

**A statutory regulatory analysis of financial inclusion for the poor and low-income earners in South Africa**

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# SOLEMN DECLARATION

I **Menelisi Ncube**, hereby declare that the dissertation entitled: **A statutory regulatory analysis of financial inclusion for the poor and low-income earners in South Africa**, is submitted in fulfilment of the requirements for the Master of Laws (LLM) degree is the product of my research and opinion with the exception of references of the sources acknowledged herein and that I have not at any prior time submitted it to any university or by any person for any qualification.

Signature of Candidate: .....

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Signed at ..... on this ..... day of ..... 2018

Declared before me on this ..... day of .....

Signature of Supervisor.....

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I would like to thank the Almighty who continues to show me pathways where I see none. Kungasuwe baba, kuba angikho lapha. Konke kungamandla lomusa, lendumiso yakho. Malibongwe igama likaJesu, Amen.

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# **DEDICATION**

**To my parents**

**And**

**The Rest of the Family**

## ABSTRACT

Financial inclusion refers to the fair, inexpensive, timely and convenient access of basic financial services and products to all members of the society especially the poor and low-income earners. South Africa is currently facing extreme poverty and financial inclusion could be one solution to it. The poor and low-income earners in South Africa are currently financially excluded from the formal financial sector as a result of several challenges. The following challenges prohibit the promotion of financial inclusion for the poor and low-income earners in South Africa: unemployment and poverty, financial illiteracy, mistrust of the formal banking sector and fear of fraud by the illiterate people, lack of documentation for opening bank accounts, uneven concentration of banks between urban and remote areas, remoteness of financial institutions to most people, costly financial services and bank fees, over-indebtedness and lack of legislation specifically dealing with financial inclusion. Moreover, the current statutory framework regulating financial inclusion in South Africa is not robust enough to combat financial exclusion of the poor and low-income earners. Such legislation includes the *South African Reserve Bank Act*, the *Banks Act*, the *Consumer Protection Act*, the *National Credit Act*, the *National Payments System Act*, the *Financial Intelligence Act* and the *Financial Sector Regulation Act*. Given this background, the researcher recommends that robust financial literacy programs must be initiated by the government and relevant stakeholders, the *National Credit Act* and the *Financial Sector Regulation Act* must be amended, the government and relevant stakeholders must protect and enhance the integrity of banking institutions, the government and other relevant stakeholders must encourage and formalise stokvels, the government and other relevant stakeholders must build more banking institutions for people residing in remote areas and that specific legislation that deals with financial inclusion must be enacted. The researcher submits that the government and relevant stakeholders must address the challenges of financial inclusion of the poor and low-income earners so that 90% financial inclusion is achieved in 2030.

**Key words:** financial inclusion, poor, low-income, South Africa, financial literacy.

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## CHAPTER ONE

### RESEARCH OUTLINE

#### 1.1 Introduction

Poverty remains a huge threat to the socio-economic welfare of most of the poor people in South Africa.<sup>1</sup> As such, financial inclusion of the poor and low-income earners could be one solution to poverty reduction in South Africa.<sup>2</sup> Financial inclusion can be defined as satisfactory access to appropriate, low-cost, fair and safe financial products and services offered by the government, banking institutions and other stakeholders to all members of the society.<sup>3</sup> Financial inclusion also refers to the ability of a government and banking institutions to create an environment of sustainable economic investment to improve the lives of all the people.<sup>4</sup> Financial inclusion is achieved when the majority of a country's population is able to access banking institutions as well as Automated Teller Machines (ATMs).<sup>5</sup> Conversely, financial exclusion refers to the unavailability and lack of access to suitable financial services and products to all members of the society.<sup>6</sup> Financial exclusion can be caused by, *inter alia*, remoteness of financial institutions to the majority of people,<sup>7</sup> costly financial services,<sup>8</sup> financial illiteracy,<sup>9</sup> unemployment and poverty,<sup>10</sup> over indebtedness<sup>11</sup> and lack of legislation that specifically and with adequate detail deals with financial inclusion.

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<sup>1</sup> Meiring T, Kannemeyer C and Optimeter E "The Gap between Rich and Poor: South African Society's Biggest Divide Depends on Where You Think You Fit in" 2018 *South African Labour and development Research Unit Working Paper Series Number 20 Version 1* 1, 15.

<sup>2</sup> Chibba M "Financial Inclusion, Poverty Reduction and the Millennium Development Goals" 2009 *European Journal of Development Research* 213, 214; Williams HT "Role of Financial Inclusion in Economic Growth and Poverty Reduction in a Developing Economy" 2017 *IJRESS* 265, 267.

<sup>3</sup> Sharma M *Dynamics of Indian Banking Views and Vistas* (Atlantic Publishers and Distributors 2008) 100.

<sup>4</sup> Kessler K *et al* "Improving Financial Inclusion in South Africa" *The Boston Consulting Group* (11 April 2017) 5.

<sup>5</sup> Mohammed JI, Mensah L and Gyeke-Dako A "Financial Inclusion and Poverty Reduction in Sub-Saharan Africa" 2017 *The African Finance Journal* 1, 2; Williams 2017 *IJRESS* 266.

<sup>6</sup> Mohammed, Mensah and Gyeke-Dako 2017 *The African Finance Journal* 1, 2.

<sup>7</sup> Mishi S, Vacu N P and Chipote P "Impact of Financial Literacy in Optimising Financial Inclusion in Rural South Africa: Case study of the Eastern Cape Province" 2012 *ERSA* 1, 7-8.

<sup>8</sup> Kessler *et al* *The Boston Consulting Group* 8.

<sup>9</sup> Chibba 2009 *European Journal of Development Research* 214.

<sup>10</sup> Kessler *et al* *Boston Consulting Group* 4.

<sup>11</sup> Coovadia C "Annual Report 2017" *Finmark Trust* (28 February 2017) 2.

The concept of financial inclusion cannot be understood outside the appreciation that it embraces three important aspects of availability, accessibility and usage of financial services and products by the consumer as provided for by the government, banking institutions and other stakeholders.<sup>12</sup> Financial services and products referred to above include banking accounts, loans, varied credit facilities as well as savings options offered by different banking institutions. Financial inclusion is pivotal to South Africa because it helps individuals and enterprises to improve in the management of their finances and in the reduction of informal financial services which charge high fees and defeat efforts to promote financial inclusion for the poor and low-income earners.<sup>13</sup>

The benefits of financial inclusion are important because they permit socio-economic development through the encouragement of precautionary saving to the poor and low-income earners.<sup>14</sup> Moreover, informal financial services remain a threat to financial inclusion because of the high levels of interest charges on informal loans by micro-lenders to the poor and low-income earners. Therefore, it remains important to discourage informal financial services. However, the stokvel seems to be a preference to about 40%<sup>15</sup> of South Africans who are part of the informal banking sector mostly for savings driven purposes.<sup>16</sup> The stokvel practice is an informal banking sector which may be a great option for promoting financial inclusion of the poor and low-income earners because it an invitation to community members to form a savings club aimed at assisting future expenditure and investment.<sup>17</sup>

Financial inclusion is not specifically and in adequate detail regulated in any legislation in South Africa. The South African Reserve Bank (SARB) indirectly regulates financial

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<sup>12</sup> Sarma M and Pais J “Financial Inclusion and Development” 2011 *Journal of International Development* 613, 614.

<sup>13</sup> Arora SS and Leach J “Towards Building an Inclusive Financial Sector: Lessons from South Africa” 2005 *Economic and Political Weekly* 1726, 1730; Abrahams R “Financial inclusion in South Africa: A review of the literature” 2017 *Southern African Accounting Association* 636.

<sup>14</sup> Adam 2017 6 *Challenges to Financial Inclusion in South Africa* <https://www.weforum.org/agenda/2017/04/financial-inclusion-south-africa/> accessed 17 May 2018 page number unknown; Kessler K *et al The Boston Consulting Group* 5.

<sup>15</sup> Ikdal A 6 “Challenges to Financial Inclusion in South Africa” 2017 *The World Economic Forum* 1, 4.

<sup>16</sup> Matuku S and Kaseke E “The Role of Stokvels in Improving People’s Lives: The Case in Orange Farm, Johannesburg, South Africa” 2014 *Social Work* 502, 505.

<sup>17</sup> Van Wyk MM “Stokvels as a Community-based Saving Club Aimed at Eradicating Poverty a Case of South African Rural Women” 2018 *International Journal of Community Diversity* 1, 15.

inclusion through the *South African Reserve Bank Act*.<sup>18</sup>The SARB works closely with other regulatory bodies such as the National Treasury, Prudential Authority (PA), Financial Sector Conduct Authority (FSCA), National Credit Regulator (NCR), National Consumer Tribunal (NCT), and the Banking Association of South Africa (BASA) to ensure that banking institutions carry out their functions in a proper way. The SARB is mandated by the Constitution to ensure the proper functioning of the banking sector and thus promote financial inclusion for all people in South Africa.<sup>19</sup>

## **1.2 Background of the study**

During the 1600s, the South African means of subsistence and production was primarily based on the land.<sup>20</sup> As a result, those without land remained poor and excluded financially.<sup>21</sup> The establishment of a financial sector began when the Dutch East India Company occupied land and established a settlement in 1652 in Cape Town.<sup>22</sup> As a result, such arrival prompted the seizure of land from the indigenous people and this was exacerbated by the arrival of the British in the 1800s.<sup>23</sup> As markets for manufactured goods, minerals and agricultural products grew, cities and banks (which provided credit only to European farmers, merchants and miners) were established to cater for the pressing need to transact formally to the exclusion of the poor and low-income earners who did not meet credit payment assessments due to low-income.<sup>24</sup>

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<sup>18</sup> 90 of 1989 (the *SARB Act*), section 2. According to Shawe L and Colegrave A “Banking Regulation in South Africa: Overview” Allen & Overy South Africa LLP (1 August 2018) 2, the *SARB Act* has established a comprehensive legal framework for the promotion of financial inclusion for the poor and low-income earners in South Africa. In other words, the *SARB Act* promotes financial inclusion for the poor and low-income earners through the SARB and the Banking Supervision Department (BSD). This follows the fact that the SARB and BSD promote financial inclusion of all persons especially the poor and low-income earners through their regulation of banks.

<sup>19</sup> Section 224(2) of the *Constitution of the Republic of South Africa, 1996* (Constitution).

<sup>20</sup> Byrnes RM *South Africa: A Country study* (Federal Research division Washington 1996) 26; South African History Online *the Natives Land Act of 1913* <https://www.sahistory.org.za/topic/natives-land-act-1913> accessed 14 June 2018 page number unknown.

<sup>21</sup> Louis L and Chartier F “Financial Inclusion in South Africa: An Integrated Framework for Financial Inclusion of Vulnerable Communities in South Africa's Regulatory System Reform” 2017 *Journal of Comparative Urban Law and Policy* 170, 176.

<sup>22</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 177.

<sup>23</sup> Byrnes RM *South Africa: A Country study* (Federal Research division Washington 1996) 26.

<sup>24</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 177.

During apartheid, scores of poor people had little or hardly any land to work and survive on<sup>25</sup> which heightened their exclusion from the basic financial services and products. Those who owned land had a source of income to afford bank accounts with banking institutions. Due to this exclusion of the poor and low-income earners from the financial sector, a new practice of “stokvels” gained prominence in the 19<sup>th</sup> century as the previously disadvantaged people sought financial inclusion in South Africa.<sup>26</sup> The stokvel practice was initially known as “stock fairs” which was initiated by English settlers of the Eastern Cape and was characterised by rotating cattle auctions.<sup>27</sup> Thereafter, stokvels existed as an informal financial system through which voluntary members accumulate financial resources for the collective benefit such as food for collective sharing and funds for investment.<sup>28</sup>

In 1968, the *Usury Act* was enacted to limit finance charges and interest rates in respect of money-lending, credit and leasing transactions.<sup>29</sup> Additionally, the *Usury Act* of 1968 was enacted to repeal the 1926 *Usury Act*.<sup>30</sup> The *Usury Act* of 1968 sought to protect the ordinary financial consumer by outlawing the charging of full-cost recovery interest rates by money lenders, creditors and lessors.<sup>31</sup> The interest rate caps introduced by the *Usury Act* of 1968 forced financial institutions to reduce and/or give minimal loans to their financial consumers owing to the fear of default payments on the part of the consumers.<sup>32</sup> This could have hampered financial inclusion of the poor and low-income earners in South Africa. The restriction of finance charges and interest rates chargeable on loans became a huge impediment towards financial inclusion of the poor and low-income earners as

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<sup>25</sup> SA History Online History *Apartheid* <http://www.sahistory.org.za/article/history-apartheid-south-africa> accessed 25 June 2018 page number unknown; Feinstein CH *An Economic History of South Africa: Conquest, Discrimination, and Development* (Cambridge University Press 2005) 105.

<sup>26</sup> Pearson G and Stoop PN “Balancing Responsibilities- Financial Literacy” 2017 *PER/PELJ* 1, 14.

<sup>27</sup> National Stokvel Association of South Africa *History (NASASA)* year unknown <http://nasasa.co.za/site/> accessed 5 July 2018 page number unknown; Verhoef G “Savings and Survival in a Modern African Economy: Informal Savings Organisations and Poor People in South Africa” 2001 *Historia* 519, 523.

<sup>28</sup> Nanziri LE *Financial Literacy, Use of Finance and Welfare in Post-Apartheid South Africa* (Doctor of Philosophy-Thesis University of Cape Town 2016) 24.

<sup>29</sup> 73 of 1968 (*Usury Act of 1968*) sections 2-5.

<sup>30</sup> Section 20 of the *Usury Act of 1968*.

<sup>31</sup> Mohane H, Coetzee G and Grant W “The Effects of the Interest Rate Ceilings on the Micro Lending Market in South Africa” *Department of Agricultural Economics, Extension and Rural Development University of Pretoria* (February 2002) 2.

<sup>32</sup> Nanziri *Financial Literacy, Use of Finance and Welfare in Post-Apartheid South Africa* 24.

they could no-longer access loans because most banks were reluctant to give out loans in small amounts owing to the interest caps.<sup>33</sup>

In 1992, the exemption to the Usury Act 1968 came into operation with its core mandate being the exemption from interest-rate restrictions loans under R6000 and whose interest term did not exceed 36 months to extend credit provision to the poor and low-income earners.<sup>34</sup> Various banks started disbursing affordable loans to the poor and low-income earners in a bid to promote financial inclusion.<sup>35</sup> However, *First Exemption Notice* led to the enormous growth of a formal micro-lending industry which amassed huge profits from lending activities due to unregulated interest rates at the expense of the poor.<sup>36</sup> In other words, *First Exemption Notice* somewhat increased the problem of financial exclusion in South Africa.

In 1999, a new exemption notice was implemented and it required, *inter alia*, lenders who operated under the auspices of the 1992 exemption notice to register with the Micro Finance Regulatory Council (MFRC) which was a credit industry regulator.<sup>37</sup> The establishment of the MFRC promoted financial inclusion of the poor and low-income earners through increasing loans which were exempted under the *Usury Act* of 1968 to R10000.<sup>38</sup> The MFRC established a National Loans Register (NLR) which allowed a registered lender to check for repayment eligibility of the borrower before tendering a loan.<sup>39</sup> Furthermore, the NLR established a “truth in lending” disclosure which sought to protect the borrower by requiring the lender to provide a summary detailing the crucial

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<sup>33</sup> Schoombee A “South African Banks and the Unbanked: Progress and Prospects”2004 *Bureau for Economic Research* 4, 5.

<sup>34</sup> GN R3451 in GG 31 December 1992 (*First Exemption Notice*); Nanziri *Financial Literacy, Use of Finance and Welfare in Post-Apartheid South Africa* 24.

<sup>35</sup> Murwisi K *et al* “The Microfinance Review 2013 from Microfinance to Financial Inclusion: A review of the South African Microfinance Sector Trends, Successes, Challenges, and Policy Issues” *Centre for Inclusive Banking in Africa* 1, 98; Schoombee A 2004 *Bureau for Economic Research* 5.

<sup>36</sup> Schoombee A 2004 *Bureau for Economic Research* 5.

<sup>37</sup> GN R713 in GG 20145 of 1 June 1999 (*Second Exemption Notice*); Schoombee A 2004 *Bureau for Economic Research* 6.

<sup>38</sup> Meagher P and Wilkinson B “Filling the Gap in South Africa’s Small and MicroCredit Market: An Analysis of Major Policy, Legal, and Regulatory Issues” *The Irish Discussion Papers on Institutions & Development* (August 2002) 6.

<sup>39</sup> Meagher and Wilkinson *The Irish Discussion Papers on Institutions & Development* 41.

elements of the loan provided so that the financial consumer understood the terms of the loan.<sup>40</sup>

In 2010, South Africa was invited to join the Brazil, Russia, India, China and South Africa (BRICS) association.<sup>41</sup> The BRICS deals with the investment and financing for the general socio-economic welfare of countries internationally.<sup>42</sup> South Africa's participation in the BRICS association has seen a sharp increase in exports of locally manufactured goods which has boosted local industry, job creation and financial inclusion.<sup>43</sup> To date, the BRICS association has impacted positively on financial markets in developing countries by contributing to more than 50% of the entire world's financial and economic growth.<sup>44</sup>

South Africa is also a member of Group of Twenty (G20). The G20 primarily aims to promote financial stability internationally.<sup>45</sup> Financial stability and financial inclusion have a correlation because lending of money to small and medium-size enterprises and small-scale entrepreneurs increases employment growth and the financial inclusion of the poor working population.<sup>46</sup> It is submitted that South Africa's membership into the G20 is a positive step towards maximising financial inclusion.

In 2004, the Financial Service Charter (FSC) was established under the *Broad-based Black Economic Empowerment Act*<sup>47</sup> to promote a transformed and globally competitive financial sector in South Africa.<sup>48</sup> The FSC was mainly initiated to improve the financial

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<sup>40</sup> Schoombee A 2004 *Bureau for Economic Research* 6.

<sup>41</sup> Oliver S "South Africa's BRICS Membership: A Win-Win Situation?" 2013 *African Journal of Political Science and International Relations* 310, 311; Besada H, Tok E and Kristen Winters "South Africa in the BRICS Opportunities, Challenges and Prospects" 2013 *Africa Insight* 1, 1-2.

<sup>42</sup> BRICS Business Council 2012 *South African Chapter BRICS Business Council* <https://www.bricsbusinesscouncil.co.za/> accessed 28 July 2018 page number unknown; BRICS "New Delhi BRICS 2012" *The BRICS Report* (9 March 2012) 3.

<sup>43</sup> Mminele D "The role of BRICS in the global economy" in Bundesbank Regional Office (7 July 2016 Düsseldorf) 5.

<sup>44</sup> Brics 2017 China 2017 *What is BRICS* <https://www.brics2017.org/English/AboutBRICS/BRICS/> accessed 21 May 2018 page number unknown; BRICS *The BRICS Report* (9 March 2012) 5.

<sup>45</sup> Group of 20 2015 Turkey 2015 *About G20* <http://g20.org.tr/about-g20/> accessed 21 May 2018 page number unknown; BRICS *The BRICS Report* (9 March 2012) 1.

<sup>46</sup> According to Morgan PJ and Pontines V "Financial Stability and Financial Inclusion" 2014 *ADB* 1, 6, financial stability and financial inclusion are interdependent because lending of money to small and medium-size enterprises and small-scale entrepreneurs which have a great pool of labourers) increases employment growth and the financial inclusion of the poor working population who can afford owning bank accounts.

<sup>47</sup> 53 of 2003 (*BBBEE Act*), section 2.

<sup>48</sup> The Banking Association South Africa 2016 *Financial Service Charter Code*

inclusion of poor people and low-income earners into South Africa's formal financial sector.<sup>49</sup> The Mzansi Account was introduced to offer a low-charge account to a majority of poor and low-income earners in 2004.<sup>50</sup> The Mzansi Account provided a loan allowance for housing and small business loans.<sup>51</sup> The Mobile Payment (M-Pesa wallet) launched by Vodacom in 2010 was a mobile based money transfer facility that allowed users to deposit, withdraw, transfer money and pay for goods and services easily with the usage of a cell phone to retailers.<sup>52</sup> However, both these services have failed in their attempts to include the poor and low-income earners into the financial sector as other services like electronic-wallet (e-wallet) by First National Bank (FNB) have gained prominence due to their convenience owing to the fact that sending money via e-wallet does not require a bank account unlike the Mzansi Account.<sup>53</sup>

The *Financial Sector Regulation Act*<sup>54</sup> introduced the Prudential Authority (PA)<sup>55</sup> which operates under the SARB. The PA supervises the safety and dependability of financial institutions in South Africa.<sup>56</sup> Furthermore, the Financial Sector Conduct Authority (FSCA) replaced the Financial Services Board (FSB). The FSCA supervises financial institutions to ensure the fair treatment of financial consumers.<sup>57</sup> Nonetheless, the *FSR Act* does not expressly provide how the PA and the FSCA could practically promote financial inclusion

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*Introduction to The Financial Sector Charter* <http://www.banking.org.za/what-we-do/inclusive-economy/financial-services-charter> page number unknown accessed 22 May 2018; Tomlinson MR "South Africa's Financial Sector Charter: Where from, Where to?" 2005 *Housing Finance International* 32, 34.

<sup>49</sup> The Banking Association of South Africa 2018 *Financial Sector Charter Code* <http://www.banking.org.za/what-we-do/inclusive-economy/financial-services-charter> accessed 14 August 2018 page number unknown; Tomlinson 2005 *Housing Finance International* 33.

<sup>50</sup> Kosto P, Arun T and Annim S "Access to financial services: The case of the 'Mzansi' account in South Africa" 2015 *Review of Development Finance* 34, 36.

<sup>51</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 16.

<sup>52</sup> Lourie G "Vodacom, Nedbank Launch Mobile Cash Service" *Mail & Guardian* (31 August 2010) page number unknown; Buku MW and Meredith MW "Saficom and M-Pesa in Kenya: Financial Inclusion and Financial Integrity" 2012 *Washington Journal of Law, Technology & Arts* 375, 378.

<sup>53</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 16.

<sup>54</sup> Section 32 of the *FSR Act*.

<sup>55</sup> Section 32(2) of the *FSR Act*.

<sup>56</sup> Section 33 of the *FSR Act*.

<sup>57</sup> Financial Services Board 2017 *What is Twin Peaks* <https://www.fsb.co.za/Departments/twinpeaks/Pages/What-is-Twin-Peaks.aspx> accessed 22 May 2018 page number unknown; section 3 of the *FSR Act*.

in South Africa. The researcher proposes that legislation be enacted that expressly seeks to promote financial inclusion for the poor and low-income earners in South Africa.

### **1.3 Statement of the Problem**

Financial inclusion remains one of the main challenges towards the eradication of poverty in South Africa. This follows the fact that poor and low-income earners are excluded from the formal financial sector due to limited funds caused by unemployment. About 30 million people are poor and 55.5% of these people struggle to access financial services and products in South Africa.<sup>58</sup> About 77% South Africans have access to basic banking services while 17% of the total population are poor and rely on social grants.<sup>59</sup> Moreover, 27.7% of the total population are unemployed young adults who cannot afford bank accounts and thus remain poor and financially excluded.<sup>60</sup> Financial inclusion cannot be fully attained when the majority of South Africans remains poor, unemployed and/or reliant on social grants. Therefore, poverty remains a problem towards attaining financial inclusion in South Africa.

Financial illiteracy is a barrier to financial inclusion of the poor and low-income earners in South Africa due to the fact that illiterate financial consumers are bound to take financial services they do not need and end up over-indebted.<sup>61</sup> Financial consumers need to understand different financial products and services so that they are better positioned to make informed decisions about their finances.<sup>62</sup> There is a high likelihood that consumers who are financially illiterate engage in high-cost debt which goes against the ideals of financial inclusion.<sup>63</sup> This follows the fact that financial inclusion extends beyond access of financial products and services to the poor and low-income earners to equipping financial consumers with knowledge on how to manage spending and save for future

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<sup>58</sup> Kessler K *et al* *The Boston Consulting Group* 4; Abrahams R "Financial inclusion in South Africa: A review of the literature" 2017 *Southern African Accounting Association* 632, 642.

<sup>59</sup> Coovadia Finmark Trust *Annual Report 2017* (28 February 2017) 7.

<sup>60</sup> Coovadia *Annual Report 2017* 7.

<sup>61</sup> Rootman C and Antoni X "Investigating Financial Literacy to Improve Financial Behaviour among Black Consumers" 2015 *Journal of Economic and Financial Sciences* 474, 475.

<sup>62</sup> Mishi, Vacu and Chipote 2012 *ERSA* 1, 2.

<sup>63</sup> Lusardi A and Mitchell OS "The Economic Importance of Financial Literacy: Theory and Evidence" 2014 *Journal of Economic Literature* 5, 25.

financial obligations.<sup>64</sup> Although the FSCA has a mandate to promote financial literacy<sup>65</sup> and a statutory obligation to educate consumers about credit and their credit rights under the *National Credit Act*,<sup>66</sup> more still needs to be done to increase financial literacy in South Africa.<sup>67</sup>

There is currently no legislation that specifically and with adequate detail regulates financial inclusion in South Africa. The *FSR Act* was enacted to, *inter alia*, establish a regulatory and statutory framework that promotes financial inclusion.<sup>68</sup> The *FSR Act* provides for the establishment of the PA<sup>69</sup> whose functions are, *inter alia*, to protect financial institutions and financial markets.<sup>70</sup> On the other hand, the FSCA<sup>71</sup> is obliged to enhance and promote the viability of financial markets in South Africa.<sup>72</sup> Moreover, the *FSR Act* establishes a Financial System Council of Regulators who must, *inter alia*, establish sub-committee groups to promote financial inclusion.<sup>73</sup> However, it remains to be seen whether the provisions of the *FSR Act* will be consistently enforced by the relevant authorities to ensure that all financial consumers have access to affordable basic financial services and products in South Africa. This is due to the fact that there is no express provision in the FSR which seeks to promote financial inclusion for the poor and low-income earners in South Africa.

Most low-income earners remain without bank accounts due to high bank charges which makes the poor and low-income earners to be unable to meet their bank charge

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<sup>64</sup> Nanziri EL “Measuring and Profiling Financial Literacy in South Africa” 2018 *Journal of Economic and Management Sciences* 1,2; Maziya M, Zwane T “Financial Inclusion is More Than Just Access to Credit” *Mail & Guardian* (17 November 2017) page number unknown; Wentzel A “Financial Literacy in South Africa” in Aprea C *et al* (eds) *International Handbook of Financial Literacy* (Springer Science+Business Media Singapore 2016) 329, 332; Arun T and Kamath R “Financial inclusion: Policies and Practices” 2015 *IIMB Management Review* 267, 271.

<sup>65</sup> *Financial Sector Regulation Act* 9 of 2017 (*FSR Act*), section 57(b)(ii).

<sup>66</sup> Act 34 of 2005 (the *NCA*), section 3(e)(i) read with sections 16(1)(a)-(b).

<sup>67</sup> According to Nanziri and Leibbrandt 2018 *South African Journal of Economic and Management Sciences* 1,6 and Moodley N “Improve Your Financial Literacy in 2017” *Fin24* (15 January 2017) page number unknown, financial literacy rates as per 2018 in South Africa stand at 51% of the total adult population illustrating that more people still need to be financially included.

<sup>68</sup> Section 7 of the *FSR Act*.

<sup>69</sup> Section 32(1) of the *FSR Act*.

<sup>70</sup> Sections 33(a)-(b) of the *FSR Act*.

<sup>71</sup> See section 56(1) of the *FSR Act*.

<sup>72</sup> See section 57(b) of the *FSR Act*.

