Capital requirements must therefore be proportional to the low-value and low-risk nature of mobile money services.¹¹⁴⁵

¹¹³⁸ Bahia and Muthiora *The Mobile Money Regulatory Index* 10; Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 5; Naghavi and Shulist *Success factors for mobile money services* 13.

¹¹³⁹ Bahia and Muthiora *The Mobile Money Regulatory Index* 9.

¹¹⁴⁰ Naghavi and Shulist have the following to say: "The GSMA defines an "enabling regulatory approach" for mobile money as one in which the rules established by the regulator imposes initial and ongoing capital requirements that are proportional to the risks of the e-money business." See Naghavi and Shulist *Success factors for mobile money services* 20; Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹⁴¹ Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹⁴² Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹⁴³ Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹⁴⁴ That is why Naghavi and Shulist say that enabling regulation imposes capital requirements that are proportional to the business. See Naghavi and Shulist *Success factors for mobile money services* 20; Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹⁴⁵ Naghavi and Shulist *Success factors for mobile money services* 20; Bahia and Muthiora *The Mobile Money Regulatory Index* 7.

6.2.1.2 Consumer protection

Consumer protection is about the protection of mobile money customers in general.¹¹⁴⁶ This involves the level with which customer funds are protected by the mobile money service provider, as well as whether any rules exist that are intended to offer protection to the mobile money customers.¹¹⁴⁷ It is essentially about measuring the level with which guidance is given to protection of customers under mobile money regulation. In terms of the analysis of the mobile money regulatory index, some countries score highest under customer protection dimension.¹¹⁴⁸

In most countries, there are clear rules making it mandatory for mobile money service providers to disclose prices, as well as the terms and conditions of the mobile money service.¹¹⁴⁹ The rules further require mobile money providers to have clear procedures for customers on important issues, such as dispute resolution, as well as complaints handling procedures.¹¹⁵⁰ Some countries have provisions in their legislation requiring deposit insurance to be extended to mobile money accounts.¹¹⁵¹

¹¹⁴⁶ Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 5; see also Bahia and Muthiora *The Mobile Money Regulatory Index* 12.

¹¹⁴⁷ Gutierrez and Singh state that the customer protection element is important because it encourages customers to accept any new product and it will also assure customers that they are protected against fraud and abuse. See Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 5; GSMA 2018 https://www.gsma.com/mobilemoneymetrics/assets/data/MMRI_Methodology.pdf page 4.

¹¹⁴⁸ These countries include Kenya, Nigeria, Ghana, Rwanda and Gambia. See Bahia and Muthiora *The Mobile Money Regulatory Index* 12.

¹¹⁴⁹ For instance, section 12 (b) of the *Bank of Uganda Mobile Money Guidelines*, 2013 stipulate that: “At mobile money account opening, the consumer shall obtain a copy of the agreement with the service provider. The agreement shall be explained by the agent clearly and in plain language. The terms and conditions provided by the mobile money service provider shall highlight to the consumer the relevant fees, charges, penalties and any other consumer liabilities or obligations in the use of mobile money services...” Also see section 37 of the Malawi *Consumer Protection Act* 14 of 2003 which is applicable.

¹¹⁵⁰ Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 5; This is further provided for under the *SADC Mobile Money Guidelines* and Lesotho also has provisions under the *Payments Systems (Issuers of Electronic Payments Instruments) Regulations* 2017 clearly addressing it. Section 32 and 33 of the *Payment Systems Regulations* and section 16 of the *SADC Mobile Money Guidelines*. Also see Bahia and Muthiora *The Mobile Money Regulatory Index* 12.

¹¹⁵¹ These countries are Kenya, Gambia, Rwanda, Colombia, Ghana, Nigeria and India. See Bahia and Muthiora *The Mobile Money Regulatory Index* 12.

6.2.1.3 Transaction limits

Transaction limits are about determining the extent to which mobile money providers are flexible when it comes to fulfilling customer needs and requirements regarding mobile money transactional limits.¹¹⁵² It basically deals with “proportionality of account balance and transaction limits (entry-level and ceiling).”¹¹⁵³

Transaction limits are there to mitigate the risk of money laundering.¹¹⁵⁴ This is where the risk-based approach to KYC is adopted whereby some accounts that are considered to be of low risk have lower balances and transactional limits than others and are also not required to go through strict due diligence requirements because they are not considered to be a high money laundering risk. The top tier account holders, on the other hand, who are a higher risk, are still allowed to have higher balances and transaction limits, though they are not substitutes for traditional banks.¹¹⁵⁵

After registering for a mobile money account, being able to make a mobile money transaction is considered to be a key facilitator for using a mobile money service.¹¹⁵⁶ Regulators must, therefore, be careful and set single account and transaction limits at reasonable levels for customers to avoid leading customers to resort to cash transactions and the informal economy.¹¹⁵⁷ This usually happens where customers have modest single

¹¹⁵² GSMA 2018 https://www.gsma.com/mobilemoneymetrics/assets/data/MMRI_Methodology.pdf page 4.

¹¹⁵³ Bahia and Muthiora *The Mobile Money Regulatory Index* 12.

¹¹⁵⁴ Bahia and Muthiora *The Mobile Money Regulatory Index* 12. Also see Article 10.2 of the *SADC Mobile Money Guidelines*.

¹¹⁵⁵ According to Bahia and Muthiora, Regulators mostly implement any of the following to manage the issue of transactional limits: “(a) Limits on individual transactions and/or the number of transactions in a specific time period (e.g. per day); Limits on the total transaction value over a given period (usually per month, but in some instances per day or year); Limits on mobile money balances; and Limits are determined or authorised for each licensed provider by the Central Bank, monitoring them regularly. There are no prescriptive transaction limits in the regulations. Some regulators apply a combination of transaction limits (e.g. on both single transactions and on the total monthly value).” See Bahia and Muthiora *The Mobile Money Regulatory Index* 12.

¹¹⁵⁶ Bahia and Muthiora *The Mobile Money Regulatory Index* 12.

¹¹⁵⁷ Bahia and Muthiora *The Mobile Money Regulatory Index* 12.

account or monthly transaction limits that may make them end up feeling inhibited from making full use of the mobile money service.¹¹⁵⁸

6.2.1.4 Know Your Customer (KYC)

This facet of regulation measures whether the KYC requirements of countries, their reporting obligations to the AML/CFT, their acceptable identification requirements and how regulators in each country give guidance on identification requirements are proportional.¹¹⁵⁹

KYC is about processes and procedures used on mobile money service providers' customers to conduct due diligence.¹¹⁶⁰ KYC is one of the requirements when customers open a mobile money account and do transactions.¹¹⁶¹ KYC requirements must not be too strict and disproportionate because they may discourage customers from using a mobile money service.¹¹⁶²

The duty to give regulatory direction to institutions that provide financial services regarding the type of identification requirements acceptable when accessing financial services rests on the country's government.¹¹⁶³ Countries may even be specific and give clarity regarding which type of ID document is acceptable for conducting KYC.¹¹⁶⁴ Some countries, like Uganda, use documents beyond government-issued ID, such as a letter

¹¹⁵⁸ Bahia and Muthiora *The Mobile Money Regulatory Index* 12.

¹¹⁵⁹ Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 5; GSMA 2018 https://www.gsma.com/mobilemoneymetrics/assets/data/MMRI_Methodology.pdf page 4; Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

¹¹⁶⁰ Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

¹¹⁶¹ Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

¹¹⁶² Evans and Pirchio make an example with KYC requirements and say that most of the time, heavy regulation is fatal to igniting mobile money schemes in any country. See Evans and Pirchio *Coase-Sandor Working Paper Series in Law and Economics* 4; Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

¹¹⁶³ Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

¹¹⁶⁴ Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

from the chief or local council, as a minimum requirement in order to access mobile money services.¹¹⁶⁵

For the minimum identification requirements, the countries that have specified minimum identification requirements require mobile money account holders to have at least one form of specified ID document or telephone number to make use of the mobile money account and its services.¹¹⁶⁶ Some countries allow mobile money providers to set their own minimum KYC requirements, but such requirements will still be reviewed and approved by the Regulator.¹¹⁶⁷

The analysis of the KYC as a facet of regulation in terms of the mobile money regulatory index also shows that the majority of countries are compliant in terms of their AML/CFT reporting obligations.¹¹⁶⁸

6.2.1.5 Agent networks

Here the focus is on hiring and making use of agents. This facet of regulation looks at the extent to which the mobile money regulations make provision for the use of agent networks and their activities in the mobile money services business.¹¹⁶⁹ The focus is on various facets, such as the activities agents are allowed to perform, the network condition of agents, for instance, whether any formal notification or authorization is compulsory when appointing individual agents, authorisation requirements for agents, as well as their eligibility criteria.¹¹⁷⁰ Agents play a very important role and are key for the success of a

¹¹⁶⁵ This happens where identification documents have not been provided by the customer when accessing the mobile money services. Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

¹¹⁶⁶ Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

¹¹⁶⁷ According to Madise, the Republic of South Africa applies a 'proportionate KYC', approach which allows mobile banking customers to register online without having to appear physically before a person or produce proof of identification. See Madise *The Case of Regulation of Mobile Money in Malawi* 113; Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

¹¹⁶⁸ Bahia and Muthiora *The Mobile Money Regulatory Index* 14.

¹¹⁶⁹ Bahia and Muthiora *The Mobile Money Regulatory Index* 14; Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 5.

¹¹⁷⁰ GSMA 2018 https://www.gsma.com/mobilemoneymetrics/assets/data/MMRI_Methodology.pdf 4; also see Bahia and Muthiora *The Mobile Money Regulatory Index* 15.

mobile money business. Agents are needed at different stages for different aspects during the mobile money services business, for instance, for registering new customers.¹¹⁷¹

In terms of agent networks as a facet of regulation, four key indicators were analysed in the mobile money regulatory index. These indicators are agents' eligibility, agents' authorisation, including the proportionality of agent authorisation requirements, permitted activities of agents, and the network condition of agents.¹¹⁷²

In terms of agents' eligibility, some countries clearly prescribe in their regulations what requirements the agent must meet in order to be eligible to be an agent.¹¹⁷³ These provisions on regulations include the requirements on the type of agent eligible, as well as which type of institution qualifies to be an agent.¹¹⁷⁴

As far as agent authorisation is concerned, the focus is on whether regulation requires mobile money providers to notify the regulator and get approval and authorisation prior to appointing any agent.¹¹⁷⁵ Some countries do not have provisions to that effect while others do. According to Bahia and Muthiora, because agents sometimes are appointed in large numbers by the mobile money providers, requiring prior approval or authorisation before appointment would not be practical for the regulators.¹¹⁷⁶

¹¹⁷¹ Bahia and Muthiora *The Mobile Money Regulatory Index* 15. Perlman discussed the functions of agents in more detail in his thesis. See Perlman *Legal and Regulatory Aspects of Mobile Financial Services* 29.

¹¹⁷² Bahia and Muthiora *The Mobile Money Regulatory Index* 15.

¹¹⁷³ Section 13 of the *SADC Mobile Money Guidelines* also states that Central Banks may prescribe the requirements that agents must meet before they are appointed by a mobile money service provider. Bahia and Muthiora *The Mobile Money Regulatory Index* 15.

¹¹⁷⁴ Countries such as Kenya and Tanzania have clear provisions, relating to requirements on eligibility of agents. Some countries, on the other hand, preclude non-banks institutions from being agents. See Bahia and Muthiora *The Mobile Money Regulatory Index* 15.

¹¹⁷⁵ Buckley, Greenacre and Malady argue that regulation must ensure that mobile money providers are given freedom to decide how to grow their agent networks. However, the writers state that reports of robbery of agents in countries like Uganda and Tanzania plus agent theft in Malawi suggest that the freedom must be balanced with regulatory oversight, especially to afford protection to customers against any loss. See Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 476.

¹¹⁷⁶ Bahia and Muthiora *The Mobile Money Regulatory Index* 15.

