A comparative statutory analysis of the use and regulation of mobile money to promote financial inclusion for the poor in Zimbabwe

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SOLEMN DECLARATION

I**,** hereby declare that the thesis entitled: **A comparative statutory analysis of the use and regulation of mobile money to promote financial inclusion for the poor in Zimbabwe**, is submitted in fulfilment of the requirements for the Doctor of Laws with Trade and Business Law (LLD) 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 May 2022

Declared before me on this ..... day of May 2022

Signature of Supervisor.....

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DEDICATION

This thesis is dedicated to my parents and millions of poor persons who were marginalised and excluded from safe, convenient and affordable formal financial services but are now enjoying these products owing to financial technology.

ABSTRACT

Mobile money refers to financial services delivered through the mobile phones and/or related electronic devices without the need for bank accounts. Mobile money combines finance and technology and/or telecommunication aspects. Additionally, mobile money is an innovative financial product that is contributing to the financial inclusion of many poor persons especially in developing countries such as Zimbabwe. This thesis reveals that millions of poor persons who could not access formal financial services owing to various reasons such as failure to meet banks' documentary requirements, use mobile money in Zimbabwe and other countries. Mobile money has assisted many poor persons to access financial services since the outbreak of the coronavirus disease (COVID-19 pandemic). Public health experts encouraged people across the world to use contactless payment systems in order to combat the spread of the infectious coronavirus through cash. In this regard, mobile money allows people to transact using their mobile phones and this provides a measure of safety and convenience to users, especially the poor. However, the use of mobile money requires robust regulation in order to combat financial crimes such fraud, money laundering and terrorist financing. Although mobile money started in 2011 in Zimbabwe, the legislature has not enacted a statute that expressly regulates mobile money. Financial regulators and law enforcement authorities use incoherent provisions from various statutes to regulate mobile money. In this regard, there are various flaws in the mobile money regulatory framework. This thesis reveals that the *National Payment Systems Act*, as amended, does not define mobile money. Furthermore, the same Act does not make specific provisions on mobile money. The *Banking Act*, as amended, use the terms "mobile money" and "mobile banking" interchangeably. However, this thesis reveals that the two terms are distinct and connote different meanings hence they cannot be synonyms. The *Banking Regulations 2020* mention mobile money but do not provide a definition and/or provisions that directly and robustly regulate mobile money in Zimbabwe. To this end, this thesis analysed the current mobile money framework to investigate if it is robust enough in regulating mobile money in order to promote financial inclusion for

the poor in Zimbabwe. The effectiveness of a legal framework in providing regulatory provisions and enforcement mechanisms in order to achieve its purpose determined the robustness of the mobile money framework. The thesis does a comparative analysis on the regulation and use of mobile money to promote financial inclusion for the poor in other jurisdictions, namely Kenya, South Africa and the United Kingdom. Accordingly, the thesis reveals that Zimbabwe lags behind in adopting and regulating financial technology products. In this regard, the current mobile money regulatory framework is inadequate and fails to promote financial inclusion for the poor effectively in Zimbabwe. The thesis proposes a viable regulatory technology (regtech) model that policymakers and the legislature can use to enhance the regulation of mobile money in order to promote financial inclusion for the poor in Zimbabwe.

Key Words: Mobile money, financial inclusion, regulation, poor, financial technology

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CHAPTER ONE

RESEARCH OUTLINE AND CONTEXT

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Although mobile money has been useful in improving financial inclusion for the poor, there has not been adequate and robust regulation of this financial technology (fintech) product in many developing countries, including Zimbabwe.[1] It is only in March 2021 that the Reserve Bank of Zimbabwe (RBZ)'s fintech regulatory sandbox guidelines came into effect.[2] In this regard, the researcher argues that sufficient regulation of mobile money has lagged behind in Zimbabwe. Incidentally, Zimbabwe is in the grips of a recurring liquidity crunch yet policymakers have failed to develop a statutory framework that adequately supervises mobile money to promote financial inclusion for the poor.[3]

For the purposes of this research, mobile money refers to the use of mobile phone technology to deliver financial services to people without the need for bank

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1 Ehrentraud J, Ocampo DG, Garzoni L and Piccolo M *Policy Responses to Fintech: A Cross-Country Overview* (Bank of International Settlements 2020) 4; see related comments by Tapanainen T "Toward Fintech Adoption Framework for Developing Countries-A Literature Review based on the Stakeholder Perspective" 2020 *Journal of Information Technology Applications & Management* 1, 2. According to the Financial Stability Board (FSB), fintech refers to technological financial innovations that can bring about new business models, applications, processes or products which can materially affect financial markets, institutions and the general provision of financial services within a jurisdiction such as Zimbabwe.

2 Reserve Bank of Zimbabwe (RBZ) *Fintech Regulatory Sandbox Guidelines* 1-2 https://www.rbz.co.zw/documents/BLSS/Fintech/FINTECH-REGULATORY-SANDBOXGUIDELINES.pdf accessed on 10 August 2021. A sandbox refers to a controlled environment in which participating fintech service providers may test their products, services or solutions for a specified period before they are launched for public consumption. A sandbox also prepares regulators such as the RBZ to study the dynamics of fintech products in order to develop a suitable regulatory framework once the testing period is over.

3 See related comments by Srouji J "Digital Payments, the Cashless Economy and Financial Inclusion in the United Arab Emirates: Why is Everyone Still Transacting in Cash?" 2020 *Journal of Risk and Financial Management* 1, 3; Lu L "Decoding Alipay: Mobile Payments, a Cashless Society and Regulatory Challenges" 2018 *Butterworths Journal of International Banking and Financial Law* 40, 41; Opare EA "The Advantages and Disadvantages of Mobile Money on the Profitability of the Ghanaian Banking Industry" 2018 *Texila International Journal of Management* 1, 6; Alexandre C and Eisenhart L "Mobile Money as an Engine of Financial Inclusion and Lynchpin of Financial Integrity" 2013 *Washington Journal of Law, Technology & Arts* 285, 288-289.

accounts.[4] Mobile money allows any mobile phone subscriber in Zimbabwe to open a mobile money account, deposit value into the account and send value using even a basic mobile phone to a recipient who can redeem that value for cash or in exchange for goods.[5] In Zimbabwe and other developing countries, mobile network operators (MNOs) provide mobile money and the poor can access this financial service without the need for bank accounts.[6] Mobile money is neither money nor a currency but a payment system that allows users to process payments, send and receive money using their mobile phones.[7] In this regard, money is defined as any clearly identifiable object of value that is generally accepted as the medium of exchange for goods, services and repayment of debts within a market.[8] On the other hand, currency refers to the medium or unit of exchange that is agreed upon by a

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4 Lumsden E "The Future is Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business & Finance* 1, 7; see related comments by Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 437; Pazarbasioglu C, Mora AG, Uttamchandani M, Natarajan H, FeyenE and Saal M *Digital Financial Services* (World Bank Group Washington Dc 2020) 2; Chatain PL, Zerzan A, Noor W, Dannaoui N and De Koker L *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* (The World Bank Washington DC 2011) 2. It is submitted that there is no single definition of mobile money.

5 Lawack-Davids V "The Legal and Regulatory Framework of Mobile banking and Mobile Payments in South Africa" 2012 *Journal of International Commercial Law and Technology* 318, 319; Lumsden 2018 *Stanford Journal of Law, Business & Finance* 7-8; Buckley, Greenacre and Malady *Washington University Global Studies Law Review* 437; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 2.

6 Mashiri E, Dzingirai C and Nyamwanza L "Micro-determinants of Customer Level Interoperability: A Feasibility Study between Traditional Banks and Mobile Network Operators in Zimbabwe" 2017 *Journal of Applied Finance & Banking* 93, 96; see related comments by Masocha R and Dzomonda O "Adoption of Mobile Money Services and the Performance of Small and Medium Enterprises in Zimbabwe" 2018 *Academy of Accounting and Financial Studies Journal* 1, 2-3; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2-3; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 2-3; Demirgüç-Kunt A, Klapper L, Singer D, Ansar S and Hess J *The Global Findex Database 2017: Measuring Financial Inclusion and the Fintech Revolution* (The World Bank Group Washington DC 2018) 18.

7 Chung JJ "Money as Simulacrum: The Legal Nature and Reality of Money" 2009 *Hastings Business Law Journal* 109, 111-112; see related comments by Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96; De, Pandey and Pal 2020 *International Journal of Information Management* 3; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76.

8 Tuba MD "The Regulation of Electronic Money Institutions in the SADC Region: Some Lessons from the EU" 2014 *Potchefstroom Electronic Law Journal* 2269, 2271; see related comments by Chung 2009 *Hastings Business Law Journal* 111-112; Backhaus JG "Money and Its Economic and Social Functions: Simmel and European Monetary Integration" 1999 *American Journal of Economics and Sociology* 1075, 1082-1083; Fine B and Lapavitsas C "Markets and Money in Social Theory: What Role for Economics?" 2000 *Economy and Society* 357, 365-366; Teigen RL "Demand and Supply Functions for Money in the United States: Some Structural Estimates" 1964 *Econometrica* 476, 482-483.

community of buyers and sellers such as the Zimbabwean dollar.[9] A payment system is defined as a set of services that allows individuals to save value, make and receive payments in a convenient, cheap and simple manner.[10] Accordingly, mobile money enables financial consumers to store funds originally purchased either as airtime or funds that have been deposited directly into the customer's mobile wallet for future use.[11] It also enables the poor to access financial services such as depositing, withdrawing, payments, savings, credit and money transfer using their mobile phones.[12] Thus, mobile money provides a simple payment system that allows poor individuals who may be less literate to access financial services that were previously out of their reach.[13] In this regard, mobile money users in Zimbabwe can use their mobile phones to process payments and remittance services in the form of peer-to-peer (P2P), business to persons (B2P), business to business (B2B) and government-

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9 Bindewald L "Inconsistent Definitions of Money and Currency in Financial Legislation as a Threat to Innovation and Sustainability" 2021 *Journal of Risk and Financial Management* 1, 11; see related comments by Chung 2009 *Hastings Business Law Journal* 119; Backhaus 1999 *American Journal of Economics and Sociology* 1082-1083; Fine and Lapavitsas 2000 *Economy and Society* 365-366.

10 Forgor and Julie 2020 *Advances in Social Science, Education and Humanities Research* 194; see related comments by Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 319-320; Morales Resendiz R and Bernal MV "The Role of Payment Systems and Services in Financial Inclusion: Latin American and Caribbean Perspective" 2016 *Centro de Estudios Monetarios Latinoamericanos* 1, 6; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 13-14.

11 Ahmad HA, Green C and Jiang F "Mobile Money, Financial Inclusion and Development: A Review with Reference to African Experience" 2020 *Journal of Economic Surveys* 753, 762; Chopra S and Sherry AM "Architecture of a Low Cost Technology Solution Integrating Mobile Financial Services with *AADHAAR* Authentication to Accelerate Financial Inclusion in India" 2014 *OIDA International Journal of Sustainable Development* 27, 28; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 13-14: Masocha and Dzomonda 2018 *Academy of Accounting and Financial Studies Journal* 2-3.

12 Winn JK and De Koker L "Introduction to Mobile Money in Developing Countries: Financial Inclusion and Integrity Conference Special Issue" 2013 *Washington Journal of Law, Technology and Arts* 155, 156; Winn JK "Governance of Global Mobile Money Networks: The Role of Technical Standards" 2013 *Washington Journal of Law, Technology and Arts* 197, 200; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 13-14.

13 Lawack-Davids 2012 *Journal of International Commercial law and Technology* 320; see related comments by Morales, Resendiz and Bernal 2016 *Centro de Estudios Monetarios Latinoamericanos* 6; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 13; Forgor and Julie 2020 *Advances in Social Science, Education and Humanities Research* 194.

to-person (G2P) transactions fast and less costly compared to using banks.[14] The researcher submits that mobile money has become arguably one of the leading, if not the most used payment system in Zimbabwe.[15]

For his part, Porteous opines that mobile money can have either an additive effect or a transformative effect in the financial markets.[16] An additive effect arises when a person uses mobile money as aesthetics or additional channels for access to an individual's bank account.[17] Mobile money has a transformative effect when people use it as the primary and probably only avenue for the poor to access financial services.[18] In light of this, the researcher argues that mobile money has had a transformative effect in that most poor people are using it as their only gateway to financial inclusion in Zimbabwe. For the purposes of this research, financial inclusion refers to the provision of sustainable, useful, convenient and affordable financial

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14 Fonte E "US Regulatory Overview of Mobile Wallets and Mobile Payments" 2017 *Wake Forest Journal of Business & Intellectual Property Law* 549, 556-557; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 8; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 13-14, Soutter L, Ferguson K and Neubert M "Digital Payments: Impact Factors and Mass Adoption in Sub-Sahara Africa" 2019 *Technology Innovation Management Review* 41, 42.

15 Chinakidzwa M, Mbengo P and Nyatsambo M "Mobile Money Usage in Rural Areas in Zimbabwe – Case of Mudzi District" 2015 *International Journal of Scientific & Engineering Research* 128, 129-130; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 7; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76; Kendall J and Voorhies R "The Mobile-Finance Revolution: How Cell Phones can Spur Development" 2014 *Foreign Affairs* 9, 10.

16 Porteous D *The Enabling Environment for Mobile Banking in Africa* (Bankable Frontier Associates Boston 2006) 15; see related comments by Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific & Engineering Research* 129; Bångens L and Söderberg B *Mobile Banking–Financial Services for the Unbanked?* (Spinder Sweden 2008) 14; Ndlovu I and Ndlovu M "Mobile Banking the Future to Rural Financial Inclusion: Case Study of Zimbabwe" 2013 *International Organisation for Scientific Research Journal of Humanities and Social Science* 70, 70-71.

17 Porteous *The Enabling Environment for Mobile Banking in Africa* 15; see related comments by Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 14; Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific & Engineering Research* 129; Ndlovu and Ndlovu 2013 *International Organisation of Scientific Research Journal of Humanities and Social Science* 70-71.

18 Porteous *The Enabling Environment for Mobile Banking in Africa* 15; see related comments by Ndlovu and Ndlovu 2013 *International Organisation of Scientific Research Journal of Humanities and Social Science* 70-71; Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific & Engineering Research* 129; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 14.

services to all people in a properly regulated environment.[19] Financially included individuals have access to financial services such as payments, savings, credit and insurance. The researcher argues that policymakers should categorise financial services as part of essential services that should be available to all persons without exception in Zimbabwe.[20] Individuals who do not have access to financial services fall in the category of financially excluded persons. In this regard, financial exclusion refers to a situation where some persons are unable to have access to, or actively use, affordable and convenient formal financial services such as a bank account, loan, credit or savings facilities.[21] De Koker argues that financial exclusion can undermine efforts to fight financial crimes as it tends to push criminals and the poor into the unregulated and largely paperless informal financial sector such as use of cash.[22] In Zimbabwe, the high adoption of the mobile phone among the adult population allows the poor to transfer and receive funds, purchase good, pay bills and school fees at any time of the day using their mobile phones.[23] Additionally, mobile money is a convenient channel to disburse governments' social relief aid to

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19 Mhlanga, Dunga and Moloi 2020 *Eurasian Journal of Economics and Finance* 171; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 3Chitimira and Magau 2021 *Potchefstroom electronic Law Journal* 2; Mukoka S and Chipanga TP "Financial Inclusion and GDP per-capita Nexus: Evidence from Zimbabwe" 2021 *International Journal of Innovative Science and Research Technology* 1723, 1723-1724.

20 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; Ngoma G "Financial Inclusion and its Determinants in Zimbabwe" 2019 *International Journal for Innovative Research in Multidisciplinary Field* 78, 85; Munyoro G, Kutesera P, Tanhara JR, Mazuvawanda P and Mhere Chigunhah B "The Significance of Mobile Money Transfer Facility to Zimbabwean Economy: A Case Study of Ecocash" 2017 *International Journal of Research in Business Management* 1, 1-2.

21 De Koker 2006 *Journal of Financial Crime* 27; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25;; see related comments by Yusheng K, Yama Tampuri Jnr M and Opoku-Boadi P "Digital Financial Inclusion: The Star Strategy Approach to Policy Formulation" 2018 *International Journal of Management Sciences and Business Research* 120, 123.

22 De Koker L "The 2012 Revised FATF Recommendations: Assessing and Mitigating Mobile Money Integrity Risks within the New Standards Framework" 2013 *Washington Journal of Law, Technology & Arts* 165, 184; see related comments by De Koker 2006 *Journal of Financial Crime* 27; Ngoma 2019 *International Journal for Innovative Research in Multidisciplinary Field* 86; Marime N and Chakazamba L "Urban Financial Exclusion in Zimbabwe: An Exploratory Study" 2016 *Research Journal of Finance and Accounting* 1, 2-3.

23 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2; see related comments by Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific & Engineering Research* 129; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76; Barruetabeña E "Impact of New Technologies on Financial Inclusion" 2020 *Economic Bulletin, Banco de España* 1, 4.

the poor since the outbreak of the coronavirus disease (COVID-19 pandemic) in Zimbabwe.[24] Mobile money provides considerable potential to promote the financial inclusion of the poor even beyond the COVID-19 pandemic in Zimbabwe and other developing economies.[25]

However, like other fintech products, mobile money requires sufficient regulation for it to operate in a manner that keeps financial markets free from risks such as money laundering, terrorism financing and related financial crimes.[26] Money laundering is concealing or disguising the true nature, source or ownership of tangible or intangible property knowing or reasonably suspecting that such property is the proceeds of crime.[27] The Financial Action Task Force (FAFT) and other standards-setting bodies developed international anti-money laundering (AML) and combating of terrorism financing (CTF) standards that guide financial markets operations across

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24 Mbulayi, Makuyana and Kang'ethe 2020 *Perspectives on Global Development and Technology* 568-569; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 22; Jenik I, Kerse M and de Koker L *Rapid Account Opening in a Pandemic: How to meet AML/CFT Rules for Social Assistance Payments* (Consultative Group to Assist the Poor Washington DC 2020) 1; Mann "Driver for Contactless Payments" 176; van Coller S "Mobile Money will be even more Relevant after Covid-19" https://www.businesslive.co.za/bd/opinion/2020-06-03-mobile-money-will-be-even-morerelevant -in-sa-after-covid-19/ accessed on 10 December 2020. Frontline workers refer to individuals who work in essential services such as health, police, army, banks and transport logistics.

25 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 22; see related comments by Harris A, Goodman S and Traynor P "Privacy and Security Concerns Associated with Mobile Money Applications in Africa" 2013 *Washington Journal of Law, Technology & Arts* 245, 246; Robb and Vilakazi T "Mobile Payments Markets in Kenya, Tanzania and Zimbabwe: A Comparative Study of Competitive Dynamics and Outcomes" 2016 *The African Journal of Information and Communication (AJIC)* 9, 10; Shrier D, Canal G and Pentland A "Mobile Money and Payments" 2016 *Massachusetts Institute of Technology* 1, 3.

26 Winn JK and De Koker L "Introduction to Mobile Money in Developing Countries: Financial Inclusion and Integrity Conference Special Issue" 2013 *Washington Journal of Law, Technology & Arts* 155, 156; see related comments by De Koker 2012 *Washington Journal of Law, Technology & Arts* 178-179; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 25-26; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442-443.