<sup>73</sup> Section 81(f) of the *FSR Act*.

obligations.<sup>74</sup> High bank charges are a barrier to financial inclusion since they discourage the poor and low-income earners to have access to formal banking and other financial services.<sup>75</sup> The frequent reliance on cash by the poor and low-income earners discourages them from saving money and ultimately excludes them from accessing basic financial services and products. The monopoly enjoyed by the main banks in South Africa could be the other reason for the high fee structure that is currently prevalent in most South African financial institutions.<sup>76</sup>

It is imperative for financial institutions to be transparent and honest in their dealings to gain the trust of their consumers and enhance the promotion of financial inclusion in South Africa. The recent mismanagement of funds and allegations of fraud at the Venda Building Society (VBS)<sup>77</sup> is a case in point for the ongoing mistrust that financial consumers have against banks in South Africa. These challenges have also negatively affected the financial integrity of financial institutions in South Africa.

## **1.4 Aims and Objectives**

### **1.4.1 Aims**

This research seeks to:

- a) investigate whether financial inclusion is adequately promoted in South Africa to improve the economic welfare of the poor and low-income earners;
- b) examine whether banking institutions in South Africa are conducting their activities fairly in order to promote financial inclusion for the poor and low-income earners who were previously discriminated through apartheid; and
- c) investigate the different causes of financial exclusion in South Africa for the purposes of recommending possible measures that could be utilised by the relevant authorities to curb financial exclusion.

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<sup>74</sup> Wentzel JP, Diathab KS and Yadavallie VSS “An Investigation into Factors Impacting Financial Exclusion at the Bottom of the Pyramid in South Africa” 2016 *Development Southern Africa*, 203, 212.

<sup>75</sup> Kessler K *et al* *The Boston Consulting Group* 5.

<sup>76</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 177.

<sup>77</sup> Kgosana C and Afrika M “The Great VBS Bank Heist” *Sunday Times* (24 June 2018) 2; Masondo S and Van Rensburg D “How VBS was Plundered” *City Press* (24 June 2018) 1.

#### 1.4.2 Objectives

In order to achieve the aims of this research, the researcher will:

- a) investigate whether the current South African regulatory statutory framework for financial inclusion is adequate to combat financial exclusion in South Africa so as to ensure that even the poor and low-income earners are included in the financial system of the country;
- b) discuss the role of the SARB in promoting financial inclusion in South Africa so as to trace its shortcomings on ensuring financial inclusion; and
- c) propose measures that could be employed to improve the regulation and promotion of financial inclusion in South Africa so that the poor and low-income earners are included into the financial sector of the country.

#### **1.5 Research Question**

Is the current South African regulatory statutory framework for financial inclusion robust enough to combat financial exclusion of the poor and low-income earners in South Africa?

#### **1.6 Rationale of the study**

According to the National Development Plan,<sup>78</sup> South Africa should achieve financial inclusion of about 90% in the year 2030. The research discusses the role of the SARB, PA, FSCA, NCR and other stakeholders in the promotion of financial inclusion in South Africa. This flows from the fact that most excluded poor and low-income earners are faced with high levels of financial illiteracy,<sup>79</sup> unemployment and poverty,<sup>80</sup> over-

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<sup>78</sup> Manuel TA “National Development Plan Vision 2030” *National Planning Commission* (11 Nov 2011)129.

<sup>79</sup> Wentzel JP, Diatha KS and Yadavalli VSS “An Investigation into Factors Impacting Financial Exclusion at the Bottom of the Pyramid in South Africa” 2016 *Development Southern Africa* 203, 209; Wentzel A “Financial Literacy in South Africa” 332.

<sup>80</sup> Kessler et al *Boston Consulting Group* 4.

indebtedness<sup>81</sup> and remoteness of financial institutions to financial consumers who reside in remote areas.<sup>82</sup>

Additionally, there is no legislation that specifically and with adequate detail regulates the promotion of financial inclusion in South Africa. Owing to such lack of legislative regulation, it could be said that the measures adopted by the government, banking institutions and other stakeholders are not adequate enough to promote financial inclusion for the poor and low-income earners in South Africa. Consequently, the researcher submits that it is not certain whether South Africa will achieve its financial inclusion target by 2030.

The research investigates whether the South African financial inclusion statutory regulatory framework is robust enough to ensure that the poor and low-income earners have access to all financial services and products.

### **1.7 Literature Review**

De Koker and Jentzsch<sup>83</sup> argue that financial inclusion and financial integrity are interdependent and complementary. De Koker and Jentzsch further argue that anti-money laundering and anti-financial terrorism measures curb illegal activities which are a threat to financial integrity.<sup>84</sup> Such measures could also promote transparent financial inclusion activities in South Africa. If financial inclusion is to be achieved, financial integrity remains pivotal in South Africa. De Koker and Jentzsch argue that the increased use of financial services leads to an increased use of formal financial services which leads to a reduced use of informal services which are not cost beneficial to customers.<sup>85</sup> This could be true of South Africa since there is a growing usage of informal financial services which burden consumers.<sup>86</sup> Reliance on cash increases the propensity to spend

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<sup>81</sup> Coovadia Finmark Trust *Annual Report 2017* (28 February 2017) 7-8; Ssebagala RA "Relieving Consumer Over indebtedness in South Africa: Policy Reviews and Recommendations" 2017 *Journal of Financial Counseling and Planning* 235, 236-237.

<sup>82</sup> Fanta AB and Mutsonziwa K "Gender and Financial Inclusion Analysis of Financial Inclusion of Women in the SADC Region" 2016 *Finmark Trust Policy Research Paper 01* 1, 11; Mishi, Vacu and Chipote 2012 *ERSA* 9

<sup>83</sup> De Koker L and Jentzsch J "Financial Inclusion and Financial Integrity: Aligned Incentives?" 2013 *World Development* 267, 277.

<sup>84</sup> De Koker and Jentzsch 2013 *World Development* 279.

<sup>85</sup> De Koker and Jentzsch 2013 *World Development* 277.

<sup>86</sup> De Koker and Jentzsch 2013 *World Development* 277.

impulsively which goes against saving and exposes the consumer to theft. De Koker and Jentzsch submit that the government should promote the privacy and protection of consumers' identities by banks when opening accounts and during usage of such accounts.<sup>87</sup> This establishes a sense of trust in the banking system and builds consumer confidence which could well encourage most of the people to open banking accounts.

Rootman and Antoni<sup>88</sup> trace the problem of financial exclusion as emanating from the lack of financial literacy. Financial literacy refers to the consumer's ability to utilise their knowledge, skills and attitudes in order to manage income effectively and improve their future financial needs.<sup>89</sup> Most poor and low-income earners in South Africa are financially illiterate which hampers financial inclusion because those with poor educational attainment have no understanding of banking services and products and thus find no pressing need to have bank accounts.<sup>90</sup> Financial literacy requires banking institutions to use language that is easily understood by their consumers.<sup>91</sup> Language plays a significant role in ensuring that consumers make sound financial decisions.<sup>92</sup> This explains why the FSCA's business unit has adopted a diverse language policy as mandated by the *Use of Official Languages Act*<sup>93</sup> to ensure that financial education is achieved.<sup>94</sup> Nevertheless, language barrier is still a huge impediment towards achieving financial inclusion in South Africa.<sup>95</sup> In this regard, it remains pivotal that consumers receive banking products and services in their language of preference.

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<sup>87</sup> De Koker and Jentzsch 2013 *World Development* 277.

<sup>88</sup> Rootman and Antoni 2015 *Journal of Economic and Financial Sciences* 475.

<sup>89</sup> Hung AA, Parker AM and Yoong J "Defining and Measuring Financial Literacy" 2009 *Rand and Labor Population* 1, 5.

<sup>90</sup> Wentzel, Diathab and Yadavallie 2016 *Development Southern Africa* 9; Moodley N "Improve Your Financial Literacy in 2017" *City Press* (15 January 2017) 47; Pearson and Stoop 2017 *PER/PELJ* 14.

<sup>91</sup> Pearson and Stoop 2017 *PER/PELJ* 3.

<sup>92</sup> Mondlana S "Role of Language in Financial Inclusion and Literacy" 2017/2018 *FSB Bulletin Quarter 4* (November 2018) 16.

<sup>93</sup> 12 of 2012, see section 4.

<sup>94</sup> Mondlana 2017/2018 *FSB Bulletin Quarter 4* 16.

<sup>95</sup> Fanta AB and Mutsonziwa K "Gender and Financial Inclusion Analysis of Financial Inclusion of Women in the SADC Region" *FinMark Trust* (August 2016) 21.

Allen *et al*<sup>96</sup> argue that financial inclusion is accelerated by an enabling environment which promotes the access to financial services, lower banking costs and the proximity of banking institutions to consumers. Banking charges are indeed a deterrent to opening of bank accounts for most low-income earners in South Africa.<sup>97</sup> Allen *et al* further argue that the stronger the legal rights possessed by individuals in a country coupled with political stability, the higher the likelihood that such individual will have financial inclusion.<sup>98</sup> Allen *et al*'s aforementioned argument is true to South Africa owing to the fact that as the country's credit ratings were shaken by Moody due to economic mishaps thereby worsening the economic and financial situation. Allen *et al* also argue that higher bank charges are barriers to financial inclusion to poor people in South Africa.<sup>99</sup>

Wentzel *et al*<sup>100</sup> argue that the realisation of financial inclusion is mostly required amongst the poor and low-income earners in South Africa. This follows the fact that about 30 million people are poor and 55% of the total population struggles to access financial services and products whereas 27.7% are unemployed young adults in South Africa.<sup>101</sup> Wentzel *et al* argue that poor educational attainment by consumers, lack of income to sustain a bank account, age, home language and number of dependents causes financial exclusion of the poor in South Africa.<sup>102</sup> It is, true that the aforementioned factors are also barriers to financial inclusion in South Africa.<sup>103</sup> Low-income earner's lack of bank accounts is attributable to unemployment as without any means of income, it becomes difficult to sustain a bank account.<sup>104</sup>

Wentzel *et al* also argue that the more dependents a low-income earner has, the more likely it is for such person to remain without a bank account.<sup>105</sup> This could be correct since

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<sup>96</sup> Allen F, Demirguc-Kunt A, Klapper L, Peria MSM *et al* "The Foundations of Financial Inclusion: Understanding Ownership and Use of Formal Accounts" 2016 *Journal of Financial Intermediation* 1, 35.

<sup>97</sup> Kessler *et al* *The Boston Consulting Group* 8.

<sup>98</sup> Allen *et al* 2016 *JEL* 35.

<sup>99</sup> Allen *et al* 2016 *JEL* 36.

<sup>100</sup> Wentzel, Diatha and Yadavalli 2016 *Development Southern Africa* 209.

<sup>101</sup> Kessler K *et al* *The Boston Consulting Group* 4.

<sup>102</sup> Wentzel, Diathab and Yadavalli 2016 *Development Southern Africa* 204.

<sup>103</sup> Ssebagala 2017 *Journal of Financial Counseling and Planning* 237.

<sup>104</sup> Wentzel, Diathab and Yadavalli 2016 *Development Southern Africa* 212.

<sup>105</sup> Wentzel, Diathab and Yadavalli 2016 *Development Southern Africa* 213.

high fee structures by the banking institutions<sup>106</sup> as well as the financial needs of the dependents may leave the low-income earners with less or no money for their subsistence. Moreover, most low-income earners are engaged in informal work and are not eager to have financial accounts with financial institutions whose services and products they find very complex to understand. Wentzel *et al* did not provide how aspects like gender, marital status and asset ownership influence financial inclusion.<sup>107</sup> However, the researcher submits that gender, marital status and asset ownership influence financial inclusion and Wentzel *et al*'s neglect of discussing these aspects makes their study inadequate.<sup>108</sup>

Wentzel *et al* argue that living in rural as opposed to an urban area is not associated with financial exclusion.<sup>109</sup> Rather, Wentzel *et al* argue that financial literacy rates rather than the availability of banking institutions and ATMs in close proximity are the real causes of financial exclusion. This could be applicable to South Africa because even in urban areas where there is relatively easier access to banking institutions, the illiterate still remain without banking accounts.<sup>110</sup> However, the researcher submits that remoteness of banking institutions to consumers who stay in remote areas of South Africa remains a challenge towards promoting financial inclusion in South Africa.<sup>111</sup> Furthermore Wentzel *et al* fail to acknowledge the fact that most rural areas still remain without basic financial services like access to unrestricted amounts of cash as compared to most urban areas.<sup>112</sup> However, the recent First National Bank (FNB) non-cash dispensing Automated Teller

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<sup>106</sup> Peyper L “High Fees Tops 6 Reasons Why South Africans Shun Banks” *Fin 24* (5 May 2017) page number unknown; Abrahams 2017 *Southern African Accounting Association* 639.

<sup>107</sup> Wentzel, Diathab and Yadavallie 2016 *Development Southern Africa* 213.

<sup>108</sup> According to Demirüç-Kunt A, Klapper L, Singer D, Ansar S and Hess J. “Measuring Financial Inclusion and the Fintech Revolution in The Global Findex Database 2017” 2018 *The World Bank* 1, 23, gender and financial inclusion are strongly related because it is argued that men formally borrow and save more likely than women due to income inequalities and asset ownership with men tending to own more assets. Furthermore, it is argued that women are likely to be financially excluded due to inferior levels of income, lower financial literacy, lesser business experience and greater reliance on informal financial services.

<sup>109</sup> Wentzel, Diathab and Yadavallie 2016 *Development Southern Africa* 213.

<sup>110</sup> Mishi, Vacu and Chipote 2012 *ERSA* 6.

<sup>111</sup> Fanta and Mutsonziwa *FinMark Trust* 21.

<sup>112</sup> Writer S “FNB Launches Non-Cash Dispensing ATMs for Rural South Africa” *BusinessTech* (24 May 2017) page number unknown.

Machines (ATMs) have slips that are redeemable for cash at tuck shops. However, these tuck shops do not always have sufficient cash for those using non-cash dispensing ATMs redeemable slips. Owing to this flaw, this measure has to date failed to effectively increase financial inclusion for the poor and low-income earners in South Africa. The challenge is exacerbated by the rigid operating hours of tuck shops and the inability to give out large amounts of cash at any time like ATMs.<sup>113</sup>

Abrahams<sup>114</sup> argues that voluntary and involuntary financial exclusion occurs in many countries. Voluntary financial exclusion is usually attributed to, or caused by religious reasons and a lack of trust in the banking financial institutions.<sup>115</sup> On the other hand, involuntary financial exclusion is caused by low-income and inability for one to qualify for credit facilities offered by banks. There is not much literature on financial exclusion due to religious reasons in South Africa. However, involuntary exclusion due to low-income is relatively common amongst the poor and vulnerable persons in South Africa. Other reasons to financial exclusion cited by Abrahams include the lack of required bank documentation to account ownership as required by the *FICA*.<sup>116</sup> The high number of immigrant workers in South Africa without required documentation becomes a challenge for them to access banking services in most instances.

Sarma and Jesim<sup>117</sup> argue that socio-economic development leads to financial inclusion of the poor and low-income earners. This flows from the notion that medium to high income earners have some degree of socio-economic development and so are able to sustain bank accounts.<sup>118</sup> This flows from the fact that the higher the income level, both at individual and national level, the higher the likelihood that such an individual will have a bank account because they can afford a bank account.<sup>119</sup> Sarma and Jesim also argue that financial exclusion is more common among those residing in rural areas since there

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<sup>113</sup> Van Zyl L “FNB Promotes Access to Banking in Rural South Africa” *FANews* (24 May 2017) page number unknown. Abrahams 2017 *Southern African Accounting Association* 636.

<sup>114</sup> Abrahams 2017 *Southern African Accounting Association* 635.

<sup>115</sup> Abrahams 2017 *Southern African Accounting Association* 635; Zins A and Weill L “The Determinants of Financial Inclusion in Africa” 2016 *Review of Development Finance* 46, 48.

<sup>116</sup> Section 21 of the *FICA*.

<sup>117</sup> Sarma and Pais 2011 *Journal of International Development* 613.

<sup>118</sup> James D “Mediating Indebtedness in South Africa” 2018 *Journal of Anthropology* 814, 826.

<sup>119</sup> Sarma and Jesim 2011 *Journal of International Development* 623.

are limited banking institutions or if available, they are remote to the consumer.<sup>120</sup> It could be true to the South African case in that people who reside in rural areas like Eastern Cape and Limpopo are financially excluded due to remoteness of banking institutions and services.<sup>121</sup>

Additionally, Sarma and Jesim's submit that the higher the level of adult literacy, the higher the chances of such an individual to have a bank account.<sup>122</sup> Owing to the aforementioned, financial literacy could promote financial inclusion of the poor and low-income earners. Sarma and Jesim recommend the reduction of income inequalities, enhancing adult literacy levels as well as improving proximity of banks to financial consumers which help to promote financial inclusion for the poor and low-income earners.<sup>123</sup> More emphasis on alleviating the problem posed by income inequalities financial literacy, proximity of banks especially to the people residing in remote areas could greatly promote financial inclusion for the poor and low-income earners in the South African.

The Finscope report<sup>124</sup> indicates that South Africa's financial inclusion is currently fixed at 87% of the adult population having access to bank accounts. This is mainly because more needs to be done by the government, banks as well as other stakeholders in order to maximise the promotion of financial inclusion in South Africa. Moreover, mere ownership of bank accounts should not be considered as financial inclusion<sup>125</sup> especially when most adults with bank accounts withdraw their entire income upon receipt.<sup>126</sup> It is submitted that withdrawing savings entirely as most South Africa financial consumers do cannot be considered because the financial inclusion involves not only having a bank account but the use of savings facilities, security of income and credit facilities as offered by financial

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<sup>120</sup> Sarma and Jesim 2011 *Journal of International Development* 621.

<sup>121</sup> Allen F, Demirguc-Kunt A, Klapper L and Peria Mishi MSM "The Foundations of Financial Inclusion: Understanding Ownership and Use of Formal Accounts" 2016 *Journal of Financial Intermediation* 1, 3; Vacu and Chipote 2012 *ERSA* 2.

<sup>122</sup> Sarma and Jesim 2011 *Journal of International Development* 623; Nanziri and Leibbrandt 2018 *South African Journal of Economic and Management Sciences* 3.

<sup>123</sup> Sarma and Jesim 2011 *Journal of International Development* 626.

<sup>124</sup> Coovadia Finmark Trust 20177.

<sup>125</sup> SADC "SADC Financial Inclusion Strategy" *SADC Report* 2016 1, 13.

<sup>126</sup> Finmark Trust *Annual Report* 20177.

institutions.<sup>127</sup> It can be submitted that financial literacy remains a major concern if financial inclusion is to be fully achieved in South Africa to alleviate financial exclusion of the poor and low-income earners.

Rhine and Greene<sup>128</sup> argue that many immigrants enter the United States of America (USA) to seek employment. This follows the fact that most of the immigrants remain without bank accounts owing to lack of documentation, education, low-income, informal employment, minimal bank balance and high bank fees and as a result struggle to access formal banking services<sup>129</sup> Likewise, in South Africa most immigrants conduct informal work due to low levels of education and low-income and thus remain without formal bank accounts.<sup>130</sup> Illegal immigrants who come to South Africa are unable to open bank accounts due to the provisions of the *Financial Intelligence Centre Act*.<sup>131</sup> The *FICA* requires financial institutions to establish and verify every client's identity before opening an account.<sup>132</sup> This follows the fact that identification and verification of bank clients helps to combat fraud and money laundering activities which may harm the integrity of the banking sector and diminish consumer confidence on banks thereby defeating the efforts of financial inclusion. For immigrants without proper documentation, the *FICA* is a barrier to financial inclusion.

Chauvet and Jacolin<sup>133</sup> argue that financial inclusion helps to develop the growth of private firm growth through the provision of loans. Chauvet and Jacolin argue that the growth of private firms enhances the growth of banking institutions and competitiveness of banking institutions who offer financial services and products to members of the society.<sup>134</sup> As a result, private firm growth promotes the growth of the economy which serves the poor and low-income earners in job allocation and cheaper services and

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<sup>127</sup> National Treasury "Achieving Effective Financial Inclusion in South Africa: A Payments Perspective" 2016 *The World Bank* 1, 16.

<sup>128</sup> Rhine SL and Greene WH "The Determinants of Being Unbanked for U.S. Immigrants" 2006 *The Journal of Consumer Affairs* 23.

<sup>129</sup> Rhine and Greene 2006 *The Journal of Consumer Affairs* 23.

<sup>130</sup> Abrahams 2017 *Southern African Accounting Association* 640; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 174.

<sup>131</sup> Act 38 of 2001 (*FICA*), section 21 *FICA*.

<sup>132</sup> See sections 21(1) and (2) of the *FICA*.

<sup>133</sup> Chauvet L and Jacolin L "Financial Inclusion, Bank Concentration, and Firm Performance" 2017 *World Development* 1, 6-7.

<sup>134</sup> Chauvet and Jacolin 2017 *World Development* 6-7.

products. In this regard, financial inclusion of the private sector benefits the poor and low-income earners who in turn become financially included.<sup>135</sup> The researcher submits that financial inclusion of private firms is important for the promotion of financial inclusion of the poor and low-income earners in South Africa.

## **1.8 Assumptions and Hypothesis**

### 1.8.1 Assumptions

This research is premised on the following assumptions:

- a) the poor and low-income earners are easily excluded from accessing basic financial services such as bank accounts and loans in many countries, including South Africa; and
- b) financial literacy for consumers could improve financial inclusion in South Africa by 2030.

### 1.8.2 Hypothesis

It is widely accepted that financial consumers sometimes make poor financial decisions due to their financial illiteracy. Additionally, it is believed that some financial consumers do not borrow responsibly and save their earnings for medium to long term financial goals due financial illiteracy. Likewise, it is generally assumed that most poor, vulnerable and low-income earners are largely excluded from accessing basic financial services such as bank accounts, loans and credit facilities in many developing countries than in the developed countries.<sup>136</sup> This follows a widely accepted belief that most financial institutions in the formal financial sectors have far too onerous and stringent requirements that makes it difficult for people, especially the poor, vulnerable and low-income earners to comply with in developing countries than in developed countries.<sup>137</sup> In this regard, the researcher explores how good financial literacy programs and the enactment of specific legislation for financial inclusion could help South Africa to achieve its 90% financial

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<sup>135</sup> Chauvet and Jacolin 2017 *World Development* 3.

<sup>136</sup> Skowronski, G. "The Microcredit Sector in South Africa: An Overview of the History, Financial Access, Challenges and Key Players" 2010 *Global Development Research Centre* 1, 2.

<sup>137</sup> Abrahams 2017 *Southern African Accounting Association* 645.

inclusion target by 2030. Furthermore, the researcher investigates whether South Africa will fulfil the recommendations contained in the National Development Plan in respect of its financial inclusion policies.

### **1.9 Limitations of the study**

This research mainly focuses on the statutory regulatory framework for the promotion of financial inclusion in South Africa. Although the introduction of the twin peaks model involving the PA and the FSCA was adopted from other jurisdictions like the United Kingdom (UK) and Australia, the researcher only examines the adequacy of this model in accordance with the provisions the *FSR Act*. This follows the fact that the poor and low-income earners are still struggling to access financial services and products in South Africa than in other countries. This research is not a comparative study because the researcher believes that the challenges towards the promotion of financial inclusion for low-income earners in South Africa do not require foreign lessons as they could be fixed nationally.

### **1.10 Research Methodology**

The following research methods will be utilised in this research:

#### *a) Primary and Secondary sources*

The researcher refers to of Constitution of the Republic of South Africa,<sup>138</sup> journal articles, case law, legislation and books that are relevant to the topic under discussion. Internet websites were accessed to obtain relevant information from online databases for most recent and updated databases. Internet databases enable a diverse set of information and opinions from relevant academic scholars. The dates indicated in the bibliography reflect the dates on which these websites were accessed by the researcher. **For purposes of this research, the North West University Potchefstroom Electronic Law Journal Referencing style was utilised.**

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<sup>138</sup> The Constitution of the Republic of South Africa, 1996 (*Constitution*).

*b) Relevant Case Law*

The researcher examines and analyses case law relevant to the promotion of financial inclusion in South Africa.

*c) Relevant Legislation*

The research discusses legislation that deals with the promotion of financial inclusion in South Africa such as the *South African Reserve Bank Act* 90 of 1989, the *FSR Act*, the *Banks Act* 90 of 1994, the *FICA*, the *National Payment System Act* 78 of 1998 and the *NCA*.

**1.11 Statement regarding ethics**

This research uses a qualitative research method. All primary and secondary sources that are used are referenced and acknowledged fully. No individual or group interviews or questionnaires were used as instruments for this research. This research does not directly or indirectly affect any person's rights.

**1.12 Relevance to Research Unit Theme**

This research focuses on the promotion of financial inclusion in South Africa. Therefore, it falls under the Finance, Trade and Investment Research Unit of the faculty of law. Furthermore, the research falls under the Securities and Financial Markets Law ancillary module under the Master's in Mercantile Law module of the faculty of law. The findings of the research are contained in the final dissertation. It is further hoped that some parts of the research will be published as book chapters or referred journal articles.

**1.13 Structure of the dissertation**

This research has five chapters as discussed below:

Chapter One provides the outline of the research. It contains the background of the study, the problem statement, aims and objectives, research question, rationale and justification, assumptions and hypothesis, scope and limitations and research methodology.

Chapter Two lays out the historical background of the research by tracing sources of financial exclusion from as early as the 1800. This chapter discusses what financial inclusion measures in South Africa have been taken from 1800 up to date.

Chapter Three discusses the South African statutory regulatory framework on financial inclusion. Statutes and bodies responsible for promotion of financial inclusion are discussed in this chapter to identify why they are inadequately promoting financial inclusion for the poor and low-income earners.

Chapter Four discusses the contemporary challenges hindering the promotion of financial inclusion in South Africa. This chapter highlights problems faced by consumers in their quest to have access to basic financial services in South Africa.

Chapter Five provides recommendations to improve the current regulatory framework on the promotion of financial inclusion in South Africa.

## CHAPTER TWO

### HISTORICAL ASPECTS OF FINANCIAL INCLUSION REGULATION IN SOUTH AFRICA

#### 2.1 Introduction

Financial inequalities and the subsequent financial exclusion of the poor and local income earners in South Africans has existed from as early as 1600 when the struggle for land as the main source of production started.<sup>139</sup> For the purposes of this research, the history of financial inclusion for the poor and local income earners in South Africa was traced from 1652 to date. From 1652, the Dutch East India Company arrived in South Africa seizing land from the local Koi Koi people to establish supply stations of fruits, vegetables and fresh water for resale by the Dutch East India Company.<sup>140</sup> Without land, income inequalities developed between the poor and the Dutch settlers who sought cheap labour from the local South Africans excluding them from land ownership<sup>141</sup> and consequently from the main financial sector.

In 1800, the infiltration of the British exacerbated the struggle for land at the expense of the local South Africans.<sup>142</sup> This intensified the income inequality between the poor and low-income earners suffering financial exclusion and the European settlers getting enriched in the process. The arrival of the British in 1800 also introduced the use of pence, pounds and shillings as a medium of exchange thereby improving accessibility of money to high income earners.<sup>143</sup> During the period between 1652 and 1968, there was no legislation for financial inclusion. The exclusion of the poor and low-income earners during

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<sup>139</sup> Byrnes RM *South Africa: A Country Study* (Federal Research Division, Library of Congress Washington D.C 1997) 11.

<sup>140</sup> Byrnes *South Africa: A Country Study* 12.

<sup>141</sup> Byrnes *South Africa: A Country Study* 12; Nanziri LE "Financial Inclusion and Socio-Economic Transformation in Post-apartheid South Africa" 2015 *Juniata Voices* 30, 32.

<sup>142</sup> Byrnes *South Africa: A Country Study* 18.

