

The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe

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Abstract

The advent of mobile money innovations has given people in rural areas, informal settlements and other poor communities an opportunity to participate in Zimbabwe's mainstream financial economy. However, the technology-driven money services have presented some challenges to the traditional banking sector in general and the regulation of financial services in particular. Firstly, most mobile money services are products of telecommunication corporations, which are not banks. Telecommunication companies use their network reach to provide mobile money services via mobile devices at a cheaper cost than banks across the country in Zimbabwe. As such, banks face unprecedented competition from telecommunications companies that are venturing into financial services. It also appears that prudential regulation of banks cannot keep up with the fast pace at which technological innovations are developing and this has created a disjuncture between the regulation and the use of technological innovations to promote financial inclusion in Zimbabwe. The *Banking Act* [Chapter 24:20] 9 of 1999, the *Reserve Bank of Zimbabwe Act* [Chapter 22:15] 5 of 1999 and the *National Payment Systems Act* [Chapter 24:23] 21 of 2001 have a limited scope in terms of the regulation of mobile money services in Zimbabwe. The Ministry of Finance and Economic Development launched the National Financial Inclusion Strategy (NFIS) 2016-2020 to provide impetus to the financial inclusion of the poor, unbanked and low-income earners in Zimbabwe. However, the NFIS appears to push more for bank-led financial inclusion than it does for innovation-driven initiatives such as mobile money services. This article highlights the positive influence of mobile money services in improving financial inclusion for the poor, unbanked and low-income earners in Zimbabwe. The article also seeks to point out gaps and flaws in the financial services regulatory framework that may limit the potential of mobile money services to reach more people so that they actively participate in the Zimbabwean economy. It is submitted that the Zimbabwean mobile money services regulations and the financial regulatory framework should be carefully amended in line with the recent innovations in mobile money to adequately regulate the use of mobile money services and innovative technology to address the financial exclusion of the poor, unbanked and low-income earners in Zimbabwe.

Keywords

Mobile money; mobile money services; financial inclusion; unbanked persons; regulation.

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1 Introductory remarks

The increasing use of innovative technology in society has led to the emergence of new and potentially disruptive financial products, such as mobile money, that are changing the terrain and regulation of the financial services sector in Zimbabwe.¹ Technological advances have given rise to various financial services and the opening of doors for new role-players such as telecommunication corporates in a sector that was dominated by banks.² Innovative technology refers to the use of new products in the information communication technologies (ICTs) such as mobile phone applications to provide cheap, quick and real-time financial services.³ Mobile money is one of many innovative digital financial products that form part of the Fourth Industrial Revolution and it is changing the structure and regulation of the financial markets in Zimbabwe.⁴ Mobile money makes it possible *inter alia* for the poor, unbanked and low-income earners to deposit, withdraw and transfer money, and pay bills using value stored on their subscriber identity module (SIM) cards inserted in mobile phone handsets or any other hand-held devices.⁵ Banks can also provide their customers with mobile banking services by linking the customers' mobile phones to their bank accounts, allowing customers to access their

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¹ Sulieman and Salleh 2020 *Journal of Critical Reviews* 568; Kendall and Voorhies 2014 *Foreign Affairs* 10; Robb and Vilakazi 2016 *AJIC* 10-11; Kufandirimbwa et al 2013 *Online Journal for Social Sciences Research* 92-93.

² Buckley et al 2019 *European Business Organisation Law Review* 7-35; Remolina 2019 <https://doi.org/10.2139/ssrn.3475019> 7; Robb and Vilakazi 2016 *AJIC* 10; Kufandirimbwa et al 2013 *Online Journal of Social Sciences Research* 93.

³ Wayne et al 2020 *Research Agenda Working Papers* 43-44; see related notes by Barruetabeña 2020 *Economic Bulletin, Banco de España* 4; Andrianaivo and Kpodar 2011 *ICT, Financial Inclusion and Growth Evidence* 10-11.

⁴ Gas 2017 <http://dx.doi.org/10.13140/RG.2.2.25176.39689> 2; Sulieman and Salleh 2020 *Journal of Critical Reviews* 568; Buckley et al 2019 *European Business Organisation Law Review* 7-35.

⁵ Winn and de Koker 2013 *Wash J L Tech & Arts* 156; Buckley, Greenacre and Malady 2015 *Wash U Global Stud L Rev* 437; Goldby 2013 *Wash J L Tech & Arts* 403.

accounts without visiting a bank branch.⁶ However, for the purposes of this article, we refer to mobile money services that are offered by telecommunication companies in Zimbabwe.⁷ Accordingly, bank-led mobile money services fall outside the scope of this article. Mobile money users are able to store funds either originally purchased as airtime or as money that has been deposited directly into the relevant user's mobile wallet for future use either as electronic money or withdrawn as cash.⁸ (For the purposes of this article, the terms users and customers will be used interchangeably.)

Zimbabwe has mobile money platforms such as Ecocash, Onemoney and Telecash that are run by three mobile network operators (MNOs), namely Econet, NetOne and Telecel respectively, and not by conventional banks.⁹ Ecocash, Onemoney and Telecash are accessible through the use of mobile phones and they have changed the way that the poor, unbanked and low-income earners access financial services and financial products in Zimbabwe and other developing countries.¹⁰ Mobile money platforms provide some avenues for financial inclusion for the poor and previously unbanked persons who become able to participate in the formal financial sector in Zimbabwe.¹¹ Financial inclusion entails the provision of access for all persons to affordable and useful financial products and financial services such as payments, savings, credit and insurance in a responsible and sustainable manner by various providers in a properly regulated environment.¹² On the contrary, financial exclusion means the failure or inability of poor and unbanked persons to access and use reasonably cheap and suitable financial services and financial products that are

⁶ Wayne *et al* 2020 *Research Agenda Working Papers* 43; Bećirović, Bajramović and Ahmatović "Role of Mobile Banking" 89, 91-92; Chitokwindo, Mago and Hofisi 2014 *MJSS* 420.

⁷ Gibson, Lupo-Pasini and Buckley 2015 *Sing JLS* 26; Greenacre *Regulating Mobile Money* 3; Buckley, Greenacre and Malady 2015 *Wash U Global Stud L Rev* 437; Masocha and Dzomonda 2018 *AAFSJ* 2-3.

⁸ Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 762; Chopra and Sherry 2014 *OIDA International Journal of Sustainable Development* 28; Greenacre *Regulating Mobile Money* 3; Masocha and Dzomonda 2018 *AAFSJ* 2-3.

⁹ Mbengo and Phiri 2015 *Corporate Ownership of Control* 196-197; Robb and Vilakazi 2016 *AJIC* 15; Mago and Chitokwindo 2014 *MJSS* 221-222; Kufandirimbwa *et al* 2013 *Online Journal of Social Sciences Research* 93.

¹⁰ Kendal and Voorhies 2014 *Foreign Affairs* 10; Sulieman and Salleh 2020 *Journal of Critical Reviews* 568; Robb and Vilakazi 2016 *AJIC* 16; Mago and Chitokwindo 2014 *MJSS* 223.

¹¹ Buckley *et al* 2019 *Social Sciences Research Network* 13; Sulieman and Salleh 2020 *Journal of Critical Reviews* 568-569; Robb and Vilakazi 2016 *AJIC* 15-16.