27 Section 8 of the *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] (*MLPC Act*); Chitimira H "The Reliance on Artificial Intelligence Measures to Curb Money Laundering Practices in the South African Banking Institutions and Real Estate Sector" 2020 *Acta Universitatis Danubius Juridica* 28, 29; Sulieman DM and Salleh F "Anti-Money Laundering Risk Posed By Mobile Money Services in Sub-Saharan Africa" 2020 *Journal of Critical Reviews* 568; 569; Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 43, 44-45.

the world.[28] In this regard, promoting financial inclusion for the poor should not come at the expense of effective regulatory control of mobile money in order to combat money laundering, terrorist financing and other financial crimes.[29] Nonetheless, the enforcement of AML and CFT standards on mobile money requires an enabling and proportionate approach owing to the fact that a strict or rigid approach could impede innovation that powers mobile money and hinder financial inclusion for the poor.[30] Against this background, the researcher seeks to examine whether the mobile money regulatory framework is comprehensive and robust enough to provide for the legal use of mobile money to promote financial inclusion for the poor in Zimbabwe.

The research includes a comparative analysis of the regulation and use of mobile money to promote financial inclusion in Kenya, South Africa and the United Kingdom.[31] The comparative analysis provides lessons that policymakers in Zimbabwe can adopt to enhance the adoption and regulation of fintech products such as mobile money in order to promote financial inclusion for the poor.

1.2 Background to the Study

Generally, Zimbabwe is a laggard when it comes to the adoption, regulation and use of fintech products such as mobile money leading to uneven financial access

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28 Financial Action Task Force (FATF) *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferations* (FATF Paris 2019) 6; see related comments by De Koker 2013 *Washington Journal of Law, Technology & Arts* 166; Kersop M and Du Toit S "Anti-Money Laundering Regulations and the Effective Use of Mobile Money in South Africa Part 1" 2015 *Potchefstroom Electronic Law Journal* 1603, 1608; Alexandre C and Eisenhart L "Mobile money as an engine of financial inclusion and lynchpin of financial integrity" 2013 *Washington Journal of Law, Technology & Arts* 285, 290.

29 De Koker 2013 *Washington Journal of Law, Technology & Arts* 195; see related comments by Di Castri S and Plaitakis A *Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* (Centre for Financial Inclusion 2018) 13; Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 156; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1608.

30 Kernan AB "Sustaining the Growth of Mobile Money Services in Developing Nations: Lessons from Overregulation in the United States" 2018 *Vanderbilt Journal of Transnational Law* 1109, 1112; see related comments by De Koker 2013 *Washington Journal of Law, Technology & Arts* 182; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1608; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438.

31 See para 1.9 of this Chapter for the justification of the researcher's selection of each of the jurisdictions chosen for comparative analysis.

between the rich and poor.[32] Consequently, consumer uptake of new fintech products often forces policymakers in Zimbabwe to follow rather than anticipate and lead technology.[33] Although the use of mobile money started in 2011 in Zimbabwe, this research traces the regulation of fintech products from 1980 to the present, for historical purposes. Zimbabwe got its political independence from Britain in 1980 and it is important to explore how policymakers have responded to fintech developments to date. Three MNOs in Zimbabwe, Econet Wireless, NetOne and Telecel launched Ecocash, Onewallet and *Skwama* mobile money platforms, respectively, in Zimbabwe in 2011.[34] NetOne and Telecel later rebranded Onewallet and *Skwama* to Onemoney and Telecash respectively. The researcher argues that mobile money regulatory shortcomings have been more apparent since the outbreak of the COVID-19 pandemic in Zimbabwe. The COVID-19 pandemic caused an unprecedented public health and economic crisis in many countries, including Zimbabwe.[35] The COVID-19 pandemic caused socio-economic challenges especially on poor persons who often

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32 Dube T, Njanjike K, Manomano C and Chiriseri L 2011 "Adoption and Use of SMS/Mobile Banking Services in Zimbabwe: An Exploratory Study" 2011 *Journal of Internet Banking and Commerce* 1, 13; see related comments by Magweva and Shiri 2015 *Journal of Corporate Governance, Insurance and Risk Management* 103-104.

33 See related comments by Chitungo and Munongo 2013 *Journal of Business Administration and Education* 67-68; Magweva and Shiri 2015 *Journal of Corporate Governance, Insurance and Risk Management* 103-104; Dube *et al* 2011 *Journal of Internet Banking and Commerce* 13.

34 See related comments by Gukurume S and Mahiya IT "Mobile Money and the (Un)Making of Social Relations in Chivi, Zimbabwe" 2020 *Journal of Southern African Studies* 1203, 1204; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 6; see related comments by Munyanyi 2014 *Greener Journal of Banking and Finance* 1-2.

35 Mbulayi SP, Makuyana A and Kang'ethe SM "Psychosocial Impacts of the Coronavirus Disease (COVID-19) Pandemic in Zimbabwe: Citizens' Perspective" 2021 *Perspectives on Global Development and Technology* 565, 567-568; see related comments by Kasradze T "Challenges Facing Financial Inclusion Due to the COVID-19 Pandemic" 2020 *European Journal of Marketing and Economics* 63, 64; Nakouwo NS and Akplehey FN "COVID-19 and Mobile Money Agents in Ghana" 2020 *African Journal of Emerging Issues* 75; 78; Otache I "The Effects of the Covid-19 Pandemic on the Nigeria's Economy and Possible Coping Strategies" 2020 *Asian Journal of Social Sciences and Management Studies* 173, 174-175; Buheji M, Da Costa Cunha K, Beka G, Mavric B, De Souza YL, Da Costa Silva SS, Hanafi M and Yein TC "The Extent of COVID-19 Pandemic Socio-Economic Impact on Global Poverty. A Global Integrative Multidisciplinary Review" 2020 *American Journal of Economics* 213, 215.

lack savings and financial security in many countries including Zimbabwe.[36] The term "poor persons" is relative and may not have a universally agreed metric to measure it but for the purposes of this research, it refers to persons who live below the poverty datum line and may need social assistance to live in dignity.[37] In this research, the poor include unbanked persons and low-income earners. Unbanked persons refer to individuals who do not have access and cannot, afford the costs of maintaining a bank account at a formal financial institution while low-income earners are persons who earn below the prescribed minimum wage.[38] Since the outbreak of the COVID-19 pandemic, governments, including that of Zimbabwe, imposed partial or complete economic lockdowns in order to combat the spread of the contagious corona virus.[39] The lockdown measures meant to combat the spread of coronavirus halted economic activities for all non-essential services and curtailed the movement

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[36] Mbulayi, Makuyana and Kang'ethe 2021 *Perspectives on Global Development and Technology* 568; see related comments by Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 21; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76; Kasradze 2020 *European Journal of Marketing and Economics* 69; Buheji *et al* 2020 *American Journal of Economics* 216; Olivia S, Gibson J and Nasrudin R "Indonesia in the Time of Covid-19" 2020 *Bulletin of Indonesian Economic Studies* 143, 165-166.

[37] Mhlanga D, Dunga SH and Moloi T "Financial Inclusion and Poverty Alleviation Among Smallholder Farmers in Zimbabwe" 2020, *Eurasian Journal of Economics and Finance* 168, 169-170; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Buheji *et al* 2020 *American Journal of Economics* 216; Chitimira H and Ncube M "Legislative and Other Selected Challenges Affecting Financial Inclusion for the Poor and Low Income Earners in South Africa" 2020 *Journal of African Law* 337, 338; Olivia, Gibson and Nusrudin 2020 *Bulletin of Indonesian Economic Studies* 165-166.

[38] Chitimira H and Magau PT "A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa" 2021 *Potchefstroom Electronic Law Journal* 1, 3; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Chitimira H and Ncube M "The Role of Regulatory Bodies and Other Role-Players in the Promotion of Financial Inclusion in South Africa" 2020 *Acta Universitatis Danubius Juridica* 24, 25; Nyimbiri BA "The Impact of Mobile Money on the People's Use of Financial Services in Sub-Sahara Africa" 2021 *Management Dynamics in the Knowledge Economy* 137, 138.

[39] Mbulayi, Makuyana and Kang'ethe 2021 *Perspectives on Global Development and Technology* 567; see related comments by Olivia, Gibson and Nusrudin 2020 *Bulletin of Indonesian Economic Studies* 145-146; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 175; Buheji *et al* 2020 *American Journal of Economics* 218; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 77-78.

of all non-essential service workers in many countries including Zimbabwe.[40] Consequently, the lockdowns seem to have had more adverse effects on the poor than their wealthier counterparts in Zimbabwe.[41] In this regard, most poor persons who relied on informal sector jobs were left unemployed, confined to their homes with very little to do to support their livelihoods.[42] Those who went to public places in Zimbabwe had to keep a "safe" social distnce and regularly sanitise their hands to minimise the spread of the Coronavirus as shown in figure 1 below.[43] They also had to wear face-masks and avoid crowded places or practices such as hugging as shown in figure 1 below.

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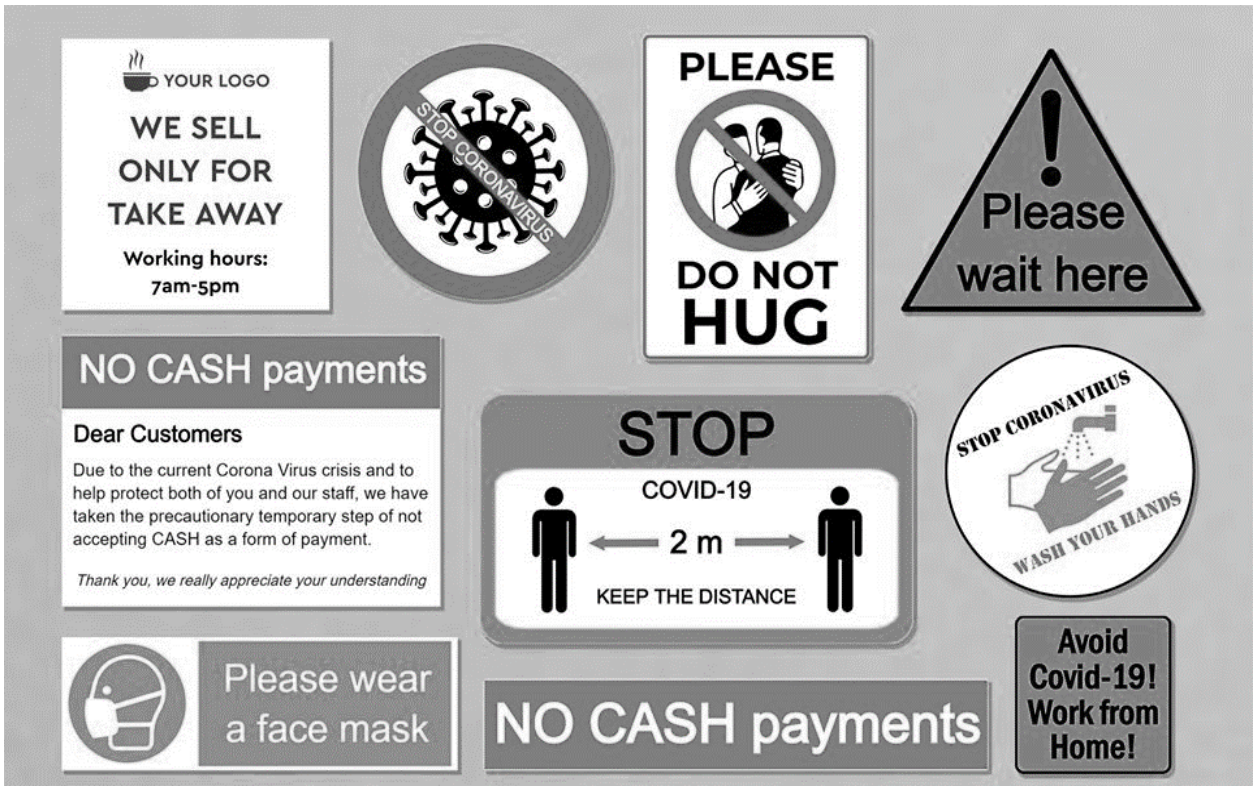
40 Shumba K, Nyamaruze P, Nyambuya VP and Meyer-Weitz "Politicising the COVID-19 Pandemic in Zimbabwe: Implications for Public Health and Governance" 2020 *African Journal of Governance and Development* 270, 281; see related comments by Kasradze 2020 *European Journal of Marketing and Economics* 71; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 175; Buheji *et al* 2020 *American Journal of Economics* 218; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76.

41 Katsidzira L, Gwaunza L and Hakim JG "The Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Epidemic in Zimbabwe: *Qou Vadis*?" 2020 *Clinical Infectious Diseases* 2180, 2182; see related comments by Ahamed M and Gutiérrez-Romero R "COVID-19 Response Needs to Broaden Financial Inclusion to Curb the Rise in Poverty" 2020 *Centre for Globalisation Research* 1, 2; Kasradze 2020 *European Journal of Marketing and Economics* 71, Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76.

42 Katsidzira, Gwaunza and Hakim 2020 *Clinical Infectious Diseases* 2182; see related comments by Kasradze 2020 *European Journal of Marketing and Economics* 71; see related comments by Otache 2020 *Asian Journal of Social Sciences and Management Studies* 175; Buheji *et al* 2020 *American Journal of Economics* 218; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76.

43 Mackworth-Young CRS, Chingono R, Mavodza C, McHugh G, Tembo M, Chikwari CD, Weiss HA, Rusakaniko S, Ruzario S, Bernays S and Ferrand RA "Community Perspectives on the COVID-19 Response, Zimbabwe" 2021 *Bull World Health Organ* 85, 87; see related comments by Shumba *et al* 2020 *African Journal of Governance and Development* 281; Mann RJ "Driver for Contactless Payments" in Pistor K *Law in the Time of COVID-19* (Columbia Law School Ney York 2020) 177; Olivia, Gibson and Nusrudin 2020 *Bulletin of Indonesian Economic Studies* 146; Buheji *et al* 2020 *American Journal of Economics* 219.

Figure 1: COVID-19 info-graphics like this one became commonplace in Zimbabwe and other countries. Source: www.marktek.co.uk.



Moreover, it became apparent as shown in figure 1 that the highly infectious coronavirus could transmit through cash during transactions and this further put strain on the poor who often relied on the use of cash.[44] Many supermarkets and grocery stores stopped cash payments preferring to serve customers who paid electronically through bank-card tapping or swiping as shown in figure 1 above.[45] Government and health experts in many countries including Zimbabwe, urged people to use contactless electronic payments to combat the spread of the COVID-19

[44] Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; see related comments by Mann "Driver for Contactless Payments" 177; Kasradze 2020 *European Journal of Marketing and Economics* 70; De R, Pandey N and Pal A "Impact of Digital Surge During COVID-19 Pandemic: A Viewpoint on Research and Practice" 2020 *International Journal of Information Management* 1, 3.

[45] Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22; see related arguments by Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76; Kasradze 2020 *European Journal of Marketing and Economics* 70; De, Pandey and Pal 2020 *International Journal of Information Management* 3; Mann "Driver for Contactless Payments" 177.

pandemic.[46] Contactless payment methods thus became the preferred and arguably safer ways to transact than using cash in Zimbabwe and many other countries as shown in figure 2 below. While the banked individuals could easily swipe and rely on Internet banking and online shopping, the poor in Zimbabwe ran the risk of being plunged further into poverty.[47]

Figure 2: Contactless payments helped people to adhere to the COVID-19 social distancing measures: Info-graphic by telpo.com

As shown in figure 2 above, the point of sale (POS) machine became central to the processing of transactions during the COVID-19 pandemic. Individuals could swipe bank debt or credit cards, they could tap and go or use mobile phones and other hand-held electronic gadgets to process payments in a safe manner as shown in figure 2 above. Amidst this unprecedented crisis, the use of mobile money to provide

[46] Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22; see related arguments by Mann "Driver for Contactless Payments" 177 Mann "Driver for Contactless Payments" 177; Kasradze 2020 *European Journal of Marketing and Economics* 70; De, Pandey and Pal 2020 *International Journal of Information Management* 3; Mann "Driver for Contactless Payments" 177.

[47] De, Pandey and Pal 2020 *International Journal of Information Management* 3; see related comments by Mann "Driver for Contactless Payments" 177; Kasradze 2020 *European Journal of Marketing and Economics* 70; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76.

financial services became one advantage of embracing financial technology (fintech) in Zimbabwe's payment systems.[48]

Since the outbreak of the COVID-19 pandemic, the use of mobile money to promote financial inclusion of the poor became more pertinent in Zimbabwe and other countries.[49] Mobile money allows individuals to process contactless payments that reduce the use of cash and minimise chances of spreading the Coronavirus during transactions.[50]

Although mobile money contributes to financial inclusion, service providers need to adhere to AML/CFT and other international financial markets regulatory requirements.[51] Crimes such as money laundering lead to poor financial markets stability and low investor confidence in any economy.[52] Money laundering is a crime in Zimbabwe and other countries.[53] Moreover, mobile money service providers have a duty to implement AML/CFT rules in the same way as other financial service providers such as banks.[54] Winn and De Koker argue that mobile money potentially introduces risks of criminal activities like money laundering and terrorist financing.[55] Owing to this, there could be need to balance the promotion of financial inclusion

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48 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 22; see related comments by De, Pandey and Pal 2020 *International Journal of Information Management* 3; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76; Forgor AT and Julie KA "Financial Innovative Development in Sub-Saharan Africa: The Role of Payment Systems" 2019 *Advances in Social Science, Education and Humanities Research* 192, 194-195.

49 See related comments by De, Pandey and Pal 2020 *International Journal of Information Management* 3; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76; Forgor and Julie 2019 *Advances in Social Science, Education and Humanities Research* 194-195.

50 See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; Mann "Driver for Contactless Payments" 177; Kasradze 2020 *European Journal of Marketing and Economics* 70; De, Pandey and Pal 2020 *International Journal of Information Management* 3.

51 Section 81 of the *Banking Act*; Buku and Meredith 2013 *Washington Journal of Law, Technology and Arts* 394; also see Goldby 2013 *Washington Journal of Law, Technology and Arts* 403; Weihuan, Arner and Buckley 2015 *Chinghua China Law Review* 43.

52 Goldby 2013 *Washington Journal of Law, Technology and Arts* 404-405; see related comments by Chitimira 2020 *Acta Universitatis Danubius Juridica* 29; Sulieman and Salleh 2020 *Journal of Critical Reviews* 569.

53 Sections 7-9 of the *Money Laundering and Proceeds of Crime Act*; see related comments by Chitimira 2020 *Acta Universitatis Danubius Juridica* 29.

54 Goldby 2013 *Washington Journal of Law, Technology and Arts* 405; see related comments by Weihuan, Arner and Buckley 2015 *Chinghua China Law Review* 43; Malady and Buckley 2014 *Centre for International Finance and Regulation* 4.

55 Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 156; see related comments by Weihuan, Arner and Buckley 2015 *Chinghua China Law Review* 43.

and the effective regulation of the financial services sector in jurisdictions like Zimbabwe.[56] Nonetheless, the FATF guidelines allow a variation on the requirements for proof of customer identity and residence to promote financial inclusion of the poor in developing countries particularly during crisis like the COVID-19 pandemic.[57] This variation means that, unlike banks, mobile money service providers could relax the requirement on the need for their clients to produce proof of identity and residence since the poor in countries like Zimbabwe may not have such documents.[58] As a result, the flexible approach allows the poor persons in Zimbabwe to access mobile money.

1.3 Problem Statement

This research is premised on the argument that Zimbabwe generally lags behind other countries in the adoption, regulation and use of technology.[59] The world is fast moving into the fourth industrial revolution (4IR) where financial technology (fintech) products such as mobile money are central in promoting financial inclusion for the poor.[60] Mobile money has been in use since 2011 in Zimbabwe but policymakers have failed to enact an express statute that regulates this fintech product. Mobile money cuts across the financial and telecommunications domains and it keeps on evolving.[61] In this regard, mobile money brings new players in the form of MNOs to the financial services sector and policymakers need to adjust the

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56 Weihuan, Arner and Buckley 2015 *Chinghua China Law Review* 34; also see related comments by Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 156.

57 See related comments by Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 156-157; Goldby 2013 *Washington Journal of Law, Technology and Arts* 406.