<sup>143</sup> Bronkhorst Q "A history of South Africa's Currency" *Business Tech* (23 September 2012) page number unknown; Reserve Bank of South Africa *History of South African Bank Notes 1782- 1920* <https://www.resbank.co.za/BanknotesandCoin/SouthAfricanCurrency/BankNotes/Pages/HistoryofSouthAfricanbanknotes1782To1920.aspx> accessed 31 October 2018 page number unknown; Byrnes *South Africa: A Country Study* 24.

this period could indicate that financial inclusion regulation is crucial for all the people in South Africa.<sup>144</sup>

From around 1600's, it appears not any currency was used in South Africa. However, financial inclusion in South Africa started informally with practices like the stokvel and borrowings from friends and family members.<sup>145</sup> In the 1800's when South Africa became a British colony and pence, pounds and shillings started gaining prominence as the first step towards.<sup>146</sup> During the mid-1800s, no factories for the production of goods and services existed as a force behind the social and economic welfare of many South Africans today such that ownership of land was important for financial sustenance.<sup>147</sup>

From 1968 to date, various statutes like the *Usury Act* of 1968,<sup>148</sup> the *Credit Agreements Act*,<sup>149</sup> the *Financial Services Board Act*,<sup>150</sup> the *National Credit Act*,<sup>151</sup> the *South African Reserve Bank Act*,<sup>152</sup> the *Banks Act*, the *Consumer Protection Act*<sup>153</sup> and the *Financial Sector Regulation Act*<sup>154</sup> have been enacted for the promotion of financial inclusion for everyone in South Africa. Additionally, other stakeholders and/or role players that have existed since 1968 to promote financial inclusion for the poor and low-income earners in South Africa are, the Micro Finance National Consumer Tribunal, and the National Credit Regulator.

## **2.2 Financial inclusion regulation from the period between 1652 - 1948**

Financial exclusion of the poor and low-income earners started as early as 1652 when the Dutch East India Company established a settlement in Cape Town seizing land from

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<sup>144</sup> Manuel TA "National Development Plan Vision 2030" *National Planning Commission* (11 Nov 2011) 129.

<sup>145</sup> Nanziri EL "Financial Inclusion and Welfare in South Africa: Is there a Gender Gap?" 2016 *Journal of Development Africa* 109, 112; Ramnath N "FinScope South Africa Small Business Survey 2010" 2010 *Finmark Trust* 1, 4.

<sup>146</sup> Bronkhorst Q "A history of South Africa's Currency" *Business Tech* (23 September 2012) page number unknown; Byrnes *South Africa: A Country Study* 18.

<sup>147</sup> Nanziri 2015 *Juniata Voices* 31.

<sup>148</sup> 73 of 1968 (*Usury Act* of 1968), see sections 2-5.

<sup>149</sup> 75 of 1980 (*Credit Agreements Act*), see sections 4 and 7.

<sup>150</sup> 97 of 1990 (*FSB Act*), see section 3.

<sup>151</sup> 34 of 2055 (*NCA*), see sections 3, 80 and 81.

<sup>152</sup> 90 of 1989(*SARB Act*), see sections 3, 10, 11 and 14

<sup>153</sup> 68 of 2008 (*CPA*), see sections 3, 22, 48, 55.

<sup>154</sup> 17 of 2017 (*FSR Act*) see sections 32, 56.

the indigenous people.<sup>155</sup> Land was the main source of production in 1652. However, most indigenous people were excluded from the possession of land.<sup>156</sup> The clashes between the Dutch and British for land excluded the local poor people from the main financial economy of the time.<sup>157</sup>

### 2.2.1 *The stokvel practice*

From 1800 ownership of the means of production remained mostly in the hands of the Dutch and the British to the exclusion of the indigenous people. This perpetuated inequalities and the financial exclusion of the poor.<sup>158</sup> With the poor and low-income earners having no recourse to any financial sustenance, the advent of the 'stokvel' gained momentum in the bid to alleviate the poor and low-income people's plight of financial exclusion in the early 1800's.<sup>159</sup> Stokvels may be referred to as an initial step taken by the poor and low-income earners towards ensuring socio-economic security through saving and planning for future financial and social obligations. The phrase stokvel is suggested to have been a result of distortion of the word "stock fairs" which referred to a British system of rotating cattle auctions which offered financial backing to those who were part of the stock-fairs.<sup>160</sup>

The term 'stokvel' relates to a category of a credit union by which a group of people agree to contribute a fixed amount of money to a shared pool in varied durations which may be weekly, fortnightly or monthly for poverty alleviation through the encouragement of saving.<sup>161</sup> In other words, the term stokvel may be referred to as typical rotating savings

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<sup>155</sup> Feinstein CH *An Economic History of South Africa: Conquest, Discrimination and Development* (Cambridge University Press 2005) 2.

<sup>156</sup> Byrnes RM *South Africa: A Country Study* (Federal Research Division, Library of Congress Washington D.C 1997) 8.

<sup>157</sup> Byrnes RM *South Africa: A Country Study* 6.

<sup>158</sup> Byrnes RM *South Africa: A Country Study* 9.

<sup>159</sup> Kritzinger JNJ "African Cultural Resources in the Struggle against Mammon the Challenge of Stokvels to the Mission of the Church" 1996 *African Cultural Resources in the Struggle against Mammon* 109, 114; Irving M "Informal Savings Groups in South Africa: Investing in Social Capital" 2005 *Centre for Social Science Research University of Cape Town Working Paper No. 112* 1, 10.

<sup>160</sup> Matuku S and Kaseke E "The Role of Stokvels in Improving People's Lives: The Case in Orange Farm, Johannesburg, South Africa" *Social Work* 503, 505. Lukhele AK *Stokvels in South Africa: Informal Savings Schemes by Blacks for the Black Community* (Amagi Books Johannesburg 1990) 3.

<sup>161</sup> According to section 1, stokvel refers to a formal or informal rotational financial scheme which consists of 2 or more people in a voluntary association through which a pool of capital by raising

and credit associations (ROSCAs).<sup>162</sup> Such savings accumulated through the practice of stokvel are used to balance the daily subsistence needs of the poor people and to account for unforeseen expenditure in times of death or even sickness of a family member.<sup>163</sup> Stokvel serves the functions that financial institutions serve which includes, *inter alia*; tendering of credit, precautionary saving mechanisms and insurance in times of unforeseen circumstance yet at no high fee structure.<sup>164</sup> The stated functions of the stokvel are for members. There are different types of stokvels namely, burial stokvels, savings stokvels, grocery stokvels and investment stokvels which all provide great socio-economic benefits to members.<sup>165</sup> Many South Africans today still use the stokvel as a banking system especially the poor and low-income earners.<sup>166</sup> This may perhaps be one of the ways in which the poorest and low-income earners ought to manage their finances for financial inclusion purposes.

It should be borne in mind that the arrival of the British in South Africa led to growth of cities and business opportunities which created a pressing need for formal financial institutions to allow formal transactions in the form of payments and investment.<sup>167</sup> By mid-1800, there was the advent of formal banking institutions which provided access and credit only to European business people, farmers and miners.<sup>168</sup> The poor and low-income earners were excluded from the financial services. Therefore, stokvels were

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funds each member is established upon which members agree to contribute towards the achievement of specific objectives. The stokvel grants credit to its members, allows them to share in the profits made from credit provision and its self-regulated. Lukhele *Stokvels in South Africa: Informal Savings Schemes by Blacks for the Black Community* 1.

<sup>162</sup> Verhoef G "Informal Financial Service Institutions for Survival: African Women and Stokvels in Urban South Africa" 2001 *Enterprise & Society* 259, 263.

<sup>163</sup> Verhoef G "Savings and Survival in a Modern African Economy: Informal Savings Organisations and Poor People in South Africa" 2001 *Historia* 519, 523.

<sup>164</sup> Matuku S and Kaseke E "The Role of Stokvels in Improving People's Lives: The Case in Orange Farm, Johannesburg, South Africa" 2014 *Social Work* 504, 506; Kritzinger *Mission Studies* 116.

<sup>165</sup> Kritzinger 1996 *Mission Studies* 116.

<sup>166</sup> Storchi S "Impact Evaluation of Savings Groups and Stokvels in South Africa: The Economic and Social Value of Group-Based Financial Inclusion" *Finmark Trust* (30 September 2018) 3.

<sup>167</sup> Louis L and Chartier F "Financial Inclusion in South Africa: An Integrated Framework for Financial Inclusion of Vulnerable Communities in South Africa's Regulatory System reform" 2017 *Journal of Comparative Urban Law and Policy* 170, 178.

<sup>168</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 178.

formed to enhance financial inclusion for the poor and low-income earners to supplement their income and encourage savings.<sup>169</sup>

### **2.3 The Usury Act of 1926<sup>170</sup> and the Credit Agreements Act**

There is little documentation about the history of formal financial inclusion up until the 1900s owing to the fact that most South Africans had not yet reached a stage of development which necessitated the need for the establishment of formal banking institutions.<sup>171</sup> However, the lack of statutes to regulate fees or interest for any sort of credit, gave allowance to private lenders in loans and credit agreement to charge interest without regulation and/or any restriction. This made it very difficult for the poor and low-income earners to access credit from formal banking institutions.<sup>172</sup> As a result, this led to the enactment of the *Usury Act* of 1926 which sought to limit interest charges on loans.<sup>173</sup> The term “usury” relates to the practice of lending money at high rates of interest or simply a great returns transaction for the lender.<sup>174</sup>

The *Usury Act* of 1926 was enacted to determine the annual finance charges which could be implemented by lease, loan or credit agreement providers so as to protect the poor and low-income earners against excessive fees while ensuring that the provision of credit is extended to them.<sup>175</sup> The *Usury Act* of 1926 did not achieve much in terms of the financial inclusion of the poor and low-income earners and the curbing of high fee structures in South Africa. This could have been caused by the fact that micro-lenders saw it unprofitable to issue loans in smaller amounts with restricted interest rates.<sup>176</sup> Moreover, the *Usury Act* of 1926 may not have been successful because it was not applicable to banking institutions that provided credit at cheaper interest rates due to greater capacity,<sup>177</sup> hire purchase contracts<sup>178</sup> and to other transactions where the money

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<sup>169</sup> Matuku and Kaseke 2014 *Social Work* 504.

<sup>170</sup> 37 of 1926.

<sup>171</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 178.

<sup>172</sup> Moorcroft J” Interest, Usury, and the Boni Mores” *Johannesburg Bar* (August 2014) 41.

<sup>173</sup> 37 of 1926 (*Usury Act* of 1926).

<sup>174</sup> Prather WC “Mortgage Loans and the Usury Laws”1960 *The Business Lawyer*. 181, 184.

<sup>175</sup> Section 2 of the *Usury Act* of 1926 prescribed the maximum interest rates that could be charged by micro-lenders which interest rates varied according to the principal amount loaned.

<sup>176</sup> Prather 1960 *Bus. Law*. 184.

<sup>177</sup> Section 14(3) of the *Usury Act* of 1926.

<sup>178</sup> Section 14(2) of the *Usury Act* of 1926.

lender was not a party to the contract.<sup>179</sup> The researcher submits that inapplicability of the *Usury Act* of 1926 to banks and hire purchase transactions excluded most poor and low-income earners who may have preferred buying on hire purchase due to low-income.

The *Credit Agreements Act*<sup>180</sup> was enacted after the *Usury Act* of 1926. The *Credit Agreements Act* was enacted primarily to regulate some transactions in which movable goods were purchased or leased on credit<sup>181</sup> and to repeal the *Hire Purchase Act*.<sup>182</sup> The *Credit Agreements Act* had limited application owing to the fact that it did not restrict fees charged by credit providers. Moreover, the *Credit Agreements Act* was enacted exclusively for movable goods<sup>183</sup> thereby rendering it limitedly applied.

#### **2.4 The Usury Act of 1968<sup>184</sup>**

In 1968, the *Usury Act* of 1968<sup>185</sup> was enacted to curb the high fee structures that were blossoming and barring financial inclusion for the poor and low-income earners in South Africa. The *Usury Act* of 1968 was enacted to extend credit to people who are unable to obtain loans and credit from commercial banks due to their low regular income. In other words, the offering of loans to the section of the public that is poor and low-income is called micro-lending.<sup>186</sup> Although it is not expressed in any of the provisions of the *Usury Act* of 1926 and the *Usury Act* of 1968, consumer protection seems to have been the driving force behind the promulgation of the two Acts.<sup>187</sup> The purpose of the aforementioned Acts goes beyond consumer protection and extends also to sustaining

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<sup>179</sup> Section 14(4) of the *Usury Act* of 1926.

<sup>180</sup> 75 of 1980 (*Credit Agreements Act*).

<sup>181</sup> Section 2 *Credit Agreements Act*.

<sup>182</sup> 36 of 1942; Section 29 of the *Credit Agreements Act*.

<sup>183</sup> Section 2 of the *Credit Agreements Act*.

<sup>184</sup> 73 of 1968 (*Usury Act* of 1968)

<sup>185</sup> 73 of 1968 (*Usury Act* of 1968) sections 2-5.

<sup>186</sup> Whittaker M "South Africa's National Credit Act: A Possible Model for the Proper Role of Interest Rate Ceilings for Microfinance" 2008 *Northwestern Journal of International Law & Business* 560, 561.

<sup>187</sup> Section 2-5 and section 7 of the *Usury Act* of 1968 prohibited the unrestricted charging of interest by money lenders so that poor and low-income earners could borrow money at reasonable interest rates; Mohane H, Coetzee GK and Grant W "The Effects of the Interest Rate Ceilings on the Micro Lending Market in South Africa" 2000 *Agrekon* 730, 731.

the co-existence of both the borrower and the lender by ensuring fairness in the credit market.<sup>188</sup>

The *Usury Act* of 1968 presented a lot of challenges to the poor and low-income earners in the provision of credit.<sup>189</sup> Interest rate caps imposed by the *Usury Act* of 1968<sup>190</sup> barred financial inclusion for the poor as financial institutions became reluctant to give loans of smaller amounts because administration costs were far too high rendering it not profitable to issue loans in smaller amounts.<sup>191</sup> Additionally, the fear by micro-lenders that the poor and low-income earners would default in payment exacerbated this situation which led to their financial exclusion.<sup>192</sup> Whittaker argues that if micro-lending transactions charge low interest, financial inclusion is defeated.<sup>193</sup> Bearing in mind that micro-financing institutions incur costs of funds for on-lending, cost of risk (loan loss) and administrative costs, this may suggest that offering loans in smaller amounts depletes the profit making motive by micro-lenders as interest is capped. This created the financial exclusion of the poor.<sup>194</sup> The *Usury Act* of 1968 presented this challenge which consequently left the poor and low-income earners financially excluded.

The other purpose of micro-lending is the extension of access to credit to the poor and low-income earners who would not be able to access credit due to lack of assets often used as collateral for loans acquired in the formal banking institutions.<sup>195</sup> Given this background, the *Usury Act* of 1968 sought to provide financial inclusion for the poor and low-income earners who did not have property for such collateral. This follows that charging low interest by micro-financing institutions did not benefit micro-lenders equally

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<sup>188</sup> Section 6 of the *Usury Act* of 1968.

<sup>189</sup> Kelly-Louw "The Prevention and Alleviation of Consumer Over-Indebtedness" 2008 *SA Mercantile Law Journal* 200, 201-202.

<sup>190</sup> Section 2 of the *Usury Act* of 1968.

<sup>191</sup> Nanziri *Financial Literacy, Use of Finance and Welfare in Post-Apartheid South Africa* 24. Schoombee A "South African Banks and the Unbanked: Progress and Prospects" 2004 *South African Journal of Economics* 581,586; Mohane, Coetzee and Grant 2000 *Agrekon* 734; Porteous D and Hazelhurst E *Banking on Change: Democratizing Finance in South Africa, 1994-2004 and Beyond* (Double Storey Books Cape Town 2004) 77.

<sup>192</sup> Schoombee 2004 *South African Journal of Economics* 586.

<sup>193</sup> Whittaker M "South Africa's National Credit Act: A Possible Model for the Proper Role of Interest Rate Ceilings for Microfinance" 2008 *North-western Journal of International Law & Business* 561, 563.

<sup>194</sup> Whittaker M 2008 *Northwest Journal of International Law & Business* 564.

<sup>195</sup> Mohane, Coetzee and Grant 2000 *Agrekon* 732.

since, no micro-financing institution was willing to offer credit to the poor and low-income earners.<sup>196</sup> The researcher submits that the *Usury Act* of 1968 did not promote financial inclusion of the poor and low-income earners.

## **2.5 Exemption to the Usury Act of 1992**

In 1992, the Department of Trade and Industry (DTI) issued the *Usury Act Exemption Notice* in a bid to open up the credit market to the poor and low-income earners.<sup>197</sup> The *first Exemption Notice* removed the interest rate restrictions which encouraged micro-lenders to extend credit provision to poor and low-income earners as it allowed them to provide credit without interest rate restrictions.<sup>198</sup> Loans which fell within the *first Exemption Notice* were loans that did not exceed R6000 and whose term did not exceed 36 months.<sup>199</sup> Owing to this, financial inclusion was promoted because poor and low-income earners could access credit as micro-lenders found it profitable to disburse loans under the *first Exemption Notice*.

The exemption of loans that fell within the R6000 and 36 month category boosted the micro-lending industry at the expense of the ordinary consumers by allowing full-cost recovery interest rates on loans.<sup>200</sup> Full-cost recovery interest rates on loans entailed that the consumer could go as far as paying double the principal debt.<sup>201</sup> Due to the aforementioned challenges presented by the *first Exemption Notice*, the DTI repelled the *first Exemption Notice* which had left most of the poor financial consumers vulnerable to over-indebtedness financial exclusion.<sup>202</sup> The challenge that the DTI faced was curbing the exploitation of the consumer through exorbitant interest rates and at the same time

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<sup>196</sup> Schoombee 2004 *Bureau for Economic Research Department of Economics University of Stellenbosch* 5; According to Mashigo P “The Lending Practices of Township Micro-lenders and their Impact on the Low-Income Households in South Africa: A Case Study for Mamelodi Township” 2012 *New Contree* 23, 25, the lending of small amount of loans is considered by financial institutions as costly, risky and unprofitable.

<sup>197</sup> GN R3451 in GG 31 December 1992 (*first Exemption Notice*).

<sup>198</sup> The *first Exemption Notice*.

<sup>199</sup> The *first Exemption Notice*.

<sup>200</sup> Mashigo 2012 *New Contree* 26.

<sup>201</sup> Nanziri *Financial Literacy, Use of Finance and Welfare in Post-Apartheid South Africa* 24.

<sup>202</sup> Goodwin-Groen RP “The National Credit Act and its Regulations in the Context of Access to Finance in South Africa” *Finmark Trust* (November 2006) 12.

trying to keep the industry favourable to loans and credit of smaller amounts to poor and low-income financial consumers.<sup>203</sup>

The Exemption Notice of 1992 presented some challenges to financial consumers. For instance, it created a huge informal micro-lending industry which allowed micro-lenders to charge exorbitant interest fees and ambush clients by arranging with companies and trade union representatives to solicit clients from their residences and workplaces which lured the poor into over indebtedness.<sup>204</sup> The charging of excessive interest rates was made possible by the fact that the entry into the micro-lending industry was not regulated by any legislation.<sup>205</sup> This allowed anyone to offer loans at very high interest rates to the detriment of the poor and low-income earners. Furthermore, clients were induced by micro-lenders into signing complex written loan documentation which allowed the micro-lenders to receive payment through clients' payroll deductions and/or bank account debits.<sup>206</sup> In other cases, the poor and low-income earners guaranteed repayment by providing the creditor with a bank debit card and a personal identification number (PIN).<sup>207</sup> Additionally, the cost of credit rose to about 360% per year heightening the default payment rate thereby discouraging yet again, the willingness by micro-lenders from extending credit provision to low-income financial consumers.<sup>208</sup> This opened room for financial consumer over-indebtedness as financial exclusion of the poor and low-income earners.

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<sup>203</sup> Kelly-Louw 2008 *SA Mercantile Law Journal* 201.

<sup>204</sup> Mohane, Coetzee and Grant 2000 *Agrekon* 736.

<sup>205</sup> Meagher P "Microfinance Regulation and Supervision in South Africa" 2005 *Essays on Regulation and Supervision* 1, 4.

<sup>206</sup> Coetzee GK, Druschel KA, Cook LD, Brislin NW, Meagher JP and Pearson RV "The Evolution of the South African Microfinance Sector from 1992 to 2004: The role of the Microfinance Regulatory Council" 2005 *IRIS Centre of the University Research* 1, 44.

<sup>207</sup> Meagher P and Wilkinson B "Filling the Gap in South Africa's Small and Micro Credit Market: An Analysis of Major Policy, Legal, and Regulatory Issues" *The Iris Discussion Papers on Institutions & Development* (August 2002) 6.

<sup>208</sup> Marsh D and Saran N *Access to Credit for the Poor: The Borrower's Perspective* (Black Knysna Sash Trust 1999) 44.

## **2.6 Usury Act Exemption Notice of 1999<sup>209</sup>**

In 1999, two major developments in the micro-lending industry took place. Both sought to extend credit provision to the poor and low-income earners.<sup>210</sup> Firstly, the *second Exemption Notice* was enacted to enable micro-lenders to extend credit provision to the poor and low-income consumers without interest rate restrictions.<sup>211</sup> The *second Exemption Notice* provided that a regulator, the Micro Finance Regulatory Council (MFRC) must be established in order to formalise the micro-lending industry and monitor the operations of the micro-lenders operating under the new R10000 loan cap.<sup>212</sup> The MFRC was primarily enacted to regulate the credit market by the supervision of all micro-lenders to protect the financial consumers against exorbitant interest rates,<sup>213</sup> improving and simplifying credit information so that financial consumers were better positioned to make sound financial decisions.<sup>214</sup>

The MFRC promoted financial consumer protection which included the retention of bank cards as were previously used as collateral for repayment and illegalised reckless and predatory lending.<sup>215</sup> Additionally, in 2000, the MFRC introduced the National Loans Register to reduce financial consumer over-indebtedness.<sup>216</sup> The National Loans Register recorded details of all micro-loans tendered by all registered micro-lenders so that a registered lender could inquire on a prospective lender's lending and payment history so as to make an informed opinion on his or her repayment capacity and avoid reckless lending which would increase over-indebtedness.<sup>217</sup> Moreover, the MFRC implemented a disclosure mechanism called the 'truth in lending' which obligated the lender to provide a summary of the crucial elements of the loan to the consumer to allow

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<sup>209</sup> GN R713 in GG 20145 of 1 June 1999 (the *second Exemption Notice* of 1999).

<sup>210</sup> Meagher 2005 *Essays on Regulation and Supervision* 5.

<sup>211</sup> Section 15A of the *Usury Act* of 1968; Meagher and Wilkinson *The Iris Discussion Papers on Institutions & Development* 1.

<sup>212</sup> Schoombee 2004 *South African Journal of Economics* 584.

<sup>213</sup> According to Mohane, Coetzee and Grant 2000 *Agrekon* 3, interest rates were limited to the extent that they could not exceed ten times the prime rate.

<sup>214</sup> Meagher and Wilkinson *The Iris Discussion Papers on Institutions & Development* 2.

<sup>215</sup> Meagher 2005 *Essays on Regulation and Supervision* 5.

<sup>216</sup> GN R713 in GG 20145 of 1 June 1999 (the *second Exemption Notice* of 1999).

<sup>217</sup> The *second Exemption Notice* of 1999; Schoombee 2004 *South African Journal of Economics* 584.

the consumer to understand the terms of the contract and thus make an informed financial choice.<sup>218</sup>

## **2.7 The National Credit Act<sup>219</sup>**

The *NCA*'s enactment boosted consumer protection, especially, the poor and low-income earners in line with financial inclusion.<sup>220</sup> *Inter alia*, it was enacted to promote a fair, transparent, competitive, responsible, and effective credit market which also protects consumers against abusive debt collection measures by micro-lenders and excessive fees.<sup>221</sup> The enactment of the *NCA* broadened the scope of provision of credit to the poor and low-income earners who have been previously unable to access credit.<sup>222</sup> The *NCA* also provides for responsible borrowing and the avoidance of over-indebtedness.<sup>223</sup>

In *Gundwana v Steko Development CC and Others*,<sup>224</sup> the court asserted that orders which seek to declare immovable property, especially, executable when making a default judgment under the Uniform Rules of Court<sup>225</sup> are unconstitutional if such orders permit the sale of the home of a person. The *Gundwana* case, *inter alia*, demonstrates the extended protection afforded to the consumer by the *NCA* such that the rights of both credit provider and consumer are balanced.<sup>226</sup> Such protection given to financial consumers encourages them to trust the formal financial banking sector thereby utilising most of the services and products it offers which alleviates financial exclusion.

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<sup>218</sup> Schoombee 2004 *South African Journal of Economics* 584.

<sup>219</sup> 34 of 2005 (*NCA*).

<sup>220</sup> See sections 3, 80 and 81 of the *NCA*.

<sup>221</sup> Section 3 of the *NCA*.

<sup>222</sup> Section 3(a) of the *NCA* states that one of the purposes of the *NCA* is to promote the development of the credit market to a point where credit market access is extended to those who have been historically deprived access under sustainable market conditions; According to Schoombee 2004 *South African Journal of Economics* 584, formal banking institutions have been reluctant to provide credit to the poor and low-income earners as such business has always been dubbed unprofitable. It has only been since the 1990s that banks have been opening credit facilities to the poor and low-income earners.

<sup>223</sup> Section 3(c)(i) of the *NCA*.

<sup>224</sup> *Gundwana v Steko Development CC and Others* (CCT 44/10) [2011] ZACC 14 (*Gundwana case*) para 65.

<sup>225</sup> Rule 31(5).

<sup>226</sup> Section 3(d) of the *NCA* states that the *NCA* was enacted to ensure that both the credit provider and the consumer are afforded equal protection and equal rights and responsibilities in the credit market.

The *NCA* introduced provisions that promotes fair credit markets for both consumers and credit providers by ensuring that before the commencement of a legal action where a consumer is allegedly in default, such consumers must be provided with written notice detailing the facts of the default.<sup>227</sup>This was not the case before 1990.The introduction of such a prerequisite was introduced by the *NCA* and before its introduction, consumers fell prey to abusive repayment practices from micro-lenders.<sup>228</sup> In the *Sebola and Another v Standard Bank of South Africa Ltd and Another*,<sup>229</sup> the court reiterated that the *NCA* introduced less abusive measures to enforce repayment of loans by financial consumer. The *NCA* obliges a credit provider to provide a notice to the defaulting consumer before institution of legal proceedings so that the consumer is made aware of the debt and the intent by credit provider to institute legal proceedings.<sup>230</sup> This follows the fact that financial inclusion connotes, inter alia, fair access to basic financial services and products and a credit provider providing a notice of default is one way of providing fair access to financial services.<sup>231</sup> In this way, the introduction of section 129 has afforded financial consumers protection to ensure that the credit market is favourable and accommodative to the poor and low-income earners so that 90% financial inclusion may be attained by 2030 in South Africa.<sup>232</sup>

In *SA Taxi Securitization v Mbatha*,<sup>233</sup> the court held that balancing the interdependent interests of credit providers and financial consumers is important so as maintain viability and fairness in the credit market and where necessary, allow the provision of debt relief to indebted consumers. The balancing of the rights and obligations of credit providers and financial consumers in the credit market ensures the sustainability of the credit market and ensures financial inclusion for everyone in South Africa. The *Mbatha case* further

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<sup>227</sup> See section 129 of the *NCA* and other related sections of the *NCA*.

<sup>228</sup> According to Coetzee, Druschel, Cook, Brislin, Meagher and Pearson 2005 *IRIS Centre of the University Research* 1, 44, financial consumers fell prey to payroll deductions, inducement to sign prejudicial loan agreements and provide bank debit cards with PINs as collateral for repayment.

<sup>229</sup> *Sebola and Another v Standard Bank of South Africa Ltd and Another* (CCT 98/11) [2012] ZACC 11 (*Sebola case*) para 168.

<sup>230</sup> Section 129-130 of the *NCA*.

<sup>231</sup> Shettar RM "Financial Inclusion: An Overview" 2016 *Journal of Business and Management* 37, 38; Iqbal BA and Sami S "Role of banks in financial inclusion in India" 2017 *Accounting and Administration* 644, 646.

<sup>232</sup> Manuel TA "National Development Plan Vision 2030" *National Planning Commission* (11 Nov 2011) 129.