¹² Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25; Mago and Chitokwindo 2014 *MJSS* 222; Barruetabefia 2020 *Economic Bulletin, Banco de España* 1-2; Ozili 2020 *IFR* 3-4.

offered in the formal financial sector of any country, including Zimbabwe.¹³ Persons who do not have access to formal financial services and financial products such as payments, savings, credit and insurance are regarded as financially excluded. There are various factors that contribute to financial exclusion of the poor, unbanked and low-income earners in Zimbabwe. These include the absence of a financial inclusion policy, geographical distance, proof of identity documentary requirements, the costs of financial services and products, cultural and psychological hindrances.¹⁴ For the purposes of this article, the poor, unbanked and low-income earners refer to both unemployed and employed persons who do not have enough money or income to support themselves or to maintain a bank account.¹⁵ Put differently, poor, unbanked and low-income earners have limited or no access to formal financial services and they often resort to cash when they do transactions.¹⁶

Although the growing use of mobile money and related digital financial services is a positive development for financial inclusion, it requires the relevant authorities to effectively regulate and supervise mobile money services in Zimbabwe.¹⁷ The effective regulation of mobile money is crucial owing to the fact that mobile money combines a telecommunication service on the one hand and a financial service on the other. These two sectors have separate regulatory frameworks in Zimbabwe.¹⁸ For this reason, legislation that effectively deals with the regulation of financial services and telecommunications should be enacted in Zimbabwe. Chatain *et al* argue that mobile phones can be used by criminals and terrorists. The use of mobile money could hence pose financial integrity challenges that affect financial markets.¹⁹ Furthermore, De Koker argues that some of the key risk factors in relation to mobile money are the

¹³ Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 173; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25-26; Ngwenya, Pelser and Chivaura 2018 *SAJEMS* 3.

¹⁴ Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25-26; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 173; Mago and Chitokwindo 2014 *MJSS* 222.

¹⁵ Lumsden 2018 *Stan J L Bus & Fin* 10; Chopra and Sherry 2014 *OIDA International Journal of Sustainable Development* 27; Ali 2016 *Int J Soc Sci Stud* 74.

¹⁶ Lumsden 2018 *Stan J L Bus & Fin* 17; see related remarks by Chopra and Sherry 2014 *OIDA International Journal of Sustainable Development* 27; Ali 2016 *Int J Soc Sci Stud* 74.

¹⁷ Lowry 2016 *Fed Comm LJ* 356; Sulieman and Salleh 2020 *Journal of Critical Reviews* 568.

¹⁸ Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 287; Kersop and Du Toit 2015 *PELJ* 1605; also see Lumsden 2018 *Stan J L Bus & Fin* 35.

¹⁹ Chatain *et al* *Protecting Mobile Money* 1; Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 287; Kersop and Du Toit 2015 *PELJ* 1607.

anonymity, elusiveness, rapidity and poor oversight of the system, due to the limited or poor regulation and supervision by regulators.²⁰ In addition, the instant nature of mobile money transactions appears to be too fast for effective regulation and supervision of the financial sector in Zimbabwe.²¹ As a result, these innovative technologies have both positive and negative implications for consumers, financial service providers, financial sector regulation and the economy at large.²²

It is submitted that Zimbabwe does not have legislation that expressly regulates mobile money services. In this regard, a wide range of incoherent laws are used to regulate and supervise innovative financial services and products in Zimbabwe. The authors argue that a new statute must be enacted to accommodate innovative technology that effectively regulates the financial sector to promote financial inclusion for the poor, unbanked and low-income earners in Zimbabwe. Against this background, this article discusses the relationship between mobile money regulation, innovative technology and the promotion of financial inclusion for the poor, unbanked and low-income earners in Zimbabwe. The article discusses the adoption, use and regulation of mobile money under the *National Payment System Act (NPS Act)*,²³ the *Money Laundering and Proceeds of Crime Act (MLPC Act)*,²⁴ the *Reserve Bank of Zimbabwe Act (RBZ Act)*,²⁵ the *Postal and Telecommunications Act*,²⁶ the *Banking Act*²⁷ and the National Financial Inclusion Strategy (NFIS) 2016-2020, as well as the role of the Reserve Bank of Zimbabwe (RBZ), the National Payment Systems (NPS) division, the Financial Intelligence Unit (FIU) and the Postal and Telecommunications Regulatory Authority of Zimbabwe (Potraz) in the promotion of financial inclusion in Zimbabwe.

²⁰ De Koker 2013 *Wash J L Tech & Arts* 186; also see Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 287; Kersop and Du Toit 2015 *PELJ* 1607; Sulieman and Salleh 2020 *Journal of Critical Reviews* 570.

²¹ Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 287; Sulieman and Salleh 2020 *Journal of Critical Reviews* 570; Kersop and Du Toit 2015 *PELJ* 1607; De Koker 2013 *Wash J L Tech & Arts* 186.

²² Kersop and Du Toit 2015 *PELJ* 1607; De Koker 2013 *Wash J L Tech & Arts* 186.

²³ *National Payments Systems Act* [Chapter 24:23] 21 of 2001 (the *NPS Act*) s 3; Bara 2013 *AJSTID* 348.

²⁴ *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] 4 of 2013, as amended (the *MLPC Act*) ss 12A-12D.

²⁵ *Reserve Bank of Zimbabwe Act* [Chapter 22:15] 5 of 1999, as amended (the *RBZ Act*) s 6(1).

²⁶ *Postal and Telecommunications Act* [Chapter 12:05] 4 of 2000, as amended, ss 4, 59-65.

²⁷ *Banking Act* [Chapter 24:20] 9 of 1999 (the *Banking Act*) ss 5, 17, 45-52C.

2 Overview background on the adoption of mobile money in Zimbabwe

The number of Zimbabwean citizens with active bank accounts is approximately two million out of a total population of about 14 million.²⁸ Furthermore, over 67 per cent of Zimbabwe's population resides in rural areas where there are limited or no banking services.²⁹ Liquidity challenges that have affected Zimbabwe's financial sector in the past two decades coupled with high bank charges have forced the majority of the adult population to adopt and use mobile money services.³⁰ In Zimbabwe mobile money services started in 2011, when the country's three telecommunication companies, Econet, NetOne and Telecel launched their mobile money platforms.³¹ The three mobile money platforms have attracted the poor and the low-income earners and unbanked segments in both rural and urban areas in Zimbabwe.³² As of 31 March 2020, Zimbabwe's mobile phone subscription had reached 24.3 million users, with 13.7 million subscribers actively using their mobile phones.³³ The high number of mobile phone subscriptions and use shows the massive utilisation of cellular phones in Zimbabwe. In this regard, it is submitted that most of the adult population have a mobile phone that is subscribed to mobile money services. Official figures further show that at the end of March 2020 the number of mobile phones subscribed to mobile money services stood at 7.6 million, having increased from the 7.3 million recorded in 2019.³⁴ In this regard, the poor, unbanked and low-income earners in Zimbabwe are among millions of persons who have benefitted from this innovative technology and are using mobile phones to participate

²⁸ RBZ 2016 <https://www.rbz.co.zw/documents/BLSS/FinancialInclusion/National-Financial-Inclusion-Strategy.pdf>; Munyoro *et al* 2017 *IMPACT: IJRBM* 2.

²⁹ RBZ 2016 <https://www.rbz.co.zw/documents/BLSS/FinancialInclusion/National-Financial-Inclusion-Strategy.pdf>; Chitokwindo, Mago and Hofisi 2014 *MJSS* 415; Mavhiki, Nyamwanza and Shumba 2015 *IJECM* 2.

³⁰ Phiri and Muponda 2016 *University of Zimbabwe Business Review* 3; Mavhiki, Nyamwanza and Shumba 2015 *IJECM* 2; Chitokwindo, Mago and Hofisi 2014 *MJSS* 419.

³¹ Levin 2013 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/07/EcoCash-Zimbabwe.pdf> 4; Mbengo and Phiri 2015 *Corporate Ownership and Control* 198; Chitokwindo, Mago and Hofisi 2014 *MJSS* 421.

³² Munyoro *et al* 2017 *IMPACT: IJRBM* 2; Chitokwindo, Mago and Hofisi 2014 *MJSS* 421-422.

³³ Potraz 2020 http://www.potraz.gov.zw/wp-content/uploads/2020/06/Sector_Performance_1stQ2020.pdf.