58 Malady and Buckley 2014 *Centre for International Finance and Regulation* 4; see related comments by Lumsden 2018 *Stanford Journal of Law, Business and Finance* 44.

59 See related comments by Magweva R and Shiri M "Internet Banking Adoption and Usage in Zimbabwean Commercial Banks: An Analytical Approach" 2015 *Journal of Corporate Governance, Insurance and Risk Management* 91, 103-104; Chitungo SK and Munongo S "Extending the Technology Acceptance Model to Mobile Banking Adoption in Rural Zimbabwe" 2013 *Journal of Business Administration and Education* 51, 67.

60 Mhlanga D "Industry 4.0 in Finance: The Impact of Artificial Intelligence (AI) on Digital Financial Inclusion" 2020 *International Journal of Financial Studies* 1, 1-2; see Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 29.

61 Botchey FE, Qin Z and Hughes-Lartey K "Mobile Money Fraud Prediction-A Cross-Case Analysis on the Efficiency of Support Vector Machines, Gradient Boosted Decision Trees and Naïve Bayes Algorithms" 2020 *Information* 1, 4.

regulatory framework accordingly.[62] Arner, Barberis and Buckley argue that there is a need for a regulatory technology (regtech) approach that develops in response to the changes in fintech.[63] Further, the automation of regulatory processes could allow for better and more effective risk identification mechanisms and promotion of innovation in the sector in Zimbabwe.[64] The high volume of financial data due to the increased volume of persons using formal services makes a compelling case for an evolving regtech in order to improve supervisory efficiency.[65] To that end, it may be necessary to integrate artificial intelligence (AI) for the effective supervision of financial markets and market participants.[66] AI and machine learning is defined as a catalogue of computer systems, methods and technologies that display intelligent behaviour, ability to analyse their environment and take appropriate action towards specified outcomes, with a fair degree of autonomy.[67] The researcher argues that the COVID-19 pandemic has disrupted financial transactions and the integration of AI could play a key role in the effective regulation of mobile money activities in Zimbabwe.

The researcher argues that the mobile money statutory framework in Zimbabwe fails to maintain a balance between promoting financial inclusion for the poor and safeguarding financial markets from risks.[68] The researcher further avers that the regulatory framework in Zimbabwe is not sufficiently flexible to allow innovative

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62 Malady L, Buckley RP, Didenko A and Tsang CY "A Regulatory Diagnostic Toolkit for Digital Financial Services in Emerging Markets" *University of New South Wales Research Series* (2018) 4; see related comments by Botchey *et al* 2020 *Information* 4.

63 See related comments by Botchey *et al* 2020 *Information* 5.

64 Mhlanga 2020 *International Journal of Financial Studies* 1; see related comments by Botchey *et al* 2020 *Information* 5.

65 See related comments Perlman L 2019 *Fintech and Regtech: Data as the New Regulatory Honeypot* 12 https://dfsobservatory.com/sites/default/files/Fintech%20and%20Regtech%20-%20Perlman%2 0Final.pdf accessed on 28 June 2021.

66 Mhlanga 2020 *International Journal of Financial Studies* 1; see related comments by Botchey *et al* 2020 *Information* 5.

67 See related comments by Mhlanga 2020 *International Journal of Financial Studies* 1-2; Biallas M and O'Neill F *Artificial Intelligence Innovation in Financial Services* (International Financial Corporation, World Bank Group 2020) 1.

68 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; see related comments by the Basel Committee on Banking Supervision 2011 *Core Principles for Effective Banking Supervision* 22; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 54; Di Castri and Plaitakis 2018 *Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* 3.

technology to thrive. Chatain *et al* argue that regulatory frameworks that are unnecessarily conservative stifle innovation in financial markets blocking the expansion of the financial inclusion net to the poor.[69] Banks have failed to expand their branch networks to the poor majority who reside in rural areas in Zimbabwe.[70] However, mobile money has been a game-changer owing to its role in improving financial access especially to the poor in rural and urban areas in Zimbabwe.[71] The use of mobile money has opened opportunities for MNOs to provide financial services traditionally reserved for banks, bringing many people into financial inclusion in Zimbabwe.[72] Any person with a mobile phone, including the poor who are usually not a profitable target for commercial banks, can access mobile money services in Zimbabwe.[73] The current mobile money regulatory framework in Zimbabwe has many statutes that include, *inter alia*, the *National Payments Systems Act*,[74] the *Postal and Telecommunications Act*,[75] the *Money Laundering and Proceeds*

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69 Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 54; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; De Koker 2006 *Journal of Financial Crime* 31. The risk-based approach should be used in regulating innovative financial products such as mobile money.

70 Mhlanga, Dunga and Moloi 2020 *Eurasian Journal of Economics and Finance* 173; see related comments by Munyanyi W "Banking the Unbanked: Is Financial Inclusion Powered by Ecocash a Veracity in Rural Zimbabwe?" 2014 *Greener Journal of Banking and Finance* 1, 2; Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific and Engineering Research* 128.

71 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96; see related comments by Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific and Engineering Research* 128; Sulieman and Salleh 2020 *Journal of Critical Reviews* 568; Goldby M "Reporting of Suspicious Activity by Mobile Money Service Providers in Accordance with International Standards: How Does it Impact on Financial Inclusion" 2013 *Washington Journal of Law, Technology and Arts* 401, 403-404.

72 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 6; see related comments by Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; Lawack VA "Mobile Money, Financial Inclusion and Financial Integrity: The South African Case" 2013 *Washington Journal of Law, Technology and Arts* 317, 318; Sulieman and Salleh 2020 *Journal of Critical Reviews* 568; Weihuan Z, Arner DW and Buckley RP "Regulation of Digital Financial Services in China: Last Mover Advantage?" 2015 *Tsinghua China Law Review* 25, 33.

73 Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 319; see related comments by Lumsden 2018 *Stanford Journal of Law, Business & Finance* 7-8; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 2.

74 *National Payment Systems Act* [Chapter 24:23] 21 of 2001 (*NPS Act*), section 3; also see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; Bara 2013 *African Journal of Science, Technology, Innovation and Development* 345.

75 *Postal and Telecommunications Act* [Chapter 12: 05] 4 of 2000 as amended, see sections 34, 60-64; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5.

of Crime Act[76] and the *Banking Act*.[77] However, none of these statutes expressly provide for the regulation of mobile money and the promotion of financial inclusion for the poor in Zimbabwe.[78] Thus, the researcher submits that these statutes are incoherent and poorly developed to meet the legislative demands of mobile money services in Zimbabwe. In this regard, the current mobile money regulatory framework is not robust and comprehensive enough to supervise the use of mobile to promote financial inclusion of the poor in Zimbabwe.

Moreover, mobile money combines finance and telecommunications aspects that are regulated by two distinct and separate regulators in many countries including Zimbabwe.[79] This owes to the unrelated demands of the financial sector on one hand and the telecommunications sector on the other. Zimbabwe's central bank, the Reserve Bank of Zimbabwe (RBZ) is the leading mobile money regulator working in conjunction with the Ministry of Finance and Economic Development to promote financial inclusion of the poor.[80] Regulators from sectors such as telecommunications, competition, consumer protection and AML/CTF also assist in monitorig mobile money in Zimbabwe.[81] In a possible response to the growing use of mobile money in Zimbabwe, the Minister of Finance gazetted the *Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations*

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76 *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] of 2013, sections 2, 3 and 8; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5.

77 *Banking Act* [Chapter 24:20] 9 of 1999 as amended (*Banking Act*), sections 2(m), 4C, 7(d), and 28A; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5.

78 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25.

79 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; see related comments by Malady L, Buckley RP, Didenko A and Tsang CY "A Regulatory Diagnostic Toolkit for Digital Financial Services in Emerging Markets" 2018 *Banking and Finance Law Review* 1, 4; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology and Arts* 287; Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 770.

80 Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 762; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 13-14; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Review* 452; Rosengard JK *A Quantum Leap Over High Hurdles to Financial Inclusion: The Mobile Banking Revolution in Kenya* (Swift Institute Harvard Kennedy School 2016) 14.

81 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Review* 452; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 71-72.

2020.[82] The regulations appear to be the closest legislative instrument developed to regulate mobile money in Zimbabwe. However, the researcher argues that the legislature in Zimbabwe has not enacted a statute that sufficiently and adequately provides for the regulation of mobile money.[83] Consequently, there has not been robust regulation of the use of mobile money to promote financial inclusion for the poor in Zimbabwe. Against this background, the researcher seeks to examine the following flaws and problems:

(a) there is a general failure by policymakers in Zimbabwe to quickly adopt technology to improve the delivery of financial services to the poor. Thus, there is a weakness in the regulation of mobile money in Zimbabwe owing to flaws in the current mobile money regulatory framework.[84] In this regard, it is submitted that policymakers in Zimbabwe should enact a statute that specifically regulates mobile money services in order to adequately supervise mobile money and promote financial inclusion for the poor.[85] Ideally, the proposed statute should balance the promotion of innovation and financial inclusion for the poor with financial markets stability in order to combat systemic risks such as money laundering, terrorist financing and fraud.[86]

(b) the duties of mobile money regulators such as the RBZ, the Financial Intelligence Unit (FIU) and the Postal and Telecommunications Regulatory Authority

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82 See section 3 of *Banking* (*Money Transmission, Mobile Banking and Mobile Money Interoperability*) *Regulations*, 2020 (*Banking Regulations 2020*); see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 15-16.

83 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 23; see related comments by Malady *et al* 2018 *Banking and Finance Law Review* 4; Rosengard 2016 *A Quantum Leap Over High Hurdles to Financial Inclusion: The Mobile Banking Revolution in Kenya* 21.

84 See related comments by Kernan 2018 *Vanderbilt Journal of Transnational Law* 1112; De Koker 2013 *Washington Journal of Law, Technology & Arts* 182; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1608; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438.

85 Ahamed M and Gutiérrez-Romero R "COVID-19 Response Needs to Broaden Financial Inclusion to Curb the Rise in Poverty" 2020 *Centre for Globalisation Research* 1, 2; Katsidzira, Gwaunza and Hakim 2020 *Clinical Infectious Diseases* 2182; Kasradze 2020 *European Journal of Marketing and Economics* 71, Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76.

86 See related comments by the Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: The Banking Sector* (FATF Paris 2014) 6; De Koker L "Identifying and Managing Low Money Laundering Risk: Perspectives on FAFT's Risk-Based Guidance" 2009 *Journal of Financial Crime* 334, 336-337; De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 282.

of Zimbabwe (POTRAZ) in regulating mobile money services are unclear, poorly defined, weak and inconsistently applied in Zimbabwe.[87] This owes to the absence of clear and consistent provisions on the use of mobile money in Zimbabwe.[88] The researcher discusses duties of the mentioned regulators and other role-players to explore their weaknesses and strengths in the regulation of mobile money services in Zimbabwe. Owing to the fact that mobile money has financial and telecommunications aspects, none of the existing laws in Zimbabwe adequately regulates finance and telecommunication services.[89] Accordingly, the financial and telecommunications aspects of mobile money are regulated separately in Zimbabwe.[90]

c) although financial inclusion is a key policy matter in Zimbabwe, there is no statute that directly promotes financial inclusion for the poor through the use of mobile money services in Zimbabwe.[91] In this regard, the relevant authorities should consider, where applicable, making financial inclusion part of the national policy and provide for it legislation as is the case in South Africa.[92]

1.4 Aims and Objectives

1.4.1 Aims

The researcher seeks to:

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87 *Reserve Bank of Zimbabwe Act* [Chapter 22:15] 5 of 1999 as amended (*RBZ Act*), section 6; section 3 of the *NPS Act*; section 4 of the *Postal and Telecommunications Act*.

88 Although sections 2 and 3 of the *NPS Act*; sections 2(m), 4C and 28A of the *Banking Act* may be used to regulate mobile money, they are not very clear. Mobile money and mobile banking may not necessarily be the same things.

89 See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 71-72; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Review* 452.

90 See related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Review* 452; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 71-72.

91 Reserve Bank of Zimbabwe (RBZ) *Zimbabwe National Financial Inclusion Strategy 2016-2020* (Reserve Bank of Zimbabwe Harare 2015) 15; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 4; Chitimira H and Ncube M "Legislative and Other Selected Challenges Affecting Financial Inclusion for the Poor and Low Income Earners in South Africa" 2020 *Journal of Africa Law* 337, 353.

92 *Financial Sector Regulation Act* 9 of 2017 (*FSR Act*), sections 1 and 58(1)(e).

a) discuss whether statutes such as the *Banking Act*, the *NPS Act*, the *Money Laundering and Proceeds of Crime Act*, and the *Banking Regulations* 2020 sufficiently regulate the use of mobile money in order to promote financial inclusion for the poor in Zimbabwe.

b) highlight the gaps and flaws in the current mobile money statutory framework in order to recommend possible measures that can be incorporated to enhance financial inclusion for poor in Zimbabwe.

1.8.2 Objectives

The researcher seeks to:

a) examine the gaps in Zimbabwe's financial regulatory framework on the use and regulation of mobile money to promote financial inclusion for the poor.

b) explore possible ways of improving the role of regulatory bodies like the RBZ, FIU and CCZ in regulating the use of mobile money to enhance financial inclusion for the poor in Zimbabwe.

1.5 Research Question

Is the current statutory regulatory framework mobile money robust and comprehensive enough to encourage the legal use of mobile money financial services to promote financial inclusion for the poor persons in Zimbabwe?

1.5.1 Explaining the Research Question

This research seeks to explore whether the regulation of mobile money is effective and sufficient in encouraging its use in order to promote sustainable financial inclusion for the poor in Zimbabwe.[93] In this regard, a regulatory framework is robust if it is capable of performing without failure even under a different range of

[93] Tagoe NA "Who Regulates the Mobile Money Operations by Telcos? The Need for and Effective and Robust Legislative and Regulatory Framework in Ghana" 2016 *Journal of Business & Financial Affairs* 1, 2; see related comment by Soutter, Ferguson and Neubert 2019 *Technology Innovation Management Review* 52; De Koker 2013 *Washington Journal of Law, Technology & Arts* 196.

conditions. The robustness of a mobile money legal framework refers to adequate policies, such as know your customer (KYC) and customer due diligence (CDD) rules that are efficiently enforced.[94] These rules assist to promote ethical and professional standards in the financial sector and in order to combat the abuse of the mobile money for criminal activities. The researcher also submits that a regulatory framework qualifies as robust if it complies with regional and international best practices. Thus, this research examines whether the current mobile money regulatory framework in Zimbabwe is effectively regulating mobile money in a manner that promotes financial inclusion for the poor.[95]

1.6 Rationale of the Study

The researcher argues that the regulation of mobile money to promote financial inclusion is poorly enforced due to weaknesses in the current mobile money regulatory framework in Zimbabwe.[96] Mobile money is an innovative financial product provided by non-bank institutions such as MNOs in Zimbabwe and many other developing countries.[97] Furthermore, mobile money is arguably cheaper and more accessible to the poor than other alternatives to cash in Zimbabwe.[98] MNOs

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94 Basel Committee on Banking Supervision *Core Principles for Effective Banking Supervision* (Bank of International Settlements Basel 2011) 64; see related comments by Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156; De Koker 2006 *Journal of Financial Crime* 29.

95 De Koker 2013 *Washington Journal of Law, Technology & Arts* 196; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Basel Committee on Banking Supervision 2011 *Core Principles for Effective Banking Supervision* 22; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 54.

96 See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 54; Di Castri and Plaitakis *Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* 3.

97 Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific and Engineering Research* 129; Lawack 2013 *Washington Journal of Law, Technology and Arts* 319; Abiona O and Koppensteiner MF "Financial Inclusion, Shocks, and Poverty: Evidence from the Expansion of Mobile Money in Tanzania" 2020 *Journal of Human Resources* 1, 2; Kasradze 2020 *European Journal of Marketing and Economics* 67; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378-379.

98 Mutsonziwa K and Maposa OK "Mobile Money – A Catalyst for Financial Inclusion in Developing Economies: A Case Study of Zimbabwe using FinScope Survey Data" 2016 *International Journal of Financial Management* 45, 46; see related comments by Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96; Abiona and Koppensteiner 2020 *Journal of Human Resources* 2.

leverage on their network infrastructure to provide affordable and convenient mobile money services that are reaching millions of the poor persons in Zimbabwe.[99] Innovative technology has facilitated the invention of low-cost mobile money services that are reaching more poor persons in Zimbabwe in a relatively shorter time than banks have in their long history of existence.[100] The researcher argues that a bank account is no longer a prerequisite requirement for a person to withdraw, deposit or save money in Zimbabwe.[101] Mobile money enables the poor to process deposits, withdrawals, transactions and paying bills using their mobile phones. However, it appears that the ongoing COVID-19 pandemic may lead to relaxed application of KYC/CDD measures in mobile money services.[102] This is done to allow the poor to open mobile money accounts in order to receive social assistance payments.[103] Although relaxing KYC/CDD measures may be good for the financial inclusion of the poor, the move adds to regulatory concerns regarding the current financial statutory framework in Zimbabwe.[104] The researcher argues that there is a need for an enhanced mobile money regulatory framework that can robustly balance the promotion of financial inclusion and safeguarding financial

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99 See related comments by Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96; see related comments by Van Hove and Dubus 2019 *Sustainability* 2; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 439; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5.

100 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96-97; see related comments by Munyoro *et al* 2017 *International Journal of Research in Business Management* 2; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology and Arts* 287.

101 See related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11, see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378 Mazer R and Rowan P "Competition in mobile financial services: Lessons from Kenya and Tanzania" 2016 *The African Journal of Information and Communication* 39, 51; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1607.

102 Jenik I, Kerse M and De Koker L *Rapid Account Opening in a Pandemic: How to meet AML/CFT Rules for Social Assistance Payments* (Consultative Group to Assist the Poor Washington DC 2020) 5-6; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; Mann "Driver for Contactless Payments" 175-176.

103 Jenik, Kerse and De Koker 2020 *Rapid Account Opening in a Pandemic: How to meet AML/CFT Rules for Social Assistance Payments* 5-6; see related comments by Malady and Buckley 2014 *Centre for International Finance and Regulation* 4; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology and Arts* 290-291; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 4-5.

104 See related comments by Alexander K "Financial Inclusion and Banking Regulation: The Role of Proportionality" 2021 *Law and Contemporary Problems* 129, 142-143; Buheji *et al* 2020 *American Journal of Economics* 216; Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 76; Jenik, Kerse and De Koker 2020 *Rapid Account Opening in a Pandemic: How to meet AML/CFT Rules for Social Assistance Payments* 13.

markets stability.[105] One way to achieve this is for policymakers in Zimbabwe to enact a mobile money statute that promotes financial inclusion for the poor while combating crimes such as money laundering, fraud and terrorist financing.

In addition, the researcher discusses other factors driving the adoption and use of mobile money as possibly the most preferred payment system in Zimbabwe.[106] In this regard, Zimbabwe has faced intermittent liquidity challenges and mobile money has somehow filled the resultant void, enabling the country to avert an economic stagnation.[107] Many poor people in Zimbabwe rely on mobile money for their financial needs in both rural and urban areas.[108] The outbreak of the COVID-19 pandemic has further increased the utility of mobile money in Zimbabwe owing to its relative safety compared to other payment systems.[109] The wide adoption and use of mobile money also provides an opportunity for countries such as Zimbabwe to start thinking of an inclusive cashless economy.[110] A cashless economy refers to reduced use of physical cash such as bank notes and coins and adoption of alternative payments methods like mobile money.[111]

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105 See related comments by Alexander 2021 *Law and Contemporary Problems* 142-143; Jenik, Kerse and De Koker 2020 *Rapid Account Opening in a Pandemic: How to meet AML/CFT Rules for Social Assistance Payments* 13-14; Buheji *et al* 2020 *American Journal of Economics* 216; Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 76.