<sup>233</sup> *SA Taxi Securitization v Mbatha* 2011 (1) SA 310 (GSJ) (*Mbatha case*) para 37.

acknowledges the importance of the interdependent contributions of the credit providers and the financial consumers to the credit market which contributions are pivotal for the attainment of financial inclusion for the poor and low-income earners.<sup>234</sup>

The *NCA* further supports the interests of financial consumers in South Africa by obliging credit providers to provide financial education and credit information to financial consumers.<sup>235</sup> Owing to this, financially educated consumers are better positioned to make well-informed financial decisions which enable better management of finances to avoid over-indebtedness. In *Rossouw v Firstrand Bank Ltd*,<sup>236</sup> the courts reiterated that the *NCA* was enacted to “provide customers with adequate disclosure of standard information in order to make informed choices.” The researcher submits that the *NCA* is key in the promotion of financial inclusion of the poor and low-income earners in South Africa.<sup>237</sup>

In *Kubyana v Standard Bank of South Africa Ltd*,<sup>238</sup> the court emphasized that the purpose of the *NCA* is not the shifting of power to the consumer but a balance of the bargaining position for both credit provider and the financial consumer in relation to credit. It must be borne in mind that financial inclusion denotes the provision of safe financial services and products to everyone in a fair, convenient and cost-effective manner.<sup>239</sup> Thus, both the credit provider and financial consumer must be on the same bargaining positions to promote financial inclusion in South Africa.<sup>240</sup> The mechanisms brought by the *NCA*

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<sup>234</sup> The *Mbatha* case para 37.

<sup>235</sup> Section 3(e)(1) and (2) of the *NCA*.

<sup>236</sup> *Rossouw v Firstrand Bank Ltd* 2010 (1) SA 439 (SCA) (*Rossouw* case) para 57. See also section 3(e)(2) of the *NCA*.

<sup>237</sup> According to Mashigo P “The Debt Spiral in the Poor Households in South Africa” 2006 *International Indigenous Journal of Entrepreneurship, Advancement, Strategy and Education* 1, 2, the financial exclusion of poorest and low-income earners is as a result of unemployment, low levels of education, income and asset inequality. The researcher therefore submits that the inclusion of financial education and the disclosure of information as obligations of the credit providers goes towards ensuring that even the poor and low-income earners are accommodated in the *NCA*.

<sup>238</sup> *Kubyana v Standard Bank of South Africa Ltd* (CCT 65/13) [2014] ZACC 1 (*Kubyana* case) para 21; See also section 3(d) of the *NCA*.

<sup>239</sup> Varghese G and Viswanathan L “Financial Inclusion: Opportunities, Issues and Challenges” 2018 *Theoretical Economics Letters* 1935, 1937.

<sup>240</sup> Pearson G, Stoop PN and Kelly-Louw M “Balancing Responsibilities- Financial Literacy” 2017, *PER* 1, 21.

sustain the credit market by seeking a fair and sustainable transacting environment by both the lender and borrower.

The *NCA* also provides a “reckless credit” assessment procedure which is meant to protect consumers against credit providers who tender credit to them despite a background of repayment incapacity and miscomprehension of the terms of the credit agreement.<sup>241</sup> It is submitted that more stringent measures need to be adopted to combat reckless credit provision. This could discourage credit providers from ambushing financial consumers into over indebtedness without those financial consumers properly appreciating the terms of credit agreements.<sup>242</sup> Ensuring that financial consumers, especially, the poor and low-income earners manage debt is an important step towards achieving financial inclusion for everyone in South Africa.<sup>243</sup>

The *NCA* also introduced the National Credit Regulator (NCR)<sup>244</sup> whose role includes the promotion, regulation and ensuring the sustenance of the credit market.<sup>245</sup> The sustenance of the credit market allows even the poor and low-income earners to access credit thereby ensuring that financial inclusion for everyone is achieved. Additionally, the *NCA* introduced the National Credit Tribunal (NCT)<sup>246</sup> which adjudicates on matters arising out of credit disputes and grant orders accordingly to ensure fair play in the credit market.<sup>247</sup> The NCT ensures that credit disputes are resolved amicably so that both credit provider and financial consumer are equally protected, thus promoting credit markets and financial inclusion.<sup>248</sup>

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<sup>241</sup> Section 80 of the *NCA*; Bijak *et al* “Credit Card Market Literature Review: Affordability and Repayment” *Southampton Business School, University of Southampton* (22 October 2015) 27.

<sup>242</sup> See, *inter alia*, Salie F “Lewis Hits Back in R18k Washing Machine Row” *Fin24* (22 January 2016) page number unknown an instance in point where Lewis store concluded a credit agreement with a consumer who misunderstood the terms of the credit agreement on the sale of the washing machine which misapprehension of the contract landed the financial consumer in over indebtedness.

<sup>243</sup> Hung AA, Parker AM and Yoong J “Defining and Measuring Financial Literacy” 2009 *Rand and Labor Population* 1, 5.

<sup>244</sup> Section 12 of the *NCA*.

<sup>245</sup> Section 13 of the *NCA*.

<sup>246</sup> Section 26 of the *NCA*.

<sup>247</sup> Davies R “Strategic Plan 2018/19-2022/23)” *National Consumer Tribunal* (31 January 2018) 21.

<sup>248</sup> Section 27 of the *NCA*.

## **2.8 The Reconstruction and Development Programme (RDP) and the Broad-Based Black Economic Empowerment Act<sup>249</sup> towards the promotion of financial inclusion for all South Africans**

The Reconstruction and Development Programme (RDP) was implemented by the South African government in 1994 to improve the socio-economic wellbeing of South Africans who were victims of apartheid injustices.<sup>250</sup> The *BBBEE Act* was enacted to promote the effective economic participation of all people who were victims of apartheid segregation and injustices in the ownership of business enterprises.<sup>251</sup> This was aimed at promoting financial inclusion of the poor through programs such as the RDP. However, the *BBBEE Act* has not been very successful in respect of the redistribution of wealth and promotion of financial inclusion for the poor and low-income earners. Instead, businesses find it unprofitable to comply with the *BBBEE Act* as a result of high compliance costs.<sup>252</sup> The *BBBEE Act* has heightened corruption in the tender business<sup>253</sup> and fails to redistribute wealth to the poor and low-income earners.<sup>254</sup>

## **2.9 The Financial Services Charter (FSC) towards the promotion of financial inclusion for the poor and low-income earners in South Africa**

The Financial Services Charter (FSC) was established in an agreement by all members of the National Economic Development and Labour Council (NEDLAC) for the promotion of social and economic integration as well as the improvement of access to the financial

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<sup>249</sup> 53 of 2003 (the *BBBEE Act*).

<sup>250</sup> Luiz JM “South African State Capacity and Post-Apartheid Economic Reconstruction” 2002 *International Journal of Social Economics* 594, 597; Wessels D “South Africa’s Reconstruction and Development Programme: ‘A Better Life for All’” 1999 *Journal of Social Sciences* 235, 236; Department of Trade and Industry 2016 *Economic Empowerment*, [http://www.thedti.gov.za/economic\\_empowerment/economic\\_empowerment.jsp](http://www.thedti.gov.za/economic_empowerment/economic_empowerment.jsp) accessed 5 November 2018 page number unknown.

<sup>251</sup> Also known as the Broad-Based Black Economic Empowerment (BBBEE); see also section 2(h) of the *BBBEE Act*.

<sup>252</sup> Kleynhans EPJ and Kruger MC “Effect of Black Economic Empowerment on Profit and Competitiveness of Firms in South Africa” 2014 *Acta Commercii* 1, 5.

<sup>253</sup> See related comments in Mbeki M *Architects of Poverty: Why African Capitalism Needs Changing* (Picador Johannesburg 2009) 61 that instead of redistributing wealth to the emerging poor and low-income earners, the BBBEE has been hijacked by some wealthy members of the ruling elite to the exclusion of the poor and low-income earners who ought to benefit from the BBBEE.

<sup>254</sup> Pike A, Puchert J and Chinyamurindi WT “Analysing the future of Broad-Based Black Economic Empowerment through the Lens of Small and Medium Enterprises” 2018 *Acta Commercii* 1, 3.

services sector by the poor in 2004.<sup>255</sup> The FSC achieved its mandate to a lesser extent since the BBBEE has not been very successful to date.<sup>256</sup> Additionally, a majority of South Africans remain financially excluded from the formal banking sector.<sup>257</sup> Given this background, it is submitted that the FSC failed to fulfil its mandate of ensuring access to basic financial services and products by everyone to the achievement of financial inclusion in South Africa.<sup>258</sup>

### **2.10 The 'Mzansi account' and the M-Pesa wallet's and the promotion of financial inclusion for the poor and low-income earners in South Africa**

In 2004, the FSC in its bid to extend access to financial services launched the Mzansi Account to accommodate the poor and low-income earners.<sup>259</sup> The Mzansi account is a low fee bank account that provides access to affordable financial services and products to the poor and low-income earners in South Africa.<sup>260</sup> In 2008, the Mzansi account had reached six million users with 72% of them being new users who never had banking accounts before showing how much financial access coverage was achieved.<sup>261</sup> Owing to this background, the researcher submits that the Mzansi Account was an effective tool towards combating financial exclusion.<sup>262</sup> This follows the fact that the Mzansi Account encouraged most poor and low-income earners to open bank accounts with formal banking institutions that offered low bank fees.<sup>263</sup> However, the Mzansi Account's

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<sup>255</sup> Kirsten M "Policy Initiatives to Expand Financial Outreach in South Africa" in Development Bank of Southern Africa *World Bank/Brookings Institute Conference* (30-31 May 2006 Washington DC) 1, 11; Rogerson CM "Tracking SMME Development in South Africa: Issues of Finance, Training and the Regulatory Environment" 2008 *Urban Forum* 61, 67.

<sup>256</sup> See para 2.5 of this dissertation above.

<sup>257</sup> See Chapter One para 1.3 of this dissertation.

<sup>258</sup> Section 8 of the FSC which dealt with access to financial services by everyone in South Africa. According to Nanziri EL "Measuring and Profiling Financial Literacy in South Africa" 2018 *South African Journal of Economic and Management Sciences* 1, 7, when the FSB was replaced by the FSCA in 2017, financial literacy levels were at approximately 49% and financial inclusion at 77%. Owing to this, the researcher submits that it did not adequately promote financial inclusion for the poor and low-income earners in South Africa.

<sup>259</sup> Kostov P, Arun T and Annim S "Access to Financial Services: The Case of the 'Mzansi' Account in South Africa" 2015 *Review of Development Finance* 34, 36.

<sup>260</sup> Kostov, Arun and Annim 2015 *Review of Development Finance* 36.

<sup>261</sup> Finmark Trust "Investments and Saving Everyday Quality of Life" *Annual Report 9* (August 2009) 11.

<sup>262</sup> Claessens S "Access to Financial Services: A Review of the Issues and Public Policy Objectives" 2006 *The World Bank Research Observer* 207, 212.

<sup>263</sup> Kostov P, Arun T and Annim S "Access to Financial Services: The case of the 'Mzansi' Account in South Africa" 2015 *Review of Development Finance* 34, 41; Finmark Trust *Annual Report 9* 11.

adoption has declined over the years because most financial service and product users in South Africa utilise their accounts for receipt of payments or income.<sup>264</sup> As a result, the Mzansi Account has proven less effective in promoting financial inclusion for the poor and low-income earners in South Africa.

The M-Pesa service allowed users to deposit, withdraw, transfer money and pay for goods and services easily with the usage of a cell phone to retailers.<sup>265</sup> Although M-Pesa was short-lived, to some extent it was a positive development towards the financial inclusion of the previously excluded poor and low-income earners from the financial sector of South Africa.

### **2.11 Mobile banking and Internet Banking as a way of promoting financial inclusion**

The introduction of mobile banking is important for the promotion of financial inclusion for the poor and low-income earners in South Africa due to flexibility, effectiveness and convenience.<sup>266</sup> Mobile banking is the storage of monetary value on a mobile phone which enables the user to make payments, purchases or sent to other mobile money users.<sup>267</sup> The introduction of mobile phones and the Internet has extended access to financial services and products through the convenience of Internet banking by financial consumers which seeks to improve the financial services in South Africa.<sup>268</sup>

#### **2.11.1 Mobile-payment (M-Pesa)**

The M-Pesa wallet is a low-cost mobile-based money transfer facility provided by Safricom which was launched by Nedbank and Vodacom in 2010 as a means to promote financial inclusion for the poor and low-income earners due to low fees.<sup>269</sup> M-Pesa is a

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<sup>264</sup> Kostov, Arun and Annim 2015 *Review of Development Finance* 41.

<sup>265</sup> Hughes N and Lonie S "M-PESA: Mobile Money for the 'Unbanked' Turning Cellphones into 24-Hour Tellers in Kenya" 2007 *Innovations: Technology, Governance, Globalization* 63, 77. Lourie G *Mail & Guardian* page unknown.

<sup>266</sup> Lawack VA "Mobile Money, Financial inclusion and Financial Integrity: The South African Case" 2013 *Washington Journal of Law, Technology and Arts* 318, 320.

<sup>267</sup> Kersop M and Du Toit SF "Anti-money Laundering Regulations and the Effective Use of Mobile Money in South Africa – Part 1" 2015 *PER* 1603, 1606.

<sup>268</sup> Lawack 2013 *Washington Journal of Law, Technology and Arts* 521.

<sup>269</sup> Ismail T and Masinge K "Mobile Banking: Innovation for the Poor" 2012 *African Journal of Science, Technology, Innovation and Development* 98, 105; Lourie G "Vodacom, Nedbank Launch Mobile Cash Service" *Mail & Guardian* (31 August 2010) page number unknown.

Short Message Service (SMS) based money transfer system which allows individuals to deposit, send and withdraw funds using a mobile cellular device.<sup>270</sup> The M-Pesa facility accepts deposits from customers who must be registered users because it credits a sum of electronic money (e-float or e-money) into the user's electronic account which is stored for use.<sup>271</sup> M-Pesa is convenient because it does not require a bank account which may be difficult to open to some financial consumers who lack client identification and verification documentation (as required by the *Financial Intelligence Act*)<sup>272</sup> and the lack of a minimal bank account balance.<sup>273</sup> Owing to this background, M-Pesa is one of the great initiatives towards the achievement of financial inclusion for the poor and low-income earners in South Africa.

### 2.11.2 WIZZIT

WIZZIT is a company that operates as a division of the South African Bank of Athens and is mostly used by higher income earners in South Africa making it not favourable to the poor and low-income earners.<sup>274</sup> WIZZIT is a mobile banking service that offers a transaction banking account accessible through a mobile phone and/or debit card and requires payment of interest and maintenance of a minimum bank balance.<sup>275</sup> WIZZIT does help income-earners to access its services although it does not promote financial inclusion to the poor and low-income earners who may not have a minimal bank balance. WIZZIT's banking service allows its users to make payments, transfer money, purchase prepaid electricity and airtime making it convenient although it is costly.<sup>276</sup> Additionally, cash deposits into the WIZZIT accounts can be made at any Absa bank or Postbank branch so that transacting may be done using a mobile phone at any time.<sup>277</sup> WIZZIT is

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<sup>270</sup> Buku MW and Meredith MW "Safaricom and M-Pesa in Kenya: Financial Inclusion and Financial Integrity" 2012 *Washington Journal of Law, Technology & Arts* 375, 378.

<sup>271</sup> Buku and Meredith *Washington Journal of Law, Technology & Arts* 379.

<sup>272</sup> Section 21 of the *Financial Intelligence Act* (the *FICA*).

<sup>273</sup> Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 105.

<sup>274</sup> Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 105.

<sup>275</sup> Ilvatory G and Pickens M "Mobile Phone Banking and Low-Income Customers Evidence from South Africa" 2006 *CGAP* 1, 2.

<sup>276</sup> Keene SD *Threat Finance: Disconnecting the Lifeline of Organised Crime and Terrorism* 1<sup>st</sup> ed (Routledge New York 2016) 150; Ilvatory and Pickens 2006 *CGAP* 1, 2.

<sup>277</sup> Ilvatory and Pickens 2006 *CGAP* 1, 2.

convenient, fast and secure to the higher income financial consumer.<sup>278</sup> The use of a bank account requires payment of bank interest and rates and maintaining a minimum bank balance which is a challenge for the poor and low-income earners. Although WIZZIT seeks to cater for those without access to basic formal financial services, the researcher submits that it discriminates against the poor and low-income earners through the requirement of minimal bank balances and charging of interest.

### *2.11.3 Cell phone banking offered by banks and the promotion of financial inclusion for the poor and low-income earners in South Africa*

Online banking is provided by the Amalgamated Banks of South Africa (ABSA), First National Bank (FNB), Standard Bank of South Africa (SBSA), Capitec and Nedbank in South Africa.<sup>279</sup> Financial customers who bank with Capitec, ABSA and Nedbank need to have a bank account in order to utilise the online services.<sup>280</sup> The prerequisite of a bank account may pose a challenge for the poor and low-income earners who may not afford bank fees and the minimum balance required to maintain a bank account thereby excluding them from access to financial services and products.<sup>281</sup>

### *2.11.4 E-wallet and Instant Money*

FNB's cell phone banking service called electronic wallet (e-wallet) allows an FNB account holder to send money to anyone around South Africa through their cell phone.<sup>282</sup> The e-wallet service does not charge the recipient of the money. This accommodates the poor and low-income earners who may not readily have money to cover transaction costs.<sup>283</sup> Additionally, FNB has a service called pay-wallet that makes it possible for the commercial and public sectors to pay customers without bank accounts directly into their mobile phones.<sup>284</sup> The pay-wallet promotes financial inclusion of the poor and low-income

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<sup>278</sup> Ilvatory and Pickens 2006 *CGAP* 1, 3.

<sup>279</sup> Mlitwa N and Tshetsha N "Adoption of Cell-Phone Banking among Low-Income Communities in Rural Areas of South Africa" 2012 *iBusiness* 362, 364.

<sup>280</sup> Mlitwa and Tshetsha 2012 *iBusiness* 364.

<sup>281</sup> Fanta AB and Mutsonziwa K "Gender and Financial Inclusion: Analysis of Financial Inclusion of Women in the SADC Region" *Finmark Trust* (30 August 2016) 22.

<sup>282</sup> Lawack 2013 *Washington Journal of Law, Technology and Arts* 521.

<sup>283</sup> Lawack 2013 *Washington Journal of Law, Technology and Arts* 521.

<sup>284</sup> Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 106.

earners who may not afford bank account charges and bank accounts. SBSA's instant money service allows a SBSA account holder to send money to anyone in South Africa provided such person has a valid mobile number.<sup>285</sup> Instant money is a convenient cost-free service to the recipient and it greatly allows the poor and low-income earners to have access to banking services. The researcher thereby submits that FNB's e-wallet, pay-wallet and SBSA's instant money are great initiatives towards the promotion of financial inclusion for the poor and low-income earners through such no cost and convenient services.<sup>286</sup>

### 2.11.5 Internet Banking

Internet banking refers to an electronic platform which allows users of the banking system to conduct a range of banking transactions like access to banking accounts, transferring of funds and the purchase of banking products and services.<sup>287</sup> Internet banking is widely believed to offer convenience for banking customers by allowing banking customers to transact anytime and anywhere at a cheaper cost as compared to visiting a bank or an ATM.<sup>288</sup> In South Africa, approximately 29 million people use the internet for banking purposes.<sup>289</sup> However, the majority of the banking population in South Africa does not embrace internet banking due to fears of online fraud, mistrust of the safety of the internet amongst the illiterate banking customers and lack of internet connection in some remote areas.<sup>290</sup> Owing to the fact that internet banking is cheaper, the researcher recommends that more poor and low-income earners ought to be encouraged to use of internet banking by banking institutions and the government through financial literacy programs in order to reduce financial exclusion in South Africa.

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<sup>285</sup> Lawack 2013 *Washington Journal of Law, Technology and Arts* 521.

<sup>286</sup> Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 106.

<sup>287</sup> Singh AM "Trends in South African Internet Banking" 2004 *Aslib Proceedings* 187, 190.

<sup>288</sup> Maduku DK "Predicting Retail Banking Customers' Attitude towards Internet Banking Services in South Africa" 2013 *Southern African Business Review* 76, 79; Mujinga M, Eloff MM and Kroeze JH "System Usability Scale Evaluation of Online Banking Services: A South African Study" 2018 *South African Journal of Science* 1, 2.

<sup>289</sup> Mujinga , Eloff MM and Kroeze "System Usability Scale Evaluation of Online Banking Services: A South African Study" 2018 *South African Journal of Science* 1, 2.

<sup>290</sup> Maduku 2013 *Southern African Business Review* 81; Singh 2004 *Aslib Proceedings* 192.

## **2.12 Financial inclusion in South Africa and other international organisations**

In 2010, South Africa joined the Brazil, Russia, India, China and South Africa (BRICS) association. This move has increased the quantity of exports, created jobs locally and improved access to financial services as more people are now having salaries.<sup>291</sup> This association has contributed immensely to the South African economic and social welfare. For instance, BRICS has contributed to more than 50% of the entire world's financial and economic growth through trade and the creation of business and occupational opportunities including in South Africa.<sup>292</sup>

South Africa is also a member of the Group of Twenty (G20) whose mandate is achievement of financial stability internationally.<sup>293</sup> This allows South Africa to extend credit to small and medium enterprises who create employment to the poor and low-income earners who consequently utilise the banking sector.<sup>294</sup> As a result, the employed people enjoy financial inclusion. There is a strong belief that the employed population is the segment of the population that remains financially included.<sup>295</sup> Therefore, South Africa's association with the G20 contributes towards the achievement of financial inclusion for the poor and low-income earners in South Africa.

## **2.13 Financial Sector Regulation Act<sup>296</sup>**

The *FSR Act* promotes financial stability, financial inclusion, safety and soundness of financial institutions, and the fair treatment of financial consumers.<sup>297</sup> The *FSR Act* ensures that financial inclusion for the poor and low-income earners is achieved in South Africa.<sup>298</sup> Currently, financial inclusion stands at 87% in South Africa<sup>299</sup> and more inclusive

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<sup>291</sup> Brown N *et al* "The South African Retail Sector and the BRICS Trading Bloc – An Analysis of Opportunities" W&RSETA (1 March 2012) 11.

<sup>292</sup> Brics 2017 China 2017 *What is BRICS* <https://www.brics2017.org/English/AboutBRICS/BRICS/> accessed 21 August 2018 page number unknown.

<sup>293</sup> Morgan PJ and Pontines V "Financial Stability and Financial Inclusion" 2014 *ADB I* 1, 2.

<sup>294</sup> Morgan and Pontines 2014 *ADB I* 6.

<sup>295</sup> Wentzel JP, Diathab KS and Yadavallie VSS "An investigation into Factors Impacting Financial Exclusion at the Bottom of the Pyramid in South Africa" 2016 *Development South Africa* 203, 209.

<sup>296</sup> 9 of 2017 (*FSR Act*), section 7, 32 and 56.

<sup>297</sup> Section 17(1) of the *FSR Act*.

<sup>298</sup> Section 56(f) of the *FSR Act*.

<sup>299</sup> Abrahams R "Financial Inclusion in South Africa: A Review of the Literature" 2017 *Southern African Accounting Association* 632, 643.

measures, especially, for the poor and low-income earners needs to be adopted if 90% financial inclusion is to be attained by 2030.<sup>300</sup> The *FSR Act* mainly focuses on the regulation of financial markets.<sup>301</sup> The researcher submits that the housing of the promotion of financial inclusion in the *FSR Act* which mainly promotes the well-functioning of financial markets is not adequate in the promotion of financial inclusion because it does not detail how financial inclusion should be promoted.

## **2.12 Conclusion**

The researcher seeks to show how financial inclusion challenges have been dealt with in the past up to date. Historically, lack of regulation of the credit market has exposed the poor and low-income earners to exploitative and abusive practices by the credit providers.<sup>302</sup> The researcher argued that legislation is vital to the regulation and the protection of the poor and low-income earners in order to promote financial inclusion. Such legislation must be enforced with due caution so that credit providers remain encouraged to provide credit thereby maintaining or improving access to financial services to the poor and low-income earners. As financial inclusion target currently stands at 90% in South Africa and needs some improvement, the next chapter seeks to analyse the current statutory framework in a bid to suggest possible improvements so that the targeted 90% or better may be attained.

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<sup>300</sup> Manuel *National Planning Commission* 129.

<sup>301</sup> Section 33 of the *FSR Act* states that the PA's functions are the promotion of safe and sound financial institutions and market infrastructures, the protection of financial customers in case financial institutions fail to meet their obligations and the assistance towards ensuring that there is financial stability in the financial market.

<sup>302</sup> See footnote 88 of this chapter.

## CHAPTER THREE

### THE STATUTORY REGULATORY FRAMEWORK FOR FINANCIAL INCLUSION

#### 3.1 Introduction

Financial inclusion is a process of ensuring the affordable access to financial services and credit by the government, banks and other relevant role players to all members of the society especially vulnerable people like the poor and low-income earners.<sup>303</sup> Financial inclusion is important because it helps reduce the growth of informal sources of credit which exploit the poor and low-income earners through very high fees for loans.<sup>304</sup> Additionally, a financial inclusion enhances the socio-economic well-being of all members of society by providing means for secure and safe saving practices through a range of efficient and economic financial services and products.<sup>305</sup> Financial inclusion must not only ensure access to credit but must also equip all members of the society with financial literacy and necessary products to promote saving and the avoidance of reckless credit.<sup>306</sup>

The Financial Sector Charter is one of the first initiatives which sought the elimination of inequalities in the financial sector by improving access to banks and Automated Teller Machines (ATMs) to the poor and low-income earners in South Africa.<sup>307</sup> One way of ensuring that financial inclusion for all members of society is achieved may be through

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<sup>303</sup> Rangarajan C "Report for the Committee on Financial Inclusion" *Rangarajan Committee* (January 2008) 1, 3; Garg S and Agarwal P "Financial Inclusion in India- A Review of Initiatives and Achievements" 2014 *Journal of Business and Management* 52, 53.

<sup>304</sup> Sarma M and Pais J "Financial Inclusion and Development" 2011 *Journal of International Development* 613, 613-614; Honohan P and Demircuc-Kunt A "Access to Financial Services: Measurement, Impact, and Policies" 2009 *The World Bank Research Observer* 1, 4.

<sup>305</sup> Sarma and Pais 2011 *Journal of International Development* 613-614; National Financial Inclusion Council of Jamaica "National Financial Inclusion Strategy 2016-2020" *National Financial Inclusion Council of Jamaica* (10 March 2017) 5.

<sup>306</sup> Nanziri EL "Measuring and Profiling Financial Literacy in South Africa" 2018 *Journal of Economic and Management Sciences* 1,2; Maziya M, ZwaneT "Financial Inclusion is More Than Just Access to Credit" *Mail & Guardian* (17 November 2017) page number unknown; Wentzel A "Financial Literacy in South Africa" in Aprea C *et al* (eds) *International Handbook of Financial Literacy* (Springer Science+Business Media Singapore 2016) 329, 332; Arun T and Kamath R "Financial inclusion: Policies and Practices" 2015 *IIMB Management Review* 267, 271.

<sup>307</sup> The World Bank "Achieving Effective Financial Inclusion in South Africa: A Payments Perspective" *The World Bank* 1, 8; Sutton CN and Suttons B "The Role of the Financial Services Sector in Expanding Economic Opportunity" 2007 *Corporate Social Responsibility Initiative Report No 19* 1, 31-32.

the enactment and enforcement of relevant financial inclusion legislation. Notably, the *National Credit Act*,<sup>308</sup> the *South African Reserve Bank Act*,<sup>309</sup> the *Banks Act*,<sup>310</sup> the *Consumer Protection Act*<sup>311</sup> the *National Payment Systems Act*,<sup>312</sup> the *Financial Intelligence Centre Act*,<sup>313</sup> and the *Financial Sector Regulation Act*<sup>314</sup> were enacted to, *inter alia*, promote financial inclusion in South Africa, especially, for the poor and low-income earners. Additionally, there are other role-players that seek to promote financial inclusion in South Africa such as the South African Reserve Bank,<sup>315</sup> National Treasury,<sup>316</sup> National Consumer Financial Education Committee, National Credit Regulator<sup>317</sup> and the National Consumer Tribunal.<sup>318</sup> This chapter discusses the adequacy of the stated legislation and different role players in relation to the promotion of financial inclusion for the poor and low-income earners in South Africa.