As for non-bank agents, their authorisation requirements are proportionately lower than agents serving the banks. This is because agents working for the banks act for the bank itself and regulations require them to go through stringent requirements.¹¹⁷⁷

In terms of the activities that agents may or may not perform, the argument raised by Bahia and Muthiora is that if the activities that agents may perform in the mobile money business are limited, then the mobile money business will not grow well.¹¹⁷⁸ The analyses made by the mobile money regulatory index revealed that some countries permit agents to perform services and activities such as registration of customers, –cash-in, as well as cash-out services, while some restrict agents to registration of customers.¹¹⁷⁹

In terms of the agent network conditions, the focus is on whether mobile money providers limit their liability for activities performed by agents.¹¹⁸⁰ Another issue considered under this dimension is whether there are provisions or requirements in the regulation pertaining to the geographical limits for agents. The point or argument here is that mobile money becomes successful when the mobile money services distribution points are spread as widely as possible without any restriction or limitations on where agents' outlets may be located.¹¹⁸¹ These limitations may include, but are not limited to the number of agent locations permitted in a given geographical area.¹¹⁸²

6.2.1.6 Investment and infrastructure environment

This focuses on analysing factors that may prevent mobile money services from succeeding. These are external factors and they include the infrastructure for the

¹¹⁷⁷ Bahia and Muthiora *The Mobile Money Regulatory Index* 15.

¹¹⁷⁸ Bahia and Muthiora *The Mobile Money Regulatory Index* 15.

¹¹⁷⁹ See Madise *The Case of Regulation of Mobile Money in Malawi* 2; Bahia and Muthiora *The Mobile Money Regulatory Index* 15. Perlman *Legal and Regulatory Aspects of Mobile Financial Services* 29.

¹¹⁸⁰ Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 479; Bahia and Muthiora *The Mobile Money Regulatory Index* 15.

¹¹⁸¹ Gutierrez and Singh have stated that the use of agents is an important element of mobile banking, especially those agents who target unbanked people without access to banks. See Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 6.

¹¹⁸² Bahia and Muthiora *The Mobile Money Regulatory Index* 15.

verification of IDs, infrastructure for the interoperability of mobile money services, strategies for financial inclusion in place in a country, tax on mobile money services, as well as provision on the usage of interest on money in the trust account.¹¹⁸³ These factors are briefly discussed below:

6.2.1.6.1 Tax levied on mobile money transactions

As indicated above, the focus here is on those aspects that have the potential to affect the mobile money services adversely.¹¹⁸⁴ Tax is one of those factors. Where tax is levied on mobile money transactions, mobile money services costs increase, and customers may choose not to utilise the service anymore.¹¹⁸⁵ There are countries that levy tax on mobile money transactions, such as Kenya¹¹⁸⁶ Tanzania and Uganda.¹¹⁸⁷

6.2.1.6.2 ID verification infrastructure

It is a well-known fact that accountable financial institutions have a regulatory and statutory obligation to identify and verify their customers.¹¹⁸⁸ The challenge, however, is that the regulation or statutes do not usually set out the mechanisms that may assist institutions in verifying the identity of their customers.¹¹⁸⁹

The focus here is whether there are any ID verification mechanisms or tools provided by governments to mobile money providers, such as access to the ID verification

¹¹⁸³ Bahia and Muthiora *The Mobile Money Regulatory Index* 16.

¹¹⁸⁴ Bahia and Muthiora *The Mobile Money Regulatory Index* 16.

¹¹⁸⁵ Bahia and Muthiora *The Mobile Money Regulatory Index* 16.

¹¹⁸⁶ In Kenya a proposal was raised to charge 2% tax on mobile money transactions. The proposal was to amend the *Excise Duty Act* 23 of 2015 and See Kazeem 2018 <https://qz.com/africa/1309097/m-pesa-opposing-kenya-mobile-money-tax-increase/>.

¹¹⁸⁷ In Uganda for instance, in terms of the *Excise Duty (Amendment) No.2 Bill of 2018* tax on mobile money services transactions, that is on depositing money and receiving money, was reduced from 1% to 0.5%. See URN 2018 <https://observer.ug/news/headlines/58819-mps-approve-new-mobile-money-tax>. Bahia and Muthiora *The Mobile Money Regulatory Index* 16.

¹¹⁸⁸ Banks are also enjoined in terms of common law to verify the identity of clients who want to open bank accounts. See Perlman *Legal and Regulatory Aspects of Mobile Financial Services* 302; *Powell v ABSA Bank Ltd (t/a Volkskas Bank)* 1998 2 SA 807.

¹¹⁸⁹ Bahia and Muthiora *The Mobile Money Regulatory Index*.

database.¹¹⁹⁰ If the government provides such mechanisms or tools, up to what level do they provide them? While very few countries have ID verification systems available to mobile money providers, some of those systems are available online, as in South Africa and Kenya.¹¹⁹¹

6.2.1.6.3 Interoperability of mobile money infrastructure

The focus here is on whether regulations and statutes make it mandatory for technical standards of interoperability to be present, or whether interoperability is only prescribed.¹¹⁹² Some countries leave it to MNOs and mobile money providers to determine whether they are ready to implement interoperability systems.¹¹⁹³ The argument made by Bahia and Muthiora is that where it is a must for interoperability systems to be present, the objective and intention behind interoperability may not necessarily be achieved.¹¹⁹⁴

Interoperability must therefore be market-driven and regulatory intervention must be a last resort.¹¹⁹⁵ Countries that use the bank-led model of mobile money invariably become interoperable through national payments switches.¹¹⁹⁶

¹¹⁹⁰ According to Madise, verification is dependent on being connected to specific verification systems. See Madise *The Case of Regulation of Mobile Money in Malawi* 113.

¹¹⁹¹ Madise *The Case of Regulation of Mobile Money in Malawi* 113.

¹¹⁹² See for example, sections 5.5, 8.6 and 10.1.1 of the Reserve Bank of Malawi *Guidelines for Mobile Payment Systems* 2011; Bahia and Muthiora *The Mobile Money Regulatory Index* 16; Gutierrez and Singh *What Regulatory Frameworks Are More Conducive to Mobile Banking?* 6.

¹¹⁹³ Perlman says, “Interoperability can be mandated by the payments regulator or the central bank if it has the power to do so and sees a need to do so.” See Perlman *Legal and Regulatory Aspects of Mobile Financial Services* 244; Bahia and Muthiora *The Mobile Money Regulatory Index* 16.

¹¹⁹⁴ Bahia and Muthiora *The Mobile Money Regulatory Index* 16. Evans and Pirchio have the following to say about regulation that makes interoperability a must: “The regulatory framework adopted by the government, in particular, the extent to which regulations restrict potential players, in particular mobile network operators (MNOs), from operating mobile money schemes and the extent to which regulations impose obligations, such as interoperability, on the schemes that could facilitate or restrain success.” See Evans and Pirchio *Coase-Sandor Working Paper Series in Law and Economics* 8.

¹¹⁹⁵ Naghavi and Shulist have the following to say: “The GSMA defines an “enabling regulatory approach” for mobile money as one in which the rules established by the regulator does not prescribe the implementation of specific interoperability models without allowing for a market-led approach.” See Naghavi and Shulist *Success factors for mobile money services* 20; Bahia and Muthiora *The Mobile Money Regulatory Index* 10.

¹¹⁹⁶ Bahia and Muthiora *The Mobile Money Regulatory Index* 16.

6.2.1.6.4 Infrastructure for payments and settlements

This aspect looks at whether the regulators, usually the Central Banks, give mobile money providers access to the national payments and settlement infrastructures.¹¹⁹⁷ Most countries' regulations are silent on this. It is said that a need may arise for the Central Banks to give access into their national payments and settlement infrastructure.¹¹⁹⁸ This will be the case when the systems for mobile money become mature and are integrated into the financial system.¹¹⁹⁹ Some countries permit access to this either through a settlement agent or integrated mobile money service providers to the national switch or give them access directly.¹²⁰⁰

6.2.1.6.5 Interest payments

Regulations for some countries require mobile money funds to be put in an escrow or trust account as a customer protection measure.¹²⁰¹ Funds in a trust account earn some interest.¹²⁰² If the interest in the trust account can be paid to the customers of mobile money, it may encourage usage of mobile money services.¹²⁰³ Some countries like Ghana give permission to mobile money providers to pay such interests to customers and take 20% of that interest and keep it for the benefit of the mobile money provider.¹²⁰⁴

¹¹⁹⁷ Bahia and Muthiora *The Mobile Money Regulatory Index* 16.

¹¹⁹⁸ Madise *The Case of Regulation of Mobile Money in Malawi* 113; Bahia and Muthiora *The Mobile Money Regulatory Index* 16.

¹¹⁹⁹ Bahia and Muthiora *The Mobile Money Regulatory Index* 16.

¹²⁰⁰ Madise says, "...while clearance and settlement are still within the banking system, the integration allows the m-money issuers to offer new innovative products and to circulate value within their ecosystem. This then raises the issue whether this telco-led model is now mimicking the bank-led model since a direct linkage to the bank account is the hallmark of the latter." See Madise *The Case of Regulation of Mobile Money in Malawi* 182.

¹²⁰¹ Bahia and Muthiora *The Mobile Money Regulatory Index* 17.

¹²⁰² Bahia and Muthiora *The Mobile Money Regulatory Index* 17.

¹²⁰³ Bahia and Muthiora *The Mobile Money Regulatory Index* 17.

¹²⁰⁴ Bahia and Muthiora *The Mobile Money Regulatory Index* 17.

Some countries' laws are silent on this aspect. Malawi's regulations permit the funds in the trust account to earn interest but do not allow for such interest to be for the benefit of the mobile money service provider.¹²⁰⁵

6.2.1.6.6 Policies for financial inclusion

Here the focus is on whether there are codified and written national financial inclusion policies or strategies.¹²⁰⁶ If so, to what level do such policies make mention of mobile money as one of the tools for financial inclusion to address or bridge the gender gaps? Some countries do have these policies at national level.¹²⁰⁷

6.3 Analysis of Lesotho's mobile money and money laundering legal regulatory frameworks

As discussed earlier, the Payment Systems Regulations¹²⁰⁸ form part of the Mobile Money Framework in Lesotho. The money laundering framework of Lesotho is made up of many pieces of legislation, but the main legislation that was discussed is the *Money Laundering and Proceeds of Crimes Act*¹²⁰⁹ as amended.¹²¹⁰ Analysis of the Lesotho mobile money framework and money laundering framework to be discussed hereunder will be based on those pieces of legislation.

¹²⁰⁵ Section 8.8 of the Reserve Bank of Malawi *Guidelines for Mobile Payment Systems* 2011. Madise *The Case of Regulation of Mobile Money in Malawi* 224.

¹²⁰⁶ Bahia and Muthiora *The Mobile Money Regulatory Index* 17.

¹²⁰⁷ Bahia and Muthiora *The Mobile Money Regulatory Index* 17.

¹²⁰⁸ *Payment Systems (Issuers of Electronic Payments Instruments) Regulations* 11 of 2017.

¹²⁰⁹ *Money Laundering and Proceeds of Crimes Act* 4 of 2008. Hereinafter referred to as the MLPCA. The other pieces of legislation that also form part of the money laundering framework in Lesotho include, but are not limited to, *Rectification of Errors Money Laundering Regulations* 2017; *Money Laundering & Proceeds of Crime Regulations* 51 of 2017; *Money Laundering (Politically Exposed Persons) Guidelines* 152 of 2015; *Money Laundering (Accountable Institutions) (Amendment) Guidelines* 2014 and *Money Laundering (Accountable Institutions) Guidelines* 2013.

¹²¹⁰ Amended by the *Money Laundering and Proceeds of Crimes (amendment) Act* 7 of 2016 (Hereinafter referred to as the MLPC Amendment Act 2016).

6.3.1 Analysis of the mobile money legal regulatory framework

6.3.1.1 Money laundering requirements in the mobile money legal regulatory framework of Lesotho

The *Payment Systems Regulations* make it a requirement for mobile money service providers to implement systems that make it difficult for the crime of money laundering to be committed.¹²¹¹ The mobile money service providers must have KYC measures and ensure that their agents comply with the MLPCA and its implementing regulations.¹²¹² The implementing regulations include, but are not limited to, the *Money Laundering (Accountable Institutions) Guidelines*¹²¹³ and the *Money Laundering and Proceeds of Crimes Regulations*.¹²¹⁴

These pieces of money laundering legislation referred to above have very relevant provisions for regulating financial services in Lesotho to control and prevent money laundering and terrorist financing-related crimes. Whilst this is true, given the nature of the mobile money services, especially in a country, such as Lesotho, these regulations and guidelines are appropriate and effective when being applied to other financial institutions, such as banks and not the mobile money service providers. The nature of these businesses differs; therefore, regulators and law makers must not expect mobile money service providers to work under similar laws and regulations as those of banks and other financial institutions.