106 See related comments by Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 299; see related comments by Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1112.

107 See related comments by Mavaza T "E-Banking Adoption by Zimbabwe Banks: An Exploratory Study" 2019 *PM World Journal* 1, 6; Bara A and LeRoux P "Technology, Financial Innovations and Bank Behavior in a Low Income Country" 2018 *Journal of Economics and Behavioral Studies* 221, 230.

108 Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156; see related comments by Greenacre 2018 *Regulating Mobile Money: A Functional Approach* 3; Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific & Engineering Research* 128.

109 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; Mann "Driver for Contactless Payments" 175-176; Chibango 2014 *The International Journal of Humanities and Social Studies* 64.

110 See related comments by Okoye PVC and Ezejiofor R "An Appraisal of Cashless Economy Policy in Development of Nigerian Economy" 2013 *Research Journal of Finance and Accounting* 237, 242; Lu L "Decoding Alipay: Mobile Payments, a Cashless Society and Regulatory Challenges" 2018 *Butterworths Journal of International Banking and Financial Law* 40, 41; Opare EA "The Advantages and Disadvantages of Mobile Money on the Profitability of the Ghanaian Banking Industry" 2018 *Texila International Journal of Management* 1, 6.

111 Okoye and Ezejiofor 2013 *Research Journal of Finance and Accounting* 239; see related comments by Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41; Opare 2018 *Texila International Journal of Management* 6.

Although mobile money has become a powerful tool for economic development and financial inclusion for many poor persons in Zimbabwe, it should operate in a regulated environment.[112] This assists to curb money laundering and other criminal activities in Zimbabwe.[113] As such, this research highlights adverse effects of flaws and gaps in the current mobile money statutory framework on the promotion of financial inclusion for the poor in Zimbabwe. Thus, the research examines relevant provisions of, *inter alia*, the *NPS Act*, the *Banking Act*, the *RBZ Act*, *Money Laundering and Proceeds of Crime Act* and the *Banking Regulations 2020* that deal with mobile money. This is done to recommend possible measure that the policymakers may adopt to improve the regulation of mobile money in order to promote financial inclusion for the poor in Zimbabwe.

1.7 Literature Review

Mashiri, Dzingirai and Nyamwanza argue that technology has assisted MNOs to roll out mobile money services and contribute towards financial inclusion for persons in rural areas and informal settlements in Zimbabwe.[114] Mobile money has bridged the poor infrastructure challenge that made it uneconomical for banks to establish branches or ATMs in areas outside towns and cities in Zimbabwe.[115] However, Mashiri, Dzingirai and Nyamwanza did not discuss the legal use and regulation of mobile money services in Zimbabwe. That is where this research comes in to

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112 See related comments by Greenacre J "What Regulatory Problems Arise when Fintech Lending Expands into Fledgling Credit Markets?"2020 *Washington University Journal of Law & Policy* 229, 233; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 66; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

113 Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; see related comments by Greenacre 2020 *Washington University Journal of Law & Policy* 233; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451: Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 66.

114 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96; see related comments by Van Hove L and Dubus A "M-PESA and Financial Inclusion in Kenya: Of Paying Comes Saving?" 2019 *Sustainability* 1, 2; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2; Kufandirimbwa *et al* 2013 *Online Journal of Social Sciences Research* 94-95.

115 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 95-96; see related comments by Van Hove and Dubus 2019 *Sustainability* 2; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 439.

examine how policymakers in Zimbabwe have responded to the advent of mobile money services.

De Koker argues that financially excluded persons face risks associated with cash such as theft and robberies, and their inability to save threatens their financial security.[116] The researcher agrees with De Koker's assertion and adds that the use of cash has become a health risk since the outbreak of the covid-19 pandemic.[117] Health experts warn that the highly contagious coronavirus could transmit through cash transactions.[118] Thus, the poor and informal workers who often use cash and work in crowded places face great risk of contracting covid-19.[119] The researcher submits that the use of mobile money allows the poor to receive Covid-19 related social assistance payments, alleviating the suffering of many households in Zimbabwe.

Lowry argues that mobile money is a product of the colliding domains of finance and technology.[120] While the intersection of the finance and technology domains has resulted in affordable, convenient and secure financial services like mobile money, it presented regulatory challenges.[121] In this regard, regulators in jurisdictions like Kenya and Zimbabwe adopted the 'test-and-learn' approach at the inception of

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116 De Koker 2006 *Journal of Financial Crime* 27; see related comments by Chitimira and Ncube 2020 *Journal of African Law* 351; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 35; Nyanhete A "The Role of International Mobile Remittances in Promoting Financial Inclusion and Development" 2017 *European Journal of Sustainable Development* 256, 257.

117 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22, see related comments by Buheji *et al* 2020 *American Journal of Economics* 216; De, Pandey and Pal 2020 *International Journal of Information Management* 3; Mann "Driver for Contactless Payments" 176; Kasradze 2020 *European Journal of Marketing and Economics* 70.

118 Olivia, Gibson and Nusrudin 2020 *Bulletin of Indonesian Economic Studies* 165; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22, De, Pandey and Pal 2020 *International Journal of Information Management* 3; Mann "Driver for Contactless Payments" 176; Kasradze 2020 *European Journal of Marketing and Economics* 70.

119 See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22, De, Pandey and Pal 2020 *International Journal of Information Management* 3; Mann "Driver for Contactless Payments" 176; Kasradze 2020 *European Journal of Marketing and Economics* 70; Buheji *et al* 2020 *American Journal of Economics* 216.

120 Lowry C "What's in your Mobile Wallet: An Analysis of Trends in Mobile Money Payments and Regulation" 2016 *Federal Communication Law Journal* 353, 355; Malady *et al* 2018 *Banking and Finance Law Review* 8; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 394.

121 Lowry 2016 *Federal Communication Law Journal* 355; see related comments by Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156.

mobile money services.[122] As argued earlier, the test-and-learn approach allowed mobile money services to rollout while affording regulators took a pause to study the characteristics of the new financial product before regulating.[123] Lowry opines that it may be easier for policymakers in countries that use mobile money to amend existing laws than to enact new statutes.[124] While Lowry's sentiments may be sound in jurisdictions with well-developed regulatory frameworks, using existing financial laws may not work in Zimbabwe. This follows the fact that the finance and telecommunication domains are distinct and they are regulated differently.[125] Therefore, the researcher submits that policymakers in Zimbabwe should enact a new statute that can combine the finance and technology domains in order to expressly and adequately regulate mobile money.

Additionally, De Koker, Morris and Jaffer argue that fintech products such as mobile money require policymakers to change regulatory and supervisory approaches.[126] The researcher argues that policymakers in Zimbabwe have been slow in developing suitable mobile money policies. De Koker, Morris and Jaffer further argue that fintech products are driving many jurisdictions across the globe to research into the possibility of introducing digital currencies and cashless economies.[127] The researcher submits that Zimbabwe does not have a clearly outlined digital currency policy or cashless economy strategy.

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122 Lowry 2016 *Federal Communication Law Journal* 376; Malady *et al* 2018 *Banking and Finance Law Review* 8; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 394.

123 See related comments by Malady *et al* 2018 *Banking and Finance Law Review* 8; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 394; De Koker, Morris and Jaffer 2019 *Law in Context* 6.

124 Lowry 2016 *Federal Communication Law Journal* 356; see related comments by Soutter, Ferguson and Neubert 2019 *Technology Innovation Management Review* 53.

125 Malady *et al* 2018 *Banking and Finance Law Review* 4; see related comments by Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 287; Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 770.

126 De Koker, Morris and Jaffer 2019 *Law in Context: A Socio-Legal Journal* 92; see related comments by Botchey FE, Qin Z and Hughes-Lartey K "Mobile Money Fraud Prediction-A Cross-Case Analysis on the Efficiency of Support Vector Machines, Gradient Boosted Decision Trees, and Naïve Bayes Algorithms" 2020 *Information* 1, 4-5; Packin NG "Regtech, Compliance and technology Judgement Rule" 2018 *Chicago-Kent Law Review* 193, 210.

127 De Koker, Morris and Jaffer 2019 *Law in Context: A Socio-Legal Journal* 92; see related comments by Botchey, Qin and Hughes-Lartey 2020 *Information* 4-5; Okoye PVC and Ezejiofor R "An Appraisal of Cashless Economy Policy in Development of Nigerian Economy" 2013 *Research Journal of Finance and Accounting* 237, 239.

Kobor posits that it may be difficult to regulate mobile money using a legal framework designed for conventional financial institutions like banks.[128] The traditional financial regulatory frameworks can be good for banks and other financial institutions such as insurance companies, but lacks coherence when it comes to mobile money services in many developing countries, including Zimbabwe.[129] Kobor further argues that it may be better if MNOs can self-regulate through, for instance, imposing transaction limits rather than using external regulators whose understanding of mobile money could be limited.[130] However, the researcher submits that self-regulation by MNOs could be work for big service providers such as Ecocash which can afford the financial and human resources to do that.[131] Thus, self-regulation could be tantamount to promoting monopolies in the mobile sector at the expense of small players. Ultimately, self-regulation potentially discourages innovation, a critical factor in the invention of cheaper and more accessible financial products like mobile money.[132] Therefore, the researcher argues that policymakers should enact a new statute that is specifically used to regulate mobile money in order to promote financial inclusion for the poor in Zimbabwe.

Mugarura argues that mobile phones can provide records of activities on all mobile money activities that could assist law enforcement agencies to fight financial crimes

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128 Kobor ES "The Role of Anti-Money Laundering Law in Mobile Money Systems in Developing Countries" 2013 *Washington Journal of Law, Technology & Arts* 303, 314; see related comments by Buckley, Greenare and Malady 2015 *Washington University Global Studies Law Review* 451-452.

129 Kobor 2013 *Washington Journal of Law, Technology & Arts* 314; see related comments by Buckley, Greenare and Malady 2015 *Washington University Global Studies Law Review* 453-454.

130 Kobor 2013 *Washington Journal of Law, Technology & Arts* 314; see related comments by Jenik, Kerse and De Koker 2020 *Rapid Account Opening in a Pandemic: How to meet AML/CFT Rules for Social Assistance Payments* 6.

131 See related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 399-400; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 127.

132 See related comments by Robb and Vilakazi 2016 *The African Journal of Information and Communication* 33; Pazarbasioglu *et al Digital Financial Services* 8; Guild 2017 *Asian Journal of Public Affiars* 4; Di Castri and Plaitakis 2018 *Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* 5.

in developing countries like Zimbabwe.[133] The researcher agrees with Mugarura and submits that one of mobile money's advantages is the traceability of transactions.[134] Although mobile phones may be susceptible to abuse by criminals, law enforcement agencies can use the same phones to access transaction records in order to track down criminals.[135] For instance, mobile phones store call history, contacts, text messages, emails, Global Positioning System (GPS) and other location information that can assist the police in fighting crime in countries like Zimbabwe.[136] Nonetheless, Zimbabwe may not have the financial and technological abilities to afford and maintain the necessary state-of-the-art infrastructure to detect money laundering and other financial crimes.[137] Thus, the researcher submits that it could be prudent for policymakers in Zimbabwe to enact a statute or amend the existing legislation in order to regulate the telecommunications aspects of mobile money services sufficiently.

Winn argues that while mobile money may promote financial inclusion for the poor in developing countries such as Zimbabwe, it remains unclear whether there are sufficient AML/CTF safeguards.[138] The researcher argues that Zimbabwe does not seem to have AML/CTF statutes that can adequately regulate the use of mobile

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133 Mugarura N "The Use of Mobile Phones in Changing the Banking Regulatory Landscape in Africa" 2019 *African Journal of International and Comparative Law* 308, 309; see related comments by Kernan 2018 *Vanderbilt Journal of Transnational Law* 1118; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 292.

134 Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 289-290; see related comments by Mugarura 2019 *African Journal of International and Comparative Law* 309; Chatain *et al Protecting Mobile Money Against Financial Crimes: Global Policy Challenges and Solutions* 10.

135 Mugarura 2019 *African Journal of International and Comparative Law* 309-310; see related comments by Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 292; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1118.

136 Mugarura 2019 *African Journal of International and Comparative Law* 310; see related comments by Kernan 2018 *Vanderbilt Journal of Transnational Law* 1118; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 292.

137 Mugarura 2019 *African Journal of International and Comparative Law* 310; see related comments by Kernan 2018 *Vanderbilt Journal of Transnational Law* 1118; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 292.

138 Winn 2013 *Washington Journal of Law, Technology & Arts* 212; see related comments by Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156.

money.[139] Winn further opines that while financial inclusion is important for economic development of the poor, a rigid enforcement of AML/CTF could hinder the use of mobile money in countries like Zimbabwe.[140] A rigid enforcement of AML/CTF subjects mobile money users to the same documentary requirements banks demand in opening of accounts.[141] Such documents include proof of income and proof of residence, which poor persons may find difficult to obtain.[142] The researcher submits that many poor persons could be informally employed and they might be staying in informal settlements hence they may not easily get pay-slips or proof of residence. In this regard, the researcher argues that policymakers should relax some KYC and CDD measures in order to assist more poor persons to use and access mobile money services in Zimbabwe.

According to Makulilo, there are important legal and regulatory constraints that have remained unresolved more than a decade since mobile money started operating in Africa such as the protection of mobile money users' privacy.[143] For instance, mobile money agents assist illiterate clients who make their Personal Identity Numbers (PINs) or passwords available, yet there appears to be no assurance that such users' information and money is safe.[144] This potentially puts mobile money users' accounts at risk of abuse by unscrupulous agents. In this regard, there should be financial

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139 See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25.

140 Winn 2013 *Washington Journal of Law, Technology & Arts* 212; see related comments by Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156.

141 Winn 2013 *Washington Journal of Law, Technology & Arts* 227; see related comments by Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 45-46; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 6-7; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 34; Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156-157.

142 See Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 45-46; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 6-7; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 34.

143 Makulilo 2015 *International Journal of Law and Information Technology* 374; see related comments by Packin NG "Show ME the (Data About the) Money!" 2020 *Utah Law Review* 1277, 1283; Malady *et al* 2018 *Banking and Finance Law Review* 13.

144 Makulilo 2015 *International Journal of Law and Information Technology* 375; also see Packin 2020 *Utah Law Review* 1283; Malady *et al* 2018 *Banking and Finance Law Review* 13; Masocha and Dzomonda 2014 *Academy of Accounting and Financial Studies Journal* 2.

literacy programmes to empower the poor on the best ways to safeguard sensitive information linked to their mobile money accounts.

Buckley, Greeacre and Malady argue that with supportive regulatory frameworks, the use of mobile money can promote financial inclusion of the poor in developing economies like Zimbabwe.[145] Buckley, Greenacre and Malady submit that effective regulation of mobile money should be conducive for fintech innovation to grow without undue restrictions.[146] Further, effective mobile money regulation should balance the safeguarding of financial markets integrity and the promotion of financial inclusion for the poor.[147] The researcher argues that in Zimbabwe, there has not been sufficient development of a mobile money regulatory framework to robustly supervise mobile money and promote financial inclusion for the poor.

Malady *et al* argue that financial inclusion of the poor in developing countries like Zimbabwe can be realised when all individuals can access a wide range of financial services that they can use as and when needed.[148] In this regard, the regulatory framework should not place unnecessary difficulties that may prevent the poor in Zimbabwe from accessing financial services.[149] However, Greenacre argues that MNOs such as Econet and NetOne in Zimbabwe should open trust accounts at banks where they deposit mobile money users' funds for safekeeping.[150] The researcher submits that depositing mobile money users' funds in trust accounts guards against the potential abuse and misappropriation of funds by MNOs. Trust accounts also safeguard mobile money users' funds in the event that MNOs become insolvent.

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145 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437-438; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 35.

146 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; also see Lee E "Financial Inclusion: A Challenge to the New Paradigm of Financial Technology, Regulatory Technology and Anti-Money Laundering Law" 2017 *Journal of Business Law* 1, 30-31.

147 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; Lee 2017 *Journal of Business Law* 31-32.

148 Malady *et al* 2018 *Banking and Finance Law Review* 3-4; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; Lee 2017 *Journal of Business Law* 30-32.

149 Malady *et al* 2018 *Banking and Finance Law Review* 3; see related comments by Lee 2017 *Journal of Business Law* 31-32; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438.

150 Greenacre *Regulating Mobile Money: A Functional Approach* 9; see related comments by Lee 2017 *Journal of Business Law* 43.

Lumsden argues that while financial innovations are the future of inclusive finance, there is a need for due diligence so that mobile money is not used to commit financial crimes.[151] The researcher further argues regulators should safeguard financial markets stability while allowing innovative financial products such as mobile money to benefit the poor.[152] In this regard, the researcher submits that mobile financial services regulation in Zimbabwe should strive for a healthy balance between facilitating financial inclusion of the poor and maintaining the integrity of the financial services sector.

Gibson, Lupo-Pasini and Buckley postulate that although the mobile money in developing countries like Zimbabwe often involve small amounts of money, they could still be susceptible to fraud and other financial crimes.[153] The researcher argues that criminal elements could attempt to abuse mobile money if no proper safeguards are in place. To curb money laundering, terrorist financing and other financial crimes, policymakers in Zimbabwe need to enact a mobile money regulatory framework that supervises MNOs and their agents.[154] The researcher argues that policymakers in Zimbabwe should enact a statute that clarifies whether the liability of agents' actions rests with MNOs or agents themselves. The current regulatory framework in Zimbabwe is not clear on the aspect of agents' legal liability.

Lawack argues that the over-regulation of the South African financial services sector creates barriers for the financial inclusion of the poor who may not have the required documents.[155] In other words, the South African financial regulatory framework puts stringent proof of identity and proof of residence requirements for the poor persons

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151 Lumsden 2018 *Stanford Journal of Law, Business and Finance* 4-5; see related comments by Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 290-291.

152 Lumsden 2018 *Stanford Journal of Law, Business and Finance* 4-5; see related comments by Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology and & Arts* 290-291.

153 Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 26-27; also see related comments by Makulilo 2015 *International Journal of Law and Information Technology* 374; Malady *et al* 2018 *Banking and Finance Law Review* 13.

154 Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 27; see Malady *et al* 2018 *Banking and Finance Law Review* 13; Masocha and Dzomonda 2014 *Academy of Accounting and Financial Studies Journal* 2.

155 Lawack 2013 *Washington Journal of Law, Technology and Arts* 344-345; see related comments by Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 42, 45-46; Lee 2017 *Journal of Business Law* 31-32; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438.

from informal settlements and those without valid documents cannot satisfy.[156] The researcher concurs with Lawack's sentiments that South Africa may need a relaxed and segmented approach in regulating its payment systems so that it remains competent while serving more people.[157]

Alexandre and Eisenhart opine that there is no need for specific legislation for mobile money regulation.[158] They argue that regulators can use laws that supervise electronic money to regulate mobile money.[159] The researcher has a slightly different approach to this proposition. The researcher submits that mobile money is an evolving financial product that may grow to eclipse banking as we know it. In this regard, it may be necessary for policymakers to enact a suitable regulatory framework that enables the legal use of mobile money to promote financial inclusion for the poor in Zimbabwe.

1.8 Assumptions and Hypothesis

1.8.1 Assumptions

This research is premised on the following assumptions:

a) the relevant provisions under, *inter alia*, the *Banking Act, NPS Act, RBZ Act* and the *CPA* are not robust enough to regulate the use of mobile money in a way that promotes financial inclusion of the poor in Zimbabwe. In this regard, the enactment of good financial service legislation that factors in innovations can significantly improve mobile money regulation.

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156 Lawack 2013 *Washington Journal of Law, Technology and Arts* 345; see related comments by Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 45-46; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 6-7; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 34.

157 Lawack 2013 *Washington Journal of Law, Technology and Arts* 345; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; Lee 2017 *Journal of Business Law* 30-31.