## **3.2 Current statutory framework**

### **3.2.1 SARB Act**

The *SARB Act* was enacted primarily for the regulation of the SARB and monetary circulation in South Africa.<sup>319</sup> The regulation of monetary circulation allows the *SARB Act* together with the *Banks Act*, the *Mutual Banks Act*<sup>320</sup> and the *Financial Sector Regulation*

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<sup>308</sup> 34 of 2005 (*NCA*), see sections 3, 80, 81.

<sup>309</sup> 90 of 1989 (*SARB Act*), see sections 3, 10, 11 and 14.

<sup>310</sup> 94 of 1990 (*Banks Act*), see section 2, 6, 11, 12 and 32.

<sup>311</sup> 68 of 2008 (*CPA*), see section 3, 22, 48, 55,

<sup>312</sup> 78 of 1998 (*National Payment Systems Act*) *inter alia*, see section 2, 3, 4, 4A and 5.

<sup>313</sup> 38 of 2001 (*FICA*) *inter alia*, see section 3 and 4.

<sup>314</sup> 17 of 2017 (*FSR Act*) see sections 32, 56

<sup>315</sup> Regulated by the *SARB Act*, see section 3.

<sup>316</sup> Chapter 13 of the Constitution of South Africa, 1996 (*Constitution*) and chapter 2 of the Public Finance Management Act (*PFM Act*) state that, *inter alia*, the National Treasury is responsible for supporting efficient and sustainable public financial management for the promotion of socio-economic development and the good governance of public finances. This aforementioned function extends to ensuring the accountability and transparency of banking institutions as they provide access financial products and services to all members of the South African society including the poor and low-income earners.

<sup>317</sup> Section 13 of the *NCA* states that, *inter alia*, the National Credit Regulator (NCR) was established for the promotion of a transparent, effective and accessible credit market to serve the needs of the, *inter alia*, historically disadvantaged persons and low-income earners.

<sup>318</sup> Section 26 of the *NCA* states that one of the functions of the National Consumer Tribunal (NCT) is the adjudication and making of orders where necessary in relation to any matter within the jurisdiction of the *NCA*; most importantly, matters affecting the financial inclusion of the poor and low-income earners in South Africa.

<sup>319</sup> See section 10, 11, 14 and other related sections of the *SARB Act*.

<sup>320</sup> 124 of 1993 (*Mutual Banks Act*), section 2.

Act<sup>321</sup> (*FSRA*), to assign responsibility for the registration and supervision of banks to the SARB. The SARB and the SARB's Banking Supervision Department (BSD) regulate and supervise the functioning of banking institutions in South Africa.<sup>322</sup> However, it may be argued that the *SARB Act* has not established a comprehensive legal framework for the promotion of financial inclusion for the poor and low-income earners in South Africa. In other words, it may be submitted that the *SARB Act* does not adequately promote financial inclusion of all persons, especially, the poor and low-income earners in South Africa. This follows that the rate at which financial inclusion is moving tends to be stable with no improvement.<sup>323</sup> Additionally, the embezzlement of funds by banking personnel at the VBS Mutual Bank worsens the situation of financial inclusion because it suggests that banks are being poorly supervised. As a result, the researcher submits that the SARB and the BSD do not adequately promote the promotion of financial inclusion for all persons, especially, the poor and low-income earners through their poor supervision and regulation of banks.

### 3.2.2 *The Banks Act*

The *Banks Act* regulates and supervises the business undertakings of public companies that take monetary deposits from the public in the bank-customer relationship.<sup>324</sup> The *Banks Act* regulates and supervises public companies which are the banking institutions of South Africa except the SARB, mutual banks, Development Bank of Southern Africa and the Land Bank.<sup>325</sup> The regulation of banking institutions by the *Banks Act* is one of the ways in which the protection of formal banking sector is monitored through legislation

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<sup>321</sup> 9 of 127 (*FSR*), section 7(2).

<sup>322</sup> Mohamed 2016 *Journal of Economic Literature Classification* 80; Shawe L and Colegrave A "Banking Regulation in South Africa: Overview" *Allen & Overy South Africa LLP* (1 August 2018) 2. <sup>323</sup> Abrahams 2017 *Southern African Accounting Association* 643.

<sup>324</sup> See section 1(b)-(c) of the *Banks Act* which relates to the function of the banks as relating to the taking deposits from the public with the intention of investment, making payments on and/or financing on behalf of and/or for the benefit of the depositors. See also section 1(f) of the *Deposit-Taking Institutions Amendment Act 9 of 1993*, which states that one function of banks is the "business of deposit taking" from the general public as a regular feature of the business in question in relation to a bank by personnel under the banks employ for financial customer's benefit.

<sup>325</sup> Section 31 of the *Banks Act*. See also section 11(1) of the *Banks Act* which mandates that all banking institutions ought to be registered so that they legally carry on the functions of banking institutions.

to ensure that banks perform their deposit-taking function transparently and diligently to, *inter alia*, promote financial inclusion of the poor and low-income earners.<sup>326</sup>

The *Banks Act* promotes the financial inclusion of all people, especially, the poor and low-income earners in South Africa through, *inter alia*, the establishment of the office of the registrar who carries out the inspection of banks to ensure that they perform their functions transparently and fairly to all financial consumers.<sup>327</sup> Additionally, the registrar of banks ensures that financial consumers are protected through promoting the prevention of activities such as deposits that are solicited or accepted from the general public in contravention of the *Banks Act*.<sup>328</sup> Furthermore, the registrar may issue directives to banks which may have the effect of stopping banks from certain conduct, obliging banks to act in certain ways or even furnish the registrar with information which may be necessary to financially protect the interests of the financial consumer.<sup>329</sup>

The researcher submits that the *Banks Act* is playing an important role in as far as the promotion of financial inclusion for the poor and low-income earners in South Africa. Financial inclusion is achieved through, *inter alia*, investment of the money deposited, securing employment through the provision of a deposit taking facility for employment purposes, making of payments on behalf of and/or for the benefit of the poor and low-income earners.<sup>330</sup>

### 3.2.3 The NCA

The *NCA*<sup>331</sup> promotes access to the credit market for the poor and low-income earners who were previously barred from doing so due to high fees amongst other factors. After

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<sup>326</sup> Mohamed S “The South African Financial System” 2016 *Journal of Economic Literature Classification* 1, 85.

<sup>327</sup> Section 4 of the *Banks Act* establishes the office of the Registrar. Section 6 of the *Banks Act* together with Section 3 and 4 of the *Inspection of Banks Act* grants the Registrar the powers of inspecting banks.

<sup>328</sup> Section 32 allows the registrar to order repayment of any deposits taken from financial consumers should such a bank cease functioning as a banking institution under the *Banks Act*.

<sup>329</sup> Section 6(b) of the *Banks Act*.

<sup>330</sup> See section 1(b)-(c) of the *Banks Act*. See also related discussion by Lal T “Impact of Financial Inclusion on Poverty Alleviation through Cooperative Banks” 2018 *International Journal of Social Economics* 808, 808-809.

<sup>331</sup> Section 3(a) of the *NCA*; Schoombee A “South African Banks and the Unbanked: Progress and Prospects” 2004 *South African Journal of Economics* 581,586.

the enactment of the *NCA*, credit in the form of loans and advances given by banks to the domestic private sector (individual financial consumers including the poor and low-income earners ) rose by 80% from 2005 to 2007.<sup>332</sup> At the end of 2011, there were about 19 million active credit consumers in South Africa greatly indicating the growth of South Africa's credit market.<sup>333</sup> In *Truworths Limited and Others v Minister of Trade and Industry and Others*,<sup>334</sup> the court extended credit access to the poor and low-income earners who most likely could not have a bank account, payslip and/or bank statement yet affording small amounts of debt. The court extended the provision of credit to financial consumers who did not have proof of income by means of a payslip or bank statement as a result of unemployment and/or poverty.<sup>335</sup> In other words, the court in the *Truworths* case made an inclusive interpretation by relaxing the general rule that a payslip and/or bank statements are required for checking the payment prospects of a financial consumer when applying for credit.<sup>336</sup> Although a credit check is still a prerequisite for applying for a loan,<sup>337</sup> the *Truworths* case promoted financial inclusion for the poor and low-income earners.

Due to the high rate of over-indebtedness in South Africa, the extension of credit and the relaxation of payment assessment mechanisms ought to be approached with great caution to avoid over-indebting the poor and low-income earners. From the 87% of South Africans who have access to basic financial services, approximately 40% have overdue accounts.<sup>338</sup> It then becomes alarming if the *NCA* extends credit provision in such a bad state of over-indebtedness in South Africa. Although such extension to credit access seeks to accommodate the unemployed and/or poor who may have no bank account,

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<sup>332</sup> Ellyne M and Jourdan BM "Did the National Credit Act of 2005 Facilitate a Credit Boom and Bust in South Africa?" 2015 *Journal of Economic Development* 1, 11.

<sup>333</sup> Kelly-Louw M "The Statutory in Duplum Rule as an Indirect Debt Relief Mechanism" 2011 *SA Mercantile Law Journal* 352, 352.

<sup>334</sup> Section 23A(5) and (7) of the *NCA*; *Truworths Limited and Others v Minister of Trade and Industry and Others* (4375/2016) [2018] ZAWCHC 41 (*Truworths case*) para 45-47.

<sup>335</sup> *Truworths case* para 67.

<sup>336</sup> Section 81 of the *NCA*.

<sup>337</sup> Section 81 of *NCA*; *Truworths case* para 67.

<sup>338</sup> Finmark Trust Finmark Trust "Making Financial Markets Work for the Poor" *Finscope South Africa* 2015(12 November 2015) 7. See also related discussion by Abrahams R "Financial Inclusion in South Africa: A Review of the Literature" 2017 *South African Accounting Association* 632, 643.

bank statement or payslip, such extension of credit needs to be exercised with extreme caution to avoid over-indebting the poor and low-income earners.

The *NCA* was also enacted to regulate the South African credit industry through, *inter alia*, protecting credit consumers from becoming over indebted.<sup>339</sup> It must be borne in mind that financial inclusion implies that financial consumers understand the implications of credit tendered to them and that they are able to meet their credit obligations on time.<sup>340</sup> In the *National Credit Regulator v Shoprite Investments Ltd*,<sup>341</sup> the court emphasized the importance of section 3(c)(i)-(ii) of the *NCA* on encouraging responsible borrowing and discouraging reckless credit by credit providers. In the *Shoprite* case, the court ordered a fine of R1 million against Shoprite.<sup>342</sup> The court emphasized that the granting of reckless credit to financial consumers who are financially illiterate in most cases, places financial consumers in financial difficulties which go against financial inclusion.<sup>343</sup> This follows from the fact that financial inclusion entails not just access to credit but equips financial consumers with knowledge and the ability to manage payments.<sup>344</sup>

The *NCA* was further enacted for the purposes of balancing the competing rights of both credit provider and consumers.<sup>345</sup> By balancing the competing rights of credit providers and those of financial consumers, financial inclusion of the poor and low-income earners is encouraged because the credit market becomes a safe environment for access to credit

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<sup>339</sup> Section 3(c) of the *NCA*. See also related discussion by Naicker BV and Kabir H “Implementation of South African National Credit Act and its Impact on Home Loans Market: The Case of First National Bank” 2013 *Risk Governance & Control: Financial Markets & Institutions* 18, 19.

<sup>340</sup> Lusardi A and Mitchell OS “The Economic Importance of Financial Literacy: Theory and Evidence” 2014 *Journal of Economic Literature* 5, 25; See also related discussion by Cohen M and Nelson C “Financial Literacy: A Step for Clients towards Financial Inclusion” in Commissioned Workshop Paper *Global Microcredit Summit* (14-17 November 2011) 4; Also see related discussion by Kodongo O “Financial Regulations, Financial Literacy, and Financial Inclusion: Insights from Kenya” 2018 *Emerging Markets Finance & Trade* 2851, 2866.

<sup>341</sup> *National Credit Regulator v Shoprite Investments Ltd* (NCT/32946/2015/140(1)) [2017] ZANCT 98 (5 September 2017) (the *Shoprite* case) para 119.

<sup>342</sup> *Shoprite* case para 119.6

<sup>343</sup> Grohmann A, Klühs T and Menkhoff L “Does Financial Literacy Improve Financial Inclusion? Cross Country Evidence” *World Development* 84, 86. See also related discussion by Guiso L and Viviano E “How Much Can Financial Literacy Help?” 2015 *Review of Finance* 1347, 1349.

<sup>344</sup> Klapper L and Singer D “The Role of Demand-Side Data – Measuring Financial Inclusion from the Perspective of Users of Financial Services” 2017 *IFC Bulletins Chapters* 1, 11-12.

<sup>345</sup> Section 3(d) of the *NCA*; See also related discussion by Goodwin-Groen RP and Kelly-Louw M “The National Credit Act and its Regulations in The Context of Access to Finance in South Africa” *Finmark Trust* (November 2016) 38.

under fair, transparent and a responsible credit market.<sup>346</sup> In *Rossouw v Firstrand Bank Ltd*,<sup>347</sup> the court dealt with a case of balancing the competing rights and obligations of the credit provider and the financial consumer on a dispute based on a loan agreement and mortgage bond. For the purposes of promoting financial inclusion, the court emphasized that proper procedures as enunciated by the *NCA* ought to be followed if financial consumers are to be protected from the difficulties of settling debts incurred as a result of over-indebtedness.<sup>348</sup> The decision taken by the court to overturn the summary judgement stating that the credit provider had not fully complied with the requirements set out in the *NCA*<sup>349</sup> as per the *Rossouw* case illustrates the confidence given to financial consumers in the credit market so as to encourage financial consumers to access formal banking institutions.

Furthermore, the *NCA* promotes financial literacy to enable financial consumers to be better positioned to understand different financial products and services in order to make well informed financial decisions.<sup>350</sup> Financial literacy relates to the financial consumer's ability to process financial information pertaining to, for example, terms and conditions of loans and insurance products, to enable them to make informed financial decisions.<sup>351</sup> Additionally, the *NCA* regulates the imbalances of negotiating power between the credit provider and the financial consumer.<sup>352</sup> The *NCA* seeks to balance the negotiating power between credit providers and financial consumers through the provision of consumer education, credit, consumer rights, disclosure of standardised information and the protection from deception, unfair or fraudulent conduct by credit providers.<sup>353</sup> Financial education could be one factor that promotes financial inclusion. For instance, once

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<sup>346</sup> Section 3 of the *NCA*; Pearson G, Stoop PN and Kelly-Louw M "Balancing Responsibilities – Financial Literacy" 2017 *PER* 1, 19.

<sup>347</sup> *Rossouw v Firstrand Bank Ltd* 2010 (1) SA 439 (SCA) (*Rossouw* case) para 1.

<sup>348</sup> Section 129 of the *NCA*; *Rossouw* case para 57.

<sup>349</sup> Section 129 of the *NCA*.

<sup>350</sup> Section 3(e) of the *NCA*; See also related comments by Pearson G, Stoop PN and Kelly-Louw M "Balancing Responsibilities – Financial Literacy" 2017 *PER* 1, 19. See also related discussion by Sithole A "Regulatory Strategy of the Financial Sector Conduct Authority: October 2018 to September 2021" Financial Sector Conduct Authority (October 2018) 21.

<sup>351</sup> Lusardi A and Mitchell OS "The Economic Importance of Financial Literacy: Theory and Evidence" 2014 *Journal of Economic Literature* 5, 6.

<sup>352</sup> Section 3(e) of the *NCA*.

<sup>353</sup> Section 3(e)(i)-(iii) of the *NCA*.

financial consumers are well informed about different financial products, they make better financial decisions such as avoiding over indebtedness.<sup>354</sup>

The researcher submits that the provisions of the *NCA* are not adequate enough to promote financial inclusion, especially, for the poor and low-income earners in South Africa.<sup>355</sup> Statistics show that about 87% of adults in South Africa have access to basic financial services<sup>356</sup> and approximately 80% are active credit financial consumers.<sup>357</sup> However, the level of over-indebtedness and reckless credit<sup>358</sup> suggests that more needs to be done to increase financial education in order to promote financial inclusion in South Africa.

#### 3.2.4 *The CPA*

The *CPA* promotes fair, accessible and beneficial consumer markets by providing consumer goods and services including, financial services.<sup>359</sup> Additionally, the *CPA* was enacted to redress the historical inequalities of accessing consumer goods and services for poor and low-income earners residing in remote areas with low consumer literacy levels.<sup>360</sup> The *CPA* promotes financial inclusion by extending consumer protection to the poor and low-income earners.<sup>361</sup>

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<sup>354</sup> See related discussion by Babych Y, Grigolia M and Keshelava D "Financial Inclusion, Financial Literacy, and Financial Education in Georgia" 2018 *ADBI* 849 1, 23-24. See also related discussion by Grohmann A, Klühs T and Menkhoff L "Does Financial Literacy Improve Financial Inclusion? Cross Country Evidence" 2017 *German Institute for Economic Research* 1, 12.

<sup>355</sup> See, *inter alia*, section 3, 80, 86, 87 and 129 of the *NCA* which promote access to credit for the historically disadvantaged, impose obligations on credit providers regarding the disclosure of information in the form of a pre-agreement statement and quotation; disclosure requirements relating to costs; a statutory *in duplum* rule that prevents credit interest from causing consumer over indebtedness and expressly prohibits "reckless credit" granting.

<sup>356</sup> Finmark Trust *Finscope South Africa* 2015) 7. See also related discussion by Abrahams 2017 *South African Accounting Association* 643.

<sup>357</sup> Ellyne and Jourdan 2015 *Journal of Economic Development* 1. See also related discussion by Ferreira K "Analysis: How Indebted Consumers Are Stretching SA to its Limits" *Business Day* (12 September 2017) page number unknown.

<sup>358</sup> Ssebagala RA "Relieving Consumer Over indebtedness in South Africa: Policy Reviews and Recommendations" 2017 *Journal of Financial Counseling and Planning* 235, 239.

<sup>359</sup> Section 3(1)(a) of the *CPA*.

<sup>360</sup> Section 3(1)(b) of the *CPA*.

<sup>361</sup> Section 3(1)(c) of the *CPA*.

Additionally, the *CPA* prohibits the supply of or an offer to supply any good or services on unfair, unreasonable or unjust contract terms.<sup>362</sup> It could be said that the *CPA* equally protects financial consumers against unfair, unjust and unreasonable contractual agreements with credit providers or banking institutions to promote financial inclusion. Furthermore, the *CPA* guarantees every consumer's right to safe and good quality goods and services which are appropriate for the purpose for which they sought.<sup>363</sup> In relation to financial inclusion, it is noteworthy that the concept of financial inclusion relates to satisfactory access to appropriate, low-cost, fair and safe financial products and services as offered by the government and banking institutions to the all members of a society. Given this background, it could be said that the *CPA* promotes financial inclusion for everyone, especially, the poor and low-income earners in South Africa.

### 3.2.5 *The National Payment Systems Act*

The *National Payments Systems Act* regulates the management, administration, operation of payment, clearing and settlement systems in the South African banking sector.<sup>364</sup> The payments process in South Africa is supervised by the *SARB* which is empowered by the *SARB Act*<sup>365</sup> to perform functions, implement rules and procedures necessary to establish, conduct, regulate and supervise the payment, clearing and/or settlement systems of the banking sector. Payment processes are communication mechanisms provided by commercial banks to provide channels and facilities to financial customers to enable them to effect payment through facilities like electronic funds transfer (EFT), debit orders, debit cards and credit cards.<sup>366</sup> It must be borne in mind that financial inclusion relates to, *inter alia*, the access of financial services, like making or receiving

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<sup>362</sup> Section 48 of the *CPA*; Jacobs W, Stoop PN and Van Niekerk R "Fundamental Consumer Rights under the Consumer Protection Act 68 of 2008: A Critical Overview and Analysis" 2010 *PER* 302, 314.

<sup>363</sup> Section 55(2) of the *CPA*.

<sup>364</sup> Section 4A, 6, 7 and other related sections of the *National Payment Systems Act*.

<sup>365</sup> See section 10(1)(c)(i) of the *SARB Act*.

<sup>366</sup> Section 1 of the *National Payment Systems Act*; Section 1(f) of the *National Payment System Amendment Act* 22 of 2004 defines the payment system as a system that enables payments to be made between a payer and a beneficiary or a system that facilitates the circulation of money. See also related discussion by the South African Reserve Bank "Overview of the South African National Payment System" *Financial Stability Review* (20 September 2008) 2-3.

payments by the financial consumers as facilitated by a financial institution.<sup>367</sup> Consequently, the *National Payments Systems Act* promotes financial inclusion for the poor and low-income earners in the facilitation of receipt and payments.<sup>368</sup> Notably in 2012, the National Payments System (NPS) was introduced in a bid to reduce fraud and promote access of financial support to the poor and low-income earners in a convenient and effective manner.<sup>369</sup> Currently, about 32% of the total population in South Africa is reliant on social grants.<sup>370</sup> This percentage also represents the poor and low-income earners who are benefiting from the NPS. It is submitted that the NPS has made remarkable contributions towards the promotion of financial inclusion for the poor and low-income earners in South Africa.

### 3.2.6 The FICA

The *FICA* aims to combat money laundering and financial terrorism by obliging financial and/or banking institutions to obtain appropriate information about the identity and verification of clients when opening bank accounts.<sup>371</sup> The *FICA* is important for the promotion of financial inclusion because it curbs money laundering, combats financing of terrorism and encourages people to use formal financial services and products whose users' identity is known.<sup>372</sup> Additionally, the *FICA* has played a huge role in ensuring financial integrity in the formal banking sector through curbing money laundering and the financing of terrorism.<sup>373</sup> Financial integrity has a bearing on financial inclusion in that

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<sup>367</sup> Selvakumar M, Mathan J and Sathyalakshmi V "Rural Perspective Towards Financial Inclusion" 2015 *Journal of Economic and Social Thought* 106, 107; Abifarin O and Bello SA "Cooperative Bank as an Effective Financial Inclusion Strategy in Nigeria" 2015 *Journal of Law, Policy and Globalization* 5, 10.

<sup>368</sup> Section 1 of the *National Payment Systems Act*.

<sup>369</sup> Fanta BA *et al* "Digitisation of Social Grant Payments and Financial Inclusion of Grant Recipients in South Africa – Evidence from Finscope Surveys" *FinMark Trust* (May 2017) 7.

<sup>370</sup> Statistics South Africa "A Statistical Summary of Social Grants in South Africa" *Statistics South Africa* (30 September 2018) 2.

<sup>371</sup> Section 21(1) of the *FICA*. See also related discussion by Mohamed 2016 *Journal of Economic Literature Classification* 91. See also related discussion by Kersop M and du Toit SF "Anti-money Laundering Regulations and the Effective Use of Mobile Money in South Africa – Part 2" 2015 *PER* 1637, 1638.

<sup>372</sup> De Koker L and Jentzsch J "Financial Inclusion and Financial Integrity: Aligned Incentives?" 2013 *World Development* 267, 277.

<sup>373</sup> Symington J "Financial Intelligence Centre Amendment Act: Pre-implementation Study in South Africa" *FinMark Trust* (30 December 2016) 11. See also De Koker and Jentzsch 2013 *World Development* 277.

when financial consumers trust a financial institutions, they are encouraged to open bank accounts.<sup>374</sup> In this way, it is proposed that if financial integrity is adequately promoted by the *FICA*, so is the promotion of financial inclusion for the poor and low-income earners.

However, it is argued that one of the causes of financial exclusion in South Africa is the poor and low-income earner's distrust of the banking sector.<sup>375</sup> Out of the 11% adult persons who are financially excluded in South Africa,<sup>376</sup> some of them distrust some of the services and products provided by most financial institutions. The distrust of formal financial institutions has been exacerbated by the Veda Building Society (VBS) Mutual Bank scandal which was caused by the mismanagement and embezzlement of depositor's funds.<sup>377</sup> The researcher suggests that it is incidents like the VBS scandal which are a threat to financial integrity and financial inclusion as this was not well regulated under the *FICA* and other related legislation.

### 3.2.7 *The Inspection of Financial Institutions Act*<sup>378</sup>

The *Inspection of Financial Institutions Act* ensures the protection of consumers through allowing the registrar to conduct inspections of any financial institution which may be suspected to operate without registering to operate as such.<sup>379</sup> *The Inspection of Financial Institutions Act* allows the registrar to convey information obtained during an inspection of a banking institution which may be found to be in an unsound condition to any designated official.<sup>380</sup> The *Inspection of Financial Institutions Act* therefore ensures transparency in the functioning of financial institutions. In this regard, it can be concluded that the *Inspection of Financial Institutions Act* promotes financial inclusion through inspection of banks to ensure that they are adhering to regulations of the NCA.

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<sup>374</sup> Lawack VA "Mobile Money, Financial Inclusion and Financial Integrity: The South African case" 2013 *Washington Journal of Law, Technology & Arts* 317, 325.

<sup>375</sup> Kessler K et al "Improving Financial Inclusion in South Africa" *The Boston Consulting Group* (30 April 2017) 8.

<sup>376</sup> Abrahams 2017 *South African Accounting Association* 643.

<sup>377</sup> Cranston S "Breaking the Bank" *Financial Mail* (19 July 2018) 48. See also related discussion by Maohina M "No Bailouts for Municipalities that Invested with VBS" *Cape Times* (6 September 2018) 9.

<sup>378</sup> 80 of 1998 (*Inspection of Financial Institutions Act*), section 3 and 9.

<sup>379</sup> Section 3 of the *Inspection of Financial Institutions Act*.

<sup>380</sup> Section 9(b) of the *Inspection of Financial Institutions Act*.

### 3.2.8 The FSRA

The *FSRA* was enacted to provide a robust legislative framework for the financial sector in a bid to reinforce financial stability and ensure the soundness of financial institutions and the treatment of financial consumers in South Africa.<sup>381</sup> Additionally, the *FSRA* was enacted to ensure the fair treatment of financial consumers, especially, the poor and low-income earners who were unable to access basic financial services and products.<sup>382</sup> Most functions of the *FSRA* are performed through the functionality of two regulators namely, the Prudential Authority (PA)<sup>383</sup> and the Financial Sector Conduct Authority (FSCA).<sup>384</sup> The role of these regulators are discussed below.

## 3.3 *Financial inclusion and other role players*

### 3.3.1 *The role of the FSCA*

The FSB is a predecessor to the FSCA and was established under the *Financial Services Board Act*<sup>385</sup> to supervise and enforce the compliance with laws regulating financial institutions.<sup>386</sup> Additionally, the FSB was established to provide, promote and support financial education so as to boost financial consumer confidence on financial products.<sup>387</sup> However, during the operation of the FSB, financial literacy levels remained relatively constant at 51%<sup>388</sup> which is far much lower than the increased number of adults with access to basic financial services and products.<sup>389</sup> This could indicate that the FSB did not achieve much in as far as financial education is concerned. It can be said that the transition from the FSB to the FSCA may be good. However, it remains to be seen

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<sup>381</sup> See section 7(1)(a)(b) of the *FSR*.

<sup>382</sup> Section 7(1)(c) of the *FSR*.

<sup>383</sup> Section 32 of the *FSR Act*. See also related discussion by Pearson and Stoop 2017 *PER* 40.

<sup>384</sup> Section 56 of the *FSR Act*. See also related discussion by Pearson and Stoop 2017 *PER* 40.

<sup>385</sup> 94 of 1990 (*FSR Act*), section 2.

<sup>386</sup> Section 3(a) of the *FSR Act*.

<sup>387</sup> Section 3(c) of the *FSR Act*.