³⁴ Potraz 2020 http://www.potraz.gov.zw/wp-content/uploads/2020/06/Sector_Performance_1stQ2020.pdf.

in the formal financial sector in Zimbabwe.³⁵ The high rate of mobile money adoption in Zimbabwe mirrors what has transpired in other similar developing countries in Africa such as Kenya.³⁶ Kendall and Voorhies express the opinion that the majority of the poor and unbanked persons in developing countries have embraced mobile phone technology and are using their mobile devices to send, receive and save money cheaply and securely without the need for banks or bank accounts.³⁷

3 How mobile money operates in Zimbabwe

Mobile money service providers may not pay interest on deposits or provide loans like conventional banks. Accordingly, it is hoped that technological innovation will result in greater financial inclusion for the poor and low-income earners in Zimbabwe.³⁸ Each mobile money platform provides financial services to customers who use SIM cards registered with its parent MNO. For instance, Ecocash accepts cash deposits from Econet subscribers and Onemoney deals with those using NetOne, while Telecash serves Telecel subscribers. There are less stringent requirements when an individual registers a mobile money account than when the same individual opens a bank account.³⁹ For instance, mobile money users are not compelled to produce proof of residence or income. Instead, they can be registered once they produce any form of identity, such as an identity card or passport.⁴⁰ For a person to open a bank account, he or she is supposed to satisfy the Know Your Customer (KYC), anti-money laundering (AML) and counter-terrorist financing (CTF) requirements.⁴¹ It is submitted that the relaxed requirements to open a mobile money account enable the poor and unbanked persons who usually lack sufficient documentation, such as migrant workers, to get registered and participate in the mainstream financial system in Zimbabwe. In exchange for cash deposits, mobile money service providers credit the mobile money user's mobile account with an e-float or

³⁵ Mbengo and Phiri 2015 *Corporate Ownership and Control* 198; Chitokwindo, Mago and Hofisi 2014 *MJSS* 422; Kendall and Voorhies 2014 *Foreign Affairs* 10.

³⁶ Kendall and Voorhies 2014 *Foreign Affairs* 10; Chitokwindo, Mago and Hofisi 2014 *MJSS* 422; Gas 2017 <http://dx.doi.org/10.13140/RG.2.2.25176.39689> 3-4.

³⁷ Kendall and Voorhies 2014 *Foreign Affairs* 10; Gas 2017 <http://dx.doi.org/10.13140/RG.2.2.25176.39689> 5-6; Chitokwindo, Mago and Hofisi 2014 *MJSS* 422.

³⁸ Munyoro *et al* 2017 *IMPACT: IJRBM* 4; Mbengo and Phiri 2015 *Corporate Ownership and Control* 198.

³⁹ Kernan 2018 *Vanderbilt J Transnat'l L* 1129; Munyoro *et al* 2017 *IMPACT: IJRBM* 4.

⁴⁰ Mugarura 2019 *AJICL* 313-314; Munyoro *et al* 2017 *IMPACT: IJRBM* 4.

⁴¹ Fonte 2017 *Wake Forest J Bus & Intell Prop L* 581; also see related notes by Sulieman and Salleh 2020 *Journal of Critical Reviews* 569.

e-money.⁴² The e-float is the equivalent of credit in a bank account and it is held in a mobile account or mobile wallet under the user's name, ready for withdrawal or any other transaction the user may want to perform.⁴³ A mobile money service provider like Econet manages the mobile money account or wallet, recording the amount of money held by a customer at any given time.⁴⁴ As indicated above, mobile money users in Zimbabwe are not charged for depositing funds, but users pay tariffs levied according to the amount of money they withdraw.⁴⁵ For example, in Zimbabwe a user may pay \$3 when she or he withdraws \$100. Mobile money users can transfer the money from their account to another account using the Short Message Service (SMS).⁴⁶ Mobile money may be used for various purposes such as micro-payments to merchants, paying utility bills, business-to-business transfers (B2B), person-to-person transfers (P2P), business-to-person transfers (B2P) and long-distance remittances.⁴⁷ The recipient of the transferred value or money can redeem it as cash at agents who work for MNOs across Zimbabwe or use it electronically to pay for goods and services such as bills, debts, fuel and bus fare.⁴⁸ Agents are individuals, shops or garages that MNOs like Econet contract to provide mobile money services in all areas across Zimbabwe.⁴⁹

However, it appears that the success of mobile money depends on several factors such as the regulatory environment in which it operates to promote the financial inclusion of the poor, unbanked and low-income earners. Kendall and Voorhies argue that the reach of the mobile phone network and the ability of a mobile money service provider to establish an agent network that reaches remote villages, informal settlements and other places where banking services are limited are also key factors in the

⁴² Chitokwindo, Mago and Hofisi 2014 *MJSS* 422; Hughes and Lonie 2007 *Innovations* 69-70; Kufandirimbwa et al 2013 *Online Journal of Social Sciences Research* 93; Munyoro et al 2017 *IMPACT: IJRBM* 4.

⁴³ Kendall and Voorhies 2014 *Foreign Affairs* 10; Munyoro et al 2017 *IMPACT: IJRBM* 4; Kufandirimbwa et al 2013 *Online Journal of Social Sciences Research* 93; Chitokwindo, Maho and Hofisi 2014 *MJSS* 422.

⁴⁴ Kufandirimbwa et al 2013 *Online Journal of Social Sciences Research* 96; Chitokwindo, Maho and Hofisi 2014 *MJSS* 422; Munyoro et al 2017 *IMPACT: IJRBM* 4.

⁴⁵ Mago and Chitokwindo 2014 *MJSS* 227; Munyoro et al 2017 *IMPACT: IJRBM* 4; Chitokwindo, Maho and Hofisi 2014 *MJSS* 422.

⁴⁶ Burns 2015 <https://dx.doi.org/10.2139/ssrn.2688585> 8-9; Kufandirimbwa et al 2013 *Online Journal of Social Sciences Research* 108; Munyoro et al 2017 *IMPACT: IJRBM* 4.

⁴⁷ Fonte 2017 *Wake Forest J Bus & Intell Prop L* 556-557.

⁴⁸ Buku and Meredith 2013 *Wash J L Tech & Arts* 379; Munyoro et al 2017 *IMPACT: IJRBM* 4.

⁴⁹ Munyoro et al 2017 *IMPACT: IJRBM* 4; also see Gibson, Lupo-Pasini and Buckley 2015 *Sing JLS* 26-45; Chibango 2014 *IJHSS* 61.

success of mobile money.⁵⁰ Furthermore, Munyoro *et al* point out that contractual obligations between a service provider like Econet and its agents is critical in ensuring that agents work in the best interests of their principal.⁵¹ Therefore, it is beneficial for mobile money service providers to give competitive commissions and to invest in training and branding their agents to ensure continued service of their customers across Zimbabwe.⁵² The agents ensure that people who want to register for mobile money services, those who want to transact and those receiving money, are served even though they are not registered.⁵³ It is submitted that without agents, it would be difficult for telecommunication service providers to spread their innovations and provide financial services to the poor, unbanked and low-income earners in Zimbabwe. Therefore, apart from the need for networks to have extensive reach, mobile money providers in Zimbabwe must have well trained, branded and equipped agents in communities, who are able to use technology to meet the financial needs of the poor, unbanked and low-income earners.

4 The use of mobile money to promote financial inclusion in Zimbabwe

Before the advent of mobile money, the poor, unbanked and low-income earners in Zimbabwe would pay their bills in cash and send cash to families in distant places via bus drivers or friends.⁵⁴ This mode of remitting funds was risky, unreliable and very slow.⁵⁵ Mobile money has opened doors for the poor, unbanked and low-income earners to remit money, even small amounts, in a cheaper, safer and faster way than before. Furthermore, the poor and unbanked persons are now able to participate in Zimbabwe's mainstream financial sector as they can keep their electronic money in their mobile wallets and do transactions in real

⁵⁰ Gibson, Lupo-Pasini and Buckley 2015 *Sing JLS* 26-45; Kendall and Voorhies 2014 *Foreign Affairs* 13; Munyoro *et al* 2017 *IMPACT: IJRB* 4; Kufandimbwa *et al* 2013 *Online Journal of Social Sciences Research* 93-94.