158 Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 298; ; see related comments by Lowry 2016 *Federal Communication Law Journal* 356; Remolina 2019 *Social Sciences Research Network Electronic Journal* 46.

159 Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 298; see related comments by Soutter, Ferguson and Neubert 2019 *Technology Innovation Management Review* 53; Lowry 2016 *Federal Communication Law Journal* 356.

b) Government and role-players such as the RBZ, POTRAZ MNOs, the police, the National Prosecuting Authority and the courts face challenges in enforcing the regulation of mobile money due to gaps and flaws in the mobile money statutory framework. Ultimately, there is no proper legislative guidance on the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe.

c) the weak and incoherent mobile money regulatory framework is not adequate to assist the poor to adequately use mobile money to withstand shocks such as the socio-economic effects of the ongoing COVID-19 pandemic in Zimbabwe.

1.8.2 Hypothesis

Attempting to regulate mobile money using the current statutory regulatory framework in Zimbabwe appears ineffective owing to poor development and limited scope of the system. On one hand, regulators face the challenge of enforcing an inhibitive and narrow regulatory system while on the other there is a largely unbanked population that relies on mobile money for every day transactions. Moreover, there is a view that the current regulatory framework is very preliminary and therefore insufficient to cope with the fast pace with which mobile money develops.[160] Lack of sufficient regulation from the inception of mobile money in 2011 because of inadequate legislation seems to have led to an inefficient bureaucracy. As a result, the present regulations and regulatory bodies like the RBZ, FIU, CCZ and Potraz may be seen as barriers to the use of mobile money and the promotion of financial inclusion in Zimbabwe. Liquidity challenges in Zimbabwe have caused even the ten to twenty percent banked population to rely on the convenience of mobile money to transact. The *RBZ Act*, the *Banking Act,* the *NPS Act* and other relevant statutes seem to focus more on conventional financial markets regulation than on mobile money. Therefore, it is argued that there is no robust regulation of mobile money in Zimbabwe. A comparative analysis on the regulation of mobile money in

[160] Weihuan, Arner and Buckley 2015 *Chinghua China Law Review* 44; Greenacre 2018 *Pathways for Prosperity Commission Background Paper Series* 3-4; Rosengard 2016 *Swift Institute Working Paper* 21.

Kenya, South Africa and the United Kingdom seeks to explore possible steps Zimbabwe may adopt to improve the promotion of financial inclusion for the poor and unbanked persons.

1.9 Justification for Comparative Study

Selected legislation relevant to the regulation of mobile money services and promotion of financial inclusion for the poor in Zimbabwe, Kenya, South Africa and UK will be discussed. In this case, Kenya has one of the most successful mobile money sectors in the world.[161] The M-Pesa platform in Kenya has brought millions of financially underserved Kenyans into the mainstream financial sector.[162] Secondly, Kenya has a concentrated mobile money sector where M-Pesa, has developed into a monopoly in almost the same way Ecocash is, in Zimbabwe.[163] Thus, Kenya has created a monopoly in *M-Pesa* and this may work against health competition in the financial services sector.[164] Nonetheless, mobile money services in Kenya have inspired the launch and development of mobile money platforms in many developing countries including Zimbabwe.[165]

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161 Goncalves 2013 *University of Miami International and Comparative Law Review* 32-33; see also Lumsden 2018 *Stanford Journal of Law, Business and Finance* 27.

162 See related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437-438; Kobor 2013 *Washington Journal of Law, Technology & Arts* 308; Nyagilo VO, Sakwa MM and Namusonge GS "Efficiency of Mobile Led Financial Services and its Effect on Financial Inclusion in Kenya" 2017 *International Journal of Business Management & Finance* 554, 560-561; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379. The 'M in 'M-Pesa stands for mobile while 'Pesa' means money in Swahili. Thus, M-Pesa is short for mobile money.

163 Robb and Vilakazi 2016 *The African Journal of Information and Communication* 33; see related comments by Pazarbasioglu *et al Digital Financial Services* 8; Robb, Tausha and Vilakazi "Competition and Regulation in Zimbabwe's Emerging Mobile Payments Markets" 226; Di Castri and Plaitakis *Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* 1. Ecocash is short for Econet cash.

164 See related comments by Robb and Vilakazi 2016 *The African Journal of Information and Communication* 33; Pazarbasioglu *et al Digital Financial Services* 8; Robb, Tausha and Vilakazi "Competition and Regulation in Zimbabwe's Emerging Mobile Payments Markets" 226; Di Castri and Plaitakis *Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* 1.

165 See related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 1; Kobor 2013 *Washington Journal of Law, Technology & Arts* 307; Aron J and Muellbauer J *The Economics of Mobile Money: Harnessing the Transformative Power of Technology to Benefit the Global Poor* (Centre for the Study of African Economies University of Oxford 2019) 1; Di Castri and Plaitakis *Getting Financial Inclusion Policies right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* 1-2.

In South Africa, mobile money is in the preliminary stages owing to the fact that MTN revived its MoMo platform in 2020 after a four-year break.[166] It remains unclear whether the MTN MoMo will succeed where earlier attempts failed.[167] Earlier mobile money initiatives in South Africa had promising starts but they later fizzled out.[168] The failure of earlier mobile money initiatives in South Africa is attributed to South Africa's rigid financial regulatory framework.[169] Consequently, a significant section of the South African poor remains financially excluded due to stringent documentary requirements.[170]

The UK may not have extensive use of mobile money but its ability to adopt and regulate fintech products has reached a degree of maturity in promoting financial inclusion for the poor and this provides vital lessons for policymakers in Zimbabwe.[171] Put differently, the UK is one of the fintech hubs in the world.[172] The UK's support for fintech and financial inclusion for the poor extends beyond its borders as shown by its financial support that assisted in the launch and growth of

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166 McLeod D 2020 *MTN in big E-Commerce Play with Mobile Money* page number unknown https://techcentral.co.za/mtn-mobile-money-can-now-be-used-for-online-shopping/99192/ accessed on 10 December 2020; see related comments by Robb G 2015 *Why Mobile Money has Flopped in South Africa* page number unknown http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ accessed 20 April 2021.

167 McLeod 2020 https://techcentral.co.za/mtn-mobile-money-can-now-be-used-for-online-shopping /99192/accessed on 10 December 2020; Robb 2015http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ page number unknown.

168 See related comments by Lumsden 2018 *Stanford Journal of Law, Business and Finance* 30; Gedeye L *Cellphone Banking Needs Laws* Mail & Guardian (7 December 2012), https://mg.co.za/article/2012-12-07-cellphone-banking-needs-laws accessed on 9 October 2020.

169 Lumsden 2018 *Stanford Journal of Law, Business and Finance* 30-31; also see Chutel L *MTN is giving up on mobile money in South Africa*, Quartz (16 September 2016), https://qz.com/783230/mtn-has-cancelled-its-mobile-money-service-in-south-africa-but-will-continue-to-move-into-financial- services-in-africa/ accessed on 9 October 2020.

170 Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 35; Lawack 2013 *Washington Journal of Law, Technology and Arts* 330-331; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 80; 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, 184.

171 See Hodson D "The politics of FinTech: Technology, regulation, and disruption in UK and German retail banking" 2021 *Public Administration* 1, 4; Sumroy R, Kingsley B, Donovan N and Hakki S *United Kingdom: Fintech Laws and Regulations 2021* https://iclg.com/practice-areas/fintech-laws-and-regulations/united-kingdom accessed on 15 October 2021.

172 Hodson 2021 *Public Administration* 7; Sumroy *et al* https://iclg.com/practice-areas/fintech-laws-and-regulations/united-kingdom.

M-Pesa in Kenya.[173] In terms of regulation, the UK adopted the 'twin peaks' financial regulation model in 2013 that has important lessons for Zimbabwe.[174] The new model established the Prudential Regulatory Authority (PRA) that oversees the safety and soundness of the financial system and the Financial Conduct Authority (FCA), which seeks to ensure financial consumer welfare.[175] Furthermore, the FCA is obliged to secure appropriate consumer protection, safeguard and enhance financial integrity and to promote effective competition in the interests of the UK financial consumers.[176] Nonetheless, the COVID-19 pandemic has exposed underlying financial exclusion affecting many poor persons in the UK despite its well-developed financial services market.[177]

In light of the above, Zimbabwe's policymakers can draw important regulatory lessons from Kenya, South Africa and the UK in order to regulate mobile money to promote financial inclusion for the poor.

1.10 Limitations of the Study

This research focuses on the regulation and use of mobile money to promote financial inclusion for the poor persons in Zimbabwe. In this regard, mobile money is a subset of digital financial services that are accessible using the mobile phone

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173 See related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology and Arts* 385-386.

174 Lewis S and Lindley D *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* (Asian Development Bank Institute Tokyo 2015) 9; see related comments by Zetzsche DA, Buckley RP, Barberis JN and Arner DW "Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation" 2017 *Fordham Journal of Corporate & Financial Law* 31, 57; Walker G "Financial Technology Law-A New Beginning and a New Future" 2017 *The International Lawyer* 137, 152.

175 Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 9; see related comments by Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 57; Walker 2017 *The International Lawyer* 152.

176 *Financial Services Act* [Chapter 21] of 2012 (*FSA*) sections 1A and 2A; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 10.

177 See related comments by Alexander K "Financial Inclusion and Banking Regulation: The Role of Proportionality" 2021 *Law and Contemporary Problems* 129, 131; Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 76; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 174-175; Deloitte 2021 *Growth through Financial Inclusion: A Roadmap for UK Banks* 4 available at https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf accessed on 22 April 2021.

without the need for a bank account in Zimbabwe.[178] Thus, individuals who use mobile money accounts linked to a bank account fall in the category of banked persons and they fall outside the category of poor persons in Zimbabwe.[179] Furthermore, the research narrows its focus to mobile money as a payments system in Zimbabwe. In this regard, the researcher does not focus on bank-led mobile money services or mobile banking.[180] In addition, crypto-currencies do not conform to the definition of mobile money outlined above hence they are not part of this research. The use of mobile money has considerably grown in Zimbabwe, assisting many poor individuals to access financial services using their mobile phones.[181] This research discusses the regulation and use of mobile money in promoting financial inclusion for the poor who do not ordinarily have access to formal financial services such as banking, savings and insurance in Zimbabwe. Other aspects explored in this research include the inter-linkages between financial inclusion, integrity, stability and protection (I-SIP).[182] The four elements reinforce each other and they contribute towards sustainable financial inclusion of the poor in developing countries like Zimbabwe.[183] In addition, the researcher focuses on mobile money services provided

178 Demirgüç-Kunt *et al The Global Findex Database 2017: Measuring Financial Inclusion and the Fintech Revolution* 18; see related comments by Koomoon, Bukari and Villano 2021 *Technological Forecasting & Social Change* 4.

179 Demirgüç-Kunt *et al The Global Findex Database 2017: Measuring Financial Inclusion and the Fintech Revolution* 18; see related comments by Yusheng, Yama Tampuri and Opoku Boadi 2018 *International Journal of Management Sciences and Business Research* 123.

180 See related comments by Kim J "Ubiquitus Money and Walking Banks: Environment, Technology, and Competition in Mobile Banking" 2008 *Richmond Journal of Global Law & Business* 37, 42-43; Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 319; Mbengo and Phiri 2015 *Corporate Ownership & Control* 197; Harris and Terkel 2012 *Clearinghouse Review* 162-163; Porteous *The Enabling Environment for Mobile Banking in Africa* 17.

181 Masocha and Dzomonda 2018 *Academy of Accounting and Financial Studies Journal* 4; Weihuan, Arner and Buckley 2015 *Tsinghua China Law Review* 61; Sulieman and Salleh 2020 *Journal of Critical Reviews* 568; Goldby 2013 *Washington Journal of Law, Technology and Arts* 403-404.

182 Tomilova O and Valenzuela M *Financial Inclusion + Stability, Integrity, and Protection (I-SIP): Policy Making for an Inclusive Financial System: A Toolkit for Financial Sector Policy Makers* (CGAP Washington DC 2018) 2; see related comments by Di Castri and Plaitakis *Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* 7; Alber 2019 *Social Sciences Research Network Electronic Journal* 2.

183 See related comments by Cull R, Demirjuc-Kunt A and Lyman T *Financial Inclusion and Stability: What Does Research Show?* (Consultative Group to Assist the Poor Washington DC 2012) 1; Tomilova and Valenzuela *Financial Inclusion + Stability, Integrity, and Protection (I-SIP)* 4; Di Castri and Plaitakis *Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* 7.

by MNOs in Zimbabwe.[184] There is no express statute regulating MNOs' mobile money activities in Zimbabwe. However, this research examines relevant current statutes such as the *Banking Act*, the *NPS Act*, the *RBZ Act*, *Postal and Telecommunications Act*, *Money Laundering and Proceeds of Crime Act* and the *Banking Regulations 2020*.

1.11 Research Methodology

This thesis makes use of the comparative legal analysis and doctrinal studies research methodology. In this regard, the researcher makes a comparison of relevant financial regulatory statutes on mobile money and the promotion of financial inclusion for the poor in Zimbabwe, Kenya, South Africa and the UK. Furthermore, the doctrinal research approach[185] comes in handy to assist the researcher in analysing the extant financial statutory framework, policy instruments, journal articles, books and relevant case law on the regulation and use of mobile money to promote financial inclusion in Zimbabwe. Accordingly, the researcher does not use interviews, questionnaires or any other empirical research methods in this research. Therefore, the researcher will make use of the following research methods:

a) Primary and Secondary Sources

Primary sources consist of legislation, policy documents and case law that provide evidence of a first-hand account of an event or time and these are considered authoritative. Secondary sources comprise books, journal articles and relevant Internet sources and these describe or explain primary sources. The researcher uses

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184 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96; see related comments by Masocha and Dzomonda 2018 *Academy of Accounting and Financial Studies Journal* 2-3; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2-3; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 2-3.

185 Gawas VM "Doctrinal Legal Research Method a Guiding Principle in Reforming the Law and Legal System towards the Research Development" 2017 *International Journal of Law* 128, 128-129. It also provides an overview of the regulation of mobile money and the promotion of financial inclusion for the poor in Zimbabwe, Kenya, South Africa and the UK. This is done to investigate possible measures Zimbabwe can adopt from Kenya, South Africa and the UK mobile money regulatory frameworks to enhance its regulation of mobile money and the promotion of financial inclusion.

both primary and secondary sources that are relevant to the thesis topic. Where necessary, Internet websites were used to obtain relevant information that may not be easily available in primary sources. For purposes of this research, the North-West University *Potchefstroom Electronic Law Journal* referencing style is used.

b) Library

A library is a collection of sources of information such as books and periodicals. The library provides hard copy or digital access to relevant material on law to the researcher. The library is utilised in this thesis as it contains relevant materials for this research such as books, case law, journal articles, legislative reports and other relevant materials in order to substantiate views in this research.

c) Relevant Legislation

The research discusses relevant financial regulation laws in Zimbabwe, Kenya, South Africa and the UK. In Zimbabwe, the mobile money regulatory framework has statutes such as the *NPS Act*, the *Banking Act*, *Banking Regulations 2020*, the National Financial Inclusion Policy 2016-2020 and various policy documents on financial inclusion that this research discusses in detail.

d) Comparative Research Method

This research compares the use and regulation of mobile money services to promote financial inclusion of the poor between the Zimbabwean, Kenyan, South African and the UK jurisdictions. Kenya has set the trend on the successful development of mobile money and its regulatory framework can stand as a good yardstick for a country like Zimbabwe. On the other hand, South Africa is one of the countries where stringent regulation of the financial sector may have caused the demise of a seemingly thriving mobile money sector. The UK financial markets have hugely influenced financial markets in Zimbabwe owing to colonial links. Moreover, the COVID-19 pandemic has exposed financial exclusion challenges in the UK. In this regard, comparing the mobile money regulatory frameworks in South Africa, Kenya and the UK may provide important lessons for policymakers in Zimbabwe to enact

statutes that promote financial inclusion for the poor. Experiences from developing economies like South Africa and Kenya and those from developed countries like the UK can provide lessons that Zimbabwe can adopt to improve the regulation of mobile money.

1.12 Statement Regarding Research Ethics

This research uses a qualitative research method. All the primary and secondary sources used will be referenced fully. Primary sources will include the Zimbabwean Constitution, legislation and relevant case law. Secondary sources comprise books, journal articles and internet sources that are relevant to mobile money and financial inclusion. No individual or group interviews or questionnaires will be used as instruments for this research. This research does not directly or indirectly affect any person's rights.

1.13 Relevance for the Research Unit Theme

This research focuses on the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe. It falls under the Faculty's Research Unit Finance, Trade and Innovation sub-project of the faculty of law of the North-West University. The research examines the relevant regulatory framework for mobile money in Zimbabwe such as the *NPS Act*, the *Banking Act* and the *Banking Regulations 2020*. This is done in order to identify possible strengths and weaknesses of the regulatory framework with a view to recommend law reform that is conducive for the regulation of mobile money in a manner that promotes financial inclusion for the poor. In addition, the researcher examines the current mobile money regulatory framework to recommend possible measures that assist the poor to benefit from the use of mobile money during and post the COVID-19 pandemic in Zimbabwe. The findings of the research are contained in the final thesis. It is further hoped that some parts of the research will be published as book chapters or journal articles.

1.14 Structure of the Thesis

This research has ten chapters as outlined below:

CHAPTER ONE

RESEARCH OUTLINE AND CONTEXT

This chapter outlines the problem statement, the research question, the scope and limitations of the study. It also provides the rationale and justifications of the research, aims and objectives of the study, research methodology, literature review and outline the structure of the research.

CHAPTER TWO

HISTORICAL BACKGROUND ON THE REGULATION AND USE OF MOBILE MONEY IN ZIMBABWE

This chapter traces the history of the regulation of mobile money in Zimbabwe from 1980 to the present. The chapter discusses how the regulatory approach for the period under review to promote financial inclusion for the poor in Zimbabwe.

CHAPTER THREE

THE CURRENT STATUTORY FRAMEWORK ON THE REGULATION AND USE OF MOBILE MONEY IN ZIMBABWE

This chapter discusses the current mobile money regulatory framework in Zimbabwe. The statutes include, such as the *NPS Act*, the *Banking Act* and the *Banking Regulations 2020*. This is done to evaluate the strengths and weakness of the current statutory framework in the regulation of mobile money to promote financial inclusion for the poor.

CHAPTER FOUR

SELECTED ROLE-PLAYERS IN THE REGULATION OF MOBILE MONEY IN ZIMBABWE

This chapter discusses the various role-players in the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe. These include the government, the MNOs, mobile money agents, the RBZ, POTRAZ, the police, the NPA and the courts.

CHAPTER FIVE

THE REGULATION AND USE OF MOBILE MONEY TO PROMOTE FINANCIAL INCLUSION FOR THE POOR IN KENYA

This chapter discusses the regulation and use of mobile money to promote financial inclusion for the poor in Kenya. This is done to draw lessons on how Kenya regulates and uses mobile money to promote financial inclusion for the poor in view of the success story of its M-Pesa mobile money service.

CHAPTER SIX

THE REGULATION AND USE OF MOBILE MONEY TO PROMOTE FINANCIAL INCLUSION FOR THE POOR IN SOUTH AFRICA

This chapter discusses the regulation and use of mobile money to promote financial inclusion for the poor in South Africa. This will be done to compare the experiences and practices that Zimbabwe can possible adopt or avoid.

CHAPTER SEVEN

THE REGULATION AND USE OF MOBILE MONEY TO PROMOTE FINANCIAL INCLUSION FOR THE POOR IN THE UNITED KINGDOM

This chapter discusses the regulation and use of mobile money to promote financial inclusion for the poor in the United Kingdom. This is done to draw lessons that Zimbabwe can apply to enhance financial inclusion for the poor.