<sup>388</sup> Wentzel A "Financial Literacy in South Africa" in Aprea C *et al* (eds) *International Handbook of Financial Literacy* (Springer Science+Business Media Singapore 2016) 329, 334.

<sup>389</sup> Abrahams 2017 *South African Accounting Association* 643.

whether such transition will promote financial inclusion as the FSRA provides how the promotion of financial inclusion will be done.<sup>390</sup>

The FSCA is a financial market regulator that is responsible for regulating and supervising the conduct of financial institutions and ensuring consumer protection.<sup>391</sup> It commenced its operations in April 2018. Although the FSR does not expressly obligate the FSCA to promote financial inclusion, there are provisions in the *FSR Act* which indirectly promote financial inclusion. The *FSR Act* provides that the FSCA must ensure the fair treatment of financial customers by financial institutions and to provide financial consumer education.<sup>392</sup> The fact that financial literacy assists financial consumers to make better financial decisions and avoid over-indebtedness, suggests that the FSCA promotes financial inclusion.<sup>393</sup>

### 3.3.3 *The PA*

The PA is a regulator that exercises a supervisory role on banks and other financial conglomerates that tender basic financial services to every person especially the poor and low-income earners in order to promote financial inclusion. The PA is obliged to ensure the safety and soundness of financial institutions, market infrastructures and assist in maintaining financial stability.<sup>394</sup> The PA's functions towards the promotion of financial inclusion for the poor and low-income earners are not expressly entrenched in the *FSR Act*. The *SARB Act* merely states that the PA must support financial inclusion.<sup>395</sup> The PA must support financial inclusion through assessing the safety and

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<sup>390</sup> Section 56(1)(e) of the *FSR Act* merely states that in order to achieve its objective, the FSCA must promote financial inclusion. However, the *FSRA* does not provide how the promotion of financial inclusion will be carried out.

<sup>391</sup> Section 57 of the *FSR Act*. See also related discussion by Viljoen A, Lallo V and Bunge S "Financial Sector Regulation Act Implementing Twin Peaks and the Impact on the Industry" EY (3 April 2018) 4.

<sup>392</sup> Section 57(b)(ii) of the *FSR Act*; see related discussion by Morgan PJ, Zhang Y and Kydyrbayev D "Overview of Financial Inclusion, Regulation, Financial Literacy, and Education in Central Asia and South Caucasus" 2018 *ADBI No 878* 1, 14.

<sup>393</sup> Wentzel A "Financial Literacy in South Africa 332. See also related discussion by Roberts B *et al* "Financial Literacy in South Africa: Results of a Baseline National Survey" *The Financial Services Board* (30 July 2012) 2.

<sup>394</sup> Section 34(a) of the *FSR Act*; Section 33 (b)-(d) of the *SARB Act*. See also related discussion by South African Reserve Bank "Promoting the Economic Well-being of South Africans" *Annual Report 17/18* (January 2018) 9.

<sup>395</sup> Section 34(e) of the *FSR Act*.

soundness of a financial institutions in order to protect financial customers against the risk of a financial institution failing to meet their obligations.<sup>396</sup> The PA also promotes financial inclusion through collaborating with the SARB in monitoring Financial Technology (FinTech) developments (like cryptocurrencies) that may potentially facilitate financial inclusion of the poor and low-income earners through the provision of affordable and appropriate financial services.<sup>397</sup> Although other provisions of the *FSR Act* and *SARB Act* are not explicit in their promotion of financial inclusion, it may be proposed that such functions are inferred from the PA's functions of regulating financial institutions.<sup>398</sup>

### 3.3.2. National Treasury and the National Consumer Financial Education Committee

The National Treasury and the National Consumer Financial Education Committee (NCFEC) were established, *inter alia*, to enhance the levels of financial literacy in South Africa especially to the previously disadvantaged consumers.<sup>399</sup> Additionally, the NCFEC must supervise the implementation of financial education strategy as mandated by the National Treasury and conduct yearly reviews to monitor performance and efficiency of financial education initiatives.<sup>400</sup>

The NCFEC comprises representatives from industry bodies, regulators, trade unions, government departments, educational institutions and research companies.<sup>401</sup> The NCFEC seeks to eliminate financial exclusion through educational initiatives which seek to educate financial consumers to save and manage future debt.<sup>402</sup> The National Treasury together with FSCA and the NCFEC have introduced programs like the “Money Smart Week” (MSW) to educate more consumers about saving, investment and avoidance of

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<sup>396</sup> Section 33(a) of the *SARB Act*.

<sup>397</sup> Naidoo K “Regulatory Strategy 2018-2021” 2018 *South African Reserve Bank Prudential Authority* 1, 14.

<sup>398</sup> Section 33 of the *FSR Act*. See also related discussion by Godwin A “Introduction to Special Issue – the Twin Peaks Model of Financial Regulation and Reform in South Africa” 2017 *Law and Financial Markets Review* 150, 152.

<sup>399</sup> Atkinson A *et al* “OECD/INFE International Survey of Adult Financial Literacy Competencies” 2016 *OECD/INFE Policy Handbook* 1, 70.

<sup>400</sup> Sibanda S and Sibanda T “Financial Education in South Africa” 2016 *International Labour Office* 1, 16.

<sup>401</sup> Atkinson *et al* 2016 *OECD/INFE Policy Handbook* 70.

<sup>402</sup> Atkinson *et al* 2016 *OECD/INFE Policy Handbook*. See also related discussion by Siluanov A “Advancing National Strategies for Financial Education” *A Joint Publication by Russia's G20 Presidency and the OECD* (30 November 2013) 250.

over indebtedness as a means to promote financial inclusion amongst the poor and low-income earners in South Africa.<sup>403</sup>

### 3.3.4 SARB

The SARB is the central bank of South Africa and is primarily responsible for the supervision of banking institutions which provide basic financial services and products to financial consumers.<sup>404</sup> The SARB makes and issues bank notes which function as a medium of exchange and allow everyone especially the poor and low-income earners easy access to making transactions.<sup>405</sup> The SARB also ensures the payment, clearing or settling of payments through the NPS which ensures that everyone's access to financial services is satisfied.<sup>406</sup> Additionally, the SARB accepts deposits and allows deposits to be collected on behalf of other persons to ensure the supply of a basic financial service.<sup>407</sup> It can be said that the SARB promotes financial inclusion of everyone, especially, the poor and low-income earners through exercising supervisory oversight over banks, ensuring cash circulation<sup>408</sup> and monitoring the NPS to ensure the effective payments.

### 3.3.5 The NCR

The NCR was established as an independent body that regulates all credit related matters in South Africa.<sup>409</sup> The NCR is obliged to conduct research on consumer credit and policy development, register credit providers and financial consumers, investigate consumer complaints as well as ensure the enforcement of the *NCA*.<sup>410</sup> It could be said that the NCR promotes financial inclusion in that its regulatory standards ensure that financial consumers are afforded protection against credit providers who are often

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<sup>403</sup> South African Government News Agency "Financial Literacy Campaign to be Launched in October" *South African Government News Agency* (8 July 2018) page number unknown.

<sup>404</sup> Section 3 of the *SARB Act*. See also Shawe and Colegrave *Allen & Overy South Africa LLP*; See also related discussion by Mnyande M "Relevance of the SA Reserve Bank to the Development Agenda" South African Reserve Bank (9 April 2010) 3.

<sup>405</sup> Section 10(1)(a) of the *SARB Act*.

<sup>406</sup> Section 10(1)(c) of the *SARB Act*; Parliament of the Republic of South Africa "Transformation of the Financial Sector" 2017 *Standing Committee on Finance and the Portfolio Committee on Trade and Industry* 1, 15.

<sup>407</sup> Section 10 (1)(e) of the *SARB Act*.

<sup>408</sup> Section 10 of the *SARB Act*

<sup>409</sup> Section 12(1) and (2) of the *NCA*.

<sup>410</sup> Section 13(a)-(d) of the *NCA*.

exploitative to them. The *NCA* requires the NCR to promote the development of an accessible credit market, particularly, to address the needs of historically disadvantaged persons and low-income persons in remote and isolated communities.<sup>411</sup> It could also be said that the protection provided by the NCR to historically disadvantaged poor and low-income earners promotes financial inclusion in South Africa. Additionally, the NCR is also obliged to register credit providers, credit bureaus and debt counsellors; and enforce compliance with the *NCA*<sup>412</sup> to preserve legitimacy in the credit market. This could encourage other financial consumers to open bank accounts and promote financial inclusion in South Africa.

### 3.3.6 *The NCT*

The NCT adjudicates upon credit related disputes in South Africa.<sup>413</sup> In other words, the NCT provides a redress platform to aggrieved financial credit consumers so as to resolve credit matters and advance socio-economic welfare of all persons, especially, the low-income earners in South Africa. The NCT's powers extend to giving such orders deemed necessary under any circumstance so to resolve credit disputes.<sup>414</sup> The availability of the NCT has opened a forum upon which financial consumers who have credit disputes may seek redress outside the long ordinary court procedure.<sup>415</sup> Such convenience in dispute resolution provided by the NCT could serve to promote financial inclusion through speedy settlement of consumer disputes. This could build confidence in the financial consumers in the credit and banking sector and promote financial inclusion.

### 3.3.7 *The Banking Association of South Africa (BASA)*

The BASA is a banking industry body representing all 32 registered banks in South Africa.<sup>416</sup> It is the mandated representative of the sector, and represents the industry through lobbying, engagement with stakeholders and political influence. *Inter alia*, the

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<sup>411</sup> Section 13(a) of the *NCA*. See also related discussion by Vessio ML "What does the National Credit Regulator Regulate?" 2008 *SA Mercantile Law Journal* 227,235.

<sup>412</sup> Section 14 of the *NCA*.

<sup>413</sup> Section 27(a) of the *NCA*.

<sup>414</sup> Section 27 of the *NCA* grants the NCT powers to make orders as per section 147 of the *NCA*.

<sup>415</sup> Organisation for Economic Co-operation and Development/ Integrated Non-Formal Education "National Strategies for Financial Education" *OECD/INFE Policy Handbook* (2015) 70.

<sup>416</sup> Carrim Y, Fubbs J, Wicomb A "Submission on Transformation in the Financial Sector the Banking Association of South Africa" *The Banking Association South Africa* (10 March 2017) 3.

BASA promotes financial inclusion in South Africa through the promotion of financial literacy and as a result, the BASA embarked on the “Starsaver” financial literacy which educated the youth on the importance of saving.<sup>417</sup>

### *3.4 Conclusion*

From the discussion above, it is noteworthy that the South African banking sector has various legislation and several other role-players that seek to promote financial inclusion for the poor and low-income earners. Although majority of the legislation discussed in this chapter does entrench the promotion of financial inclusion, it does not indicate with adequacy and in detail how financial inclusion should be promoted for the poor and low-income earners in South Africa. However, the study submits that about 11% of adults are financially excluded from the formal banking sector.<sup>418</sup> Consequently, a robust legislative framework specifically and expressly dealing with financial inclusion must be enacted to promote financial inclusion for the poor and low-income earners in South Africa.

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<sup>417</sup> Wentzel “Financial Literacy in South Africa” 334.

<sup>418</sup> Abrahams 2017 *South African Accounting Association* 643.

## CHAPTER FOUR

### THE CHALLENGES AFFECTING FINANCIAL INCLUSION IN SOUTH AFRICA

#### 4.1 Introduction

Generally, financial inclusion has relatively improved in South Africa with a total of 32,5 million adults which equates to 77% being financially included in the formal banking sector as compared to 46% in 2004.<sup>419</sup> Currently, approximately 30 million South Africans are poor and 55.5% of these people struggle to access financial services and products due to, *inter alia*, lack of required documentation to open a bank account, lack of trust in the banks, high bank fees and financial illiteracy.<sup>420</sup> About 70% of the adult South African population has bank accounts and of this 70%, 17.5% withdraw their income immediately instead of saving for future financial obligations.<sup>421</sup> In short, the 17.5% are not actively using their accounts to achieve their financial goals nor taking advantage of financial services at their disposal like saving and investment opportunities that go with owning a bank account.<sup>422</sup> Moreover, about 77% of South Africans have access to basic banking services while 17% of the total population relies on social grants seeking to suggest that of those formally included, some are poor and bound to withdraw all their income upon receipt without saving and investing.<sup>423</sup>

For a comprehensive account of the barriers to financial exclusion, it is important to identify the different types of financial exclusion as well as the causes. In light of this, lack

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<sup>419</sup> Arun T and Kamath R “Financial Inclusion: Policies and Practices” 2015 *IIMB Management Review* 267, 281; Finmark Trust “Making Financial Markets Work for the Poor” Finscope South Africa 2015 (12 November 2015) 18.

<sup>420</sup> Franklin A *et al* “The Foundations of Financial Inclusion: Understanding Ownership and Use of Formal Accounts” 2016 *Journal of Financial Intermediation* 1, 27; Abrahams R “Financial Inclusion in South Africa: A Review of the Literature” 2017 *Southern African Accounting Association* 632, 640; Louis L and Chartier F “Financial Inclusion in South Africa: An Integrated Framework for Financial Inclusion of Vulnerable Communities in South Africa’s Regulatory System Reform” 2017 *Journal of Comparative Urban Law and Policy* 170, 181; Kessler *Boston Consulting Group* 4; Nanziri EL and Leibbrandt M “Measuring and Profiling Financial Literacy in South Africa” 2018 *South African Journal of Economic and Management Sciences* 1, 10.

<sup>421</sup> Kessler *et al* *The Boston Consulting Group* 4; Abrahams R “Financial inclusion in South Africa: A review of the literature” 2017 *Southern African Accounting Association* 632, 642.

<sup>422</sup> Kessler *et al* *Boston Consulting Group* 4.

<sup>423</sup> Coovadia C “Annual Report Making Financial Markets Work for the Poor” Annual Report 2017 (28 February 2017) 7.

of financial inclusion may be split into voluntary and involuntary exclusion.<sup>424</sup> From the poor and low-income earners that are voluntarily excluded, this could be as a result of the mistrust of the banking sector as well as cultural beliefs that do not favour formal banking.<sup>425</sup> On the other hand, some poor and low-income earners are involuntarily excluded, as a result of insufficient income to sustain a bank account and discrimination by the banks.<sup>426</sup> Additionally, high priced banking products and lack of financial literacy for contractual and financial product understanding as well as lack of documentation by consumers to open accounts are also causes of financial exclusion of the poor and low-income earners in South Africa.<sup>427</sup>

The researcher suggests that the most valuable benefit of financial inclusion in South Africa is the promotion of socio-economic development and the reduction of poverty as it enables the poor and low-income earners to save money and increase spending on other important social aspects like health and education.<sup>428</sup> Financial inclusion also promotes the growth of South Africa's Gross Domestic Product (GDP) because, *inter alia*, it attracts investors who create business opportunities and jobs.<sup>429</sup>

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<sup>424</sup> Abrahams 2017 *Southern African Accounting Association* 635; Arun and Kamath 2015 *IIMB Management Review* 279; Gupta D "Key Barriers Faced in Implementing Financial Inclusion" 2015 *International Journal of Engineering Technology Science and Research* 77, 78; Gortsos CVL "Financial Inclusion: An Overview of its Various Dimensions and the Initiatives to Enhance its Current Level" 2016 *European Centre of Economic and Financial Law* 1, 10.

<sup>425</sup> Abrahams 2017 *Southern African Accounting Association* 635.

<sup>426</sup> Matsebula V and Yu D "Financial Inclusion in South Africa: A Nids Data Analysis of Household Access and the Usage of Financial Services and Products" 2017 *Economic Society of South Africa* 1, 4.

<sup>427</sup> Abrahams 2017 *Southern African Accounting Association* 635.

<sup>428</sup> Sarma M and Pais J "Financial Inclusion and Development" 2011 *Journal of International Development* 613, 614; Oji CK "Promoting Financial Inclusion for Inclusive Growth in Africa" 2015 *South African Institute of International Affairs* 1, 5; Chibba M "Financial Inclusion, Poverty Reduction and the Millennium Development Goals" 2009 *European Journal of Development Research* 212, 215.

<sup>429</sup> Ikdal A "6 Challenges to Financial Inclusion in South Africa" 2017 *World Economic Forum* 1, 5; Demirguc-Kunt A, Klapper L and Singer D "Financial Inclusion and Inclusive Growth" 2017 *The World Bank Policy Research Working Paper* 8040 1,3; According to Demirgüç-Kunt A, Klapper L and Singer D *What Do We Know About the Link Between Financial Inclusion and Inclusive growth?* <http://blogs.worldbank.org/allaboutfinance/what-do-we-know-about-link-between-financial-inclusion-and-inclusive-growth> accessed 20 November 2018 page number unknown, financial inclusion enhances South Africa's GDP through, *inter alia*, helping the poor and low-income earners invest and expand on their financial risk management options. For example, in Niger, digital social transfer payments greatly reduced travelling and waiting times for cash receipt and greatly lowered governmental administrative costs for disbursing funds to social grant recipients. In Malawi,

Furthermore, financial inclusion is important because when banks provide suitable, understandable and practical financial services, this could help poor and low-income people to get high quality financial services which may help develop the South African economy.<sup>430</sup> In this regard, financial inclusion can greatly assist South Africa to fight poverty through reducing the impact of economic risks for the poor and low-income earners through the provision of common and fair credit rights and access to financial services.<sup>431</sup>

## **4.2 Challenges in South Africa**

### *4.2.1 Unemployment and poverty*

Unemployment and poverty are huge impediments towards the realisation of financial inclusion in South Africa as most poor, unemployed and low-income earners barely afford bank accounts and transaction costs to sustain bank accounts.<sup>432</sup> According to 2015 statistics, poverty levels were fixed at 55.5% equal to 30, 4 million South Africans living in poverty and practically unable to sustain bank accounts.<sup>433</sup> It is argued that the trends of poverty are influenced by low economic growth, high unemployment levels, high prices for basic commodities, low rates of investment and greater reliance on credit.<sup>434</sup> As a result, 30,4 million South Africans do not afford bank accounts and remain financially excluded. As compared to those with bank accounts, most of the poor and low-income earners in South Africa do not save nor enjoy the benefits of owning bank accounts which include precautionary saving.<sup>435</sup> Moreover, the poor and low-income earners in South

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financial growth was achieved through the provision of access to the opening of bank accounts for farmers which greatly enhanced their savings.

<sup>430</sup> Ramachandran R “BFSI: Best Practices in Financial Inclusion” in 22nd Skoch Summit *The India Decide at Hyatt Regency Conference* (17-19 March 2010 New Delhi) 1-13, 6.

<sup>431</sup> Jian D “The Inclusive Finance Have Effects on Alleviating Poverty” 2017 *Open Journal of Social Sciences* 233, 234.

<sup>432</sup> Chibba M and Luiz JM “Poverty, Inequality and Unemployment in South Africa: Context, Issues and the Way Forward” 2011 *Economic Papers: A Journal of Applied Economics and Policy* 307, 309.

<sup>433</sup> Statistics South Africa “Poverty Trends in South Africa an Examination of Absolute Poverty between 2006 and 2015” *Statistics South Africa* 2017 1, 14.

<sup>434</sup> Statistics South Africa 2017 *Statistics South Africa* 2017 16; Kostov P, Arun T and Annim S “Access to financial services: The Case of the ‘Mzansi’ Account in South Africa” 2015 *Review of Development Finance* 34, 41.

<sup>435</sup> See related discussion by Goldberg J “Products and Policies to Promote Saving in Developing Countries” 2014 IZA *World of Labor* 1, 2-3.

Africa who are involved in informal employment mostly deal in cash and do not utilise the formal banking sector for purposes of saving and budgeting for future financial obligations.<sup>436</sup> Although the use of cash is important for financial inclusion especially for those who are illiterate to transact through digital channels, cash transacting is generally expensive, does not encourage saving nor help alleviate poverty.<sup>437</sup> The National Development Plan strives towards eliminating poverty by 2030<sup>438</sup> through financial inclusion which may be a great initiative that will reduce financial exclusion and encourage saving and investment amongst the poor and low-income earners in South Africa. However, it is further argued that most South Africans who own bank accounts are either employed or recipients of social grants provided by the department of social development.<sup>439</sup> In this regard, it could be said that most financial consumers do not have the intention of saving as a precondition for needing a bank account.<sup>440</sup> Therefore, the researcher proposes that saving should be encouraged to most South Africans if financial inclusion and its benefits towards the alleviation of poverty are to be realised.

#### 4.2.2 Financial illiteracy

Financial literacy may be defined as the ability to make well informed judgments about the management of finances for both short and long term financial goals taking into consideration economic events and changing conditions.<sup>441</sup> On the other hand, financial illiteracy refers to the lack of knowledge and basic understanding by the financial consumer of the need to open a bank account, obtain credit, compare health and life insurance and the inability of a financial consumer to: manage cash and payments as well as pay for future financial needs.<sup>442</sup> Financial literacy has various components which are all crucial for the achievement of financial inclusion. The components of financial

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<sup>436</sup> Kessler *et al* Boston Consulting Group 4.

<sup>437</sup> Ozili PK "Impact of Digital Finance on Financial Inclusion and Stability" 2018 *Borsa Istanbul Review* 1, 3.

<sup>438</sup> Statistics South Africa 2017 *Statistics South Africa 2017* 17.

<sup>439</sup> Kessler *et al* Boston Consulting Group 7.

<sup>440</sup> Kessler *et al* Boston Consulting Group 4.

<sup>441</sup> Zait and Bertea 2014 *Journal of Accounting Management* 38.

<sup>442</sup> Emmons WR "Consumer-Finance Myths and Other Obstacles to Financial Literacy" 2005 *Louis U. Pub. L. Rev.* 335, 353; Zait A and Bertea PE "Financial Literacy – Conceptual Definition and Proposed Approach for a Measurement Instrument" 2014 *Journal of Accounting and Management* 37, 38.

literacy are financial knowledge, financial education, financial competence and financial responsibility.<sup>443</sup> After the demise of apartheid, various legislation and programs have been implemented by the banking institutions and other role players to address the problem of financial illiteracy and financial exclusion of the poor and low-income earners.

#### 4.2.2.1 Legislative and regulatory mechanisms for financial education in South Africa

The Consumer Protection Act<sup>444</sup> regulates, *inter alia*, the promotion of a fair, accessible and efficient credit market that seeks to reduce the problems of financial illiteracy amongst the poor and low-income financial consumers in accessing basic financial services and products in South Africa. Under the CPA, there are Provincial Consumer Affairs Offices (PCAO) established to provide financial consumer education, advice and information so as to enhance financial literacy and financial capability of financial consumers to promote financial inclusion of the poor and low-income earners in South Africa.<sup>445</sup> However, high levels of over-indebtedness in South Africa reflect that most poor and low-income earners are financially illiterate.<sup>446</sup> In light of the above, the researcher argues that the CPA is not dealing with financial literacy adequately enough so as to promote financial inclusion of the poor and low-income earners in South Africa.

The *National Credit Act*<sup>447</sup> was enacted primarily for regulating the granting of credit in South Africa and balancing the conflicting rights of both credit providers and the consumers. The NCA's application extends to financial consumers.<sup>448</sup> In this regard, the

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<sup>443</sup> Zait A and Bertea PE "Financial Literacy – Conceptual Definition and Proposed Approach for a Measurement Instrument" 2014 *Journal of Accounting Management* 37, 38.

<sup>444</sup> 68 of 2008 (the CPA), see section 3(1)(a)-(f); Woker T "Why the Need for Consumer Protection Legislation? A Look at Some of the Reasons behind the Promulgation of the National Credit Act and the Consumer Protection Act" 2010 *Obiter* 217, 224.

<sup>445</sup> According to section 3 of the CPA, by implication, the PCAO was established to ensure that uneducated financial consumers are equipped with financial knowledge so that well-informed financial decisions are reached.

<sup>446</sup> Nanziri and Leibbrandt 2018 *South African Journal of Economic and Management Sciences* 6; Moodley *Fin24* page number unknown.

<sup>447</sup> See section 3 of the *National Credit Act* 34 of 2005 of (the NCA).

<sup>448</sup> According to Sankharaj R "Financial Inclusion: "A Critical Assessment of its Concepts and Measurement" 2015 *Asian Journal of Research in Business Economics and Management* 12, 13-14, credit is an important facet of financial inclusion and consumers of financial products and services are by implication protected by the NCA. See also the definition of a "consumer" under section 1 of the NCA a consumer is in respect of a credit agreement to which the NCA applies, a party to whom goods or services are sold under a discount transaction, incidental credit agreement or instalment agreement; the party to whom money is paid, or credit granted, under a pawn

*NCA* seeks to balance the negotiating power between financial consumers and credit providers through the provision of; consumer education about credit and consumer rights, standardised information on consumer goods and services and the protection of financial consumers against deception and unfair and/or fraudulent conduct by credit providers.<sup>449</sup> Financial consumer education and/or literacy measures are ways through which financial consumers may be better positioned to make well-informed financial decisions to avoid over-indebtedness while promoting financial inclusion for the poor and low-income earner consumers in South Africa.<sup>450</sup> However, financial literacy levels in South Africa currently indicate that literacy levels are approximately 50% of the total adult population with the poor and low-income earners being the least financially literate.<sup>451</sup> Although the *NCA* is not the only legislation dealing with ensuring financial inclusion through financial consumer education, it can be said that its financial education measures are currently not robust enough to combat financial exclusion of the poor and low-income earners in South Africa.

Additionally, the *NCA* establishes the National Credit Regulator (NCR) whose office ought to impartially and independently deal with all credit related matters and enforce the *NCA*.<sup>452</sup> From 2006, the NCR has been educating financial consumers through educational workshops, conference presentations, financial education brochures, radio and television

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transaction; the party to whom credit is granted under a credit facility; the mortgagor under a mortgage agreement; the borrower under a secured loan; the lessee under a lease; the guarantor under a credit guarantee; or the party to whom or at whose direction money is advanced or credit granted under any other credit agreement (governed by the *NCA*).

<sup>449</sup> Section 3(e) of the *NCA*.

<sup>450</sup> Department of Trade and Industry "Making Credit Markets Work: A Policy Framework for Consumer Credit" *Credit Law Review* 1, 27; Atkinson A and Messy F "Promoting Financial Inclusion through Financial Education: OECD/INFE Evidence, Policies and Practice", 2013 *OECD Working Papers on Finance, Insurance and Private Pensions* 1, 15.

<sup>451</sup> Nanziri and Leibbrandt 2018 *South African Journal of Economic and Management Sciences* 6; Moodley N "Improve Your Financial Literacy in 2017" *Fin24* (15 January 2017) page number unknown.

<sup>452</sup> Section 12(1) and (2) of the *NCA*; According to Section 13(a) and (c) of the *NCA*, the NCR is responsible for promoting and supporting the existence of a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market that serves the historically disadvantaged, low-income earners and people residing in remote areas. Also, the NCR must monitor the credit market to ensure that it serves the rights of the poor and low-income earners and keep records of the levels of financial consumer indebtedness; Section 16(1)(a)-(b) of the *NCA* states that the NCR must promote financial inclusion of the poor and low-income earners by implementing educational measures which must enlighten financial consumers about the credit market so that financial consumers are better positioned to make well-informed financial decisions.

interviews to enhance financial consumer knowledge to encourage financial consumers to make sound financial decisions.<sup>453</sup> However, very few people know about the NCR and its functions, particularly, how it could well alleviate financial consumer over indebtedness by the credit providers.<sup>454</sup> Wentzel argues that there are relatively few low-income earners who are aware that the NCR must implement financial education to assist them to manage debt well as compared to the high number of over-indebted poor and low-income earners.<sup>455</sup> In this regard, the researcher submits that the NCR is not adequately promoting awareness of the credit market to enhance financial consumer's credit decision making so that financial inclusion for the poor and low-income earners is greatly promoted in South Africa.