⁵¹ Munyoro *et al* 2017 *IMPACT: IJRB* 4; Kufandimbwa *et al* 2013 *Online Journal of Social Sciences Research* 101; Hughes and Lonie 2007 *Innovations* 74.

⁵² Munyoro *et al* 2017 *IMPACT: IJRB* 4; Hughes and Lonie 2007 *Innovations* 74; Gibson, Lupo-Pasini and Buckley 2015 *Sing JLS* 26-45.

⁵³ Munyoro *et al* 2017 *IMPACT: IJRB* 4; Chibango 2014 *IJHSS* 61; Gibson, Lupo-Pasini and Buckley 2015 *Sing JLS* 26-45.

⁵⁴ Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 128; Kendall and Voorhies 2014 *Foreign Affairs* 10; Burns 2015 <https://dx.doi.org/10.2139/ssrn.2688585> 16.

⁵⁵ Burns 2015 <https://dx.doi.org/10.2139/ssrn.2688585> 16; Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 128; Kendall and Voorhies 2014 *Foreign Affairs* 10.

time, sending and receiving money instantly at very low cost.⁵⁶ Mobile money service providers have managed to develop branchless, convenient and fast financial services platforms that are available to almost everyone with a mobile phone handset.⁵⁷ Chinakidza, Mbengo and Nyatsambo argue that mobile money services are reaching the poor and unbanked persons who were financially excluded due to the unavailability of banks and other basic financial services in areas outside towns and cities in Zimbabwe.⁵⁸ As outlined above, millions of poor and low-income earners in Zimbabwe have now adopted mobile money and are now able to access their savings, insurance, credit and other financial tools to meet their daily needs.⁵⁹

It is submitted that mobile money has dismantled a number of barriers that kept the poor, unbanked and low-income earners outside the mainstream financial sector in Zimbabwe. Munongo and Bizah argue that some of the factors that contributed to their financial exclusion are a trust deficit in banking institutions, their distance from financial institutions and their failure to satisfy documentary requirements such as a proof of identity and a proof of residence.⁶⁰ For instance, banks require customers to produce a proof of identity when opening accounts in line with prudential requirements.⁶¹ However, the requirement for proof of identity is not rigorously enforced when a person opens a mobile money account. It suffices for a potential mobile money user to produce an ID or passport to register a mobile money account in Zimbabwe and other developing countries.⁶² The relaxation of identity requirements for mobile money services could be intended to allow the poor, who may not have identity documents, also to participate in the formal financial sector. Besides identity requirements, the costs of opening and maintaining a bank

⁵⁶ Kendall and Voorhies 2014 *Foreign Affairs* 10; Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 129; Burns 2015 <https://dx.doi.org/10.2139/ssrn.2688585> 15.

⁵⁷ Munongo and Bizah 2017 *IJER* 78; Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 129.

⁵⁸ Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 130; Munongo and Bizah 2017 *IJER* 78; Burns 2015 <https://dx.doi.org/10.2139/ssrn.2688585> 16-17.

⁵⁹ Burns 2015 <https://dx.doi.org/10.2139/ssrn.2688585> 28-29; Munongo and Bizah 2017 *IJER* 78; Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 128; Mago and Chitokwindo 2014 *MJSS* 225.

⁶⁰ Munongo and Bizah 2017 *IJER* 81; Mugarura 2019 *AJICL* 314; Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 129.

⁶¹ See s 81 of the *Banking Act*.

⁶² Mugarura 2019 *AJICL* 314-315; Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 129; Munyoro *et al* 2017 *IMPACT: IJRB* 4.

account are too high for poor and low income earners in Zimbabwe.⁶³ Nonetheless, a registered SIM card inserted even in a basic mobile phone can store monetary value, enabling a user to process payments, save, send and receive money.⁶⁴ Moreover, mobile money service providers have agents who serve the poor and unbanked persons in communities where they live in Zimbabwe.⁶⁵ As a result, mobile money services have managed to thrust the poor and unbanked persons back into the formal financial markets and the mainstream economy in Zimbabwe.⁶⁶

5 Mobile money regulation and financial inclusion in Zimbabwe

Mobile money is an innovative financial product that has managed to put millions of poor, unbanked and low-income earners into financial inclusion in a considerably shorter period of time than banks in Zimbabwe.⁶⁷ Before the advent of mobile money, the majority of financially excluded persons relied on informal cash transactions that often posed systemic risk to the financial markets in Zimbabwe.⁶⁸ In addition, liquidity challenges and distrust in the banking sector resulted in the poor and low-income earners being financially excluded in Zimbabwe.⁶⁹ It is argued that while mobile money contributes to financial inclusion for the poor and unbanked persons, Zimbabwe's mobile money regulatory framework has poorly responded to technological advancements. There is no specific statute enacted to regulate mobile money in Zimbabwe. Mobile money services have telecommunications aspects and financial aspects that require separate regulation.⁷⁰ Chibango argues that the regulatory implications of mobile money in Zimbabwe are rather complex as two separate sectors, namely finance and telecommunications, are involved.⁷¹ In this regard, the financial aspects of mobile money fall under prudential regulation while the

⁶³ Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 130; Mugarura 2019 *AJICL* 314-315; Munongo and Bizah 2017 *IJER* 81.

⁶⁴ Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 762; Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 129.

⁶⁵ Mazambani, Rushwaya and Mutambara 2018 *Investment Management and Financial Innovations* 132; Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 128-129.

⁶⁶ Robb and Vilakazi 2016 *AJIC* 15-16; Mago and Chitokwindo 2014 *MJSS* 227-228; Chinakidzwa, Mbengo and Nyatsambo 2015 *IJSER* 130.

⁶⁷ Lumsden 2018 *Stan J L Bus & Fin* 26; Winn and De Koker 2013 *Wash J L Tech & Arts* 159; Winn 2016 *Social Sciences Research Network Electronic Journal* 1-26.

⁶⁸ Robb and Vilakazi 2016 *AJIC* 15; Lumsden 2018 *Stan J L Bus & Fin* 33.

⁶⁹ Lumsden 2018 *Stan J L Bus & Fin* 34; Robb and Vilakazi 2016 *AJIC* 15.

⁷⁰ Chibango 2014 *IJHSS* 61; see related notes by Gibson, Lupo-Pasini and Buckley 2015 *Sing JLS* 26-45.

⁷¹ Chibango 2014 *IJHSS* 61; see related notes by Gibson, Lupo-Pasini and Buckley 2015 *Sing JLS* 26-45.

telecommunications aspects are non-prudentially regulated in Zimbabwe. According to Lumsden, the financial aspects of mobile money require prudential regulation that seeks to avert systemic risks which may lead to the collapse of the financial sector and the economy in any country.⁷² On the other hand, the ICTs or telecommunications aspects of mobile money require non-prudential regulation that deals more with the promotion of transparency, establishing accounting standards and dispute resolution methods that protect the poor, unbanked and low-income earners.⁷³ It is submitted that the robust regulation of mobile money helps stabilise financial markets, protects consumers and generates market and business confidence while keeping the poor and unbanked financially included.⁷⁴ Policy makers should enact robust mobile money legislation that embraces the use of innovative technology to curb the financial exclusion of the poor, unbanked and low-income earners in Zimbabwe.⁷⁵ The Zimbabwe NFIS, 2016-2020 proposes changes to the legal and supervisory framework to promote financial inclusion through financial innovations.⁷⁶ However, no legislation has been enacted in line with the Zimbabwean financial inclusion strategy to date. Due to the absence of a specific statute that regulates mobile money in Zimbabwe, laws that regulate electronic money have been used to regulate telecommunications-driven financial services.⁷⁷

5.1 The National Financial Inclusion Strategy, 2016-2020 and financial inclusion in Zimbabwe

The Ministry of Finance and Economic Development launched the NFIS, 2016-2020 in March 2016. The NFIS seeks *inter alia* to identify barriers to financial inclusion and proffer ways to improve the availability of financial services to every individual, including the poor, unbanked and low-income

⁷² Lumsden 2018 *Stan J L Bus & Fin* 34; Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 770; Klein and Mayer 2011 <https://www.econstor.eu/bitstream/10419/48654/1/664524133.pdf> 11.