Requirements, such as those requiring customers to declare the purpose of business relationships or declaration of one's income are necessary, but regulation must not expect mobile money services providers to enforce these requirements in the same way as other

¹²¹¹ Section 24 of the *Payment Systems (Issuers of Electronic Payments Instruments) Regulations* 11 of 2017.

¹²¹² Section 24 of the *Payment Systems (Issuers of Electronic Payments Instruments) Regulations* 11 of 2017.

¹²¹³ *Money Laundering (Accountable Institutions) Guidelines* 55 of 2013. (hereinafter referred to as the Money Laundering Guidelines of 2013).

¹²¹⁴ *Money Laundering and Proceeds of Crimes Regulations* 51 of 2017 (hereinafter referred to as the MLPCA Regulations).

financial firms, such as banks. The mobile money business is still new in Lesotho and it was intended to address the financial exclusion problems identified in Lesotho. The idea was for it to be used by people who do not have access to traditional financial services, such as banks. Many of the people who do not have access to formal financial services, such as banks, are very poor.¹²¹⁵ Their standard of living is so low that they do not have formal and consistent sources of income. These money laundering requirements or regulations must therefore take such factors into account.

In addition, the laws in Lesotho also do not set out the mechanisms that may assist institutions in verifying the identity of their customers. Countries, like South Africa and Kenya, have on-line ID verification systems to help mobile money providers to be able to identify and verify their customers.¹²¹⁶

Since mobile money was meant for people who do not have formal addresses, regulators must be flexible in respect of KYC requirements. Kennedy says "...despite the success of mobile money and its potential for further growth, KYC requirements present a barrier for mobile money providers in many countries."¹²¹⁷ Even Madise argues that KYC measures must consider the situations in which most people in African countries live.¹²¹⁸ He notes that while one of the KYC features is the requirement of proof of address, few families actually have addresses. In his argument, he makes reference to what is estimated by the Universal Postal Union.¹²¹⁹ The estimates reveal that about 21% of African families get their mail at home, the other 49% is able to get access to the mail and 30% do not get any access at all to the mail. Verification of address is therefore not a simple matter.¹²²⁰ The approach to identification and verification of customers should be

¹²¹⁵ Sekants'i and Motelle 2016 *Central Bank of Lesotho Research Bulletin* 6.

¹²¹⁶ See Department of Home Affairs South Africa 2019 <http://www.dha.gov.za/index.php>.

¹²¹⁷ Kennedy 2019 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2019/02/Overcoming-the-KYC-hurdle-Innovative-solutions-for-the-mobile-money-sector-1.pdf> 8.

¹²¹⁸ Madise 2014 *The Case of Regulation of Mobile Money in Malawi* 113.

¹²¹⁹ The Universal Postal Union was formed in 1874. It helps with the cooperation amongst the postal sector players. It enables a universal network of products and services that are up to date. See <http://www.upu.int/en/the-upu/the-upu.html> for more information on the Universal Postal Union.

¹²²⁰ Madise 2014 *The Case of Regulation of Mobile Money in Malawi* 113.

more flexible, for example the compliance exemption that relaxes requirements for some of the customers called mass banking clients.¹²²¹ .

The Lesotho money laundering Act¹²²² and Regulations, as well as Guidelines,¹²²³ are silent on what mobile money service providers should do in adhering to the laws; it is therefore reasonable to infer from the wording of the Act and Regulations that mobile money service providers are also expected to be in compliance in the same way as other financial institutions.

Currently, Lesotho's AML/CFT regulations are clear. However, it would be better for the mobile money legislation in Lesotho to have comprehensive provisions dealing with KYC and money laundering in more detail to cater for the nature of the business. The current AML/CFT laws are comprehensive and detailed; they are of a general nature as they regulate all financial institutions, such as banks. Even though Lesotho has clear money laundering laws, they are intended to regulate all financial institutions in Lesotho and the operations of such institutions may not be similar, therefore it is ideal to have detailed and clear KYC provisions that are specific to the mobile money business in Lesotho in the mobile money laws.

6.3.1.2 Interoperability of mobile money operators

The Payment Systems Regulations define interoperability or interoperable as "...the commercial interconnectivity between providers of different payment systems or payment instruments including the technical capability to interact and exchange information and messages."¹²²⁴ It was stated earlier in the previous chapter that in Lesotho, the mobile

¹²²¹ Madise 2014 *The Case of Regulation of Mobile Money in Malawi* 113. According to Madise, the Republic of South Africa applies a 'proportionate KYC', approach which allows mobile banking customers to register online without having to appear physically before a person or produce proof of identification. See Madise *The Case of Regulation of Mobile Money in Malawi* 113.

¹²²² *Money Laundering and Proceeds of Crimes Act* 4 of 2008 and *Money Laundering and Proceeds of Crime (Amendment) Act* 7 of 2016.

¹²²³ See *Money Laundering (Accountable Institutions) (Amendment) Guidelines* 2014 and *Money Laundering (Politically Exposed Persons) Guidelines* 152 of 2015.

¹²²⁴ See section 2 (1) of the Payment Systems Regulations.

money regulations put an obligation on the issuer of electronic payment instruments to “use systems capable of being or becoming interoperable with other issuers of electronic payment instruments, financial institutions and other payment systems both in the country and internationally.”¹²²⁵

As stated above, interoperability has many benefits, but such benefits may not be easily achieved where interoperability is a must. Lesotho's laws make it mandatory for the mobile money service providers to have systems capable of being interoperable. The laws do not leave it to the providers to have those interoperable systems when they are ready.

6.3.1.3 Transactional limits on mobile money transactions

As discussed above, in terms of the mobile money regulatory index,¹²²⁶ transactional limits help reduce the risk of money laundering, because, depending on the money laundering risk of customers, transactional limits are set.

The current mobile money legislation in Lesotho is not clear on how the transactional limits should be set by mobile money providers.¹²²⁷ The Regulations only state that a mobile money provider must have KYC measures stipulated in Schedule 5 of the Regulations in place. It is as though it was left up to each mobile money provider to decide on what the transactional limits should be.

In the case of Vodacom Lesotho, for instance, the transactional limits are as follows for M-Pesa: for the entry level or tier 1 users, the daily limit is set at two thousand five hundred Maloti (M2,500.00), the monthly limit is set at seven thousand five hundred Maloti

¹²²⁵ See section 20 (1) (d) of the Payment Systems Regulations.

¹²²⁶ See para 6.2.1.3 above.

¹²²⁷ See Section 38 (c) and Schedule 5 of the *Payment Systems (Issuers of Electronic Payments Instruments) Regulations* 30 of 2017.

(M7,500.00), and for the yearly (annual) limit it is set at ninety thousand Maloti (M90,000.00).¹²²⁸

For the standard or tier 2 users, the daily limit is five thousand Maloti (M5,000.00), with fifteen thousand Maloti (M15,000.00) for the monthly limit, and one hundred and eighty thousand Maloti (M180,000.00) for the annual/yearly limit.¹²²⁹ According to Vodacom Lesotho, all these limits for tier 1 and tier 2 may be changed from time to time.¹²³⁰

Econet Telecom Lesotho, which is another institution operating as a mobile money service provider in Lesotho, with its product called Eco-cash, does not state in its terms and conditions what the transactional limits are for its mobile money product.¹²³¹

Over and above these two mobile money providers, Vodacom Lesotho and Econet Telecom Lesotho, the Central Bank of Lesotho has recently licensed other mobile money providers in Lesotho called Smartel Money Ltd (SM).¹²³² Because the law is not clear as to what the transactional limits should be, the owners of this new mobile money product will set their own.

The *SADC Mobile Money Guidelines* provide guidance on the transactional limits to be set by the Central Bank.¹²³³ The Guidelines state that it is the role of the Central Bank to specify tiered mobile money account balances and transactional limits with the necessary customer due diligence. In doing so, the Central Bank must consider the economic

¹²²⁸ Vodacom Lesotho 2019 <https://www.vodacom.co.ls/ls-personal/legal/m-pesa-terms-and-conditions>.

¹²²⁹ Vodacom Lesotho 2019 <https://www.vodacom.co.ls/ls-personal/legal/m-pesa-terms-and-conditions>.

¹²³⁰ Vodacom Lesotho 2019 <https://www.vodacom.co.ls/ls-personal/legal/m-pesa-terms-and-conditions>.

¹²³¹ See Econet Telecom Lesotho 2019 https://www.etl.co.ls/images/News_Docs/TERMS%20AND%20CONDITIONS%20ECO-CASH.pdf.

¹²³² Mpaki *Lesotho Times*.

¹²³³ See Article 10.2.3 of the *SADC Mobile Money Guidelines*.

conditions prevailing in a domestic market, while at the same time reducing the money laundering risks.¹²³⁴

6.3.1.4 Mobile money agents

Agents are important in any mobile money business.¹²³⁵ They perform different functions on behalf of mobile money service providers. Important services, such as registering and on-boarding new customers for mobile money services, some financial institutions even allow agents to collect cash on their behalf, as well as verifying and identifying of mobile money customers.¹²³⁶ It is therefore important in the mobile money services business to ensure that any services performed by agents, as well as the relationships of agents and customers and those of the mobile money services providers are clearly regulated.¹²³⁷

The current law in Lesotho allows mobile money providers to appoint agents to do agency or cash payments services on their behalf.¹²³⁸ Mobile money providers are just mandated to perform due diligence and make proper assessments to ensure that agents are suitable to perform the work.¹²³⁹ Thereafter the mobile money provider is under an obligation to train the agent adequately and give such an agent all the necessary support to enable the agent to do the work.¹²⁴⁰ The support here includes giving the agent the provider's manual that has all the policies, rules as well as the operational guidelines that are necessary for the agent to provide mobile money services safely and efficiently.¹²⁴¹

¹²³⁴ Article 10.2.3 of the *SADC Mobile Money Guidelines*.

¹²³⁵ Unnikrishnan et al 2019 http://image-src.bcg.com/Images/BCG-How-Mobile-Money-Agents-Can-Make-Financial-Inclusion-a-Reality-Feb-2019-R_tcm9-213853.pdf 4.

¹²³⁶ Unnikrishnan et al 2019 http://image-src.bcg.com/Images/BCG-How-Mobile-Money-Agents-Can-Make-Financial-Inclusion-a-Reality-Feb-2019-R_tcm9-213853.pdf 20.

¹²³⁷ Unnikrishnan et al 2019 http://image-src.bcg.com/Images/BCG-How-Mobile-Money-Agents-Can-Make-Financial-Inclusion-a-Reality-Feb-2019-R_tcm9-213853.pdf 20.

¹²³⁸ See section 36 (1) of the Payment Systems Regulations.

¹²³⁹ Section 36 (2) of the Payment Systems Regulations.

¹²⁴⁰ Section 36 (3) of the Payment Systems Regulations.

¹²⁴¹ Section 36 (3) of the Payment Systems Regulations.

In terms of Vodacom Lesotho M-Pesa terms and conditions, it is stated that an agent is anyone authorised by Vodacom Lesotho to provide services.¹²⁴² It is further stated that agents are just independent third parties who have been given authorisation and approval by Vodacom Lesotho, and as a result Vodacom states clearly that it will in no way be responsible or liable for any default or negligent act committed by any agent in performing its activities for Vodacom Lesotho.¹²⁴³

As previously discussed above, one of the key aspects that helps a mobile money services business to succeed is when agents can sell. Whilst the truth in this is not disputed, financial integrity must still be maintained, especially because agents deal with money belonging to Vodacom's customers. If Vodacom, as stated above, absolves itself from liability or claims resulting from negligence or any wrongful act performed by its agents, then that is unfair to the customers.

Because mobile money service providers are in a way providing financial services, agents working for mobile money services providers must work well and serve the best interests of customers. Agents and/or the mobile money providers they are working for must be accountable and responsible for any action taking place while providing the mobile money services. As with agents in other financial institutions, such as the insurance industry, mobile money agents must also be responsible, and the Central Bank of Lesotho must also revoke their registration if they are negligent or do anything wrong.¹²⁴⁴

In other jurisdictions, such as that in Ghana, mobile money providers must give a monthly report to the Regulator, the Bank of Ghana, pertaining to "...the number and types of registered and active agent locations in its network, including sub-agents not directly under contract with activity counted on a 30-day basis...number of incidents of fraud, theft or robbery respectively, including at agents' points"¹²⁴⁵ As a way of ensuring protection of

¹²⁴² See Vodacom Lesotho 2019 <https://www.vodacom.co.ls/ls-personal/legal/m-pesa-terms-and-conditions>.