The Financial Sector Conduct Authority (FSCA) is one of the regulators that exist to date to ensure, inter alia, consumer protection which includes financial consumer literacy and financial education.<sup>456</sup> Because the FSCA is a new regulator that has replaced the Financial Services Board (FSB) and commenced operating in April 2018, it has not done relatively much in as far as financial education is concerned. However, the FSCA embarked on a "Youth Empowerment Campaign" in June 2018 which concentrated on educating the youth on the importance of saving at a young age.<sup>457</sup>

However, South Africa still faces financial exclusion of the poor and low-income earners due to financial illiteracy of financial consumers.<sup>458</sup> The problem of financial literacy in

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<sup>453</sup> According to G Pearson G, Stoop PN and Kelly-Louw M "Balancing Responsibilities- Financial Literacy" 2017 *PER* 1, 25, the NCR plays an important role in ensuring financial inclusion for the poor and low-income earners in South Africa; According to Sibanda S and Sibanda T "Financial Education in South Africa: Overview of Key Initiatives and Actors" 2016 *International Labour Organisation* 1, 4, in 2013-2014, the NCR reached 25 million financial consumers through various financial education initiatives seeking to enhance financial literacy amongst the poor and low-income earners in South Africa. It can thus be said that these were great efforts by the NCR as approximately half of the total population of South Africa was reached.

<sup>454</sup> Wentzel A "Financial Literacy in South Africa" in Aprea C *et al* (eds) *International Handbook of Financial Literacy* (Springer Science+Business Media Singapore 2016) 329, 331.

<sup>455</sup> Wentzel "Financial Literacy in South Africa" 332.

<sup>456</sup> Section 57(b) of the *Financial Sector Regulation Act* 9 of 2017 (the *FSRA*).

<sup>457</sup> Financial Sector Conduct Authority 2018 *Celebrating Youth Month with Financial Education* <https://www.fscaconsumered.co.za/Pages/Celebrating-youth-month-with-financial-education.aspx> accessed 13 September 2018 page number unknown.

<sup>458</sup> Mondlana S "Role of Language in Financial Inclusion and Literacy" 2017/2018 *FSB Bulletin Quarter 4* (November 2018)16; Rootman C and Antoni X "Investigating Financial Literacy to Improve Financial Behaviour among Black Consumers" 2015 *Journal of Economic and Financial Sciences* 474, 475. According to Nanziri and Leibbrandt 2018 *South African Journal of Economic and*

South African emanates from lack of financial planning, knowledge and understanding of different financial products and services, and the inability to choose financial products and financial control by the poor and low-income earners.<sup>459</sup> Financial illiteracy combined with poor educational attainment by the poor and low-income earners could be the worst barrier to financial inclusion. This follows the fact that the poor and low-income earners have no understanding of banking services and products. As a result, they have no pressing need to have bank accounts heightening the chances of not saving money and their financial exclusion.<sup>460</sup>

The study by Kostov et al on the influence of the Mzansi accounts on financial services' access, revealed that financial literacy is an important determinant towards the decision by financial consumers to open a formal bank account so that financial consumers understand the implications thereof.<sup>461</sup> Financial illiteracy remains a contemporary challenge towards the attainment of financial inclusion because it is the poor and low-income earners who do not trust the formal banking sector and remain side-lined from the formal financial sector.<sup>462</sup>

Banking institutions and the other role players ought to do more in order to enhance financial consumer education. Although the *NCA*, among other things, provides the legislative framework for consumer education, it is noteworthy that such a framework does not make it mandatory for consumers to attend financial education seminars or financial literacy initiatives.<sup>463</sup> It could be argued that the problem of financial illiteracy is

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*Management Sciences* 6 and Moodley N "Improve Your Financial Literacy in 2017" *Fin24* (15 January 2017) page number unknown, financial literacy rates as per 2018 in South Africa stand at 51% of the total adult population.

<sup>459</sup> Ssebagala RA "Relieving Consumer Over indebtedness in South Africa: Policy Reviews and Recommendations" 2017 *Journal of Financial Counseling and Planning* 235,237; Sibanda and Sibanda 2016 *International Labour Organisation* 12.

<sup>460</sup> Wentzel JP, Diathab KS and Yadavallic VSS "An Investigation into Factors Impacting Financial Exclusion at the Bottom of the Pyramid in South Africa" 2016 *Development Southern Africa*, 203, 209.

<sup>461</sup> Kosto P, Gopinath AT and Kobina AS "Access to financial Services: The case of the 'Mzansi' Account in South Africa" 2015 *Review of Development Finance* 34, 37.

<sup>462</sup> Nanziri EL "Measuring and Profiling Financial Literacy in South Africa" 2018 *South African Journal of Economic and Management Sciences* 1, 3.

<sup>463</sup> Renke S "Measures in South African Consumer Credit Legislation Aimed at the Prevention of Reckless Lending and Over-Indebtedness: An Overview against the Background of Recent Developments in European Union" 2011 *Journal of Contemporary Roman-Dutch Law* 208, 219.

exacerbated by the fact that there exists a framework that merely provides for the need for financial education yet it does not place any obligation on financial consumers as parties to the credit market. In this way, the poor and low-income earners do not acquire financial education to assist them in making well-informed financial decisions, avoid over-indebtedness and thus promote financial inclusion in South Africa.

#### 4.2.3 Over-indebtedness

Over-indebtedness is a concept that relates to the financial consumer's inability to satisfy all accrued obligations under any credit agreement and/or facility to which the financial consumer is a party to in a timely manner.<sup>464</sup> According to the Finscope 2015 report, 87% of South Africans have formal banking accounts with formal banking institutions.<sup>465</sup> More so, only 44% of the financially included South Africans save money and 23% save through formal banks, 10% through stokvels while 11% save at home.<sup>466</sup> The poor and low-income earners who do not save attribute it to unemployment, lack of surplus income after deducting money for subsistence and high fees charged by banks for transacting.<sup>467</sup> As a result, such poor and low-income earners who do not save end up seeking credit from banks and other informal sources which they do not afford to pay when due thereby leading to over-indebtedness.

Most financial consumers face over-indebtedness as a result of job losses, illnesses and deaths of family members as well as relatives<sup>468</sup> which often requires emergency funds which heightens their debt and compromise their debt repayment ability.<sup>469</sup> Ssebagala<sup>470</sup> argues that other causes of over-indebtedness amongst the poor and low-income earners in South Africa are inevitable and avoidable. Additionally, for some consumers, over-

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<sup>464</sup> Section 79(1) of the *NCA*; De Wet S, Botha I and Booyens M "Measuring the Effect of the National Credit Act on Indebtedness in South Africa" 2015 *Journal of Economic and Financial Sciences* 83, 84.

<sup>465</sup> Finmark Trust *Finscope South Africa* 2015:8.

<sup>466</sup> Moyo S *et al* "Use and Impact of Savings Services among low Income People in South Africa" 2002 *MicroSave - Market-led Solutions for Financial Services* 1, 6; Coovadia *Finscope South Africa* 2017 2.

<sup>467</sup> Coovadia *Finscope South Africa* 2017 8.

<sup>468</sup> Ssebagala 2017 *Journal of Financial Counseling and Planning* 236.

<sup>469</sup> Ssebagala RA "What Matters More for South African Households' Debt Repayment Difficulties?" 2016 *Development Southern Africa* 757,758.

<sup>470</sup> Ssebagala 2017 *Journal of Financial Counseling and Planning* 235, 236.

indebtedness is as a result of inadequate finances to subsist throughout each month such that debt becomes a necessity to cover monthly expenditure like, inter alia, utility bills, school fees and food emergency with no initial intention of overspending.<sup>471</sup> In this way, the researcher proposes that savings accounts provided by banks be adopted by the poor and low-income earners. Savings accounts could help in ameliorating over-indebtedness because saved funds could provide a safety valve for consequences of unforeseen circumstances like emergency expenses and job losses as well as promote financial inclusion for the poor and low-income earners in South Africa.

The *NCA* regulates the amount of credit provided to financial consumers so as to prevent over-indebtedness amongst consumers.<sup>472</sup> At the same time, the *NCA* seeks to extend credit provision to the poor and low-income earners who were previously excluded from the financial system.<sup>473</sup> This follows the fact that there could be contradiction presented by the *NCA* by the aforementioned sections because while the other section seeks to extend credit allowance to the poor and low-income earners the other seeks to curb over-indebtedness.<sup>474</sup> In other words, although section 3(c) and section 79- 89 of the *NCA* define reckless credit, over-indebtedness and the procedures to handle situations of such, credit providers might, at the time of granting debt, be able to predict the consumer's ability to repay (considering the financial odds of the time).<sup>475</sup> However due to the socio-economic shocks (price hikes) in South Africa and other consumer emergencies like death and ill-health of family members, credit providers might be faced with default in payments by the financial consumer even when such a consumer had borrowed within his or her financial means.<sup>476</sup>

South Africa experiences a high rate of informal credit in the form of stokvels, loan sharks (who charge a lot of interest) and borrowings from family and friends.<sup>477</sup> This is because

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<sup>471</sup> Finmark Trust *Finscope South Africa* 20159; Cohen M "72% of South African Income Goes to Debt" *CompareGuru.Co.Za* (30 January 2018) page number unknown.

<sup>472</sup> Section 3(c)(i) of the *NCA*.

<sup>473</sup> Section 3(c)(ii) of the *NCA*.

<sup>474</sup> De Wet, Botha and Booyens 2015 *Journal of Economic and Financial Science* 88.

<sup>475</sup> Ssebagala 2016 *Development Southern Africa* 758.

<sup>476</sup> Ssebagala 2016 *Development Southern Africa* 758.

<sup>477</sup> Storchi S "Impact Evaluation of Savings Groups and Stokvels in South Africa: The economic and Social Value of Group-Based Financial Inclusion" *Finmark Trust* (September 2018) 3; Kessler *et al The Boston Consulting Group* 6.

most of these borrowings are taken for buying luxuries instead of starting a business or for carrying out anything that will generate more income for the financial consumers.<sup>478</sup> Informal credit systems remain unregulated in South Africa and unlike the formal credit facilities which are subject to interest restrictions like, for example, the *in duplum* rule,<sup>479</sup> they are a huge burden to poor and low-income financial consumers through high interest fees.<sup>480</sup> In this regard, the poor and low-income financial consumers become over-indebted and excluded from the formal financial sector.

#### 4.2.4 High bank fee structure

Although the rate of financial inclusion in South Africa is at 87% with the target of 90% by 2030,<sup>481</sup> high bank fees charged by banks to financial consumers could be a huge threat to the promotion of financial inclusion of the poor and low-income earners in South Africa.<sup>482</sup> Internationally, about 25% of the poor people who do not have bank accounts cite high bank fees as a deterrent to owning one due to unemployment.<sup>483</sup> Additionally, The Boston Consulting Group (BCG) argues that 40% of banking customers internationally complain about high bank fees which often leads to closing of bank accounts and the inability by the poor and low-income earners to open them.<sup>484</sup>

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<sup>478</sup> Kessler *et al* *The Boston Consulting Group* 6.

<sup>479</sup> According to section 103(5) of the *NCA*, the *in duplum* rule entails that arrear interest ceases to accrue once the sum of the unpaid accrued interest equals the amount of capital outstanding at the time (and not the amount of capital originally advanced); Kelly-Louw M “Better Consumer Protection under the Statutory *in duplum* rule” 2007 *SA Merc LJ* 337, 339.

<sup>480</sup> Verhoef G “Savings and Survival in a Modern African Economy: Informal Savings Organisations and Poor People in South Africa” 2001 *Historia* 519, 523; Wentzel JP, Diathab KS and Yadavallie VSS “An Investigation into Factors Impacting Financial Exclusion at the Bottom of the Pyramid in South Africa” 2016 *Development Southern Africa*, 203, 212.

<sup>481</sup> Finmark Trust *Finscope South Africa* 20159.

<sup>482</sup> Wentzel, Diathab and Yadavallie 2016 *Development Southern Africa* 212; Kessler K *et al* *The Boston Consulting Group* 5; Peyper L “High Fees Tops 6 Reasons Why South Africans Shun Banks” *Fin24* (5 May 2017) page number unknown; Allen F *et al* “The Foundations of Financial Inclusion: Understanding Ownership and Use of Formal Accounts” 2016 *Journal of Financial Intermediation* 1, 10.

<sup>483</sup> Demirguc-Kunt A and Klapper L “Measuring Financial Inclusion: The Global Findex Database” 2012 *The World Bank Policy Research Working Paper* 6025 1, 3.

<sup>484</sup> Kessler *et al* *The Boston Consulting Group* 8.

Kessler *et al*<sup>485</sup> argue that South African banking fees are high and four times higher than in other countries like Germany, Australia and India and as a result deter the poor and low-income earners from opening banking accounts. Financial consumers further complain about the loss of value of money left in bank accounts owing to high banks fees unlike withdrawing everything all at once and transact in cash which does not encourage saving and causes financial exclusion.<sup>486</sup> Louis and Chartier<sup>487</sup> argue that high fee structures in South Africa are perpetuated by the monopoly of banking ownership by the four major banks which include: ABSA, Nedbank, Standard Bank and First National Bank. As a result, bank ownership monopoly reduces competition as competition may benefit financial consumers since competition for clients often reduces bank fees.<sup>488</sup> High bank fees go against what financial inclusion intends to achieve for the poor and low-income earners bearing in mind that financially inclusive systems enable financial consumers to save and borrow, acquire assets, invest on education and venture into businesses in order to improve their socio-economic status.<sup>489</sup>

High bank fees have driven some financial consumers to insist on cash transactions so as to save on transaction costs.<sup>490</sup> This trend of withdrawing income immediately after receipt which is also known as utilising bank accounts as mailboxes<sup>491</sup> does not promote financial inclusion as it does not encourage saving. About 14 million South African adults withdraw their income upon receipt of which 6, 1 million are SASSA card holders while 8, 4 million are non SASSA holders.<sup>492</sup> It could be said that high bank fee structures are a deterrent to most poor and low-income people from being financially included and manage their savings promptly through keeping their income at the bank.

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<sup>485</sup> Kessler *et al* *The Boston Consulting Group* 8; Adam 2017 *6 Challenges to Financial Inclusion in South Africa* <https://www.weforum.org/agenda/2017/04/financial-inclusion-south-africa/> accessed 17 May 2018 page number unknown.

<sup>486</sup> Kessler *et al* *The Boston Consulting Group* 8.

<sup>487</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 177.

<sup>488</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 177-178.

<sup>489</sup> Ouma SA, Odongo TM and Were M "Mobile Financial Services and Financial Inclusion: Is it a Boon for Savings Mobilization?" 2017 *Review of Development Finance* 29, 30.

<sup>490</sup> Finmark Trust "Research Report on Mobile Money in South Africa" *Finscope South Africa* 2017 (30 September 2017) 24; Kessler K *et al* "Improving Financial Inclusion in South Africa" 2017 *The Boston Consulting Group* 2017 1, 3.

<sup>491</sup> Coovadia *Finscope South Africa* 2017 24.

<sup>492</sup> Coovadia *Finscope South Africa* 2017 25.

#### 4.2.5 Mistrust of the formal banking sector and the fear of fraud

With the high levels of financial illiteracy amongst the poor and low-income earners,<sup>493</sup> there is a huge mistrust of the banking sector by the majority of the poor and low-income earners in South Africa.<sup>494</sup> Ouma, Odongo and Were<sup>495</sup> argue that banking institutions ambush financial consumers into purchasing insurance products that are barely understood by such financial customers. This follows the fact that such provision of funeral policies and other insurance products to the poor exacerbates poverty and leaves the poor and low-income earners without any money to cater for daily needs.<sup>496</sup>

Additionally, Ikdal argues that some banking institutions started giving grant recipients funeral coverage and micro-loans to poor and low-income earners.<sup>497</sup> This increased the mistrust of dealings of banking institutions by the poor and low-income earners. Furthermore, the recent mismanagement and embezzlement of funds at the VBS Mutual Bank<sup>498</sup> is a case in point which exacerbates the mistrust that financial consumers have against banks in South Africa. In this regard, the VBS scandal may be a great factor in exacerbating the mistrust of the banking system by most poor and illiterate financial consumers. This may also follow the fact that due to financial consumers fear of losing funds like in the VBS scandal, financial consumers may prefer to transact in cash thereby defeating the benefits of saving and consequently defeating the promotion of financial inclusion.<sup>499</sup>

Most of the poor and low-income earners do not utilise facilities like online banking and mobile banking due to fears of fraudulent activities which are anyway rife in South Africa.<sup>500</sup> In this regard, most poor financial consumers then prefer to transact in cash and save less in the process. It is argued that the poor and low-income earners prefer

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<sup>493</sup> Mondlana *FSB Bulletin Quarter 4* 16.

<sup>494</sup> Demirgüç-Kunt A and Klapper L “Measuring Financial Inclusion: Explaining Variation in Use of Financial Services across and within Countries” 2013 *Brookings Papers on Economic Activity* 279, 309; Ikdal 2017 *World Economic Forum* 5; Kessler *et al The Boston Consulting Group* 8.

<sup>495</sup> Ikdal 2017 *World Economic Forum* 5.

<sup>496</sup> Ouma, Odongo and Were 2017 *Review of Development Finance* 29, 30.

<sup>497</sup> Ikdal 2017 *World Economic Forum* 5.

<sup>498</sup> Kgosana C and Afrika M “The Great VBS Bank Heist” *Sunday Times* (24 June 2018) 2; Masondo S and Van Rensburg D “How VBS was Plundered” *City Press* (24 June 2018) 1.

<sup>499</sup> Ikdal 2017 *World Economic Forum* 6; Kessler *et al The Boston Consulting Group* 8.

<sup>500</sup> Ikdal 2017 *World Economic Forum* 6.

transacting in cash due to strong beliefs that there is better recourse when dealing in cash rather than in internet and mobile banking.<sup>501</sup> Reliance on cash increases the propensity to spend impulsively cash would always be in the reach of the financial consumer. In this regard, the reliance on cash does not encourage saving of funds and also exposes the consumer to theft thereby defeating the promotion of financial inclusion.

Ikdal further argues that 40% of the poor and low-income earners prefer a banking system that has a sense of community touch or trust based systems like the stokvel because there is often trust amongst members in such savings groups which trust is believed to greatly avoid default payments.<sup>502</sup> In a stokvel, consumers create a pool of savings where members of the stokvel agree to contribute a certain amount of money which is later distributed after a certain period of time amongst the members of the stokvel. This initiative and greatly encourages saving.<sup>503</sup> Furthermore, the poor and low-income earners who prefer the stokvel cite language barriers as being one of the leading factor towards forming savings groups like the stokvel wherein local languages often understood by all members are used.<sup>504</sup> In this way, there are no complex terms or bank interest rates that require understanding which makes banking and saving via the stokvel much more preferable to most poor and low-income earners in South Africa. The stokvel is also preferable to the poor and low-income earners because there are no bank fees unlike in the formal banking system.<sup>505</sup>

#### 4.2.6 *Lack of documentation and high number of informal businesses*

Documentation required by banks to open bank accounts becomes an impediment to poor and low-income earners who do not possess such documentation.<sup>506</sup> Banks have the duty of, *inter alia*, identifying clients<sup>507</sup> before opening bank accounts as well keeping

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<sup>501</sup> Ikdal 2017 *World Economic Forum* 6.

<sup>502</sup> Ikdal 2017 *World Economic Forum* 7; Kessler *et al* *The Boston Consulting Group* 10; Storchi S "Impact Evaluation of Savings Groups and Stokvels in South Africa: The Economic and Social Value of Group-Based Financial Inclusion" *Finmark Trust* (30 October 2018) 84.

<sup>503</sup> Verhoef 2001 *Historia* 523.

<sup>504</sup> Verhoef 2001 *Historia* 524.

<sup>505</sup> Verhoef 2001 *Historia* 524.

<sup>506</sup> Ikdal 2017 *World Economic Forum* 8.

<sup>507</sup> See section 21 of the Financial Intelligence Centre Act (the *FICA*).

records of clients.<sup>508</sup> Amongst other requirements, banks require valid identity documents, bank statements, proof of income, proof of residence, a minimal balance which most poor and low-income earners often do not have.<sup>509</sup> In addition, the approval of new banking accounts often takes time. This difficulty is also exacerbated by the fact that most poor and low-income earners often require immediate cash for emergencies and the banking institutions often fail to satisfy this need due to the procedure prior to granting of loans.<sup>510</sup> In this regard, it could be argued that this encourages the growth of informal credit system of loan sharks whose interest rates are very high.<sup>511</sup> Additionally, loan sharks often offer immediate cash without lengthy procedures that are daunting to the poor and low-income earners in South Africa.

The often lengthy procedure by the banking system for loans and the requirements of documentation for opening bank accounts could push scores of people into the informal banking sector which often does not take long procedures to grant credit.<sup>512</sup> De Koker<sup>513</sup> argues that the more people use the informal banking sector, the more crime combating objectives of the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) takes place. This follows the fact that lengthy bank processes and requirements of documentation push criminals out of the formal banking sector into the informal sector. In this way, the crime combating units are presented with the challenge of having to investigate and prosecute offenders who make use of the illegal informal banking systems.<sup>514</sup> It is noteworthy that the formal banking sector keep track of all users of the banking system through the documentation required to open bank accounts and so forth. In this way, it is easier to keep track of illegal activities which could affect the integrity of the banking system, discourage many financial consumers from utilising it and consequently defeats efforts to promote financial inclusion.

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<sup>508</sup> See section 22 of the *FICA*.

<sup>509</sup> Ikdal 2017 *World Economic Forum* 9.

<sup>510</sup> Ikdal 2017 *World Economic Forum* 9.

<sup>511</sup> Ikdal 2017 *World Economic Forum* 9; Kessler *et al The Boston Consulting Group* 6.

<sup>512</sup> De Koker L "Money laundering control and suppression of financing of terrorism: Some thoughts on the impact of customer due diligence measures on financial exclusion" 2006 *Journal of Financial Crime* 26, 27.

<sup>513</sup> De Koker 2006 *Journal of Financial Crime* 27.

<sup>514</sup> De Koker 2006 *Journal of Financial Crime* 27.

South Africa is faced with high levels of informal businesses owing to high levels of unemployment.<sup>515</sup> In this regard, most people who conduct businesses that are not registered are left unable to open basic bank accounts because the formal banking sector requires documentation.<sup>516</sup> According to Statistics South Africa, over 1, 5 million South Africans are running small businesses or engaged in other informal businesses.<sup>517</sup> The researcher thereby proposes the relaxation of stringent rules for opening banking accounts especially for unregistered small business so as to promote financial inclusion of such low-income groups.

#### *4.2.2 Lack of specific and detailed financial inclusion legislative framework*

Financial inclusion in South Africa is scattered around a number of legislations and there is no statute that deals specifically and well detailed on how financial inclusion for the poor and low-income earners ought to be promoted. In this regard, this creates confusion when enforcing the promotion of financial inclusion. The FSR Act provides for the establishment of the Prudential Authority (PA)<sup>518</sup> whose functions are, inter alia, to protect financial institutions and financial markets.<sup>519</sup> On the other hand, the FSCA<sup>520</sup> is obliged to enhance and promote the viability of financial markets in South Africa and promote financial inclusion.<sup>521</sup> The researcher submits that even with the introduction of the *FSR Act* which does not provide with adequate detail how financial inclusion must be promoted, this could persist the problem of lack of adequate statutory regulation for financial inclusion. As a result, it remains to be seen whether the current legislation<sup>522</sup> that is not express on the promotion of financial inclusion is robust enough to promote financial inclusion for the poor and low-income earners in South Africa.

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<sup>515</sup> Ikdal 2017 *World Economic Forum* 9.

<sup>516</sup> See section 21 of the *FICA*.

<sup>517</sup> Kessler *et al The Boston Consulting Group* 14; Ikdal 2017 *World Economic Forum* 9.

<sup>518</sup> Section 32(1) of the *Financial Sector Regulation Act (FSR Act)*.

<sup>519</sup> Sections 33(a)-(b) of the *FSR Act*.

<sup>520</sup> See Section 56(1) of the *FSR Act*.

<sup>521</sup> See Section 57(b) of the *FSR Act*.

<sup>522</sup> Inter alia, *FSR Act, CPA, NCA*.

#### 4.2.8 Uneven bank concentration

Louis and Chartier argue that the South African banking sector has improved since 1994 considering the number of bank branches as well as Automated Teller Machine (ATM) distribution with a network of over 5,000 branches and nearly 30,000 ATMs around South Africa.<sup>523</sup> However, there is an uneven balance and concentration of banking institutions across the Republic with most banking infrastructure and personnel being located in Gauteng to the exclusion of most rural provinces like the North West, Limpopo and the Eastern Cape.<sup>524</sup> This follows that most headquarters of banking institutions are located in Johannesburg to the exclusion of other provinces.<sup>525</sup> In this way, it can be said that the banking sector of South Africa is centralised and this situation exacerbates financial exclusion in other provinces.

#### 4.3 Conclusion

Although some progress has been made towards the promotion of financial inclusion in South Africa, impediments towards the full realisation of financial inclusion still exist. Firstly, financial exclusion may be attributed to unemployment and poverty which makes poor and low-income earners to be excluded outside the formal banking sector as a result of the lack of funds. Secondly, financial consumer illiteracy makes financial consumers to make ill-informed financial decisions which often lead them into over-indebtedness. Additionally, over-indebtedness caused by not saving is a factor as well towards financial exclusion of many poor and low-income South Africans.<sup>526</sup> Moreover, high bank fees, mistrust of the banking sector, the fear of fraud through using some banking products like internet banking, lack of adequate documentation by prospective financial consumers, uneven bank concentration and lack of an exclusive financial inclusion statute are, inter

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<sup>523</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 179.

<sup>524</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 180.

<sup>525</sup> Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 180.

<sup>526</sup> Klapper L and Singer D “The Role of Demand-Side Data – Measuring Financial Inclusion from the Perspective of Users of Financial Services” 2017 IFC Bulletins Chapters 1, 13. Maziya M and Zwane T “Financial Inclusion is More Than Just Access to Credit” *Mail & Guardian* (3 November 2017) page number unknown.

alia, challenges which may bar the achievement of the 90% targeted financial inclusion in South Africa by 2030.<sup>527</sup>

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<sup>527</sup> National Planning Commission “National Development Plan Vision 2030” *National Planning Commission* (11 Nov 2011)129.

## CHAPTER FIVE

### RECOMMENDATIONS AND CONCLUSION

#### 5.1 Introduction

South Africa aims to achieve 90% financial inclusion for all members of the society by 2030.<sup>528</sup> However, there are various barriers to the achievement of financial inclusion for the poor and low-income earners in South Africa. Some of these challenges hindering the attainment of financial inclusion are unemployment and poverty,<sup>529</sup> financial illiteracy,<sup>530</sup> high bank charges,<sup>531</sup> over indebtedness,<sup>532</sup> mistrust of the banking sector,<sup>533</sup> lack of specific legislation for financial inclusion, uneven bank concentration<sup>534</sup> as well lack of proximity of banks and ATMs for people staying in remote areas.<sup>535</sup> The problem of financial exclusion is more apparent in the poor and low-income earners because of their lack of financial education which reduces their chances at formal employment.<sup>536</sup> Additionally, financial illiteracy reduces trust and confidence of the banking sector as well as limits basic understanding of the products and services offered by the formal banking

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- <sup>528</sup> Manuel TA National "National Development Plan Vision 2030" *National Planning Commission* (11 November 2011) 129.
- <sup>529</sup> Kessler K *et al* "How to Create and Sustain Financial Inclusion" 2017 *Boston Consulting Group* 1, 4 argue that those who are unemployed and poor barely afford necessities such as food and clothing. This means that they can barely save money. This also means that they cannot afford bank accounts nor save any money due to lack of surplus beyond sustenance. Louis L and Chartier F "Financial Inclusion in South Africa: An Integrated Framework for Financial Inclusion of Vulnerable Communities in South Africa's Regulatory System reform" 2017 *Journal of Comparative Urban Law and Policy* 177, 182 argue that South Africa's banking system is a highly concentrated source of wealth such that only the high income earners mostly have access to capital and bank accounts to the exclusion of the unemployed and poor.
- <sup>530</sup> Rootman C and Antoni X "Investigating Financial Literacy to Improve Financial Behaviour Among Black Consumers" 2015 *Journal of Economic and Financial Sciences* 474, 475; Wentzel JP, Diathab KS and Yadavallie VSS "An Investigation into Factors Impacting Financial Exclusion at the Bottom of the Pyramid in South Africa" 2016 *Development Southern Africa* 203, 212.
- <sup>531</sup> Wentzel, Diathab and Yadavallie 2016 *Development Southern Africa*, 203, 212.
- <sup>532</sup> Ssebagala RA "What Matters More for South African Households' Debt Repayment Difficulties?" 2016 *Development Southern Africa* 757,758.
- <sup>533</sup> Kessler *et al* 2017 *Boston Consulting Group* 4.
- <sup>534</sup> Louis L and Chartier F "Financial Inclusion in South Africa: An Integrated Framework for Financial Inclusion of Vulnerable Communities in South Africa's Regulatory System Reform" 2017 *Journal of Comparative Urban Law and Policy* 170, 181; Kessler *Boston Consulting Group* 4.
- <sup>535</sup> Mishi S, Vacu NP and Chipote P "Impact of Financial Literacy in Optimising Financial Inclusion in Rural South Africa: Case Study of the Eastern Cape Province" 2014 *University of Fort Hare* 1, 7-8.
- <sup>536</sup> Mishi, Vacu and Chipote 2014 *East London University of Fort Hare* 22.

sector. Owing to this background, South Africa needs to overcome these challenges if financial inclusion for the poor and low-income earners is to be achieved.