⁷³ Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 770; Lumsden 2018 *Stan J L Bus & Fin* 34; Klein and Mayer 2011 <https://www.econstor.eu/bitstream/10419/48654/1/664524133.pdf> 10.

⁷⁴ Lumsden 2018 *Stan J L Bus & Fin* 34; Klein and Mayer 2011 <https://www.econstor.eu/bitstream/10419/48654/1/664524133.pdf> 10-11; Jones, Woods and Ndung'u *Consolidating Africa's Mobile Banking Revolution* 6-7.

⁷⁵ Chibango 2014 *IJHSS* 61; Gibson, Lupo-Pasini and Buckley 2015 *Sing JLS* 26-45.

⁷⁶ RBZ 2016 <https://www.rbz.co.zw/documents/BLSS/FinancialInclusion/National-Financial-Inclusion-Strategy.pdf>.

⁷⁷ Lawack 2013 *Wash J L Tech & Arts* 323; Klein and Mayer 2011 <https://www.econstor.eu/bitstream/10419/48654/1/664524133.pdf> 6.

earners in Zimbabwe.⁷⁸ The NFIS provides that mobile money is a financial tool that is crucial for the payment system and financial inclusion of the poor and unbanked persons in Zimbabwe.⁷⁹ According to Lawack, a payment system forms the basis of any sound financial system in any economy and it is important to the financial inclusion of the poor.⁸⁰ In this regard, the NFIS notes that mobile money has introduced payments, credit and other formal financial services to the adult population in rural areas in Zimbabwe.⁸¹ However, the NFIS also notes that there is no coordinated national policy on financial inclusion in Zimbabwe.⁸² Furthermore, poor consumer protection and resource constraints are some of the factors hindering the financial inclusion of the poor, unbanked and low-income earners in Zimbabwe.⁸³ The relevant legislation on the regulation of mobile money in Zimbabwe is discussed below.

5.2 *The RBZ Act and mobile money regulation*

The *RBZ Act* regulates the functions of Zimbabwe's central bank, the RBZ.⁸⁴ The RBZ is a legal *persona* capable of suing and being sued in its name.⁸⁵ Furthermore, it is a creature of statute and its actions are guided by the enabling law. The RBZ is obliged *inter alia* to regulate and supervise banking institutions such as commercial banks, accepting houses, discount houses or finance houses.⁸⁶ The *RBZ Act* also regulates and supervises building societies and the Post Office Savings Bank (POSB).⁸⁷ In this regard, MNOs providing mobile money services are excluded from the list of institutions regulated and supervised by the RBZ. Therefore, it is clear that the *RBZ Act* does not apply to Econet, NetOne and Telecel, since they are not regarded as banking institutions.

In addition, the RBZ regulates Zimbabwe's monetary system and it is obliged to maintain the stability of the Zimbabwean dollar in order to

⁷⁸ RBZ 2016 <https://www.rbz.co.zw/documents/BLSS/FinancialInclusion/National-Financial-Inclusion-Strategy.pdf>.

⁷⁹ RBZ 2016 <https://www.rbz.co.zw/documents/BLSS/FinancialInclusion/National-Financial-Inclusion-Strategy.pdf>.

⁸⁰ Lawack 2013 *Wash J L Tech & Arts* 323; Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 770.

⁸¹ RBZ 2016 <https://www.rbz.co.zw/documents/BLSS/FinancialInclusion/National-Financial-Inclusion-Strategy.pdf>.

⁸² RBZ 2016 <https://www.rbz.co.zw/documents/BLSS/FinancialInclusion/National-Financial-Inclusion-Strategy.pdf>.

⁸³ RBZ 2016 <https://www.rbz.co.zw/documents/BLSS/FinancialInclusion/National-Financial-Inclusion-Strategy.pdf>.

⁸⁴ Section 4 of the *RBZ Act*.

⁸⁵ Section 4 of the *RBZ Act*.

⁸⁶ Section 1 of the *RBZ Act*.

⁸⁷ Section 3 of the *RBZ Act*.

ensure a properly functioning financial services sector.⁸⁸ To achieve this, the RBZ is required to effectively oversee activities of banking institutions in Zimbabwe.⁸⁹ Furthermore, the RBZ has powers to print money, accept money from customers, grant loans, buy and sell securities, buy and sell precious metals and buy foreign currency.⁹⁰ It is submitted that the statutory functions and powers of the RBZ exclude MNOs and their mobile money activities. Thus, the *RBZ Act* does not provide for the regulation of mobile money services and it does not promote financial inclusion of the poor, unbanked and low-income earners.

5.3 The Banking Act, mobile money and financial inclusion in Zimbabwe

Although the *Banking Act* regulates mobile banking services offered by banks, or any other wireless service provider, it does not expressly regulate mobile money services that are offered by telecommunication companies in Zimbabwe.⁹¹ Listed banking activities that are provided in the *Banking Act* that can be attributed to mobile money include receiving deposits, providing money transmission services and administering means of payment services.⁹² The *Banking Act* applies to any other registered institutions that provide money transmission services in Zimbabwe.⁹³ While MNOs may be among the institutions offering money transmission services, they do not have registration certificates for the purposes of the *Banking Act*.⁹⁴ The registration certificate is usually issued to a banking institution upon registration.⁹⁵ Banking institutions that should be registered include commercial banks, accepting houses, discount houses, finance houses and micro-finance providers.⁹⁶ In this regard, MNOs in Zimbabwe are not registered as banks and there is no special provision for their regulation in the *Banking Act*.⁹⁷ Put differently, the *Banking Act* provides for the regulation of mobile banking services in line with conventional banking activities but it does not expressly apply to mobile money services that are offered by telecommunications companies in

⁸⁸ Section 6 of the *RBZ Act*.

⁸⁹ Section 6(1)(b) of the *RBZ Act*.

⁹⁰ Section 7 of the *RBZ Act*.

⁹¹ Section 2 of the *Banking Act*.

⁹² Sections 7(1)(a), (d) and (f) of the *Banking Act*.

⁹³ Sections 7(1)(a), (d) and (f) of the *Banking Act*.

⁹⁴ Section 10 of the *Banking Act*.

⁹⁵ Section 8 of the *Banking Act*.

⁹⁶ Section 6 of the *Banking Act*.

⁹⁷ Sections 3 and 6 of the *Banking Act*.

Zimbabwe.⁹⁸ Thus, the poor, unbanked and low-income earners are not covered under the *Banking Act* in Zimbabwe.