¹²⁴³ Vodacom Lesotho 2019 <https://www.vodacom.co.ls/ls-personal/legal/m-pesa-terms-and-conditions>.

¹²⁴⁴ See sections 69, 72 and 80 of the *Insurance Act* 12 of 2014.

¹²⁴⁵ See Section 24 (1) (d) and (j) of the *Bank of Ghana Guidelines for E-Money Issuers in Ghana*.

mobile money customers, mobile money providers are held responsible for the conduct of its staff and authorised agents.¹²⁴⁶ Madise also says that agents play an important role and that is why even customers use agents, not because they like those agents, but because they prefer the brand represented by those agents.¹²⁴⁷ It is as if they are dealing with the brand directly.¹²⁴⁸

The fact that Vodacom absolves itself from negligent acts of agents is objectionable. In Ghana, a mobile money provider can only use an agent in its business if it will assume liability for the acts of its agents.¹²⁴⁹ The law in Lesotho does not state what agents must do to ensure that they deliver the best mobile money service. The law does not state what will be done by negligent agents, it also does not state what will be done to the mobile money providers who do not perform due diligence when appointing agents.

The law in Lesotho is also silent on how agents who have a criminal record related to financial matters must be treated, for instance, how and what should be done to agents who have once been convicted of crimes related to finance, such as fraud and dishonesty, to mention a few. This is very important as the agent will be dealing directly with mobile money customers' money.

The law is also silent on whether the mobile money provider has to do any reporting to the Regulator regarding the agents they use. Whilst it was stated earlier that mobile money services providers should be given freedom and privilege to contract with agents of their choice, the law must still clearly give the regulator powers to request reports from the mobile money providers regarding the agents used. The law in Lesotho is silent on this aspect.

¹²⁴⁶ Section 26 of the *Bank of Ghana Guidelines for E-Money Issuers in Ghana*.

¹²⁴⁷ Madise *The Case of Regulation of Mobile Money in Malawi* 138.

¹²⁴⁸ Madise *The Case of Regulation of Mobile Money in Malawi* 138.

¹²⁴⁹ Section 6 of the *Bank of Ghana Agent Guidelines*. Also see section 37 of the *Payment Systems (Electronic Money) Regulations*, 2015 of Tanzania.

The current law in Lesotho also allows agents to freely contract with as many mobile money service providers as possible subject to certain terms and conditions which have to be observed by both the mobile money provider and the agent.¹²⁵⁰ It is, however, not specified how issues, such as conflict of interest would and should be handled, since the agent is allowed to work for other money service providers who are competitors.

6.3.1.5 Minimum capital requirements for the mobile money business

In terms of the Payment Systems Regulations of Lesotho, an issuer of electronic payment instruments must have a minimum core capital of five hundred thousand Maloti (M500,000.00) before starting that business.¹²⁵¹ The *SADC Mobile Money Guidelines* state that the Central Banks must be mindful and not set capital requirements that are too high that might prevent potential mobile money service providers from taking part in the mobile money business.¹²⁵²

On the other hand, according to the Financial Institutions Act of Lesotho, the minimum capital requirements of a bank in Lesotho are dependent on the type of financial institution concerned.¹²⁵³ For Type 1, which includes among others, the commercial banks, the minimum capital required is 20 million Maloti, while for Type 2, which includes the savings banks, the minimum capital requirements is 10 million Maloti, and for Type 3, which includes the credit institutions, the requirement is 5 million Maloti.¹²⁵⁴

Given the activities of the mobile money institutions in Lesotho, and the activities of the financial institutions mentioned in the second schedule of the Financial Institutions Act, as well as the capital requirements discussed above for both mobile money service providers and the banks, the capital requirements set for mobile money services in

¹²⁵⁰ See section 37 of the Payments Systems Regulations.

¹²⁵¹ See section 16 of the Payment Systems Regulation and Schedule 2 of the Regulations.

¹²⁵² See section 9 of the *SADC Mobile Money Guidelines*.

¹²⁵³ See section 9 of the *Financial Institutions Act 3 of 2012* and schedule 2 thereof.

¹²⁵⁴ See schedule 2 of the *Financial Institutions Act 3 of 2012*.

Lesotho are relatively low compared to that of the banks as stated in the *Financial Institutions Act*.¹²⁵⁵

Based on the above discussion, the minimum capital threshold set for Lesotho is reasonable to attain financial inclusion. The minimum capital set for Lesotho considers the fact that mobile money is another tool for financial inclusion used to help solve the problem of financial exclusion that affects many countries. It also takes into account the fact that mobile money services should be used by those people who do not have or have little access to formal financial services, such as banks that are mostly found in urban areas. Therefore, the minimum capital requirements set for Lesotho are reasonable.

6.3.1.6 Trust account

Opening a trust account and depositing money into that account is a requirement to which most mobile money providers have to adhere in most jurisdictions.¹²⁵⁶ Lesotho is no exception. Mobile money providers have to open a trust account at a bank regulated by the Central Bank of Lesotho.¹²⁵⁷

The law in Lesotho states that the interest that may accrue from the trust account will be used to cover the expenses in the trust account and that any excess thereof will be used according to the guidance that the Central Bank of Lesotho may give.¹²⁵⁸ It was stated above that if a portion of that interest could be paid to customers of mobile money, it

¹²⁵⁵ According to Maina, there are certain factors to be considered before the minimum capital requirements can be set. Some of them are: “Initial and ongoing capital requirements should ideally be evaluated based on the characteristics of the business and how certain risks are mitigated through other prudential requirements and by the providers...when deciding on capital requirements, financial regulators should consider that mobile money providers are subject to further requirements that safeguard customer funds and lowers the risk profile of mobile money...ultimately, where capital requirements are applied, they must be proportional to the risks posed by the business model. If excessive capital is immobilised, this can increase the cost of business and stifle innovation, reduce competition and increase costs, ultimately hindering financial inclusion.” See Maina 2018 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2018/09/GSMA-Mobile-Money-Policy-Handbook-2018.pdf> 21.

¹²⁵⁶ See for instance, Article 9 of the *SADC Mobile Money Guidelines* and Section 26 of the *Payment Systems (Electronic Money) Regulations*, 2015 Tanzania.

¹²⁵⁷ See section 35 of the Lesotho Payment Systems Regulations.

¹²⁵⁸ See schedule 4 (regulations 2 (1), 7(1)(c)(vi)) of the Payment Systems Regulations.

would encourage usage of mobile money services. Lesotho's law has not dealt with this aspect. It could be that the reason for choosing not to deal with this is that giving interest to mobile money customers may encourage people to rather use mobile money services than banks or that mobile money services will now be operating as banks.

6.3.1.7 Disregard for the telecommunications sector

The mobile money framework in Lesotho does not take into consideration the fact that the mobile money services in Lesotho are mobile money that is used as a method of payment or transfer only, which is not inclusive of mobile financial services products such as mobile banking and mobile securities. As stated earlier in Chapter 2 of this research, mobile money in Lesotho was introduced in 2012 and there are currently three mobile money products, namely Econet Telecom Lesotho, Vodacom Lesotho, and Smartel Money Ltd. These mobile money services are provided by Telecommunications companies. This means it is only fair that the mobile money regulatory framework in Lesotho should make reference to how the telecommunications regulator and the Central Bank will work hand in hand in regulating mobile money services in Lesotho.¹²⁵⁹ The two regulators have signed a Memorandum of Understanding in terms of how they work together, but nothing is contained in the law to regulate how they will work together to regulate the mobile money services in Lesotho.

6.3.2 Analysis of the money laundering framework

6.3.2.1 Lack of clear regulatory framework for regulators

The money laundering framework of Lesotho does not clearly define the roles that the regulators involved in the mobile money business must play to ensure adherence to the

¹²⁵⁹ This aspect is covered under the *SADC Mobile Money Guidelines*. See article 5, article 12 and article 17 of the *SADC Mobile Money Guidelines*. Ayo also says: "Mobile money merges the regulatory environments of both telecommunications and banking into a new paradigm that ultimately demands a collaborative dialogue among providers to balance intervention for risk mitigation with market innovation." Also see Ayo C. K et al 2012 *African Journal of Business Management* 2195.

law. It should be noted that the analysis of the Lesotho money laundering framework used in this research is based on how effective and relevant the framework is to the mobile money business in Lesotho. This is also based on the financial institutions environment, as well as those involved in the financial services sector in Lesotho. As stated above, the main piece of money laundering legislation in Lesotho is the *Money Laundering and Proceeds of Crimes Act*.¹²⁶⁰

This Act and other pieces of legislation that were promulgated after it, mostly regulate formal financial institutions, such as banks. The requirements imposed by those pieces of legislation mostly regulate those formal financial firms. Put differently, the regulators have, over the years, focused on monitoring adherence to the legislation by those institutions. As such, Madise notes that the financial regulator usually focuses on the banking industry.¹²⁶¹ Madise goes further to say that: “the financial regulator usually focuses on the banking industry, the danger is therefore from exogenous risk, such as an improperly regulated m-money service”¹²⁶² The same applies in Lesotho.

As discussed earlier, the nature of mobile money business discussed in this research is the mobile money as a method of payment or transfer only and it does not include mobile financial services products including mobile banking and many others such as mobile securities. This type of business is usually done through an operator-led model of mobile money, where a mobile network operator actually offers the service. In the case of Lesotho, there are two mobile money services discussed above, namely Ecocash provided by Econet Telecom Lesotho and Vodacom M-Pesa provided by Vodacom Lesotho.

In this case, it means mobile money providers or mobile money services are dependent on two regulators, namely the telecommunications regulator and the financial services

¹²⁶⁰ *Money Laundering and Proceeds of Crimes Act* 4 of 2008.

¹²⁶¹ Madise *The Case of Regulation of Mobile Money in Malawi* 114.

¹²⁶² Madise *The Case of Regulation of Mobile Money in Malawi* 114.

regulator.¹²⁶³ The reason why an argument is raised in this research that the current Lesotho money laundering framework is only meant for institutions like banks, is because such institutions only have one regulator to which they are accountable, which is the Central Bank of Lesotho. Irregularities, such as non-compliance with regulations are enforced by the Central Bank working together with the Financial Intelligence Unit. The Central Bank and the Financial Intelligence Unit work together as far as regulating these institutions is concerned.

On the other hand, the telecommunications industry in Lesotho is regulated by the Lesotho Communications Authority.¹²⁶⁴ This means that if the operator-led model of mobile money is used in Lesotho, then there are two regulators involved. The money laundering law of Lesotho does not, however, have clear provisions that deal with how the two regulators, being the Lesotho Communications Authority and the Central Bank of Lesotho, ensure smooth operation of mobile money services in as far as adherence to the money laundering laws is concerned.

This is important because the two regulators, the Central Bank and the LCA are crucial in the success of the mobile money services business. It is also stated in the SADC Mobile Money Guidelines that the Telecommunications Regulator must be consulted when formulating the mobile money framework.¹²⁶⁵

The FATF¹²⁶⁶ recommends that mobile money services providers adhere to the money laundering laws.¹²⁶⁷ This notwithstanding, care must be taken when assessing the risk so as to strike a balance between preventing a risk and being so strict as to end up being a barrier to financial inclusion.

¹²⁶³ Madise says mobile money is a hybrid service and, because of that there is always an overlap of many regulatory authorities. See Madise *The Case of Regulation of Mobile Money in Malawi* 250.

¹²⁶⁴ Hereinafter referred to as the LCA.

¹²⁶⁵ See Article 5.2 Guiding Principles of the *SADC Mobile Money Guidelines*.

¹²⁶⁶ The FATF was discussed in more detail in Chapter 3 of this research. It is the Financial Action Task Force, a policy making body formed in 1989 that sets standards and implement effective legal, regulatory as well as operational measures to fight money laundering and terrorist financing. For more information on FATF, see FATF 2019 <https://www.fatf-gafi.org/about/>.

¹²⁶⁷ See Recommendation 14 of the Financial Action Task Force.