## **5.2 Recommendations**

The researcher provides some recommendations that are aimed promoting financial inclusion of the poor and low-income earners in South Africa. The recommendations are explained as indicated below.

Accordingly, it is recommended that there must be:

### **(a) the adoption of robust financial literacy programs by the government, banking institutions and other stakeholders in South Africa**

The *Financial Sector Regulation Act*<sup>537</sup> was enacted to, *inter alia*, provide current and prospective financial customers with financial education programs to enhance financial literacy which empowers financial consumers to make sound financial decisions, avoid indebtedness and promote financial inclusion for all especially, the poor and low-income earners.<sup>538</sup> The *FSR Act* obliges the Financial Sector Conduct Authority (FSCA) to provide financial education and promote financial programs to financial consumers.<sup>539</sup> Additionally, *inter alia*, *National Credit Act*<sup>540</sup> seeks to balance the negotiating power of the financial consumers through promoting financial education to financial consumers.<sup>541</sup> However, the researcher submits that a corresponding obligation on attaining financial education should be imposed on financial consumers. This follows the fact that the *NCA* and the *FSR Act* do not place an obligation on financial consumers to get financial education. It is submitted that financial consumers must get financial education in order to enhance their understanding of financial services and products so as to make well-

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<sup>537</sup> 9 of 2017 (*FSR Act*), see section 57.

<sup>538</sup> Godwin A "Introduction to Special Issue – The Twin Peaks Model of Financial Regulation and Reform in South Africa" 2018 *Law and Financial Markets Review* 151, 152.

<sup>539</sup> Section 57(b)(ii) of the *FSR Act*.

<sup>540</sup> Act 38 of 2005 (*NCA*), see section 3(e).

<sup>541</sup> Pearson G, Stoop PN and Kelly-Louw M "Balancing Responsibilities- Financial Literacy" 2017 *PER* 1, 21

informed financial decisions. The FSCA as one of the regulators mandated with ensuring that financial literacy is improved in South Africa,<sup>542</sup> has so far embarked on a “Youth Empowerment Campaign” appealing to about 3000 youths in Gauteng and encouraged them to save money for future financial obligations and raising awareness on the dangers of overspending and indebtedness.<sup>543</sup> More could be done to alleviate the problem of over indebtedness which manifests as a result of financial illiteracy.<sup>544</sup> In this regard, the researcher recommends that more initiatives must be launched, especially, for the youth so that the problem of financial illiteracy is curbed at root level. The high school curriculum should include a mandatory subject on financial literacy to encourage saving and wise spending to avoid over-indebtedness. Additionally, a financial literacy subject could impart knowledge to the youth on saving so that when the majority enrol at tertiary institutions, they already have some background of financial responsibility.

According to Ssebagala,<sup>545</sup> recently graduated South Africans seem to contribute vastly to the overall indebtedness apparent in South Africa. Mostly, Ssebagala argues that over-indebtedness of graduates is a result of newly acquired lifestyle needs, demands for leisure, and unforeseen circumstances such as loss of a family member, excessive consumption and socio-economic shocks.<sup>546</sup> The South African society does not have a money-saving culture.<sup>547</sup> After completion of tertiary education, most graduates, join the South African society which does not embrace the notion of saving<sup>548</sup> through the purchasing of luxurious cars and the renting of expensive apartments exacerbating over-indebtedness. Additionally, the difficulty to save in South Africa is influenced by low-

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<sup>542</sup> Section 57b (ii) of the *FSR Act*.

<sup>543</sup> Financial Sector Conduct Authority 2018 *Celebrating Youth Month with Financial Education* <https://www.fscaconsumered.co.za/Pages/Celebrating-youth-month-with-financial-education.aspx> accessed 11 October 2018 page number unknown.

<sup>544</sup> Gathergood J “Self-Control, Financial Literacy and Consumer Over-Indebtedness” 2011 *Journal of Economic Psychology* 1, 3.

<sup>545</sup> Ssebagala RA *The Dynamics of Consumer Credit and Household Indebtedness in South Africa* (Doctor of Philosophy University of Cape Town 2014) 1, 119.

<sup>546</sup> Ssebagala *The Dynamics of Consumer Credit and Household Indebtedness in South Africa* 119; Ssebagala R “What Matters More for South African Households’ Debt Repayment Difficulties?” 2016 Centre for Social Science Research 1, 5.

<sup>547</sup> Mishi S “Trends and Determinants of Household Saving in South Africa” held at The Catholic University of Eastern Africa 1st Annual International Interdisciplinary Conference (26-30 June 2012 Nairobi, Kenya) 1-31, 9.

<sup>548</sup> Kessler *et al* 2017 *Boston Consulting Group* 7.

returns on savings offered by banking institutions<sup>549</sup> which perhaps helps perpetuate the desire by most South Africans to spend instead of saving. The researcher recommends that the Department of Education must cooperate with banking institutions and other role players to formally include a compulsory financial literacy subject in tertiary educational institutions whose mandate would be educating prospective graduates on wise spending. This could alleviate the high levels of indebtedness prevalent in South Africa today.<sup>550</sup>

**(b) the reduction of bank charges by banking institutions and offering of government subsidies for poor and low-income earners when opening bank accounts**

South African bank charges are very high and argued to be four times higher than other countries like Germany, Australia and India.<sup>551</sup> High bank charges discourage the poor, low-income earners, unemployed and even those engaged in small scale businesses from being financially included as they lack income to sustain bank accounts.<sup>552</sup> Small to medium enterprises mostly owned by the low-income earners also face exclusion in the South African formal banking sector because most financial institutions regard them as high risk borrowers due to limited funds and their propensity to default on loan payments.<sup>553</sup> The emergence of the Mzansi account (which was a low on bank fees account) in 2004 greatly increased inclusion of the poor into the financial system of the country.<sup>554</sup> However, due to the prevalent reliance on cash transactions which do not encourage saving, many low-income and poor segments of the society overspend and incur debt and are left without funds. The low-returns on savings has reduced the adoption

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<sup>549</sup> Kessler *et al* 2017 *Boston Consulting Group* 7.

<sup>550</sup> Ssebagala RA "Relieving Consumer Over-indebtedness in South Africa: Policy Reviews and Recommendations" 2017 *Journal of Financial Counselling and Planning* 235, 239.

<sup>551</sup> Kessler *et al* *The Boston Consulting Group* 8; Adam 2017 *6 Challenges to Financial Inclusion in South Africa* <https://www.weforum.org/agenda/2017/04/financial-inclusion-south-africa/> accessed 17 May 2018 page number unknown.

<sup>552</sup> The World Bank "Achieving Effective Financial Inclusion in South Africa: A Payments Perspective" *The World Bank* 2017 (November 2017) 65; Kessler *et al* 2017 *Boston Consulting Group* 8.

<sup>553</sup> E Mahembe "Literature Review on Small and Medium Enterprises' Access to Credit and Support in South Africa" 2011 *Underhill Corporate Solutions* 1, 10.

<sup>554</sup> Tita AF and Aziakpono MJ "The Effect of Financial Inclusion on Welfare in Sub-Saharan Africa: Evidence from Disaggregated Data" 2017 *Economic Research Southern Africa* 1, 9.

of the Mzansi Account amongst most poor people in South Africa.<sup>555</sup> The researcher recommends that the government should subsidise banking institutions so that they offer free fee accounts for the poor and low-income earners and offer an incentive for opening a new account instead of the minimum balance requirement. An income range must be determined by the government, banking institutions and other relevant stakeholders. For example, the upper-bound poverty line<sup>556</sup> of R1 183<sup>557</sup> may be utilised to gauge the income range that qualifies under the free charge accounts tailored for the poor and low-income earners. This will encourage the poor and low-income earners to open free fee accounts in order to deposit and receive their low-income in these accounts which could serve as good saving mechanisms.

**(c) an amendment of the NCA and the FSRA**

The NCA was enacted to, *inter alia*, provide and extend credit provision to everyone in South African especially the poor and low-income earners, curb reckless credit<sup>558</sup> and prevent over indebtedness.<sup>559</sup> However, section 3(a) of the NCA seeks to extend credit to the poor and low-income earners while section 81 of the NCA seeks to curb the granting of reckless credit by credit providers. In other words, the NCA overlooked the fact that at the time of granting credit, credit providers can conduct an assessment<sup>560</sup> of the financial consumer's debt repayment abilities to ascertain repayment ability of consumers. Nevertheless, after the financial consumer receives credit and with the time, economic shocks and inflation experienced internationally and in South Africa, often renders

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<sup>555</sup> The World Bank "Achieving Effective Financial Inclusion in South Africa: A Payments Perspective" *The World Bank* (November 2017) 65; Kessler *et al* 2017 *Boston Consulting Group* 8.

<sup>556</sup> Lehohla P "Methodological Report on Rebasing of National Poverty Lines and Development of Pilot Provincial Poverty Lines" 2015 *Statistics South Africa Technical Report* 1, 3, Poverty lines are measurements established as a minimum socially acceptable standard for a set welfare indicator to separate the poor from the wealthier and determine the different levels of poverty as intensities of poverty differ.

<sup>557</sup> Statistics South Africa "National Poverty Lines" *Statistics South Africa Statistical Release* (31 July 2018) 3.

<sup>558</sup> Section 81 of the NCA.

<sup>559</sup> Section 79 of the NCA.

<sup>560</sup> See section 81 of the NCA which obligates the credit provider to ensure that the financial consumer understands the terms of a contract when it comes to rights and obligations and credit provider to conduct a debt repayment history of such a consumer.

financial consumers unable to pay back their loans.<sup>561</sup> According to Statistics South Africa, consumer price inflation rates stand at about 5%.<sup>562</sup> These figures could help when making a credit assessment to alleviate consumer over-indebtedness by allowing credit providers to make a better informed assessment

The researcher recommends that when credit providers carry out assessments on financial consumers' repayment abilities, they should take into consideration inflation rates. This means that if, for example, a financial consumer who acquires credit through the purchase of a motor vehicle with a monthly instalment of R6500, the 5% interest allowance be added to the instalment price so that the creditor is protected against being a credit delinquent as a result of circumstances beyond his or her control. The researcher further suggests that for purposes of fairness, and in case inflation rates drop, a second assessment of fairness be conducted after completion of payment to ensure that should the creditor be prejudiced, a sum be paid back to them.<sup>563</sup> Equally, where it becomes apparent that there has been an underpayment due to inflation rising more than had been anticipated in the initial assessment, such an assessment will help the credit provider recover such a deficit. Put differently, the researcher recommends section 81 of the *NCA* be amended to allow for two assessments; one before contracting and one after all obligations have been met under the contract to give allowance for economic shocks beyond the financial consumer's control.

The *FSR Act* was enacted to, *inter alia*, establish a regulatory and statutory framework that promotes financial inclusion.<sup>564</sup> The *FSR Act* also provides that the PA is obligated to support financial inclusion in South Africa.<sup>565</sup> Additionally, the *FSR Act* further provides that the FSCA must promote financial inclusion.<sup>566</sup> Furthermore, the *FSR Act* establishes a Financial System Council of Regulators who must, *inter alia*, establish sub-committee groups to deal with financial inclusion.<sup>567</sup> There are no other sections in the *FSRA* which

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<sup>561</sup> Ssebagala 2016 *Development Southern Africa* 758.

<sup>562</sup> Statistics South Africa "Consumer Price Index" *Statistics South Africa Statistical Release* (22 August 2018) 3.

<sup>563</sup> Section 81 of the *NCA* assessment to prevent reckless credit.

<sup>564</sup> Section 7 of the *FSR Act*.

<sup>565</sup> Section 34(e) of the *FSRA*.

<sup>566</sup> Section 58(e) of the *FSRA*.

<sup>567</sup> Section 81(f) of the *FSR Act*.

expressly seek to promote financial inclusion. However, there are other provisions of the *FSR Act* from which it could be implied that the *FSR Act* promotes financial inclusion.<sup>568</sup> Apart from the stated, there are no express provisions contained within the *FSR Act* which provide for the promotion of financial inclusion. The researcher submits that there are no express provisions in the *FSR Act* which specify with adequate detail how financial inclusion should be promoted. The researcher recommends that the *FSR Act* must be amended to provide a clear and detailed framework which states how financial inclusion must be promoted. Without such an amendment, the researcher submits that it remains difficult to interpret how financial inclusion should be promoted as per the *FSR Act*.

**(d) the rebuilding banking institutions' integrity by the South African Reserve Bank (SARB) and relevant stakeholders in order to build trust and boost financial consumer confidence in the banking sector**

Most poor and low-income earners in South Africa have a strong sense of mistrusting the formal banking system which contributes to the high levels of financial exclusion.<sup>569</sup> This follows the fact that most financially illiterate consumers do not trust the banking sector and consequently do not open bank accounts. The formal banking system is distrusted for, *inter alia*, having targeting illiterate and vulnerable grant recipients in the past into accepting financial products like funeral cover which left the poor and low-income earners with hardly any income to cater for basic needs.<sup>570</sup> The Venda Building Society Mutual Bank (VBS)'s embezzlement and mismanagement of depositor's funds<sup>571</sup> has worsened

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<sup>568</sup> Section 34(a) of the *FSR Act* states that the PA must supervise banking institutions that provide financial services and products. This could imply that the PA ensures fair, competitive, efficient access of banking institutions to everyone, especially the poor and low-income earners. Also, section 58(1)(a) of the *FSR Act* states that the FSCA must regulate and supervise the conduct of financial institutions. This could mean that the *FSR Act* seeks to promote financial inclusion through exercising an oversight on the functioning of financial institutions in their treatment of financial consumers to which they tender financial services.

<sup>569</sup> Schmulow AD "Curbing Reckless and Predatory Lending: A Statutory Analysis of South Africa's National Credit Act" 2017 *University of Western Australia-Faculty of Law Research Paper* 220, 8; Ikdal A "6 Challenges to Financial Inclusion in South Africa" 2017 *World Economic Forum* 1, 5; Kessler K *et al* "Improving Financial Inclusion in South Africa" *The Boston Consulting Group* (April 2017) 8, 11, 15.

<sup>570</sup> Ikdal 2017 *World Economic Forum* 5.

<sup>571</sup> Kgosana C and Afrika M "The Great VBS Bank Heist" *Sunday Times* (24 June 2018) 2; Masondo S and Van Rensburg D "How VBS was Plundered" *City Press* (24 June 2018) 1.

the mistrust of banking institutions by the poor sections of the society. Given this background, the researcher submits that the formal banking system could be losing trust and confidence amongst the poor and low-income earners most of whom are illiterate. De Koker and Jentzsch<sup>572</sup> argue that financial inclusion and financial integrity are interdependent and interrelated because for a country to achieve financial inclusion, such a country must have a highly trusted and respected financial sector. The researcher supports De Koker and Jentzsch in this regard.

The researcher recommends that the SARB and other relevant stakeholders intervene to regulate and adequately supervise the functioning banks to ensure that financial consumers are protected. Banking institutions are public companies<sup>573</sup> which should render services in a transparent and fair manner to all members of the society.<sup>574</sup> For the promotion of financial inclusion for all, government needs to intervene to restore the integrity of the banking system which is crucial for financial inclusion as the poor and low-income earners will be encouraged to bank. Issues of mismanagement of funds also need thorough follow up by the relevant authorities so that justice may be done which will greatly help increase trust in the formal financial banking sector and equally improve financial inclusion in South Africa

**(e) *proximity of Banks and Automated Teller Machines (ATMs) to the people who reside in remote areas in order to promote their access to basic banking services***

South Africans, especially those residing in remote (rural) areas are faced with problems of proximity of bank branches and ATMs.<sup>575</sup> Most banking institutions and ATMs are concentrated in urban to peri-urban areas to the exclusion of the remote areas and side-

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<sup>572</sup> De Koker L and Jentzsch J “Financial Inclusion and Financial Integrity: Aligned Incentives?” 2013 *World Development* 267, 277.

<sup>573</sup> Section 1 of the Banks Act 90 of 1989 (*Banks Act*).

<sup>574</sup> The Banking Association of South Africa “Code of banking Practice” *The Banking Association of South Africa* 20121, 3.

<sup>575</sup> Rouse M and Verhoef G “Mobile Banking in Sub-Saharan Africa: Setting the Way towards Financial Development” 2017 *Munich Personal RePEc Archive* 1, 10.

lining those residing in rural areas from accessing basic banking services.<sup>576</sup> According to 2014 statistics, on average, there are 3, 44 branches and 20, 81 ATMs in every 1000 km in urban to peri-urban areas.<sup>577</sup> Comparing with other BRICS countries(Britain, Russia, India and China), South Africa ranks the lowest in terms of the number of available bank branches and ATMs per 1000 km and 100 000 adults in urban areas.<sup>578</sup> Owing to this, most people residing in remote areas have to travel long distances to access either a bank branch or simply an ATM for the purposes of banking. In some rural areas, First National Bank (FNB) has launched non-cash dispensing ATMs which issue out slips redeemable at tuck shops for actual cash in order to ameliorate the challenge of financial exclusion.<sup>579</sup> However, this initiative fails to promote financial inclusion of those residing in the remote areas owing to the rigid operating hours of most tuck shops and failure to give out larger amounts of cash as ATMs would.<sup>580</sup>

The researcher recommends that more poor and low-income earners residing in remote areas must adopt mobile banking as well as other digital platforms of banking so that they can make and receive payments more conveniently as well as send money faster.<sup>581</sup> Mobile banking allows users to deposit money which is converted to a stored value, which can be transferred to another user, withdrawn or kept for purposes of saving.<sup>582</sup> Mobile banking and Internet banking are best recommended for people who live in the remote areas to defeat distance barriers to financial inclusion. Mobile and Internet banking could remedy the challenge of having to rush to malls before closure because even though some ATMs may be operational for 24 hours, the malls in which most of them are situated tend to close. Additionally, it is recommended that banking institutions must ensure that all ATMs are located outside the areas where there is no access to ATMs after normal

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<sup>576</sup> The World Bank *The World Bank* 69.

<sup>577</sup> The World Bank *The World Bank* 69.

<sup>578</sup> The World Bank *The World Bank* 70.

<sup>579</sup> Writer S "FNB Launches Non-Cash Dispensing ATMs for Rural South Africa" *BusinessTech* (24 May 2017) page number unknown.

<sup>580</sup> National Credit Regulator "The Role of the ATM in Driving Financial Inclusion Worldwide" 2017 *The National Credit Regulator White Paper* 1, 6.

<sup>581</sup> Ozili PK "Impact of Digital Finance on Financial Inclusion and Stability" 2018 *Borsa Istanbul Review* 1, 2-4; Lawack VA "Mobile Money, Financial Inclusion and Financial Integrity: The South African Case" 2013 *Washington Journal of Law, Technology & Arts* 317, 321.

<sup>582</sup> Chigada JM and Hirschfelder B "Mobile Banking in South Africa: A Review and Directions for Future Research" 2017 *South African Journal of Information Management* 1, 2.

trading hours of malls. The researcher further recommends that more banks be built in remote areas to provide the access to services and products in the same conditions as every financial consumer around the South Africa to promote for the poor and low-income earners.

**(f) the encouragement of stokvels amongst poor and low-income earners in order to promote financial inclusion of the poor and low-income earners**

It is alleged that 40% of the poor and low-income earners in South Africans prefer community based banking systems which most users regard as free of fraud, cost effective and less procedural which is not time consuming.<sup>583</sup> The stokvel is one such practice. Stokvels form an informal part of the banking system in South Africa and are part of the rotating savings and credit associations (ROSCAs).<sup>584</sup> Stokvels operate under the auspices of National Stokvel Association of South Africa (NASASA) which was formed in 1988.<sup>585</sup> There are four types of stokvels which serve the socio-economic needs of the poor and low-income earners in South Africa.<sup>586</sup> These include; savings stokvels whose mandate is saving, burial stokvels whose main purpose is to provide financial support to its members during death of family members, investment stokvels which accumulate capital by investing in businesses and high budget stokvels which are used by high income earners for pure investment.<sup>587</sup> Stokvels are favoured by most poor and low-income earners who cannot access the formal banking system due to ,*inter alia*, use of preferred language, no formal documentation required, no bank fees and their trustworthiness.<sup>588</sup>

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<sup>583</sup> Ikdal 2017 *World Economic Forum* 6; Kessler et al 2017 *The Boston Consulting Group* 8.

<sup>584</sup> Matuku S and Kaseke E "The Role of Stokvels in Improving People's Lives: The Case in Orange Farm, Johannesburg, South Africa" 2014 *Social Work* 504, 505.

<sup>585</sup> Lukhele A "Three Decades of Stokvel Banking" *National Stokvel Association of South Africa* (23 May 2018) 1, 7.

<sup>586</sup> Storchi S "stokvel of Savings Groups and Stokvels in South Africa: The Economic and Social Value of Group-Based Financial Inclusion" *Finmark Trust* (30 September 2018) 1, 10.

<sup>587</sup> Matuku and Kaseke 2014 *Social Work* 506.

<sup>588</sup> Lukhele A "Three Decades of Stokvel Banking" *National Stokvel Association of South Africa* (May 2018) 12; Matuku and Kaseke 2014 *Social Work* 508.

The researcher recommends that the stokvel practice must be formalised. This suggests that financial consumers who choose to join stokvels should be afforded the same protection as those who bank through the formal banking system so that in the case of embezzlement of funds by other members, other members remain protected. Stokvels have existed since 1980's<sup>589</sup> which suggests that they are a banking practice which promotes financial inclusion of the poor and low-income earners in South Africa. Ultimately, stokvels ensure that the socio-economic welfare of South Africans is well taken care of which anyway is one aim of financial inclusion through the formal banking sector.<sup>590</sup> The researcher submits that encouraging more poor and low-income earners to belong to a stokvel could help promote financial inclusion. Additionally, this could help alleviate poverty and promote the socio-economic welfare of most poor people in remote areas. This follows the fact that South Africa being a developing country may take a long time to be able to provide infrastructure for bankers in remote areas. Owing to this, the stokvel may be a great solution to promote financial inclusion for the poor and low-income earners in South Africa.

**(g) *the enactment of legislation specifically and expressly dealing with financial inclusion in South Africa***

Financial inclusion is poorly regulated in various legislation in South Africa. This may cause uncertainties, confusion and problems of double jeopardy to the courts as no clear legislation promotes financial inclusion with adequate details as to how such promotion should be carried out.

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<sup>589</sup> National Stokvel Association of South Africa *History (NASASA)* year unknown <http://nasasa.co.za/site/> accessed 10 October 2018 page number unknown; Verhoef G "Savings and Survival in a Modern African Economy: Informal Savings Organisations and Poor People in South Africa" 2001 *Historia* 519, 523.

<sup>590</sup> Adam 2017 6 *Challenges to Financial Inclusion in South Africa* <https://www.weforum.org/agenda/2017/04/financial-inclusion-south-africa/> accessed 17 May 2018 page number unknown; Kessler K *et al The Boston Consulting Group* 5.

The *NCA*<sup>591</sup> provides for financial inclusion where it, *inter alia*, makes provision for the extension of credit to the poor and low-income earners who could not access credit in the past.

The *Consumer Protection Act*<sup>592</sup> establishes a legal framework for the achievement and maintenance of a consumer market that is fair, accessible and responsible for the benefit of all consumers including financial consumers.

The Financial Sector Regulation Act<sup>593</sup> provides for the support and promotion of financial inclusion but not as the main purpose of its enactment nor with adequacy.

The researcher recommends that legislation be enacted primarily for the promotion of financial inclusion for the poor and low-income earners in South Africa. Such legislation must provide in clear detail how financial inclusion should be promoted and who should be primarily responsible. In addition, such legislation should provide guidelines which will help to determinate whether financial inclusion has indeed been promoted and achieved in South Africa in the coming years.

### **5.3 Conclusion**

For South Africa to achieve 90% financial inclusion, some measures must be taken into consideration by the government and other relevant stakeholders. Firstly, robust financial literacy programs need to be initiated by the government and relevant stakeholders. Secondly, the current high bank fee structure needs to be reduced by the banking sector. Alternatively, the *NCA* must be mandated to reduce over indebtedness through carrying out two credit repayment assessments as discussed in paragraph (c) of chapter five of this dissertation. Moreover, the government and relevant stakeholders must protect and enhance the integrity of banking institutions. Additionally, the government and other relevant stakeholders must build more banking institutions to promote access of basic

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<sup>591</sup> Section 3(a) of the National Credit Act 34 of 2005 (the *NCA*).

<sup>592</sup> See section 3(1)(a) of the *Consumer Protection Act* 68 of 2008 (the *CPA*).

<sup>593</sup> 17 of 2017 section 34(1)(e) states that the Prudential Authority must support financial inclusion. Section 58(1)(i) provides for the monitoring of financial institutions to make sure that when they conduct their business, they should make sure that they treat financial consumers fairly and at the same time checking the appropriateness of financial products so that such products meet the needs of different financial consumers.

banking services to financial consumers residing in remote areas. Furthermore, stokvels must be encouraged among the poor and low-income earners and formalised in order to protect and cater for the banking needs of the poor and low-income earners, especially, those residing in remote areas. Lastly, specific legislation that deals with financial inclusion must be enacted in order to curb uncertainties, confusion and problems of double jeopardy to the courts to consequently achieve financial inclusion of the poor and low-income earners in South Africa.

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## ***LIST OF ABBREVIATIONS***

ABSA	Amalgamated Banks of South Africa
ADB	Asian Development Bank Institute
ATM	Automated Teller Machine
BASA	Banking Association of South Africa
BRICS	Brazil, Russia, India, China and South Africa
ERSA	Economic Research Southern Africa
FNB	First National Bank
FSB	Financial Services Board
FSCA	Financial Sector Conduct Authority
IJRESS	Internal Journal of Research in Economics and Social Sciences
INFE	International Network on Financial Education
MFRC	Micro Finance Regulatory Council
NCFEC	National Treasury and the National Consumer Financial Education Committee
NCR	National Credit Regulator
NCT	National Consumer Tribunal
NDP	National Development Plan
OECD	Organisation for Economic Co-operation and Development
PA	Prudential Authority
PER/PELJ	Potchefstroom Electronic Law Journal
PCAO	Provincial Consumer Affairs Offices

SADC	Southern African Development Community
SA Merc LJ	South African Mercantile Law Journal
SARB	South African Reserve Bank
SBSA	Standard Bank of South Africa
VBS	Venda Building Society
W&RSETA	Wholesale and Retail Sector Education and Training Authority
St. Louis U. Pub	Saint Louis Public Law Review 24