In addition, the poor, unbanked and low-income earners are not protected in terms of the *Deposit Protection Corporation Act* (DPCA).⁹⁹ Consequently, mobile money deposits made by both the unbanked and banked individuals may not be protected under the DPCA, since MNOs are not legally recognised as financial institutions for the purposes of the Act.¹⁰⁰ Therefore, the *Banking Act* does not expressly provide for the promotion of financial inclusion for the poor and low-income earners in Zimbabwe. In addition, the *Banking Act* does not provide for the regulation and innovative technology to curb financial exclusion in Zimbabwe. Nonetheless, the *Banking Act* gives the Minister of Finance and the RBZ powers to develop regulations or guidelines that respond to new developments in the financial markets.¹⁰¹

5.4 New banking regulations, mobile money and financial inclusion in Zimbabwe

In 2020, the RBZ published new banking guidelines that seek to coordinate mobile money services from different providers in a way that benefits the end user in Zimbabwe.¹⁰² For instance, the new regulations require the cooperation of rival mobile money providers in the transfer of funds across mobile money platforms and their agents and between mobile money platforms and banks.¹⁰³ The regulations aim to create a smooth exchange of money between two or more mobile money accounts operated by different service providers and in the transfer of money between mobile money platforms and bank accounts.¹⁰⁴ In this regard the regulations represent a departure from the initial set-up, where mobile money service providers served their subscribed or registered customers only. Under the new regulations, mobile money services can cut across networks, allowing customers to send or receive money from any mobile money platform. In addition, mobile money platforms such as Ecocash, Onemoney and Telecash should be connected to the national payment switch and each should have a trust bank account dedicated to mobile

⁹⁸ Section 7 of the *Banking Act*.

⁹⁹ *Deposit Protection Corporation Act* [Chapter 24:29] 9 of 2011 (the DPCA) s 40.

¹⁰⁰ Section 2 of the DPCA.

¹⁰¹ Section 81 of the *Banking Act*.

¹⁰² Section 3 of *Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations, 2020* (*Banking Regulations, 2020*); Clause 8 of the RBZ Guidelines 15.

¹⁰³ Section 2 of the *Banking Regulations, 2020*; Lumsden 2018 *Stan J L Bus & Fin* 35.

¹⁰⁴ Section 2 of the *Banking Regulations, 2020*.

banking.¹⁰⁵ This could protect mobile money users' funds against possible abuse by service providers. Nonetheless, mobile money users can access their service providers' platforms only if they are registered.¹⁰⁶ Furthermore, all mobile money users who have been suspended or barred from using mobile money services cannot transact.¹⁰⁷ Moreover, all mobile money transactions should be done within clearly specified limits.¹⁰⁸ The three measures given here are heavy-handed and they potentially hinder the growth of financial innovations and the promotion of financial inclusion for the poor and unbanked persons in Zimbabwe.

5.5 The National Payment Systems Act, mobile money and financial inclusion

The *NPS Act* regulates and supervises systems that clear payment instructions between financial institutions in Zimbabwe.¹⁰⁹ The *NPS Act* defines financial institutions as banking institutions that are registered and conduct banking activities in terms of the *Banking Act*.¹¹⁰ In line with the discussions under the *RBZ Act* and the *Banking Act* above, MNOs that provide mobile money services are not registered financial institutions. Nonetheless, under the *Banking Act*, other institutions that provide money transmission services should also be regulated.¹¹¹ In this regard, the *NPS Act* accords the RBZ powers to extent its regulation and supervision to institutions other than financial institutions as long as such institutions provide financial services such as deposits, money transmission and payment services.¹¹² As discussed above, the RBZ could develop regulations on electronic payments that touch on mobile money services in Zimbabwe. Failure to adequately regulate payment systems could lead to disruptions that affect financial markets and the economy at large, compromising the availability of financial services to the unbanked.¹¹³ Since the launch of mobile money services in 2011 in Zimbabwe, the RBZ has been responsible for all licensing and supervision of mobile money as a financial product.¹¹⁴ The supervision of mobile money falls under the

¹⁰⁵ Section 4(1)(3) of the *Banking Regulations*, 2020.

¹⁰⁶ Section 4(10) of the *Banking Regulations*, 2020.

¹⁰⁷ Section 4(10) of the *Banking Regulations*, 2020.

¹⁰⁸ Sections 10(a)-(f) of the *Banking Regulations*, 2020; also see Lashitew, Van Tulder and Liasse 2019 *Research Policy* 1201-1215.

¹⁰⁹ See the long title of the *NPS Act*.

¹¹⁰ Section 2 of the *NPS Act*; also see ss 7(1)(a), (d) and (f) of the *Banking Act*.

¹¹¹ Sections 7(1)(a), (d) and (f) of the *Banking Act*.

¹¹² Sections 2(b) and 3 of the *NPS Act*.

¹¹³ Lawack 2013 *Wash J L Tech & Arts* 323-324; Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 771-772.

¹¹⁴ Section 3 of the *NPS Act* read together with s 8 of the *Banking Act*; Bara 2013 *AJSTID* 348.

central bank's NPS Division.¹¹⁵ Among other functions, the NPS Division oversees and clears mobile money payments, making sure that transactions adhere to the provisions of the *NPS Act*.¹¹⁶ Nevertheless, the *NPS Act* does not sufficiently regulate mobile money owing to the fact that it does not expressly have provisions that regulate mobile money. Furthermore, the *NPS Act* does not give the RBZ express powers to supervise and regulate consumer protection matters pertaining to mobile money services. Therefore, the *NPS Act* is not robust enough because it does not regulate mobile money services so as to promote the use of innovative technology to enhance financial inclusion for the poor, low-income earners and unbanked persons in Zimbabwe.

6 ICTs, financial crimes, mobile money and financial inclusion in Zimbabwe

The advancement in ICT innovation has opened room for non-banking institutions like telecommunication corporates to provide financial services in the form of mobile money in Zimbabwe.¹¹⁷ The fact that telecommunication companies have ventured to provide financial services raises questions on whether the customer due diligence (CDD), the KYC and other requirements for the opening of an account should be strictly applied in the same way as they are applied by banks.¹¹⁸ The CDD and KYC requirements are essential in combating financial crimes like money laundering that harm the integrity of financial markets and threaten financial inclusion for the poor. Money laundering includes actions of criminally minded persons that are undertaken to disguise the original ownership and control of the proceeds of their criminal conduct by presenting them as if they have been lawfully gained.¹¹⁹ The Financial Action Task Force (FATF) has come up with anti-money laundering standards and there are international standards to combat the financing of terrorism (AML/CFT) and other financial crimes.¹²⁰ However, enforcing

¹¹⁵ Section 6(1)(e) of the *RBZ Act*; also see s 3 of the *NPS Act*; Bara 2013 *AJSTID* 348.

¹¹⁶ Section 3 of the *NPS Act*; Bara 2013 *AJSTID* 348.

¹¹⁷ De Koker, Morris and Jafter 2019 *Law in Context* 1-22; Klein and Mayer 2011 <https://www.econstor.eu/bitstream/10419/48654/1/664524133.pdf> 3; Jones, Woods and Ndung'u *Consolidating Africa's Mobile Banking Revolution* 5-6.

¹¹⁸ Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 299; Jones, Woods and Ndung'u *Consolidating Africa's Mobile Banking Revolution* 5; Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 757-758.

¹¹⁹ Chitimira 2020 *Acta Universitatis Danubius Juridica* 29; Sulieman and Salleh 2020 *Journal of Critical Reviews* 569.