6.3.2.2 KYC requirements in the law are not clear or easy to apply

This issue was discussed in detail under the analysis of the mobile money framework earlier in this chapter. The Lesotho money laundering laws' requiring verification and identification of customers does not take into consideration many aspects, such as the situations of most households in Lesotho, for instance, issues, such as the lack of formal addresses for most households, since one of the things needed to fully identify a customer in terms of the money laundering laws is the customer's proof of address.¹²⁶⁸ It is, therefore, not easy to comply with requirements, such as proof of address that the customers have to produce before or when getting the needed mobile money services.

Another aspect that makes it difficult to comply with the verification and identification requirements, even though it is a requirement in terms of the law, is identification of customers. This issue was also discussed above. Identification and verification of customers is done by producing identity documents.¹²⁶⁹ Whilst efforts are being made by the Lesotho government to ensure that every citizen of Lesotho possesses an identity document, it is not always easy to carry these documents when making use of the mobile money services. It, therefore, becomes difficult to comply with such requirements.

From the discussion above, it can be summarised that the money laundering framework of Lesotho as it relates to mobile money services is not clear. The national framework of money laundering that applies to other financial service providers, such as banks is just used to fit in the mobile money services industry. This situation is not unique to Lesotho, and it applies similarly to many countries that also have mobile money services.

Madise has the following to say about the nature of regulations regarding mobile money businesses in most countries:

¹²⁶⁸ Section 6 of the *Money Laundering (accountable Institutions) Guidelines 2013*.

¹²⁶⁹ Section 6 of the *Money Laundering (accountable Institutions) Guidelines 2013*.

So far, regulation of mobile money has been approached in an *ad hoc* manner with the regulators playing catch-up as the service, led by mobile network operators, has developed. There is no jurisdiction that has special legislation or regulations for this service. Legislation or regulations have been adapted and tweaked to apply to mobile money. There are some core queries that require to be addressed. For instance, there is the question whether mobile money may become an alternative form of banking and offer competition to the traditional banking system. In addition, there is the question of what the impact of mobile money services will be on the development agenda since it provides financial access services and contributes to the reduction of poverty. These questions are posed to illustrate that further research is required in this area.¹²⁷⁰

6.4 Recommended solutions to the weaknesses identified

6.4.1 Mobile money solutions

6.4.1.1 Provisions relating to the transactional limits

To ensure that the risk of money laundering is prevented, while also ensuring that mobile money services are utilised, it is imperative that the Central Bank of Lesotho provides clear guidance in terms of how the mobile money providers must set the transactional limits. The law must be clear as to what procedures, if any, are to be followed when determining the mobile money transactional limits. The Central Bank must also ensure that mobile money providers comply with the set limits. Mobile money providers must also ensure that the transactional limits set for customers are clearly and frequently communicated to the customers.

The current situation in Lesotho as stated above is that Vodacom has set its own transactional limits. Econet Telecom Lesotho has not stipulated transactional limits. The *SADC Mobile Money Guidelines* which are intended to serve as a guideline for all the

¹²⁷⁰ Madise 2014 *Africa Nazarene University Law Journal* 72.

SADC Central Banks gives guidance on what the Central Banks must do in as far as the mobile money transactional limits are concerned.

6.4.1.2 Mobile money agents

It is not disputed that agents play an important role in the success of any business. Mobile money agents also play an important role in the growth of the mobile money business. Whilst this is true, financial stability and integrity must be at the top of the list of priorities regarding matters about which regulators must be concerned. Mobile money providers must be accountable for the actions or omissions of the agents they have engaged to provide business to customers.

It was discussed earlier in this chapter that Vodacom Lesotho has stated explicitly in its M-Pesa terms and conditions that it does not assume responsibility for the actions of its agents. This is unfair on the part of the customers, and the regulator and law makers must address this. Lessons can be learned from countries that were discussed in Chapter 4 of this research. For instance in Ghana, mobile money providers must give a monthly report to the Regulator, the Bank of Ghana, pertaining to "...the number and types of registered and active agent locations in its network, including sub-agents not directly under contract with activity counted on a 30-day basis...number of incidents of fraud, theft or robbery respectively, including at agents points"¹²⁷¹ The mobile money providers are also held responsible for the conduct of their staff and authorised agents.¹²⁷² Ghana permits a mobile money service provider to use an agent in its business if it will assume liability for the acts done of its agents.¹²⁷³

Another jurisdiction that was discussed above that holds mobile money services providers responsible as one of the consumer protection measures, for any action or inaction of the

¹²⁷¹ See Section 24 (1) (d) and (j) of the *Bank of Ghana Guidelines for E-Money Issuers in Ghana*.

¹²⁷² Section 26 of the *Bank of Ghana Guidelines for E-Money Issuers in Ghana*.

¹²⁷³ Section 6 of the *Bank of Ghana Agent Guidelines*.

agents they have contracted to assist in providing mobile money services to customers, is Nigeria.¹²⁷⁴

Regulators and law makers in Lesotho can also follow what has been stated in the *SADC Mobile Money Guidelines*. The Guidelines clearly indicate what the mobile money services provider must do. The guidelines define mobile money agents as third parties that the mobile money service provider appoints to help in providing mobile money services to customers on behalf of the mobile money services provider.¹²⁷⁵ The Guidelines are also clear that a Central Bank must set clear procedures and processes that mobile money service providers must follow when they enter into relationships with agents.

6.4.1.3 Know Your Customer requirements

Mobile money providers must apply the KYC requirements and comply with them all the time. One of the aspects identified as a weakness above was the fact that there is nothing assisting mobile money providers to identify customers. A solution could, therefore, be to emulate what has been applied in the Republic of South Africa and Kenya by introducing an online customer identification system to help with the verification and identification of customers in order to comply with the KYC requirements.

As with the requirements for interoperability that are made mandatory by the mobile money law of Lesotho, the mobile money law must compel the mobile money services providers to have systems that make it easy to identify customers' identity online using their systems. This may be effective, although it may at the same time depend on how government assists providers by making sure that the national identity database of all the citizens of the country is available.

¹²⁷⁴ See section 17.0 (h) of the *Guidelines of the Mobile Money Services in Nigeria* 2015.

¹²⁷⁵ See Article 4.1 of the *SADC Mobile Money Guidelines*.

6.4.2 Money laundering regulatory framework solutions

6.4.2.1 Alternative forms of identity documents

Regulation must be flexible enough to allow mobile money operators to use any form of reliable identity document, such as driver's license, national voter's registration card, student' cards or identity document, employee's card or any other card that may be verified or used to identify customers.¹²⁷⁶ Members of the East African Community (EAC)¹²⁷⁷ accept the following for registering customers: valid driver's license, valid voter's card, valid passport, a letter or certificate from a local village council, a valid card issued by a company or employer, a valid government-issued identity document, a valid tax clearance certificate, a valid national identity document, and a reference identification (this occurs where any member of the family, employer or a friend with a acceptable ID document can guarantee for your identity at the time of registration.)¹²⁷⁸

6.4.2.2 Clear regulatory guidance

Legislation must have very clear provisions regarding how the two regulators involved in the mobile money business will work to ensure adherence to the money laundering legislation. In some countries, the telecommunications regulator and the financial institutions regulator have signed a memorandum of understanding that clearly shows how the two regulators work. The memorandum clearly stipulates the roles of each regulator in the provision of mobile money services.

6.4.2.3 Online verification system

¹²⁷⁶ In Tanzania for instance, people are allowed to use voter registration cards. See section 35 (1) of the Tanzania *Payment Systems (Electronic Money) Regulations*, 2015, Schedule 3 thereof.

¹²⁷⁷ The EAC is a regional intergovernmental organisation comprising six countries: Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda.

¹²⁷⁸ See Pascal "Legal Issues in Mobile Money Transactions".

A system that can be used to verify customers on the internet can provide a solution to the challenge discussed above of not being able to comply with the law. South Africa is one of the countries that uses this system to verify the identity of customers using an online system.¹²⁷⁹ In terms of these new systems, customers no longer have to fill in KYC documents or carry their identity documents with them whenever they need financial services, they just place their finger on a biometric reader which will read the finger print and verify it against the database provided at Home Affairs.¹²⁸⁰ Kenya has also implemented this system.¹²⁸¹

6.5 Conclusions

In this chapter, a comparative study of two frameworks in Lesotho, namely the money laundering framework and the mobile money framework was undertaken. The two frameworks were discussed, analysed, and compared with the framework of other countries, as well as the SADC mobile money framework. A discussion of the mobile money regulatory index was also presented.

The objective of this chapter was to analyse the two frameworks discussed above to see whether, based on the discussions about the practices of other African countries in Chapter 4, any lessons can be learnt for Lesotho. It was discussed in this chapter that one of the key aspects that helps mobile money businesses to succeed is when there is an enabling regulation. The Mobile Money Regulatory Index was then discussed which is a tool measuring the effectiveness of different mobile money regulatory frameworks of different countries.

The index discussed above focused on six facets of regulation, namely authorisation, agent network, consumer protection, transaction limits, KYC, and investment and infrastructure environment. From the discussion regarding the mobile money regulatory

¹²⁷⁹ See Verify ID 2019 <http://www.verifyid.co.za/>; also see South African Government 2019 <https://www.gov.za/services/verify-identity-online>.

¹²⁸⁰ South African Government 2019 <https://www.gov.za/services/verify-identity-online>.

¹²⁸¹ See Information Cradle Unknown <https://informationcradle.com/kenya/kenya-id/>.

index, together with the discussions in Chapter 4 of the research, it was learnt that Lesotho must still review the legislation regulating mobile money service providers. This is based on issues, such as agent network that must still be properly clarified in the mobile money legislation. For instance, the law must be clear and state what measures will be taken against either the mobile money provider or agent for rendering mobile money services negligently. The Lesotho law is currently silent on this aspect.

Another issue that was identified in the money laundering framework and mobile money framework is the fact that the money laundering laws currently in force in Lesotho are intended to be applied by all the financial institutions in Lesotho. There should be provisions in the mobile money legislation that talk about KYC and money laundering provisions taking into consideration the nature of the mobile money in Lesotho and the nature of the mobile money business in general.

To address the issues identified in the frameworks, recommendations or solutions have been discussed, such as having regulators in the industry work hand in hand to ensure that the business is well regulated. Systems that will enable mobile money providers to comply with the money laundering laws in the country should also be introduced that will enable the mobile money providers to refer to the database provided by home affairs to verify and identify customers. Countries, for instance Kenya and South Africa already have these systems and methods in place.

Chapter 7

General background, summary of the findings and analysis, conclusions and recommendations

7.1 General introduction and background

As stated in Chapter 1 of this research, the title of the dissertation is “*Promoting Financial Inclusion through Mobile Money whilst introducing Regulatory Solutions to reduce and control Money Laundering in Lesotho.*” The primary aim of the research was *to find out what regulatory measures can be introduced in the Kingdom of Lesotho to ensure that financial inclusion is easily achieved, using mobile money as one of the tools, and also ensuring that mobile money as a tool for financial inclusion operates smoothly in Lesotho, while at the same time maintaining financial integrity and financial stability by reducing, controlling and preventing the crime of money laundering.*

The main research question, which this study attempted to answer or address was: “*Based on the financial institutions’ laws and money laundering laws of some African countries, what regulatory measures need to be introduced to ensure financial inclusion and smooth operation of mobile money services in such a way as to reduce and control money laundering in Lesotho?*”

At the beginning of the research, in Chapter 1, the following secondary objectives were set:

- to describe and justify the relevance of mobile money and financial inclusion in modern economies, including Lesotho;
- to highlight the threat of the crime of money laundering in financial institutions and financial services;

- to outline and critically analyse the legal framework for mobile money services and money laundering in Lesotho;
- to determine the extent to which the current legislative legal framework for mobile money and money laundering in Lesotho can help realise financial inclusion and promote mobile money services in Lesotho; and
- to outline and critically analyse the legislative framework for mobile money services and money laundering in other African jurisdictions with a view to distilling lessons for the improvement of the current legislative or regulatory framework of Lesotho.

To address the main research question fully and adequately, the following discussions ensued:

In the first chapter of this research, a general background was provided by stating the problem statement and discussing it in more detail. The research question, the aims and objectives of the study, as well as the hypothesis were also stated. The relevance of the study for the research unit, as well as an outline of the whole research were presented.