CHAPTER EIGHT

REGIONAL AND INTERNATIONAL BEST PRACTICES, THEORIES AND POLICY DEBATES ON THE REGULATION AND USE OF MOBILE MONEY TO PROMOTE FINANCIAL INCLUSION FOR THE POOR

This chapter explores regional and best practices in the regulation and use of mobile money to promote financial inclusion. The chapter also explores theories and current policy debates on the regulation and use of mobile money to promote financial inclusion for the poor. This is done to evaluate how Zimbabwe is going about it.

CHAPTER NINE

OVERALL COMPARATIVE ANALYSIS

This chapter discusses the overall comparative analysis of the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe, Kenya, South Africa and the United Kingdom.

CHAPTER TEN

RECOMMENDATIONS AND CONCLUSION

This chapter provides the conclusions and recommendations that can be adopted by Zimbabwe to improve its statutory framework on the regulation and use of mobile money to promote financial inclusion for the poor.

CHAPTER TWO

THE HISTORICAL BACKGROUND ON THE REGULATION AND USE OF MOBILE MONEY IN ZIMBABWE

2.1 Introduction

Innovative financial technology (fintech) products are transforming the financial industry and opening up opportunities for the poor to access financial services in many developing economies, including Zimbabwe.[186] Mobile money is at intersection of finance and information communication technologies (ICTs) and it provides low-cost financial services for all in Zimbabwe.[187] The use of mobile money improves financial inclusion for the poor who can access fast and affordable financial services using their mobile phones in Zimbabwe.[188]

However, there is no specific statute that regulates the use of mobile money to promote financial inclusion for the poor in Zimbabwe.[189] This possibly owes to historical weaknesses in the adoption and regulation of fintech in Zimbabwe. This chapter analyses and discusses the historical background on the regulation and use of mobile money in Zimbabwe. The period under discussion spans from 1980 to the

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186 Lumsden E "The Future is Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business & Finance* 1, 26; see related comments by Ehrentraud J, Ocampo DG, Garzoni L and Piccolo M *Policy Responses to Fintech: A Cross-Country Overview* (Bank of International Settlements 2020) 10.

187 Akseli O "Financial Inclusion, Access to Credit, and Sustainable Finance: What Role for the UNCITRAL Model Law on Secured Transactions?" 2021 *Law and Contemporary Problems* 181, 186; see related comments by Packin NG "Regtech, Compliance and Technology Judgement Rule" 2018 *Chicago-Kent Law Review* 193, 195; Van Loo R "Making Innovation more Competitive: The Case of Fintech" 2018 *UCLA Law Review* 232, 238; Kim J "Ubiquitous Money and Walking Banks: Environment, Technology, and Competition in Mobile Banking" 2008 *Richmond Journal of Global Law & Business* 37, 41.

188 Akseli 2021 *Law and Contemporary Problems* 186; see related comments by Packin 2018 *Chicago-Kent Law Review* 195; Mbengo P and Phiri MA "Mobile Banking Adoption: A Rural Zimbabwean Marketing Perspective" 2015 *Corporate Ownership and Control* 195, 195-196; Lawack-Davids V "Legal and Regulatory Framework of Mobile Payments in South Africa: A Trade-off" 2012 *South African Mercantile Law Journal* 77, 77-78; Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 437.

189 Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 11.

end of 2021.[190] In this regard, the researcher divides the discussion into two broad parts, the period prior to 2011 and the period after 2011. The researcher does this in order to determine whether there has been a noticeable policy shift to fintech regulation in Zimbabwe. The researcher further discusses the relevant legislative and policy framework on fintech developments, particularly mobile money. Lastly, the researcher analyses the effectiveness of fintech regulation on the promotion of financial inclusion for the poor in Zimbabwe.

2.2 The Regulation and Use of Mobile Money Prior to 2011 in Zimbabwe

Zimbabwe inherited one of the best financial services sectors in Africa from the colonial Rhodesian government in 1980.[191] Although financial inclusion was not a clear policy goal then, Zimbabwe's financial sector was more sophisticated than those of other African countries and a considerable number of people had access to formal financial services.[192] Harvey argues that the new democratic government of Zimbabwe did not implement any reforms in the financial sector in the 1980s.[193] Accordingly, there were no regulatory reforms on the financial sector in Zimbabwe in the first decade after independence, from 1980-1990. Due to the limited technology at the time in Zimbabwe, all banking activities such as the opening of an account or processing transactions, were done inside a banking hall.[194] Financial consumers had

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190 See para 1.2 of Chapter One of this thesis on the rationale for the study period from 1980 to the end of 2021.

191 Marime N and Chakazamba L "Urban Financial Exclusion in Zimbabwe: An Exploratory Study" 2016 *Research Journal of Finance and Accounting* 1, 1; see related comments by Munangagwa CL "The Economic Decline of Zimbabwe" 2009 *Gettysburg Economic Review* 110, 112; Masiyandima, Mlambo and Nyarota *Africagrowth Institute 14th African Finance Conference* (3 July 2017) 3.

192 Dhliwayo CL and Gardener EPM "Supervision, Capital Adequacy and Banking Development: Some Evidence from Zimbabwe" 1996 *African Review of Money Finance and Banking* 5, 5-6; see related comments by Harvey C 1996 *The Limited Impact of Financial Sector Reforms in Zimbabwe*https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/3340/Wp36.pdf?sequence=1 6 accessed on 18 October 2021; Marime and Chakazamba 2016 *Research Journal of Finance and Accounting* 1; Munangagwa 2009 *Gettysburg Economic Review* 112.

193 See Harvey 1996 https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/3340/Wp36. pdf?sequence=1 5

194 Magweva R and Shiri M "Internet Banking Adoption and Usage in Zimbabwean Commercial Banks: An Analytical Approach" 2015 *Journal of Corporate Governance, Insurance and Risk Management* 91, 92; see related comments by Dube T, Njanike K, Manamano C and Chiriseri L "Adoption and Use of SMS/Mobile Banking Services in Zimbabwe: An Exploratory Study" 2011 *Journal of Internet Banking and Commerce* 1, 3.

to travel and be at the bank in person. Banks operated within stipulated hours meaning that consumers did not have the convenience of transacting from any location at any time as they can do with fintech products such as mobile money.[195]

2.2.1 The Regulation and Use of Mobile Money from 1980-1990 in Zimbabwe

In this first decade of freedom, there was no statute that regulated fintech developments in Zimbabwe. Between 1980 and 1990, all the commercial banks in Zimbabwe were foreign owned and they were subsidiaries of large international banks.[196] Consequently, this limited the regulatory role of the Reserve Bank of Zimbabwe (RBZ) and the legislature did very little or nothing in developing a new statutory framework.[197] In this regard, regulators relied on the *Banking Act* of 1965 despite its numerous flaws.[198] Banking failure due to deregulation in deposits, real estate and taxation law in jurisdictions like the United States of America (USA) in the 1980s could have deterred Zimbabwean financial authorities from tampering with financial regulation and supervision.[199] As a result, access to quality financial services for the poor remained a mirage in the first decade of Zimbabwe's political independence.[200]

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195 Magweva and Shiri 2015 *Journal of Corporate Governance, Insurance and Risk Management* 92; see related comments by Dube *et al* 2011 *Journal of Internet Banking and Commerce* 3;

196 Harvey 1996 https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/3340/Wp36.pdf?sequence=1 14.

197 Nhavira JDG, Mudzonga E and Mugocha E "Financial Regulation and Supervision in Zimbabwe: An Evaluation of Adequacy and Options" 2013 *Zimbabwe Economic Policy Analysis and Research Unit* 1, 4; Harvey 1996 https://opendocs.ids.ac.uk/opendocs/bitstream/handle/ 20.500.12413 /3340/Wp 36.pdf?sequence=1 14.

198 Harvey 1996 https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/3340/Wp36. pdf? sequence=1 14. Among other flaws, the *Banking Act* did not compel commercial banks to extent credit lines to small and medium enterprises (SMEs) of the emerging black business sector. It did not have provisions on insider lending, no provision on the maximum ratio of shareholder funds that could be lent to any single borrower and many other weaknesses that made it unsuitable for a government expected to lead a financial inclusion policy.

199 Hanc G "The Banking Crises of the 1980s and Early 1990s: Summary and Implications" *Federal Deposit Insurance Corporation Banking Review* 11 (1998) 1, 2.

200 See related comments by Harvey 1996 https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/3340/Wp36.pdf?sequence=1 21.

2.2.2 The Regulation and Use of Mobile Money Between 1990 and 2000 in Zimbabwe

Although the period from 1991 to 2000 had significant developments in Zimbabwe's financial sector, there was nothing to regulate mobile money and promotion of financial for the poor. In 1991, the government of Zimbabwe introduced reforms to open up the banking sector in order for new banking institutions albeit causing instability in the financial sector.[201] The reforms were done under the cloak of liberalising and deregulating the banking sector to break-up monopolies and increase competition in the sector.[202] Through the Economic and Structural Adjustment Programme (ESAP), banking regulations were relaxed opening room for new institutions to join the banking sector in Zimbabwe.[203] ESAP sought to bring competition to the banking sector that had been a preserve for a few institutions such as Standard Chartered Bank and Barclays Bank.[204]

In 1999, the legislature in Zimbabwe enacted the *Banking Act*.[205] The *Banking Act* and a set of new regulations that accorded the RBZ powers as the official supervisor of baking institutions in Zimbabwe came into effect in 2000.[206] There were further amendments to that enabled financial institutions such as merchant banks, building societies, discount houses and savings banks to change their status to commercial

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201 Harvey 1996 https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/3340/Wp36.pdf?sequence=1 17: see related comments by Boone C "State, Capital, and the Politics of Banking Reform in Sub-Saharan Africa" 2005 *Comparative Politics* 401, 409; Nhavira, Mudzonga and Mugocha 2013 *Zimbabwe Economic Policy Analysis and Research Unit* 47.

202 Alawode AA and Ikhide SI "Why Should Financial Liberalisation Induce Financial Crisis" 1997 *Savings and Development* 261, 263; Nhavira, Mudzonga and Mugocha 2013 *Zimbabwe Economic Policy Analysis and Research Unit* 4.

203 Nhavira, Mudzonga and Mugocha 2013 *Zimbabwe Economic Policy Analysis and Research Unit* 4; According to Bonga WG, Chikeya CK and Sithole R "The Need for Financial Stability in Zimbabwe: Use of Derivatives Securities" 2015 *Journal of Economics and Finance* 6, 8, the government of Zimbabwe together with the RBZ began issuing banking licenses to new banks such that between the period 1993-2009, there was a sharp increase in banks consisting of 17 commercial banks, 4 merchant banks, 4 building societies, 1 discount house and 1 savings bank.

204 Harris RG and Sullivan LA "Passing on the Monopoly overcharge: A Comprehensive Policy Analysis" 1979 *University of Pennsylvania Law Review* 269, 354; Cetorelli N and Peretto PF "Oligopoly Banking and Capital Accumulation" 2000 *Federal Reserve Bank of Chicago Working Paper* 1, 2.

205 *Banking Act* [Chapter 24:20] 9 of 1999 as amended (*Banking Act*), sections 45.

206 Nhavira, Mudzonga and Mugocha 2013 *Zimbabwe Economic Policy Analysis and Research Unit* 50.

banks.[207] The said amendments of the *Banking Act* allowed banking institutions, which were failing as merchant banks, building societies discount houses and savings banks to recuperate. In addition, the legislature enacted the *National Payments Systems Act*[208] around this time. Nonetheless, these statutes had very little on fintech regulation and mobile money was not there at this time.

2.2.2.1 The introduction of ATMs in Zimbabwe

During the early 1990s, fintech developments started changing the financial sector introducing electronic commerce (e-commerce) in Zimbabwe.[209] The introduction of the automated teller machines (ATMs) was one big breakthrough whereby financial consumers with bank accounts could get money without having to go into the banking hall.[210] The Standard Chartered Bank and the Central Africa Building Society (CABS) were the first to introduce ATMs in Zimbabwe.[211] Nonetheless, the introduction of the ATMs did not result in regulatory reform in the financial sector in Zimbabwe. From 1997, Zimbabwe's financial services sector started to show signs of decline owing, *inter alia*, to economic and political factors.[212]

2.2.3 The Regulation and Use of Mobile Money from 2000-2010 in Zimbabwe

Despite the increasing use of technology, mobile money was still not part of Zimbabwe's financial services sector in the period under review. From 2000 to 2010,

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207 Section 13 of the *Banking Act*. It states that the Registrar of Banks may at any time amend a banking institution's registration or any term or condition of its registration; if the Registrar considers the amendment necessary to reflect the true nature of the banking business which the institution conducts.

208 *National Payment Systems Act* [Chapter 24:23] 21 of 2001 (*NPS Act*), section 1.

209 Mavaza T "E-Banking Adoption by Zimbabwe Banks: An Exploratory Study" 2019 *PM World Journal* 1, 2.

210 Magweva and Shiri 2015 *Journal of Corporate Governance, Insurance and Risk Management* 92; Harvey 1996 https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/3340/Wp36.pdf?sequence=1 22; Mavaza 2019 *PM World Journal* 2.

211 Mavaza 2019 PM World Journal 2; Magweva and Shiri 2015 *Journal of Corporate Governance, Insurance and Risk Management* 92.

212 Munangagwa 2009 *Gettysburg Economic Review* 114; Marime and Chakazamba 2016 *Research Journal of Finance and Accounting* 1; see related comments by Phiri C and Muponda G "Public Confidence and its Impact on the Performance and Stability of Banks in Zimbabwe" 2016 *University of Zimbabwe Business Review* 1, 1; Kanyenze G, Chitambara P and Tyson J "The Outlook for the Zimbabwean Economy" *Supporting Economic Transformation* (September 2017) 1.

the use of Information Communication Technologies (ICTs) in finance exponentially increased in many countries including Zimbabwe.[213] The Short Message Service (SMS) was one of the first ICT products that transformed the banking sector in Zimbabwe.[214] The SMS innovation introduced financial customers to operate their bank accounts using mobile phones.[215] It also opened up opportunities for banks to customise communication to their clients and provide services remotely at any time of the day and anywhere.[216] Individuals with bank accounts could use the SMS technology to check bank balance, get mini-statements, process payments and transfer money from one account to the other.[217] More innovations such as Electronic Funds Transfer (EFT), mobile-banking and Internet banking also followed, changing the banking sector globally during this period.[218] Nonetheless, technology came with a myriad regulatory on aspects such as high reliance on data, instant transactions and consumer protection. Consequently, data security concerns, cyber-attacks, limited consumer knowledge of e-commerce and an inadequate regulatory framework are some of the fintech challenges in Zimbabwe.[219]

While fintech gained traction, Zimbabwe faced a crippling socio-economic crisis. Between 2003 and 2004, there was a banking crisis that led to the collapse of

213 Dube *et al* 2011 *Journal of Internet Banking and Commerce* 3; see related comments by Rotimi E, Awodele O and Bamidele O "SMS Banking Services: A 21st Century Innovation in Banking Technology" 2007 *Issues in Informing Science & Information Technology* 227, 227-228; Mavaza 2019 *PM World Journal* 2-3.

214 Mavaza 2019 *PM World Journal* 2-2; see related comments by Dube *et al* 2011 *Journal of Internet Banking and Commerce* 3; Rotimi, Awodele and Bamidele 2007 *Issues in Informing Science & Information Technology* 227-228.

215 See related comments by Dube *et al* 2011 *Journal of Internet Banking and Commerce* 3; Rotimi, Awodele and Bamidele 2007 *Issues in Informing Science & Information Technology* 227-228; Mavaza 2019 *PM World Journal* 3.

216 Dube *et al* 2011 *Journal of Internet Banking and Commerce* 3; Rotimi, Awodele and Bamidele 2007 *Issues in Informing Science & Information Technology* 227-228; Mavaza 2019 *PM World Journal* 2.

217 Mavaza 2019 *PM World Journal* 3; see related comments by Dube *et al* 2011 *Journal of Internet Banking and Commerce* 4; Rotimi, Awodele and Bamidele 2007 *Issues in Informing Science & Information Technology* 231.

218 See related comments by Magweva and Shiri 2015 *Journal of Corporate Governance, Insurance and Risk Management* 93; Mavaza 2019 *PM World Journal* 3.

219 Mavaza 2019 *PM World Journal* 4.

several local banking institutions in Zimbabwe.[220] The downward economic spiral continued in 2006 and reached a crescendo in 2008 when inflation reached an unprecedented peak in Zimbabwe.[221] In 2009, the government of Zimbabwe abandoned the use of the Zimbabwean dollar (ZW$) in favour of a multicurrency regime with the United States (US) dollar becoming the principal currency.[222] The authorities poorly managed the currency switch from US dollars to the local Zimbabwean currency causing individuals who had banked their savings or pensions funds to lose almost everything.[223] This led many financial consumers to lose confidence in the financial sector in Zimbabwe and pushed millions of previously banked individuals into financial exclusion.[224] The researcher submits that Zimbabwe possibly experienced its lowest rate of financial inclusion between 2006 and 2009 as most financial consumers avoided using the formal financial sector.

2.3 The Regulation and Use of Mobile Money from 2011 to 2021 and Possible Effects of the COVID-19 Pandemic

In the midst of the aforementioned socio-economic crisis, mobile network operators (MNOs), NetOne, Telecash and Econet Wireless launched mobile money platforms in

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220 Sakarombe 2018 *International Journal of Academic Research in Economics and Management Sciences* 125-126; see related comments by Phiri and Muponda 2016 *University of Zimbabwe Business Review* 1; Mazambani L, Rushwaya TG and Mutambara E "Financial Inclusion: Disrupted Liquidity and Redundancy of Mobile Money Agents in Zimbabwe" 2018 *Investment Management and Financial Innovations* 131, 134; Marime and Chakazamba 2016 *Research Journal of Finance and Accounting* 1.

221 Marime and Chakazamba 2016 *Research Journal of Finance and Accounting* 1; Phiri and Muponda 2016 *University of Zimbabwe Business Review* 1; Munangagwa 2009 *Gettysburg Economic Review* 122.

222 Ngwenya, Pelser and Chivaura 2018 *South African Journal of Economic and Management Sciences* 2; Phiri and Muponda 2016 *University of Zimbabwe Business Review* 2; Marime and Chakazamba 2016 *Research Journal of Finance and Accounting* 1.

223 Mhlanga D, Dunga SH and Moloi T "Financial Inclusion and Poverty Alleviation Among Smallholder Farmers in Zimbabwe" 2020 *Eurasian Journal of Economics and Finance* 168, 173; see related comments by Phiri and Muponda 2016 *University of Zimbabwe Business Review* 2; Marime and Chakazamba 2016 *Research Journal of Finance and Accounting* 1.

224 Sakarombe 2018 *International Journal of Academic Research in Economics and Management Sciences* 125; see related comments by Phiri and Muponda 2016 *University of Zimbabwe Business Review* 2; Marime and Chakazamba 2016 *Research Journal of Finance and Accounting* 1.

Zimbabwe.[225] The three respective mobile money platforms are Onemoney, Telecash and Ecocash.[226] The impact of mobile money use on contributing towards the financial inclusion for the poor was felt immediately. The number of people who could access financial services increased from 38 percent in 2011 to 69 percent in 2014 owing, *inter alia*, to the use of mobile money in Zimbabwe.[227] However, researcher argues that the regulation of mobile money has largely been poor in Zimbabwe. This owes to the fact that there is no specific statute enacted to regulate mobile money in Zimbabwe.[228] Policymakers in Zimbabwe have been slow to develop policies and enact statutes that adequately regulate fintech products such as mobile money.