¹²⁰ Jenik, Kerse and De Koker 2020 https://www.cgap.org/sites/default/files/publications/2020_07_COVID_Briefing_Rapid_Account_Opening.pdf 5; Bayona-

compliance with AML/CFT standards through CDD and KYC measures would be painful for the poor, unbanked and low-income earners in countries like Zimbabwe,¹²¹ who often lack formal identity documentation and have relatively small data footprints, which makes it cumbersome for financial service providers to conduct CDD on them.¹²² In this regard, mobile money services in Zimbabwe cater mostly for low-income earners and poor persons who usually lack the documentary requirements for the CDD and KYC purposes.¹²³ Applying strict CDD and KYC measures in mobile money services with the same rigour as is done with banks is likely to push poor persons into financial exclusion, where they would have to revert to informal ways of remitting money. On the other hand, informal ways of transmitting funds lack AML/CFT controls and are a threat to financial market stability in Zimbabwe.¹²⁴ Therefore, it may be necessary for financial regulators to relax the application of the CDD and KYC requirements for the sake of the financial inclusion for the poor and unbanked persons.¹²⁵ When mobile money services began in Zimbabwe in 2011, the RBZ relaxed the KYC requirements and the move allowed the poor and unbanked persons to participate in the mainstream financial sector.¹²⁶ While mobile money users are required to produce a national identity document when opening a mobile money account or when processing cash-out transactions, this is not strictly enforced. For instance, familiarity between mobile money customers and MNOs' agents may lead to a situation where agents do not enforce the requirement of proof of identity. This could enable those without documents to participate in the

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- Rodríguez, Rodríguez and Melo 2017 <http://hdl.handle.net/1992/8677> 5; Kong, Tampuri and Opoku 2018 *IJMSBR* 120-129.
- ¹²¹ Lyman *et al* 2019 https://www.cgap.org/sites/default/files/publications/2019_08_28_Working_Paper_Beyond_KYC_Uilities_0.pdf 3; Bayona-Rodríguez, Rodríguez and Melo 2017 <http://hdl.handle.net/1992/8677> 5-6.
- ¹²² Lyman *et al* 2019 https://www.cgap.org/sites/default/files/publications/2019_08_28_Working_Paper_Beyond_KYC_Uilities_0.pdf 3; Bayona-Rodríguez, Rodríguez and Melo 2017 <http://hdl.handle.net/1992/8677> 5-6.
- ¹²³ Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 299; Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 757; Jones, Woods and Ndung'u *Consolidating Africa's Mobile Banking Revolution* 5.
- ¹²⁴ Malady and Buckley 2014 https://clmr.unsw.edu.au/sites/default/files/attached_files/regulation_of_mobile_money_-_state_of_play_article_april_2014.pdf 5; Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 299.
- ¹²⁵ Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 299; Malady and Buckley 2014 https://clmr.unsw.edu.au/sites/default/files/attached_files/regulation_of_mobile_money_-_state_of_play_article_april_2014.pdf 4.
- ¹²⁶ Mugarura 2019 *AJICL* 316; Bara 2013 *AJSTID* 348.

formal financial sector at great risk to the integrity of the financial system.¹²⁷

6.1 *The Money Laundering and Proceeds of Crime Act, mobile money and financial inclusion in Zimbabwe*

The *MLPC Act*¹²⁸ provides *inter alia* for the regulation of mobile money services and associated risks in Zimbabwe. The *MLPC Act* requires financial service providers to carry out money laundering and terrorist financing risk assessments in financial services and financial products that are accessed using technological devices such as mobile phones.¹²⁹ It is submitted that the MNOs that provide mobile money services are financial institutions for the purposes of the *MLPC Act*.¹³⁰ Furthermore, all financial service providers are supposed to implement and periodically review their AML and CTF measures.¹³¹ In line with the risk assessment procedures, prospective financial service providers should submit detailed money laundering and terrorist financing risk assessment and mitigation strategies when they apply for registration.¹³² These measures seek to ensure that mobile money and other financial tools operate within the rules in order to promote financial inclusion for the poor without compromising the integrity of the financial markets in Zimbabwe.

7 Selected flaws in the regulation of mobile money services in Zimbabwe

The possible confusion around mobile money regulation in Zimbabwe is more about non-bank institutions that provide financial services rather than the services themselves.¹³³ When mobile money was initiated in Zimbabwe it was not a deposit-taking service, but ongoing innovations have made the taking of deposits one of the functions that mobile money is discharging.¹³⁴ The expansion of mobile money services allows the poor and unbanked persons in Zimbabwe to save money in their mobile accounts. However, this creates competition for banks that may not be ready to yield deposit-taking functions to non-banking institutions. This may explain why the new mobile banking regulation in Zimbabwe compels

¹²⁷ Bara 2013 *AJSTID* 348; Mugarura 2019 *AJCIL* 316.

¹²⁸ *MLPC Act* ss 12A-12D.

¹²⁹ Section 12B of the *MLPC Act*.

¹³⁰ Section 2(f) of the *MLPC Act*.

¹³¹ Section 12B of the *MLPC Act*.

¹³² Section 12B of the *MLPC Act*.

¹³³ Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 298; Mugarura 2019 *AJICL* 322.

¹³⁴ See RBZ Monetary Policy 2013, 51; Klein and Mayer 2011 <https://www.econstor.eu/bitstream/10419/48654/1/664524133.pdf> 6-7.

non-bank mobile money service providers to keep their clients' deposits in a trust account opened at a commercial bank that is subject to prudential regulation.¹³⁵ This could be a way to stifle the growth of financial innovations and the use of innovative technology in order to maintain the hegemony of banks. This approach is impeding financial inclusion. One major weakness of the new mobile banking regulations in Zimbabwe is their apparent one-sided focus on the financial aspects of mobile money, that leaves out the telecommunications regulatory aspects of mobile money.¹³⁶ It is submitted that innovations in ICTs are likely to continue to occur and may modifying financial products in a bid to increase the financial inclusion of the poor, the unbanked and low-income earners.

7.1 The Postal and Telecommunications Act, mobile money and financial inclusion in Zimbabwe

The telecommunications sector is regulated under the *Postal and Telecommunications Act*.¹³⁷ The Postal and Telecommunications Regulatory Authority of Zimbabwe (Potraz) supervises the telecommunications sector. While Potraz has a broad mandate, the financial business ventures of MNOs fall outside its scope.¹³⁸ However, the *Postal and Telecommunications Act* provides for, monitors and supervises the rollout of cellular communication services in Zimbabwe.¹³⁹ It further promotes and encourages the growth of technology, which is the key to innovation in the ICT sector.¹⁴⁰ In this regard, MNOs have invested in innovative technology¹⁴¹ resulting in mobile money services that are provided to millions of the poor, unbanked and low-income earners in Zimbabwe to promote their financial inclusion. Greenacre argues that mobile money is growing in terms of its reach and importance to the poor and that there is a need to streamline the telecommunications and financial regulation of mobile money in developing countries such as

¹³⁵ Section 4(3) of the *Banking Regulation, s* 2020; also see the RBZ Monetary Policy 2013, 51; Alexandre and Eisenhart 2013 *Wash J L Tech & Arts* 298; Klein and Mayer 2011 <https://www.econstor.eu/bitstream/10419/48654/1/664524133.pdf> 9.

¹³⁶ Chatain *et al* *Protecting Mobile Money* 25; also see Klein and Mayer 2011 <https://www.econstor.eu/bitstream/10419/48654/1/664524133.pdf> 19-20; Masiyandima, Mlambo and Nyarota "Financial Inclusion" 1-38.

¹³⁷ *Postal and Telecommunications Act* [Chapter 12:05] 4 of 2000 as amended, s 4.

¹³⁸ Section 4 of the *Postal and Telecommunications Act* [Chapter 12:05] 4 of 2000.

¹³⁹ Section 4(1) of the *Postal and Telecommunications Act* [Chapter 12:05] 4 of 2000.

¹⁴⁰ Section 4(1)(k) of the *Postal and Telecommunications Act* [Chapter 12:05] 4 of 2000.

¹⁴¹ Section 4(1)(k) of the *Postal and Telecommunications Act* [Chapter 12:05] 4 of 2000.