In Chapter 2 of the research, the focus was on the evolution and theoretical definition of mobile money (mobile money services), as well as financial inclusion in modern economies. With the aim of the research as stated in Chapter 1 in mind, which is to use mobile money as a tool to promote financial inclusion in Lesotho, it was only fitting to follow up with a discussion on the origin of mobile money services and their relevance in modern day business and economies. It was against this background that the focus was mainly on the evolution of mobile money services, as well as financial inclusion in modern economies. A clearer and more detailed definition of mobile money and the origin of mobile money were discussed. M-Pesa, Safaricom and Vodafone in Kenya were discussed, as most of the authorities stated that mobile money first originated in Kenya.¹²⁸²

¹²⁸² See para 1.7.1 and para 2.3.1 above.

Another aspect pertaining to mobile money services is mobile money platforms. Different mobile money services models were also discussed, namely the Mobile Network Operator-led model, the Third Party-Led Model, the Peer-to-Peer Model and the Hybrid Model. The benefits and characteristics of mobile money services were highlights.

Finally, financial inclusion was discussed in more detail. A detailed definition of financial inclusion was provided. Components or measurements of financial inclusion were also discussed. It was clearly stated how financial inclusion can be measured in a country. The benefits of financial inclusion which include helping the country's economy to grow were pointed out. The similarities between or relevance of financial inclusion and financial integrity, as well as the people or role players involved in ensuring that there is financial inclusion and integrity in the country were highlighted, followed by an analysis of the chapter and a conclusion.

In Chapter 3 of this research, the focus was specifically on the crime of money laundering and more specifically what money laundering is about, what it involves, the effects thereof and why it is necessary to combat money laundering. How mobile money and financial inclusion can help prevent, control and reduce the crime of money laundering were also investigated.

Money laundering was defined in detail. The different stages of money laundering, namely placement, layering and integration were explained. This was followed by a discussion on the methods and techniques of money laundering that money launderers use to move illicit proceeds and dirty money from one place to another. The methods and techniques included those appropriated by banks and other depository institutions, electronic funds transfers, electronic money, correspondent banking, tax havens and offshore banks, as well as arranging corporate loans as an integration tool. The effects of money laundering on the country's economy, such as increase in crime, the effects on investment, and the effects on society were discussed.

This was followed by the measures employed to combat money laundering and the role played by the international community in combating money laundering. The discussion revealed that money laundering is a problem that does not only affect one country. It affects many different countries in the world.

International institutions that play a role in fighting money laundering were also enumerated. These institutions include the Financial Action Task Force. The FATF also established regional bodies to help fight money laundering. The FATF regional bodies are the Asia/Pacific Group on Money Laundering (APG) based in Sydney, Australia, the Caribbean Financial Action Task Force (CFATF) based in Port of Spain, Trinidad and Tobago, the Eurasian Group (EAG) based in Moscow, Russia, the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) based in Dar es Salaam, Tanzania, the Central Africa Anti-Money Laundering Group (GABAC) based in Libreville, Gabon, the Latin America Anti-Money Laundering Group (GAFILAT) based in Buenos Aires, Argentina, the West Africa Money Laundering Group (GIABA) based in Dakar, Senegal, the Middle East and North Africa Financial Action Task Force (MENAFATF) based in Manama, Bahrain, and the Council of Europe Anti-Money Laundering Group (MONEYVAL) based in Strasbourg, France (Council of Europe).

Other institutions discussed include the United Nations (UN), the International Monetary Fund (IMF), and the Basel Committee on Banking Supervision. How mobile money and financial inclusion can help prevent and control the crime of money laundering was presented, whereafter and the conclusion followed.

In Chapter 4 of the research, the best mobile money, financial inclusion and money laundering practices in some selected African jurisdictions were highlighted. The African jurisdictions that were discussed in this chapter were Nigeria, Malawi, South Africa, Uganda, Tanzania, Ghana, and Kenya. The focus was more on how mobile money services and money laundering are regulated in those countries and the role players involved in the provision of mobile money services. The aim was also to determine how money laundering was regulated and controlled to avoid it from affecting financial

inclusion and mobile money services. The legal and regulatory frameworks of mobile money and money laundering in those jurisdictions were discussed. An analysis of the chapter was followed by the conclusions drawn.

In Chapter 5, Lesotho's mobile money and money laundering legal regulatory framework were discussed, together with a short discussion about the international and regional frameworks. In the case of Lesotho's mobile money regulatory framework, the *Central Bank of Lesotho Guidelines on Mobile Money 2013*, and the *Payments Systems (Issuers of Electronic Payments Instruments) Regulations 11 of 2017* were investigated. The regional mobile money framework that was discussed at length in the chapter was the *SADC Mobile Money Guidelines of 2016*. As far as the Lesotho Money Laundering Framework is concerned, the main piece of legislation that was discussed was the *Money Laundering and Proceeds of Crimes Act 4 of 2008* and the *Money Laundering and Proceeds Crimes (Amendment) Act 2016*.

In Chapter 6, a comparative study of Lesotho's money laundering and mobile money frameworks compared with those of other countries in Africa that were discussed in Chapter 4 of this study was undertaken. The purpose was to try and draw lessons for Lesotho, based on the discussion on the other African countries, as well as the two frameworks of Lesotho that were discussed in Chapter 5.

It emerged that the mobile money regulatory index conducts an analysis of regulation to establish whether a country has an enabling regulation. The mobile money regulatory index analysed six facets of regulation, namely authorisation, customer protection, transaction limits, KYC, agent networks and investment and infrastructure. Lesotho's money laundering and mobile money frameworks were discussed and analysed in the light of these facets of regulation. The weaknesses and strengths in the two frameworks were pointed out. Recommendations or solutions to remedy the weaknesses identified in the discussion were proposed.

7.2 Summary of the findings, analysis and final conclusions

7.2.1 Mobile money and financial inclusion in modern economies

In chapter 1, the main aim and primary objective of the whole thesis was set out.¹²⁸³ In order to achieve the primary objective set, several secondary objectives were also set out. In Chapter 2 of the research, the following secondary objective was addressed:

to describe and justify the relevance of mobile money and financial inclusion in modern economies including Lesotho.

The discussion was started by looking at where the concept of mobile money first originated.¹²⁸⁴ This was important to investigate as mobile money services are used by a majority of the people due to the fact that it is easy to use as long as one has access to a mobile phone.¹²⁸⁵ The discussion revealed that mobile money services originated in Kenya in the year 2007.¹²⁸⁶ A mobile money product called M-Pesa was introduced and launched by Vodafone and Safaricom in Kenya in 2007.¹²⁸⁷ It was found that Vodafone and Safaricom started this wonderful initiative in an effort to try and bridge the gap in the market in order to eradicate the problem of financial exclusion in the Kenyan market.¹²⁸⁸

At the beginning of the chapter it was revealed that one, Nyagaka Anyona Ouko, claimed to have come up with mobile money services in Kenya after struggling for a long time to send money to his mother who stayed far from him in the rural areas of Kenya.¹²⁸⁹ Ouko says that he thought of many ways of sending money to his mother until he came up with an idea of buying airtime and sending the airtime voucher numbers to one shop owner who stayed near his mother. The shop owner would then give money to his mother and

¹²⁸³ This was discussed in para 1.8 above.

¹²⁸⁴ See para 2.3.

¹²⁸⁵ See para 2.2 above.

¹²⁸⁶ See para 1.7.1 and para 2.3.1 above.

¹²⁸⁷ See para 2.3.1.

¹²⁸⁸ See para 2.3.1.

¹²⁸⁹ See para 2.3.

charged a certain percentage for that service.¹²⁹⁰ Another person from Britain who claims to have started mobile money is Paul Makin who claims that he started the product with Nick Hughes way back in 2004.¹²⁹¹

Of all the stories mentioned above, it emerged that mobile money indeed originated in Kenya, and therefore that the whole concept of M-Pesa started in Kenya. The study found that the M in M-Pesa stands for mobile, while Pesa which is a *Swahili* word, stands for cash.¹²⁹²

In an effort to describe and justify the relevance of mobile money in modern economies, different models of mobile money were investigated and discussed.¹²⁹³ A business model was defined and it was found to mean the way in which a business is designed to create, deliver and capture value. Mobile money businesses are classified according to the mobile money services provider offering a mobile money platform.¹²⁹⁴ According to the research, there are different mobile money models which are the Mobile Network Operator-led model, the Bank/Financial Institutions-led model, the Third Party-led model, the Peer-to-Peer model and the Hybrid model.¹²⁹⁵

The Mobile Network Operator-led model was found to be the most popular one and the one that succeeds, especially in rural and developing markets because of its ability to reach most of the unbanked population in rural and remote areas where there is no banking infrastructure at all or where the banking infrastructure is very low.¹²⁹⁶ Other models still do well, but the most successful is the Mobile Network Operator-led model.

To show that mobile money is indeed relevant in modern economies, it transpired that mobile money is important for the following reasons: 1. Speed: Transactions are

¹²⁹⁰ See para 2.3.

¹²⁹¹ See para 2.3.

¹²⁹² See para 2.3.1.

¹²⁹³ See para 2.6.1 above.

¹²⁹⁴ See para 2.6.1 above.

¹²⁹⁵ See para 2.6.1 above.

¹²⁹⁶ This model was discussed in para 2.6.2. Different mobile money service models were discussed in detail in para 2.6 above.

performed quickly through mobile money services; 2. Versatility: unlike with some plastic cards that can only function at specific service providers, mobile money services can be used anywhere, with any service provider, using just a mobile phone; 3. Security: It is safer to use mobile money than to handle cash; 4. It is an account on its own: One does not need a bank account, and it is better because one can open a mobile money account using one's mobile phone without even having to visit the bank physically; 5. Lower Costs: It is cheap to use; 6. Reduces the risk of money laundering: Electronic transactions on mobile money can be traced easily; 7. Promotes financial inclusion: It allows even poorer people and those people living in remote areas where there are no banking facilities to have access to financial services using their mobile phones.

The components or measurements of financial inclusion are access, quality, usage, and welfare. Access refers to the ability, possibility, and accessibility of individuals to make use of available financial services and products offered by different formal financial firms. Usage is about the permanent usage of financial products. This also considers the regularity, frequency, and duration of usage of such products. Quality measures, customers' experiences, attitudes, and opinions regarding usage of the available products. Welfare measures the effect and impact of using such products on the lives of individuals that make use of such products.¹²⁹⁷

The barriers to financial inclusion were investigated.¹²⁹⁸ These barriers include human barriers, which is about financial literacy or not being aware that such financial products exist. There are also institutional or infrastructure barriers when financial services are located far from where people live. Costs barriers refer to the costs involved in using such financial services.

It further emerged the study found that there are benefits to financial inclusion and these include savings and investment. As stated above, mobile money is advantageous in that it is an account on its own, and it promotes financial inclusion. This means that people

¹²⁹⁷ These discussions can be found in para 2.7.1 to para 2.7.7 above.

¹²⁹⁸ See para 2.8.3 for financial inclusion barriers.

can save money on a mobile money account. Another benefit of financial inclusion according to the research is that it promotes economic growth because where people have access to financial services opportunities are made available to everyone, including the poor, thereby improving the economy of the country. It also allows people to have access to insurance and credit, so that people can access different financial services, including insurance services and credit facilities offered by financial firms.¹²⁹⁹

The promotion of financial inclusion is the collective responsibility of individuals, the private sector, and the government. For instance, the private sector must harness technology used for financial inclusion while the government, through its policies, can create an enabling environment for financial inclusion.¹³⁰⁰

In this chapter, the research also discussed the relationship between financial inclusion and financial stability and found that financial inclusion can contribute to financial stability.

It was concluded that mobile money is important and relevant in modern economies and that Lesotho can benefit greatly from mobile money services. The conclusion was based on the benefits of mobile money, such as speed, lower costs, and convenience, among others, discussed throughout the chapter. The same conclusion was drawn regarding financial inclusion. The benefits derived from the financial growth of countries can also benefit Lesotho and are therefore relevant in modern economies.

7.2.2 The crime of money laundering

In Chapter 3 of the research, the aim was to address the following secondary objective of the thesis:

to highlight the threat of the crime of money laundering in financial institutions and financial services.

¹²⁹⁹ See para 2.8.4 for a detailed discussion on the benefits of financial inclusion.

¹³⁰⁰ See para 2.8.5.1.