Since the outbreak of the coronavirus disease (COVID-19 pandemic) in Zimbabwe in 2020, the use of mobile money assisted in providing contactless payment

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225 See related comments by Mashiri E, Dzingirai C and Nyamwanza L "Micro-determinants of Customer Level Interoperability: A feasibility Study between Traditional Banks and Mobile Network Operators in Zimbabwe" 2017 *Journal of Applied Finance & Banking* 93, 96; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 3; Mbengo P and Phiri MA "Mobile Banking Adoption: A Rural Zimbabwean Marketing Perspective" 2015 *Corporate Ownership and Control* 195, 196-197; Robb G and Vilakazi T "Mobile Payment Markets in Kenya, Tanzania and Zimbabwe: A Comprehensive Study of Competitive Dynamics and Outcomes" 2016 *The African Journal of Information and Communication* 9; 15.

226 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 3; Chitungo SK and Munongo S "Extending the Technology Acceptance Model to Mobile Banking Adoption in Rural Zimbabwe" 2013 *Journal of Business Administration and Education* 51, 52; Chinakidzwa M, Mbengo P and Nyatsambo M "Mobile Money Usage in Rural Areas in Zimbabwe – Case of Mudzi District" 2015 *International Journal of Scientific and Engineering Research* 128, 129.

227 Mavaza, Halimani and Dzapasi 2020 *PM World Journal* 3; see related comments by Robb G and Vilakazi T "Mobile Payments Markets in Kenya, Tanzania and Zimbabwe: A Comparative Study of Competitive Dynamics and Outcomes" 2016 *The African Journal of Information and Communication* 9, 15.

228 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; see related comments by De Koker L, Morris N and Jaffer S "Regulating Financial Services in an Era of Technological Disruption" 2019 *Law in Context: A Socio-Legal Journal* 90, 95-96; Chatain PL, Zerzan A, Noor W, Dannaoui N and De Koker L *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* (The World Bank Washington DC 2011) 54; Malady L, Buckley RP, Didenko A and Tsang CY "A Regulatory Diagnostic Toolkit for Digital Financial Services in Emerging Markets" 2018 *Banking and Finance Law Review* 1, 4.

mechanisms.[229] Contactless transactions reduced the usage of cash that could potentially transmit the COVID-19 virus at payment points.[230] Thus, mobile money provides cheaper, sound and safe financial services that unlock financial inclusion opportunities for the poor in Zimbabwe.[231] In this regard, mobile money has given Zimbabwe's payment systems resilience in the face of the COVID-19 pandemic stress test.[232] Despite the positive impact of mobile money since the outbreak of the ongoing COVID-19 pandemic, risks and vulnerabilities of financial markets commensurately increased due to poor fintech regulation in Zimbabwe.[233] In this regard, the researcher argues that the regulation of mobile money in Zimbabwe needs to improve in order to supervise emerging risks such as fraud and money

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229 Lupo-Pasini F "Financial Inclusion and the "War for Cash"" 2021 *Law and Contemporary Problems* 17, 28; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; Botchey FE, Qin Z and Hughes-Lartey K "Mobile Money Fraud Prediction-A Cross-Case Analysis on the Efficiency of Support Vector Machines, Gradient Boosted Decision Trees, and Naïve Bayes Algorithms" 2020 *Information* 1, 5; Kasradze T "Challenges Facing Financial Inclusion Due to the Covid-19 Pandemic" 2020 *European Journal of Marketing and Economics* 63, 70.

230 See related comments by Lupo-Pasini 2021 *Law and Contemporary Problems* 28; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; Botchey, Qin and Hughes-Lartey 2020 *Information* 5; Kasradze 2020 *European Journal of Marketing and Economics* 70.

231 Omarova ST "Dealing with Disruption: Emerging Approaches to Fintech Regulation" 2020 *Washington University Journal of Law & Policy* 25; 28-29; see related comments by Lupo-Pasini 2021 *Law and Contemporary Problems* 24; Kernan A "Sustaining the Growth of Mobile Money Services in Developing Nations: Lessons from Overregulation in the United States" 2018 *Vanderbilt Journal of Transnational Law* 1109, 111-112; Munyoro G, Kutesera P, Tanhara JR, Mazuvawanda P and Chigunhah BM "The Significance of Mobile Money Transfer Facility to Zimbabwean Economy: A Case Study of EcoCash" 2017 *International Journal of Research in Business Management* 1, 7; Ondiege PO *Regulatory Impact on Mobile Money and Financial Inclusion in African Countries – Kenya, Nigeria, Tanzania and Uganda* (Center for Global Development (CGD) 2015) 16; Alexandre C and Eisenhart L "Mobile Money as an Engine of Financial Inclusion and Lynchpin of Financial Integrity" 2013 *Washington Journal of Law, Technology and Arts* 285, 286.

232 Zetzsche DA, Birdthistle WA, Arner DW and Buckley RP "Digital Finance Platforms: Towards a New Regulatory Paradigm" 2020 *University of Pennsylvania Journal of Business Law* 273, 277.

233 See related comments by Zetzsche *et al* 2020 *University of Pennsylvania Journal of Business Law* 277.

laundering effectively in Zimbabwe. This owes to the fact that there is no specific statute enacted to regulate mobile money in Zimbabwe.[234]

2.3.1 The National Financial Inclusion Strategy (NFIS) and the Regulation and Use of Mobile Money in Zimbabwe

In 2016, the Finance Minister in Zimbabwe launched the National Financial Inclusion Strategy (NFIS) 2016-2020 that sets out the agenda for financial inclusion for the poor.[235] The NFIS seeks, *inter alia*, to provide an in-depth analysis of barriers to financial inclusion to identify and implement a coordinated strategy to promote the financial inclusion of the poor which include youths, women and informally employed individuals in Zimbabwe.[236] The NFIS provides that effective financial inclusion is achieved when all individuals in Zimbabwe can use a wide range of quality, affordable and easily available financial services that are provided in a fair and transparent manner through formally regulated entities.[237] The NFIS identifies the potential use of technology such as mobile money to improve payment systems and

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234 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; see related comments by De Koker L, Morris N and Jaffer S "Regulating Financial Services in an Era of Technological Disruption" 2019 *Law in Context: A Socio-Legal Journal* 90, 95-96; Chatain PL, Zerzan A, Noor W, Dannaoui N and De Koker L *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* (The World Bank Washington DC 2011) 54; Malady L, Buckley RP, Didenko A and Tsang CY "A Regulatory Diagnostic Toolkit for Digital Financial Services in Emerging Markets" 2018 *Banking and Finance Law Review* 1, 4.

235 Reserve Bank of Zimbabwe (RBZ) *National Financial Inclusion Strategy 2016-2020* 2 http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf accessed on 20 July 2020; see related comments by Mhlanga D, Dunga SH and Moloi T "Financial Inclusion and Poverty Alleviation Among Smallholder Farmers in Zimbabwe" 2020 *Eurasian Journal of Economics and Finance* 168, 171; Masiyandima N, Mlambo K and Nyarota S "Financial Inclusion and Quality of Livelihood in Zimbabwe" *Africagrowth Institute 14th African Finance Conference* (2017) 2.

236 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf 3; see related comments by Mukoka S and Chipanga TP "Financial Inclusion and GDP per-capita Nexus: Evidence from Zimbabwe" 2020 *International Journal of Innovative Science and Research Technology* 1723, 1723; Mhlanga, Dunga and Moloi 2020 *Eurasian Journal of Economics and Finance* 171.

237 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf 10; see related comments by Mukoka and Chipanga 2021 *International Journal of Innovative Science and Research Technology* 1723; Mhlanga, Dunga and Moloi 2020 *Eurasian Journal of Economics and Finance* 171.

drive financial inclusion in Zimbabwe.[238] In this regard, the NFIS noted that mobile money has made it possible for individuals residing in rural areas in Zimbabwe to access payments, savings, credit, and formal insurance services in Zimbabwe.[239] The NFIS identifies various demand and supply obstacles that have hampered the promotion of financial inclusion for the poor and unbanked persons in Zimbabwe. Some of the demand-side obstacles cited in the NFIS include low-income levels, irregular incomes, failure to meet minimum bank account opening requirements, lack of confidence in the financial sector, financial illiteracy and rigid implementation of anti-money laundering and counter-terrorist financing (AML/CTF) measures.[240] Barriers from the supply-side of financial services include the absence of robust credit information systems and poor infrastructure in rural areas that prevents banks from opening branches.[241] The NFIS further notes that there are regulatory barriers to financial inclusion of the poor in Zimbabwe. Some of the regulatory challenges include the absence of a coordinated national policy on financial inclusion, weak consumer protection measures and resource constraints in Zimbabwe.[242]

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238 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf 8; see related comments by Sakarombe U "Financial Inclusion and Bank Stability in Zimbabwe" 2018 *International Journal of Academic Research in Economics and Management Sciences* 121, 123; Mutsonziwa K and Maposa OK "Mobile Money – A Catalyst for Financial Inclusion in Developing Economies: A Case Study of Zimbabwe using FinScope Survey Data" 2016 *International Journal of Financial Management* 45, 45.

239 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf 10-11; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 13; Mutsonziwa and Maposa 2016 *International Journal of Financial Management* 46.

240 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf 11; see related comments by Mavaza T, Halimani D and Dzapasi F "An Insight into Financial Inclusion of the Informal Sector in Masvingo, Zimbabwe" 2020 *PM World Journal* 5-6; Mutsonziwa and Maposa 2016 *International Journal of Financial Management* 46.

241 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf 11; see related comments by Mutsonziwa and Maposa 2016 *International Journal of Financial Management* 55; Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific & Engineering Research* 130; Masiyandima, Mlambo and Nyarota *Africagrowth Institute 14th African Finance Conference* (2017) 3.

242 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf 11; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 13; Lowry C "What's in Your Mobile Wallet: An Analysis of Trends in Mobile Payments and Regulation" 2016 *Federal Communications Law Journal* 353, 356.

Furthermore, the NFIS sets out targets and timeframes on what policymakers need to do to promote financial inclusion for the poor in Zimbabwe.[243] For example, the NFIS projected that access to affordable and appropriate formal financial services was to increase from 69 per cent in 2014 to at least 90 per cent in 2020 and the number of banked individuals was set to increase from 30 per cent in 2014 to 60 per cent in 2020.[244] Additionally, the NFIS provides several measures to improve the financial inclusion of the unbanked such as women, youths and those working in the informal sector in Zimbabwe.[245] The researcher submits that most of the NFIS targets have not been achieved. The researcher avers that the NFIS should culminate in the legislature enacting a policy to regulate mobile money and other fintech products in order to promote financial inclusion in Zimbabwe. The absence of such a statute after the NFIS ran its course is a serious indictment on policymakers' lethargic response to the regulation of fintech in Zimbabwe.

2.3.2 The Fintech Regulatory Sandbox Guidelines and the Regulation and Use of Mobile Money in Zimbabwe

The RBZ published the Fintech Regulatory Sandbox Guidelines in early 2021 to provide a regulatory environment conducive for the success of fintech products such as mobile money in Zimbabwe.[246] Put differently, the guidelines seek to set standards that control the deployment of fintech products in Zimbabwe's financial markets. The purpose of the guidelines is to provide a controlled environment where fintech service providers test their products before they are released into the

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243 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf 14; see related comments by Mhlanga, Dunga and Moloi 2020 *Eurasian Journal of Economics and Finance* 171.

244 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf 17; see related comments by Mhlanga, Dunga and Moloi 2020 *Eurasian Journal of Economics and Finance* 171.

245 RBZ http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf; see related comments by Mhlanga, Dunga and Moloi 2020 *Eurasian Journal of Economics and Finance* 172; Sakarombe 2018 *International Journal of Academic Research in Economics and Management Sciences* 123.

246 Reserve Bank of Zimbabwe (RBZ) *Fintech Regulatory Sandbox Guidelines* 1-2 https://www.rbz.co.zw/documents/BLSS/Fintech/FINTECH-REGULATORY-SANDBOXGUIDELINES.pdf accessed on 10 August 2021.

financial markets in Zimbabwe.[247] The test requires fintech providers to adhere to relevant customer protection measures, know your customer (KYC) and AML/CTF requirements all the time.[248] The test period runs for a maximum period of two years.[249] In addition, the guidelines allow the RBZ to monitor disruptive fintech products in order to inform appropriate regulatory policy that promotes financial inclusion in Zimbabwe.[250] The list of fintech products and services eligible for the sandbox testing include mobile money services, retail payments and mobile transfer services.[251]

2.4 Analysis and Recommendations on the Regulation and Use of Mobile Money in Zimbabwe

In light of the legal weaknesses highlighted above, the fourth industrial revolution (4IR) requires that fintech products such as mobile money need sufficient regulation in order to promote financial inclusion for the poor in Zimbabwe.[252] This owes to the fact that mobile money cuts across the financial and telecommunications domains and it keeps on evolving.[253] Mobile money also brings new players in the form of MNOs to the financial services sector and policymakers may need to adjust the regulatory framework accordingly.[254] Arner, Barberis and Buckley argue that there is a need for a regulatory technology (regtech) approach that develops in response to

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247 RBZ https://www.rbz.co.zw/documents/BLSS/Fintech/FINTECH-REGULATORY-SANDBOXGUIDELINES .pdf 2.

248 RBZ https://www.rbz.co.zw/documents/BLSS/Fintech/FINTECH-REGULATORY-SANDBOXGUIDELINES .pdf 5.

249 RBZ https://www.rbz.co.zw/documents/BLSS/Fintech/FINTECH-REGULATORY-SANDBOXGUIDELINES .pdf 7.

250 RBZ https://www.rbz.co.zw/documents/BLSS/Fintech/FINTECH-REGULATORY-SANDBOXGUIDELINES .pdf 4.

251 RBZhttps://www.rbz.co.zw/documents/BLSS/Fintech/FINTECH-REGULATORYSANDBOXGUIDELINES .pdf 12.

252 Mhlanga D "Industry 4.0 in Finance: The Impact of Artificial Intelligence (AI) on Digital Financial Inclusion" 2020 *International Journal of Financial Studies* 1, 1-2; see related comments by Anderson CL and Reynolds T "Review of Interoperability and Regulations of Mobile Money" 2015 *Evans School Policy Analysis and Research, University of Washington* 1, 2; Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 29.

253 Botchey FE, Qin Z and Hughes-Lartey K "Mobile Money Fraud Prediction-A Cross-Case Analysis on the Efficiency of Support Vector Machines, Gradient Boosted Decision Trees and Naïve Bayes Algorithms" 2020 *Information* 1, 4.

254 Malady L, Buckley RP, Didenko A and Tsang CY "A Regulatory Diagnostic Toolkit for Digital Financial Services in Emerging Markets" *University of New South Wales Research Series* (2018) 4; see related comments by Botchey *et al* 2020 *Information* 4.

the changes in fintech.[255] Put differently, there could be a need for a new regulatory approach that balances the promotion of innovation and combating possible systemic risks. Further, the automation of regulatory processes could allow for better and more effective risk identification mechanisms and promote innovation in the sector.[256] The high volume of financial data due to the increased volume of persons using formal services makes a compelling case for an evolving regtech in order to improve supervisory efficiency.[257] To that end, it may be necessary to integrate artificial intelligence (AI) for the effective supervision of financial markets and market participants.[258] AI and machine learning refer to a catalogue of computer systems, methods and technologies that display intelligent behaviour, ability to analyse their environment and take appropriate action towards specified outcomes, with a fair degree of autonomy.[259] The researcher argues that in a data-driven world where the COVID-19 pandemic disruptions have upended normal financial transactions, the integration of AI could play a key role in the regulation of mobile money activities in Zimbabwe.

Although the deployment of AI may be costly and disruptive to the traditional bank-centric regulatory model, it can improve the efficiency of financial institutions and assist in promoting financial inclusion for the poor in Zimbabwe.[260] In this regard, mobile money is not a new currency but a payment system that allows customers to access payments, savings and be able to send and receive money cheaply using

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255 See related comments by Anderson and Reynolds 2015 *Evans School Policy Analysis and Research, University of Washington* 2; Botchey *et al* 2020 *Information* 5.

256 Mhlanga 2020 *International Journal of Financial Studies* 1; see related comments by Botchey *et al* 2020 *Information* 5.

257 See related comments Perlman L 2019 *Fintech and Regtech: Data as the New Regulatory Honeypot* 12 https://dfsobservatory.com/sites/default/files/Fintech%20and%20Regtech%20-%20Perlman%2 0Final.pdf accessed on 28 June 2021.

258 Mhlanga 2020 *International Journal of Financial Studies* 1; see related comments by Botchey *et al* 2020 *Information* 5.

259 Botchey *et al* 2020 *Information* 5-6; see related comments by Mhlanga 2020 *International Journal of Financial Studies* 1-2; Biallas M and O'Neill F "Artificial Intelligence Innovation in Financial Services" 2020 *International Financial Corporation, World Bank Group* 1, 1.

260 Mhlanga 2020 *International Journal of Financial Studies* 1; see related comments by Perlman 2019 https://dfsobservatory.com/sites/default/files/Fintech%20and%20Regtech%20-%20Perlman%20 Final.pdf 8; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 297.

their mobile phones.[261] A payment system can be defined as a financial service that allows customers to transact and exchange value using their mobile phones, bank cards and cash.[262] Payments systems can be formal or informal. Cash-based payments fall in the category of informal payments because they are not traceable. This research focuses on mobile money as a payment system that users access using their mobile phones. In Zimbabwe, the mobile money payment system is MNO-led in collaboration with some banks and mobile money agents.[263] However, it is possible that banks, retail outlets and technology companies can also offer mobile money services.[264] Klein and Mayer argue that mobile money allows poor persons who previously relied only on cash to store and send money to use a form of book-entry money (BEM) that leaves an electronic record.[265] Mobile money users can convert cash into BEM and BEM into cash as they go about transacting.[266]

The challenge regarding the regulation of mobile money could emanate from the regulation of the service provider, especially if it is a non-bank.[267] Where MNOs provide mobile money services, as is the case in Zimbabwe, there is no express statute compelling them to adhere to AML/CTF requirements and other measures

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261 Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology and Arts* 298; see related comments by Tampuri Jnr MY and Kong Y "Digitizing Payments: Opportunities for Financial Inclusion for Sub-Saharan Africa" 2019 *Case Studies Journal* 20, 23.

262 See related comments by Lawack-Davids V "Legal and Regulatory Framework of Mobile Payments in South Africa: A Trade-off?" 2012 *South African Mercantile Law Journal* 77, 78; Tampuri Jnr and Kong 2019 *Case Studies Journal* 23.

263 Ndlovu I and Ndlovu M "Mobile Banking the Future to Rural Financial Inclusion: Case Study of Zimbabwe" 2013 *International Organisation of Scientific Research Journal of Humanities and Social Sciences* 70, 71; see related comments Tampuri Jnr and Kong 2019 *Case Studies Journal* 23.

264 See related comments by Lawack-Davids 2012 *South African Mercantile Law Journal* 79-80; Tampuri Jnr and Kong 2019 *Case Studies Journal* 23; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology and Arts* 298.

265 Klein and Mayer *The World Bank Policy Research Working Paper* (2011) 7; see related comments by Ndlovu and Ndlovu 2013 *IOSR Journal of Humanities and Social Sciences* 71; Tampuri Jnr and Kong 2019 *Case Studies Journal* 27.

266 Ndlovu and Ndlovu 2013 *IOSR Journal of Humanities and Social Sciences* 71; see related comments by Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 290; Klein and Mayer *The World Bank Policy Research Working Paper* (2011) 7.

267 Chibango 2014 *International Journal for Humanities and Social Sciences* 61; see related comments by Kersop M and du Toit S "Anti-Money Laundering Regulations and the Effective Use of Mobile Money in South Africa – Part 1" 2015 *Potchefstroom Electronic Law Journal* 1603, 1607-1608; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 298.

meant to combat financial crimes.[268] Thus, mobile money is a fintech innovation that is disrupting the traditional ways of financial regulation in Zimbabwe.[269] As such, mobile money presents challenges that may require the reshaping of the financial services regulatory framework in Zimbabwe.[270] In this regard, financial regulators in Zimbabwe need to enact a new statute or carefully amend the existing legal framework in order to sufficiently regulate mobile money and promote financial inclusion for the poor.