Zimbabwe.¹⁴² It is submitted that both telecommunications and financial services regulation are equally important in the effective regulation of mobile money services in Zimbabwe. Therefore, innovative technology must be carefully utilised to promote financial inclusion for the poor and low-income earners.¹⁴³

8 The reliance on mobile money services during the corona virus (COVID-19) pandemic in Zimbabwe

Mobile money services have become a convenient payment channel for many persons, especially frontline workers dealing with the COVID-19 pandemic in remote areas, who cannot easily access banking services in many affected countries, including Zimbabwe.¹⁴⁴ Crises such as the COVID-19 pandemic tend to leave the poor and unbanked persons in a more precarious position in terms of their financial wellbeing compared to their banked counterparts.¹⁴⁵ The COVID-19 crisis came at a time when developing nations such as Zimbabwe were experiencing an unprecedented use of innovative financial products in their financial markets.¹⁴⁶ The exponential adoption of mobile phone technology has amply provided the poor and unbanked persons with cheap, affordable and safe mobile money services in Zimbabwe.¹⁴⁷ The COVID-19 pandemic has shown that innovative technology can serve communities better in times of crisis. For instance, cashless modes of transaction like mobile money are safer and more convenient, particularly for the poor and unbanked, owing to the fear that the COVID-19 virus could survive on paper and get transmitted when people exchange money.¹⁴⁸ In response to the COVID-19 virus, there has been a marked increase in many countries, including Zimbabwe, in the number of retail outlets that decline

¹⁴² Greenacre *Regulating Mobile Money* 2; Buku and Meredith 2013 *Wash J L Tech & Arts* 394-395.

¹⁴³ Greenacre *Regulating Mobile Money* 2; Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 770; Buku and Meredith 2013 *Wash J L Tech & Arts* 395.

¹⁴⁴ Dube et al 2011 *JIBC* 1-15; Jenik, Kerse and De Koker 2020 https://www.cgap.org/sites/default/files/publications/2020_07_COVID_Briefing_Rapid_Account_Opening.pdf 1; Mann "Driver for Contactless Payments" 176; Ozili 2020 *IFR* 14.

¹⁴⁵ Ozili 2020 *IFR* 2; Brenton and Chemutai 2020 <https://openknowledge.worldbank.org/bitstream/handle/10986/33548/Trade-Responses-to-the-COVID-19-Crisis-in-Africa.pdf?sequence=1> 2-3; see related notes by Fernandes 2020 <http://dx.doi.org/10.2139/ssrn.3557504> 10-11; Mann "Driver for Contactless Payments" 177.

¹⁴⁶ Buckley et al 2019 *European Business Organisation Law Review* 7-35; Arner, Berberis and Buckley 2016 *Nw J Int'l L & Bus* 12-13.

¹⁴⁷ Harris, Goodman and Traynor 2013 *Wash J L Tech & Arts* 246; Robb and Vilakazi 2016 *AJIC* 10; Dittus and Klein 2011 <https://www.bis.org/publ/work347.pdf> 1-19.

¹⁴⁸ Mann "Driver for Contactless Payments" 177.

cash payments in preference for contactless electronic money to combat the spread of the COVID-19 virus.¹⁴⁹ Consequently, mobile money has become a convenient tool to provide safe transactions while allowing the banked and unbanked to participate in the financial services sector in Zimbabwe. The relative safety of mobile money in the COVID-19 pandemic period adds to the growing importance of innovative technology to promote the financial inclusion of the poor, unbanked and low-income earners in Zimbabwe.

9 Concluding remarks

Innovative technologies and advancements in ICTs have transformed mobile phones from mere communication devices into powerful financial tools that are contributing to the financial inclusion of the poor, unbanked and low income earners in Zimbabwe. Mobile phones are hosting financial platforms such as Ecocash, Onemoney and Telecel either as software on the SIM card or as applications that can be downloaded and installed on the mobile phones in order to access financial services in Zimbabwe. Ecocash, Onemoney and Telecash are providing cheap, convenient, safe and fast financial services to the poor, unbanked and low-income earners who cannot afford the cost of opening and maintaining bank accounts in Zimbabwe. Mobile money services have also become a safe and convenient mode of payment during the COVID-19 pandemic for both the banked and the unbanked in many countries, including Zimbabwe. The payment of frontline workers dealing with the COVID-19 pandemic via mobile money in areas far from banking facilities allows such workers to receive their salaries in a convenient and safe manner that minimises the transmission of the COVID-19 in Zimbabwe. Furthermore, the poor, unbanked and low-income earners who usually rely on cash can also access their funds and COVID-19-related relief payments through mobile money.

However, the financial regulatory framework in Zimbabwe does not adequately regulate mobile money services to promote the financial inclusion of the poor, unbanked and low-income earners. The *Banking Act*, the *NPS Act*, the *RBZ Act*, the *MLPC Act* and the *Postal and Telecommunications Act* are insufficient and do not robustly regulate mobile money services. The NFIS and the mobile banking regulations published in 2020 have some positive aspects on the adoption of

¹⁴⁹ Mann "Driver for Contactless Payments" 177-178; Ozili 2020 <http://dx.doi.org/10.2139/ssrn.3585662> 1-9.

innovative financial technologies and financial inclusion for the poor. In this regard, the authors submit that the current legislation dealing with financial services must be amended to enact provisions that promote the regulation and supervision of technology-driven financial products in Zimbabwe. Alternatively, the policy makers should enact a specific statute that regulates mobile money and the use of innovative technology to curb the financial exclusion of the poor and low-income earners in Zimbabwe. The RBZ and other relevant stakeholders should effectively promote the financial inclusion of the poor and low-income earners in Zimbabwe. The *RBZ Act*, the *Banks Act* and other relevant statutes must be amended to recognise the mobile money services offered by telecommunications financial services providers so as to effectively promote financial inclusion for the poor, unbanked and low-income earners in Zimbabwe.

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Postal and Telecommunications Act [Chapter 12:05] 4 of 2000

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List of Abbreviations

AAFSJ	Academy of Accounting and Financial Studies Journal
AJIC	African Journal of Information and Communication
AJICL	African Journal of International and Comparative Law
AJSTID	African Journal of Science, Technology, Innovation and Development
AML	anti-money laundering

B2B	business-to-business
B2P	business-to-person
CDD	customer due diligence
CFT	counter-terrorist financing
COVID-19	Coronavirus disease
DPCA	Deposit Protection Corporation Act
FATF	Financial Action Task Force
Fed Comm LJ	Federal Communications Law Journal
FIU	Financial Intelligence Unit
ICTs	information communication technologies
IFR	International Finance Review
IJECM	International Journal of Economics, Commerce and Management
IJER	International Journal of Education and Research
IJHSS	International Journal of Humanities and Social Studies
IJMSBR	International Journal of Management Sciences and Business Research
IJSER	International Journal of Scientific and Engineering Research
IMPACT: IJRB	IMPACT: International Journal of Research in Business Management
Int J Soc Sci Stud	International Journal of Social Science Studies
JIBC	Journal of Internet Banking and Commerce
KYC	Know Your Customer
MJSS	Mediterranean Journal of Social Sciences
MLPC Act	Money Laundering and Proceeds of Crime Act
MNOs	mobile network operators
NFIS	National Financial Inclusion Strategy
NPS	National Payment System
Nw J Int'l L & Bus	Northwestern Journal of International Law and Business
OIDA	Ontario International Development Agency
P2P	person-to-person
PELJ	Potchefstroom Electronic Law Journal
POSB	Post Office Savings Bank
Potraz	Postal and Telecommunications Regulatory

	Authority of Zimbabwe
RBZ	Reserve Bank of Zimbabwe
SAJEMS	South African Journal of Economic and Management Sciences
SIM	subscriber identity module
SMS	Short Message Service
Sing JLS	Singapore Journal of Legal Studies
Stan J L Bus & Fin	Stanford Journal of Law, Business and Finance
Vanderbilt J Transnat'l L	Vanderbilt Journal of Transnational Law
Wake Forest J Bus & Intell Prop L	Wake Forest Journal of Business and Intellectual Property Law
Wash J L Tech & Arts	Washington Journal of Law, Technology and Arts
Wash U Global Stud L Rev	Washington University Global Studies Law Review