It was stated at the beginning of the research that one of the aims is to find ways of introducing regulatory solutions to fight the crime of money laundering. In order to do this, it was necessary to understand everything about money laundering and in order to be able to find appropriate solutions.

The discussion in the chapter started with different definitions of money laundering and found that different authors all define it broadly, but the meaning is still that money laundering is a process of converting cash or property derived from illegal sources to appear as though it was obtained through legitimate or legal sources.¹³⁰¹ This whole process is carried out through the placement, layering and integration stages. These different stages of money laundering were discussed at length in the chapter.¹³⁰²

It was also found that money launderers use certain methods and techniques to launder money. In the earlier stages, they use the traditional banking sector to enable their money laundering activities, but because of the strict requirements with which banks have to comply, it was difficult for money launderers to push ahead with the crime; they were forced to think of other possible techniques and methods of laundering money. These methods and techniques included laundering money through banks and other depository institutions, and laundering money by using Electronic Funds Transfers (EFT), where dirty money is moved daily, using systems, such as Fedwire, SWIFT or CHIPS.¹³⁰³

Electronic money is also used as another technique of money laundering because personal contact of the system with the client is not a requirement. Correspondent banking relationships are also misused because of the nature of the relationship that enables another bank to carry out its international transactions. Its customers in other foreign countries and remote places where it does not have a physical place of business and its customers and its employees are also not there. Money launderers therefore take advantage of these conditions. Another method used is tax havens and offshore banks.

¹³⁰¹ See para 3.2.2 for different definitions of money laundering.

¹³⁰² See para 3.2.3 for a detailed discussion.

¹³⁰³ Methods and techniques of money laundering were discussed in detail in para 3.3 above.

It was also found that money laundering crimes weaken a country's economy. It lessens production, output, and efficiency in the country's real sector by diverting the resources, thereby inspiring criminals to engage in corrupt activities.¹³⁰⁴ It increases crime and affects investment. The efforts made by the international community in the fight against money laundering were also investigated. It was found that institutions, such as the FATF have established different bodies in different countries and continents to help in fighting the crime.¹³⁰⁵

It became clear that money laundering is certainly not good for the financial sector and must therefore be eradicated. This point was illustrated by the disadvantages and negative effects of money laundering discussed in the chapter. It was shown that money laundering increases crime and affects the economy of the country. These negative effects of money laundering must therefore be prevented so that criminals do not take advantage of the mobile money technology to engage in money laundering activities. The conclusion drawn was, therefore, that money laundering must be prevented in Lesotho.

7.2.3 Best mobile money and financial inclusion practices in other jurisdictions

Another secondary objective which was addressed in Chapter 4 was:

to outline and critically analyse the legislative framework for Mobile Money Services and money laundering in other African Jurisdictions with a view to distilling lessons for the improvement of the current legislative or regulatory framework of Lesotho.

Having described and justified the relevance of mobile money and financial inclusion in modern economies, and also highlighting and understanding the crime of money laundering, the next step in the research was to investigate the framework of mobile money and money laundering in Lesotho.

¹³⁰⁴ See para 3.4 above.

¹³⁰⁵ These institutions and the role they play were discussed in detail in para 3.5 above.

Before dwelling on how the current legal framework of Lesotho impacts on financial inclusion and mobile money, the best practices of mobile money and financial inclusion in other African jurisdictions were discussed. Mobile money and financial inclusion, as well as money laundering regulatory practices of the following countries were discussed and analysed: Nigeria, Malawi, Tanzania, South Africa, Uganda, Ghana and Kenya. The research found that mobile money, financial inclusion, as well as money laundering are tackled differently in different jurisdictions.

As far as South Africa is concerned, the research found that mobile money was introduced in 2004.¹³⁰⁶ The research found that mobile money services in South Africa were not successful and were terminated in 2016.¹³⁰⁷ One of the reasons that led to termination of mobile money services is the regulatory environment that was not enabling in the sense that mobile money services are regulated in the same way that banks are regulated.¹³⁰⁸ Although mobile money services were discontinued, the research found that the South African AML/CFT regulatory framework which is also applicable to mobile money services enables customers to have access to financial services even though they may not have some required documents such as an identity document.¹³⁰⁹ This is in line with the risk-based approach recommended by the FATF.

In terms of Uganda, mobile money services were introduced in 2009.¹³¹⁰ Mobile money services are regulated in Uganda by the Bank of Uganda. The Bank of Uganda shares the responsibility of regulating mobile money services with the Uganda Communications Commissions. The piece of legislation that is used for regulating mobile money services in Uganda is the *Mobile Money Guidelines of 2013*. The Guidelines make it mandatory for a mobile money service provider to partner with an institution supervised by the Bank of Uganda as a requirement to get a mobile money service provider license from the Bank of Uganda. One of the duties of this partnering institution is to ensure that a mobile money

¹³⁰⁶ See para 4.2.1.

¹³⁰⁷ See para 4.2.1.

¹³⁰⁸ See para 4.2.1.

¹³⁰⁹ See para 4.2.3.

¹³¹⁰ See para 4.3.2.

service provider adheres to money laundering requirements by having, among others, measures intended to prevent and control money laundering.

As far as Kenya is concerned, mobile money services were introduced in 2007.¹³¹¹ The very first country to introduce mobile money services in Africa and probably in the whole world is Kenya. As with other countries, the Central Bank of Kenya, and the Communications Authority of Kenya work together to regulate the provision of mobile money services in Kenya.

The CBK played a major role in supporting financial inclusion in the country by issuing a piece of legislation that assisted banks to promote their products.¹³¹² It also ensured that financial inclusion was attained by providing M-Pesa at lower costs. The research found that the *2014 National Payment Systems Regulations* is the main piece of legislation used for regulating mobile money services in Kenya. The Regulations deal with many aspects regarding mobile money services, including agents, transactional limits, anti-money laundering, systems interoperability, and customer service agreements.

Nigeria is another country that was discussed in this research. It was found that mobile money services were introduced in 2011 for the first time in Nigeria.¹³¹³ The regulating body responsible for regulating mobile money services is the Central Bank of Nigeria. It is also vested with the responsibility of coming up with the relevant regulatory framework for mobile money services in Nigeria. The Central Bank of Nigeria introduced the *Mobile Money Service Guidelines* on 1 April 2015. The research found that Nigeria has about twenty-one (21) mobile money network operators, the highest number in the world, and the Central bank of Nigeria has a plan to strike off or deregister those that are dormant. It was further found that Nigerian mobile money law recognises only two mobile money models, namely the bank-led mobile money model and non-bank-led mobile money model.¹³¹⁴

¹³¹¹ See para 4.7.2 above.

¹³¹² See para 4.7.2 above.

¹³¹³ See para 4.6.2.

¹³¹⁴ See para 4.6.4 above.

Interesting about Nigeria is the fact that the mobile money models adopted are different from models used in other African countries, such as Kenya where they are driven mostly by the MNOs.¹³¹⁵ The mobile money models in Nigeria are driven and regulated by the CBN which also regulates the entire Nigerian financial sector. The models adopted are the bank-led model, where the whole mobile money process is led by a deposit-taking financial institution licensed by the CBN. The second model is the non-bank-led model where the process is led by a licensed deposit financial institution or any of its affiliates.

The Guidelines regulate a number of important aspects, such as the roles and responsibilities of all those involved in the provision of mobile money services, namely the mobile network operators, licensed institutions, and consumers and most importantly, the Guidelines give clear guidance in terms of payment settlement of mobile money transactions. The Guidelines do not say much about how money laundering risks can be managed in order to prevent them from affecting mobile money services in Nigeria.

The other jurisdiction that was discussed in this research was Malawi. Mobile money was introduced in Malawi in 2012.¹³¹⁶ There are different regulators involved in the regulation of mobile money in Malawi, but the main regulator is the Reserve Bank of Malawi. These different regulators include the Ministry of Finance, the Malawi Communications Regulatory Authority, the Financial Intelligence Unit, as well as the Competition and Fair-Trading Commission. Each of these regulators has a specific role to play in the provision of mobile money services in Malawi.¹³¹⁷

The research found further that there are efforts by different stakeholders led by the RBM towards coordinating regulatory approaches to come up with an enabling regulation for mobile money services in Malawi. As a result, industry bodies, such as the National Payments Council were formed, and the E-Banking Task Force made up of banking,

¹³¹⁵ See para 4.6.4.

¹³¹⁶ See para 4.8.2 above.

¹³¹⁷ A discussion on these regulators was made in para 4.8.3 above.

payments, internal audit and IT departments within the RBM. Their efforts led to the formation or promulgation of the Mobile Money Guidelines in Malawi.

As far as the mobile money regulatory framework of Malawi is concerned, it was found that the *Payment Systems Act 2016*,¹³¹⁸ the *Electronic Transactions Act 2016*¹³¹⁹ and the *Reserve Bank of Malawi Guidelines for Mobile Payment Systems 2011*¹³²⁰ of Malawi form part of the legal and regulatory framework of financial services, including mobile money services in Malawi.¹³²¹

7.2.4 Lesotho's legislative regulatory framework of mobile money services and money laundering

Having discussed and analysed the best regulatory practices in other African jurisdictions, the next step taken in the research was to discuss and look at the position in Lesotho. As a result, the following secondary objective of the research was addressed in Chapter 5:

to determine the extent to which the current legislative legal framework for money laundering and terrorist financing in Lesotho can help realise financial inclusion and promote mobile money services in Lesotho.

The focus was solely on the mobile money framework of Lesotho and the money laundering framework. The purpose was to determine how mobile money services are regulated in Lesotho and to generally find out how money laundering is regulated in order to establish if there is any need for improvement, based on what has been learned from other jurisdictions. The legal framework and sources of law in Lesotho in general were discussed briefly. The purpose of this discussion was to learn of the sources of law in general that are applicable in Lesotho. This was because the money laundering framework and the mobile money framework in Lesotho could have been influenced by

¹³¹⁸ *Payments Systems Act 15 of 2016.*

¹³¹⁹ *The Electronic Transactions and Cybersecurity Act 33 of 2016.*

¹³²⁰ *Reserve Bank of Malawi Guidelines for Mobile Payment Systems 2011.*

¹³²¹ See para 4.8.3 above.

some of the practices that are applied in regional bodies, trade agreements or international organisations to which Lesotho is a party.

It emerged that some of the sources of law in Lesotho include international law, and by virtue of being a signatory to many international instruments, international law is used as a source of law in Lesotho. The Central Bank of Lesotho was bound, through its National Payments Systems Division, to ensure that its payment systems laws and mobile money laws are aligned to the *SADC Mobile Money Guidelines*. It was found that the CBL is a member of the SADC Payment Systems Oversight Committee to promote the objectives of the SADC Protocol on Finance and Investment. The PSOC was instrumental in the drafting of the SADC Mobile Money Guidelines to which the SADC Central Bank's member states have to ensure that their mobile money laws and payment systems laws are aligned. Lesotho is no exception.

Thereafter the current mobile money regulatory framework of Lesotho was discussed. It was found that mobile money services in Lesotho were regulated through the *Mobile Money Guidelines 2013* that were issued shortly after mobile money services were introduced for the first time in Lesotho. Because of the regulatory shortcomings identified in the 2013 Guidelines, the CBL introduced the *Payment Systems Regulations* in 2017 to strengthen the mobile money legislation.

The two frameworks of Lesotho were compared with what is done in other African jurisdictions as discussed in Chapter 4. This was done to propose solutions for Lesotho, based on the gaps identified.

7.2.5 Any lessons for Lesotho?

With all the secondary objectives discussed and addressed in Chapters 2 to 5 of the research, the aim of Chapter 6 was to find out whether there are any lessons to be learnt by Lesotho for the improvement of financial inclusion, money laundering control and mobile money services. The findings of the mobile money regulatory index were

discussed, whereafter Lesotho's mobile money and money laundering frameworks were discussed and analysed by highlighting the strong points and weaknesses in the two regulatory frameworks. How those weaknesses in the regulatory framework could be solved, based on what was practised in other African countries, as well as what emerged from the discussion on the Mobile Money Regulatory index, was investigated. Conclusions were then drawn, and recommendations were made.

It was found that the mobile money regulatory index is a tool that measures the effectiveness of different mobile money regulatory frameworks of different countries. In terms of what was discussed about the mobile money regulatory index, the research found that one of the key aspects that makes the mobile money business succeed is an 'enabling regulation'.¹³²²

The index also focused on six facets of regulation, namely authorisation, agent network, consumer protection, transaction limits, KYC, as well as investment and infrastructure environment. From the discussion of the mobile money regulatory index, as well as the discussions in Chapter 4 of the research, it was determined that Lesotho must review the legislation regulating mobile money service providers. There are several issues that must be clarified in the current mobile money and money laundering law of Lesotho. These issues include the following: regulation and management of agent networks, transactional limits, unclear money laundering provisions in the law, disregard of the telecommunications sector and unclear KYC requirements that are also not easy to apply.

The money laundering laws currently enforced in Lesotho are intended for application by all the financial institutions in Lesotho. There are currently no comprehensive provisions in the mobile money legislation that talk about KYC and money laundering provisions taking into consideration the nature of the mobile money sector in Lesotho and the nature of the mobile money business in general. This is so, despite the fact that the research found that the *SADC Mobile Money Guidelines* state that the Telecommunications

¹³²² Enabling regulation is defined in more detail in para 6.1 above.

Regulator must be consulted when formulating the mobile money framework.¹³²³ The FATF also recommends mobile money services providers to adhere to the money laundering laws.¹³²⁴ This is, however, not the case only in Lesotho, as Madise notes that even in Malawi, none of the existing pieces of legislation currently used to regulate mobile money services were drafted with mobile money as a focal point.¹³²⁵

It was also established that the money laundering law of Lesotho is not clear in that it does not clearly define the roles that the regulators involved in the mobile money business must fully play to ensure compliance with the law. As discussed earlier, mobile money is regulated by the CBL and the telecommunications regulator from the MNO's side, but the law does not clearly define the roles that each of those regulators must play to ensure smooth operation of mobile money services, as well as compliance with money laundering laws.

To address the issues identified in the frameworks, recommendations or solutions have been discussed, such as having regulators in the industry to work hand in hand to ensure that the business is well regulated.¹³²⁶ Systems that will enable mobile money providers to comply with the money laundering laws in the country should also be introduced that will enable the mobile money providers to refer to the database provided by the home affairs department to verify and identify customers.¹³²⁷ Countries, such as Kenya and South Africa already have these systems and methods in place.¹³²⁸

7.3 Recommendations

Before any recommendations are made, it is important to look back and determine whether the main aim of this research has been achieved. It is also important to establish whether the hypothesis made at the beginning was correct.

¹³²³ See para 5.4.1.2 above.

¹³²⁴ See Recommendation 14 of the *Financial Action Task Force*.

¹³²⁵ See para 4.8.3 above.

¹³²⁶ See para 6.4.2.2 above.

¹³²⁷ See para 6.4.2.3 above.

¹³²⁸ See para 6.4.2.3 above.

At the beginning of the research, the primary aim was stated as follows:

to determine what regulatory measures are needed in Lesotho to protect mobile money services to control and reduce the crime of money laundering.

To achieve this objective, a thorough discussion ensued regarding what mobile money entails to understand it. The same discussion was carried out in respect of financial inclusion. The crime of money laundering for which the research aimed to find solutions to protect mobile money was also investigated thoroughly, together with ways of preventing money laundering. After this discussion, other African countries' mobile money and money laundering frameworks was addressed, whereafter a critical discussion of the Lesotho money laundering and mobile money frameworks followed. These discussions allowed the researcher to determine if there are any regulatory measures needed in Lesotho to protect mobile money services from money laundering.

The hypothesis was stated as follows:

The current regulatory framework of mobile money services in Lesotho has many gaps that should be stopped, and if stopped, the regulatory framework could address the problems that are identified.

Because the hypothesis was made at the beginning, the research then thoroughly discussed and critically analysed the mobile money and money laundering framework of Lesotho to find out whether it is enabling for mobile money to operate smoothly. The frameworks of other African countries were also discussed.

The legal shortcomings were identified after analysing the law to determine if mobile money services in Lesotho are well regulated. The legal gaps have been shown and clarified. For instance, as stated above, there is a need to revisit the following provisions in the law: provisions dealing with agent networks, transactional limits, money laundering and CDD requirements. It is submitted that after these gaps in the law have been

addressed, mobile money in Lesotho would operate smoothly and help to promote financial inclusion.

7.3.1 Amendment of the law

It is against this background that it is recommended that the regulatory measures that need to be introduced include the amendment of the current law to address those legal gaps identified. Lesotho can benefit if mobile money services are well regulated. The following must be addressed when amending the law:

7.3.1.1 Agents

It has already been shown in previous chapters that mobile money is important, as it contributes to financial inclusion.¹³²⁹ The benefits of both mobile money and financial inclusion were also demonstrated at length in previous chapters.¹³³⁰ It was also concluded that based on those benefits, Lesotho can benefit.¹³³¹ Therefore, Lesotho can benefit from sound regulation of mobile money services. For instance, Lesotho could benefit, and mobile money services could operate smoothly, if the issue of agent networks that was identified as a gap in the law could be clarified. It was stated earlier that one of the aspects that contributes to the success of mobile money is agents, as they play a major role in the service.¹³³²

Madise says one of the issues that contributed to the success of M-Pesa in Kenya was the fact that they used agents.¹³³³ He says that the fact that M-Pesa customers go to agents to get mobile money services does not mean that they necessarily like those agents; it is because they like the company that is represented by those agents.¹³³⁴ This means that companies or mobile money providers must make sure that they train their

¹³²⁹ See para 2.7.7 above.

¹³³⁰ See para 2.7 and para 2.8.4 above.

¹³³¹ See para 2.9 above.

¹³³² See para 6.3.1.4 above.

¹³³³ See para 6.3.1.4 above.

¹³³⁴ See para 6.3.1.4 above.

agents well. They must be accountable and responsible for the actions committed by the agents and this must be clearly stipulated in the law. This will help to restore customers' confidence in the MNO. Madise says that customers feel as if they are dealing with the company directly when they are dealing with agents.¹³³⁵ This means that whatever an agent does, the customer feels as if that was done directly by the MNO. In the case of Lesotho, it is submitted that mobile money services will be provided better if they are provided by agents who are well-regulated, and if the law can be amended to that effect, then Lesotho can benefit substantially.

In countries like Kenya, Ghana and Tanzania, mobile money service providers are held accountable for the actions of the agents they employ.¹³³⁶ It has also been stated that mobile money agents in Kenya help in promoting financial inclusion.¹³³⁷ This means that if they are regulated well to ensure that even the mobile money service provider is made to be accountable for his/her actions, then that can contribute to the success of mobile money services further. It is, therefore, recommended that Lesotho should amend the existing law to clarify this issue of agents. The law must unambiguously make mobile money providers accountable for their agents' actions. This is simple and easy, since the Central Bank of Lesotho is already enforcing this in other industries, such as insurance where the insurer is held accountable for the actions of the insurance intermediaries,¹³³⁸ such as agents and brokers.¹³³⁹

¹³³⁵ See para 6.3.1.4 above.

¹³³⁶ Section 26 of the *Bank of Ghana Guidelines for E-Money Issuers in Ghana*. Section 6 of the *Bank of Ghana Agent Guidelines*; section 37 of the *Payment Systems (Electronic Money) Regulations, 2015 of Tanzania*. Also see section 55 (1) (p) of the *National Payment System Regulations, 2014 of Kenya*.

¹³³⁷ See Unnikrishnan et al 2019 <https://www.bcg.com/publications/2019/how-mobile-money-agents-can-expand-financial-inclusion.aspx>.

¹³³⁸ In terms of the *Insurance Act* 12 of 2014 of Lesotho, section 2 thereof, an Insurance Intermediary is defined as: "...an insurance broker, insurance agent, insurance loss adjuster, insurance loss assessor or risk consultant registered under the Act"

¹³³⁹ See section 11 (6) of the *Insurance (Fit and Proper Requirements for Intermediaries) Regulations* 2016 issued in terms of the *Insurance Act* 2014 of Lesotho. Also see section 76 (2) of the *Insurance Act* which also requires the Insurance intermediaries themselves to take full responsibility for all acts committed by their employees.

7.3.1.2 Multi-regulators of mobile money services

Another shortcoming that must be addressed is the issue of the telecommunications sector that the law is currently not addressing thoroughly. Madise says that it is important for the mobile money services industry to be regulated as a unique service that combines the elements of the financial service and communications service.¹³⁴⁰ It is, therefore, recommended that the law be amended to include provisions that clearly give direction as to how the two regulators will work together to regulate mobile money services in Lesotho. It has also been stated above that the telecommunications regulator/industry must be included in the drafting of the mobile money laws.¹³⁴¹

This is not an issue in Lesotho only, as Gitiri notes that, despite the success of mobile money in Kenya, there are some regulatory challenges, as it is regulated by two sectors that have traditionally been regulated separately and differently.¹³⁴² Gitiri argues that the approach in regulating mobile money should involve flexible mechanisms that are capable of accommodating a technological development in the operations mobile money.¹³⁴³ It is therefore recommended that Lesotho should be flexible enough to amend the existing law to cater for this, since currently it is not provided for in the law.

7.3.1.3 Simplified CDD rules and application of a risk-based approach

Another gap in the legislation of Lesotho that must be addressed is the issue of CDD requirements that are unclear and difficult to apply. Madise says that “In reality, however,

¹³⁴⁰ Madise *The Case of Regulation of Mobile Money in Malawi* 114.

¹³⁴¹ See para 5.4.1.2 above.

¹³⁴² See Gitiri 2018 <https://rechtinnovativ.online/ri-nova-01-2018-gitiri-the-legal-regulation-of-M-Pesa>. This was also stated by Madise who submitted that: “The multiplicity of regulators has the potential to lead to the problems associated with cross sanctioning between regulatory regimes. Although attempts have been made to achieve regulatory coordination, what comes out is confirms Teubner’s theory of autopoiesis. 2 Each of the regulators operates in its own cocoon and although there are cooperating agreements; they usually talk past each other because of the different communication language they employ. Apart from being distinct sector regulators, they also employ different regulatory approaches.” Also see Madise *The Case of Regulation of Mobile Money in Malawi* 215.

¹³⁴³ Gitiri 2018 <https://rechtinnovativ.online/ri-nova-01-2018-gitiri-the-legal-regulation-of-M-Pesa>.

the low ceiling in transaction value means that the risk of m-money being used for such illicit purposes is very low.”¹³⁴⁴ As such, it is submitted that the risk of money laundering in mobile money services is low and therefore mobile money services providers should be allowed to apply a risk-based approach as explained in Recommendation 1 of the FATF,¹³⁴⁵ and not be expected to apply the same CDD requirements as other financial institutions, such as those to which banks are subjected. This is also because it has been said by many writers that mobile money services are used by low-income earners who pose a low risk to financial services.¹³⁴⁶ The FATF also made the following recommendation:

There are circumstances where the risk of money laundering or terrorist financing may be lower. In such circumstances and provided there has been an adequate analysis of the risk by the country or by the financial institution, it could be reasonable for a country to allow its financial institutions to apply simplified CDD measures.¹³⁴⁷

De Koker also submits that the FATF’s risk-based approach is very helpful in removing barriers to financial inclusion.¹³⁴⁸

7.3.1.4 Transaction limits

Regarding the issue of transactional limits that has also been identified as a gap in Lesotho, it is recommended that the current mobile money legislation in Lesotho should be amended to clarify this, as it will also help in reducing the risk of money laundering.

It is submitted that the current mobile money law of Lesotho must be amended to incorporate these recommendations made above to address the weaknesses identified. Bahia and Muthiora¹³⁴⁹ argue that regulation must adapt to changing dynamics just as

¹³⁴⁴ Madise *The Case of Regulation of Mobile Money in Malawi* 114.

¹³⁴⁵ See para 3.5.1.1.3 above for a discussion on Recommendation 1.

¹³⁴⁶ See para 1.1 above.

¹³⁴⁷ See FATF Recommendation 10 on Customer Due Diligence available at <https://www.cfatf-gafic.org/index.php/documents/fatf-40r/376-fatf-recommendation-10-customer-due-diligence>.

¹³⁴⁸ De Koker 2013 *Washington Journal of Law, Technology and Arts* 177.

¹³⁴⁹ See para 6.2.1.1 above.

MNOs do with innovation, introduction of new and modern technology, consumer needs and demands and business models.

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