2.5 Concluding Remarks

In conclusion, there is no legislation enacted that expressly regulates mobile money in order to promote financial inclusion for the poor in Zimbabwe.[271] The absence of a specific statute that regulates mobile money reflects a general legislative weakness in Zimbabwe where policymakers have failed to timely enact fintech policies.[272] Moreover, mobile money is at the intersection of two domains, finance and telecommunications.[273] The two domains are distinct in nature and they have separate regulatory frameworks.[274] Accordingly, there is need for policymakers to enact a statute that caters for this unique characteristic of mobile money in Zimbabwe. The NFIS and the Fintech Regulatory Sandbox Guidelines display policy intent on the regulation of mobile money and the promotion of financial inclusion.[275] However, they two instruments need the legislature to enact a statute that gives the guidelines legal authority. In this regard, the legislature has failed to enact a statute

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268 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 11; see related comments by Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1619; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 298.

269 See de Koker L, Morris N and Jaffer S "Regulating Financial Services in an Era of Technological Disruption" 2019 *Law in Context: A Socio-Legal Journal* 90, 92; see related comments by Momberg R and de Koker L 2020 *Adopting SupTech for Anti-Money Laundering: A Diagnostic Toolkit* 6 available at www.bfaglobal.com/R2A accessed on 8 September 2020.

270 De Koker, Morris and Jaffer2019 *Law in Context: A Socio-Legal Journal* 92; see related comments by Momberg and De Koker 2020 www.bfaglobal.com/R2A 6-7; Mawejje J and Lakuma PCE "Macroeconomic Effects of Mobile Money in Uganda" 2017 *Economic Policy Research Centre* 1, 7.

271 See paragraph 2.1 of this chapter.

272 See paragraph 1.3 of Chapter One of this thesis.

273 See paragraph 2.4 of this chapter.

274 See paragraph 2.4 of this chapter.

275 See paragraphs 2.3.1 and 2.3.2 of this chapter.

that adequately regulates mobile money and promoted financial inclusion for the poor in Zimbabwe.

CHAPTER THREE

THE CURRENT STATUTORY FRAMEWORK ON THE REGULATION AND USE OF MOBILE MONEY IN ZIMBABWE

3.1 Introduction

Following on the discussion in Chapter Two, this chapter examines whether the current mobile money statutory framework is effective in regulating mobile money to promote financial inclusion for the poor in Zimbabwe.

The researcher discusses various relevant statutes, expounding on the possible shortcomings of the current mobile money regulatory framework in Zimbabwe. The researcher does this to provide recommendations on what policymakers should do to improve the regulation and use of mobile money in order to promote financial inclusion for the poor in Zimbabwe.

3.2 The Regulation and Use of Mobile Money and Possible Influences of the COVID-19 Pandemic in Zimbabwe

The effective use of mobile money requires adequate regulatory supervision in order to promote financial inclusion for the poor while combating risks such as money laundering, terrorism financing and fraud in Zimbabwe.[276] A report from the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) shows that the number of persons using mobile money in Zimbabwe increased since the outbreak of the raging coronavirus disease (COVID-19 pandemic).[277] The increase in the number of people using mobile money is attributable to the relative safety and convenience of contactless payments at a time people's movements are restricted.

[276] Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156; see related comments by De Koker L "The 2012 Revised FATF Recommendations: Assessing and Mitigating Mobile Money Integrity Risks within the New Standards Framework" 2013 *Washington Journal of Law, Technology & Arts* 165, 178-179; Chatain *et al* 2011 *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 25-26; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442-443.

[277] See POTRAZ 2020 https://t3n9sm.c2.acecdn.net/wp-content/uploads/2021/03/Abridged-SectorPerfo rma nce-report-4th-Q-2020.pdf 14, see related comments by Muhamba 2021 https://www.techzim.co.zw/2021/03/ecocashonmoney-grew-in-q4-2020-while-telecash-crashed/ M.

Payment systems and financial services have significantly shifted from cash-based to digital or electronic payments due to concerns that the corovanirus could survive on banknotes and coin surfaces, making it transmissible during transactions.[278] Consequently, the government of Zimbabwe and health experts urged people to use contactless electronic payments to mitigate the spread of the coronavirus.[279] In this regard, the researcher submits that policymakers in Zimbabwe should develop policies that promote the use of financial technology (fintech) products such as mobile money. The current mobile money statutory framework does not adequately encourage the adoption and growth of fintech innovations, limiting the promotion of financial inclusion for the poor in Zimbabwe.[280] Chatain *et al* argue that mobile money regulatory frameworks should facilitate innovation that is essential for the development of low-cost and inclusive fintech products such as mobile money.[281] Accordingly, policymakers should embrace fintech innovations and change the existing regulatory framework in order to make it supportive to new products such as mobile money in Zimbabwe. Guild argues that sufficiently developed regulatory frameworks should cater for both the financial and telecommunications aspects of mobile money.[282] In this regard, policymakers should enact a statute that adequately combines financial and telecommunications aspects of mobile money in order to

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278 Mann "Driver for Contactless Payments" 175-176; see related arguments by De, Pandey and Pal 2020 *International Journal of Information Management* 3; Kasradze 2020 *European Journal of Marketing and Economics* 70.

279 See related discussion by Kasradze 2020 *European Journal of Marketing and Economics* 70; Machasio 2020 *World Bank Group* 3; De, Pandey and Pal 2020 *International Journal of Information Management* 1.

280 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; see related comments by the Basel Committee on Banking Supervision Core Principles for Effective Banking Supervision 22; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 54; Di Castri S and Plaitakis A *Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives* (Centre for Financial Inclusion 2018) 3.

281 Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 54; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; 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, 31. The risk-based approach should be used in regulating innovative financial products such as mobile money.

282 Guild J "Fintech and the Future of Finance" 2017 *Asian Journal of Public Affairs* 1, 3; see related comments by Klein MU and Mayer C "Mobile Banking and Financial Inclusion: The Regulatory Lessons" *World Bank Policy Research Working Paper* (2011) 5.

enhance fintech use and financial inclusion for the poor in Zimbabwe.[283] Zimbabwean policymakers can draw lessons from the Financial Action Task Force (FAFT)'s standards that guide financial markets operations across the world.[284] The FATF standards require an enabling and proportionate regulatory approach that promotes fintech development and encourages financial inclusion for the poor.[285]

3.3 The Current Mobile Money Regulatory Framework in Zimbabwe

Generally, Zimbabwe does not have an express statute that regulates mobile money. Nonetheless, an assortment of related legislation is used to fill this gap. The laws include the *National Payment System Act*,[286] the *Banking Act*,[287] the *Money Laundering and Proceeds of Crime Act*,[288] and the *Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations* 2020.[289] Mobile money has telecommunications aspects that are regulated under the *Postal and Telecommunications Act*.[290] The mentioned statutes are discussed below.

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283 Kendall and Voorhies 2014 *Foreign Affairs* 11-12; see related comments by Greenacre J *Regulating Mobile Money: A Functional Approach* (Pathways for Prosperity Commission Oxford 2018) 4; by Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 29-30.

284 Financial Action Task Force (FATF) *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferations* (FATF Paris 2019) 9-28; see related comments by De Koker 2013 *Washington Journal of Law, Technology & Arts* 166; Kersop M and Du Toit S "Anti-Money Laundering Regulations and the Effective Use of Mobile Money in South Africa Part 1" 2015 *Potchefstroom Electronic Law Journal* 1603, 1608; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 290.

285 FATF *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferations* 9; see related comments by De Koker 2013 *Washington Journal of Law, Technology & Arts* 166; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1608; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 290.

286 *National Payments Systems Act* [Chapter 24:23] of 2001, as amended (*NPS Act*), sections 2 and 3.

287 *Banking Act* [Chapter 24:20] 9 of 1999, as amended, see sections 2, 4, 6 and 7.

288 *Money Laundering and Proceeds of Crime Act* 12 of 2018, as amended (*MLPC Act*), sections 12A-12D.

289 *Banking* (*Money Transmission, Mobile Banking and Mobile Money Interoperability*) *Regulations*, 2020 (*Banking Regulations 2020*), see sections 2 and 3.

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

3.3.1 The National Payment Systems Act and the Regulation of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe

The *NPS Act* is the principal payments systems statute that provides for the recognition, operation and regulation of systems for clearing payment instructions between financial institutions in Zimbabwe.[291] Financial institutions, in this regard, could be banks or any other institutions in Zimbabwe that engage in financial activities specified in the *Banking Act*.[292] Importantly, the *NPS Act* was enacted in 2001, when mobile money was not a factor within Zimbabwe's financial sector.[293] Consequently, there have not been sufficient amendments to the *NPS Act* in order to include non-financial institutions such as MNOs that provide mobile money services in Zimbabwe. Thus, according to the *NPS Act*, the RBZ, commercial banks, mutual banks and any other legally recognized financial institutions form part of the payment systems participants in Zimbabwe.[294] Nonetheless, the absence of an express reference to MNOs as part of financial institutions does not necessarily preclude their participation in Zimbabwe's payment systems. The *NPS Act* provides that the Reserve Bank of Zimbabwe (RBZ)'s National Payments Systems Division (NPSD) should supervise the regulation of mobile money services in Zimbabwe.[295] The RBZ can recognise a payment system such as mobile money and regulate it in a manner similar to other payment systems participants in Zimbabwe.[296] Furthermore, the RBZ has the power to recognise different payment systems offered by different classes of financial institutions.[297] Among other considerations, the RBZ can recognise a payment system if it is to the best interests of all financial institutions that are participants in the system.[298] The RBZ also registers participants on the payment system if it has capacity to regulate the system in compliance with the *NPS Act* and the *Banking Act*.[299] However, the absence of an express provision on mobile

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291 Section 2 of the *NPS Act*.
292 See section 2 of the *NPS Act*, sections 7(a)(d)(f) and (l) of the *Banking Act*.
293 Section 2 of the *NPS Act*, see also section 7 of the *Banking Act*.
294 See section 2 of the *NPS Act*, section sections 7(a)(d)(f) and (l) of the *Banking Act*.
295 See section 3 of the *NPS Act*.
296 See section 3(1)(a)-(c) of the *NPS Act*.
297 Section 3(2) of the *NPS Act*.
298 Section 3(2)(3) of the *NPS Act*.
299 Section 3(1) of the *NPS Act*.

money in the *NPS Act* is a weakness in Zimbabwe's payment systems legal framework.[300] To that end, the researcher argues that policymakers should consider a careful amendment of the *NPS Act* in order to include mobile money as one of the payment systems participants in Zimbabwe's financial markets.

In its present form, the *NPS Act*'s definition of financial institutions is narrow and it does not seem to envisage the possibility of MNOs as participants in the payments system in Zimbabwe.[301] In this regard, it is apparent that only financial institutions may be considered as eligible participants in Zimbabwe's payment systems.[302] Therefore, it can be argued that the electronic transactions envisaged in the *NPS Act* refer to services offered by conventional financial institutions.[303] Thus, the researcher argues that the *NPS Act* requires an amendment in order to expand its scope so that it clearly provides for mobile money regulation in Zimbabwe.

3.3.2 The Banking Act and the Regulation of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe

The *Banking Act* provides for the registration, supervision and regulation of persons conducting banking business and financial activities in Zimbabwe.[304] The Registrar of Banking oversees the banking industry in Zimbabwe.[305] The *Banking Act* also establishes the deposit protection scheme that seeks to protect depositors in the event that a bank or financial institution in Zimbabwe becomes insolvent.[306] The *Banking Act* provides a list of financial institutions in Zimbabwe that includes banks, building societies, insurers and pension funds but excludes MNOs.[307] Importantly for this research, the *Banking Act* defines mobile banking.[308] In this regard, mobile banking refers to an arrangement that allows a customer of a bank, MNO or any other registered wireless communication system in Zimbabwe to access financial

300 Sections 2 and 3 of the *NPS Act*.
301 Section 3(3) of the *NPS Act*.
302 Section 6 of the *NPS Act*.
303 Section 2 of the *NPS Act*.
304 See the long the long title of the *Banking Act*.
305 Sections 4, 4A and 4B of the *Banking Act*.
306 See the long title of the *Banking Act*.
307 Section 2 of the *Banking Act*.
308 Section 2 of the *Banking Act*.

services through the mobile phone.[309] Further, institutions that can provide mobile banking in Zimbabwe include a bank, an MNO or an independent operator.[310] However, apart from the definition of mobile banking, there are no further provisions in the *Banking Act* to expand on this aspect. The researcher argues that mobile banking and mobile money are not the same. Mobile banking represents a convenient access point to a range of banking products for individuals who have bank accounts.[311] Consequently, mobile banking falls outside the scope of this research. Some of the banking activities cited in the *Banking Act* include receiving deposits, providing money transmission services and administering means of payment services.[312] In this regard, the *Banking Act* subjects mobile money services offered by MNOs to the same regulations as those of traditional banking services in Zimbabwe.[313] Although MNOs in Zimbabwe provide money transmission services, they do not have the registration certificates, which financial institutions should have for purposes of the *Banking Act*.[314] The registration certificate refers to a registration certificate issued to a financial institution in Zimbabwe in terms of the *Banking Act*.[315] The same registration certificate is issued to a financial institution upon meeting the requirements to register as a bank in Zimbabwe.[316] The *Banking Act* specifies classes of banking institutions that include commercial banks, accepting houses, discount houses, finance houses and micro-finance institutions.[317] Thus, there is no express inclusion of MNOs as financial institutions and their network provision activities do not qualify them for registration under the *Banking Act*.[318]

309 Section 2 of the *Banking Act*.
310 Section 2 of the *Banking Act*.
311 Lawack-Davids V "The Legal and Regulatory Framework of Mobile Banking and Mobile Payments in South Africa" 2012 *Journal of International Commercial Law and Technology* 318, 319; see related comments by Mbengo P and Phiri MA "Mobile Banking Adoption: A Rural Zimbabwean Marketing Perspective" 2015 *Corporate Ownership & Control* 195, 197; Harris KK and Terkel A "Mobile Banking – Can the Unbanked Bank on It" 2012 *Clearinghouse Review* 160, 162-163; Porteous D *The Enabling Environment for Mobile Banking in Africa* (Bankable Frontier Associates Boston 2006) 17.
312 Section 7(1)(a)(d)and (f) of the *Banking Act*.
313 See section 7 of the *Banking Act*.
314 Section 7(1) of the *Banking Act*.
315 Section 2 of the *Banking Act*.
316 Section 8 of the *Banking Act*.
317 Section 6 of the *Banking Act*.
318 Sections 6 and 8 of the *Banking Act*.

Therefore, MNOs that run mobile money operations are not registered as banks and there is no special provision for their regulation in the *Banking Act* in Zimbabwe.[319]

The researcher submits that the *Banking Act* does not sufficiently provide for the regulation of mobile money in Zimbabwe. Apart from defining mobile banking and naming MNOs as providers of money transmission services in Zimbabwe, the *Banking Act* does little to mention activities related to mobile money.[320] Additionally, MNOs in Zimbabwe could be exempted from the registration certificate requirement.[321] This owes to the fact that MNOs are registered under the *Postal and Telecommunications Act*.[322] Although MNOs work closely with banks in delivering mobile money services in Zimbabwe, that does not make them financial institutions for the purposes of the *Banking Act*. Furthermore, mobile money activities differ significantly from banking activities listed in the *Banking Act*.[323] The disclosure of certain information to consumers during the account opening process further underscores the unsuitability of the *Banking Act* in regulating mobile money in Zimbabwe.[324] A person opening a new account at a financial institution in Zimbabwe should be given a written statement showing, *inter alia*, all charges for maintaining the account, the interest such financial institution will pay on funds in the account or interest such a person pays for any overdraft.[325] Thus, it appears that the account opening process is suitable for a banking institution than a mobile money service provider in Zimbabwe. In light of this, banking activities outlined in the *Banking Act* are not the same as MNO-driven mobile money services as discussed above.[326] Therefore, the *Banking Act* does not adequately regulate the use of mobile money to

319 Section6 and 8 of the *Banking Act*.
320 Section 2(m) of the *Banking Act*.
321 Section 7(m) of the *Banking Act*.
322 Section 31(1) of the *Postal and Telecommunications Act*.
323 Section 7 of the *Banking Act*. For instance, mobile money is a payment systems and not a deposit-taking service. Consumer funds in the mobile money value chain are protected through trust accounts, not deposit protection legislation.
324 Section 28E of the *Banking Act*.
325 Section 28E(1)(a)(b)(c) of the *Banking Act*; section 81(2)(d) of the *Banking Act*.
326 Fonte E "US Regulatory Overview of Mobile Wallets and Mobile Payments" 2017 *Wake Forest Journal of Business & Intellectual Property Law* 549, 556-557; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 8; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 13-14, Soutter L, Ferguson K and Neubert M "Digital Payments: Impact Factors and Mass Adoption in Sub-Sahara Africa" 2019 *Technology Innovation Management Review* 41, 42.

promote financial inclusion for the poor in Zimbabwe. Policymakers should consider carefully amending the *Banking Act* in order to provide for the regulation of mobile money to promote financial inclusion for the poor in Zimbabwe.

3.3.3 The Reserve Bank of Zimbabwe (RBZ) Act and the Regulation of Mobile Money to Promote Financial Inclusion in Zimbabwe

In Zimbabwe, the Reserve Bank of Zimbabwe (RBZ) supervises banking institutions, regulates the monetary system, fosters liquidity, solvency, stability and the proper functioning of the financial system to promote the smooth operation of the payment system. [327] The *RBZ Act* defines a banking institution as a commercial bank, an accepting house, a discount house or a finance house that is registered in Zimbabwe.[328] In this regard, none of the RBZ functions expressly refers to mobile money and the promotion of financial inclusion for the poor in Zimbabwe.[329] Therefore, the definition of a banking institution shows that mobile money falls outside the regulatory ambit of the RBZ.[330] Moreover, there is no provision in the *RBZ Act* that expressly regulates or supervises MNOs in their capacity as mobile money service providers.[331] Nonetheless, the RBZ partly regulates mobile money since this financial technology (fintech) product forms part of Zimbabwe's payments system.[332] Generally, the state issues money or currency through the central bank which in turn supervises commercial banks and other role-players in payment

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327 *Reserve Bank of Zimbabwe Act* [Chapter 22:15] 5 of 1999 as amended (*RBZ Act*), section 6(a)-(e); see related comments by Tagoe 2016 *Journal of Business & Financial Affairs* 2; Mehrotra A and Yetman J "Financial Inclusion – Issues for Central Banks" 2015 *BIS Quarterly Review* 83, 83.

328 Section 2 of the *RBZ Act.*

329 See section 6 of the *RBZ Act*.

330 Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 438; see related comments by Makulilo 2015 *International Journal of Law and Information Technology* 378; Tagoe 2016 *Journal of Business & Financial Affairs* 2.

331 See section 6 of the *RBZ Act*.

332 Section 6(e) of the *RBZ Act*.

systems.[333] In this regard, the RBZ has the legal authority to supervise payments systems and by necessary implication, mobile money.

Beyond payment systems, mobile money has several other aspects such as prudential, telecommunications, competition and consumer protection that require regulatory clarity.[334] In many respects, mobile money is disrupting the traditional role of the central banks such as the RBZ and this requires adjustments in the regulation of fintech products in Zimbabwe. The researcher submits that the RBZ should have legislative control over MNOs and mobile money agents in order to enforce anti-money laundering and counter-terrorist financing (AML/CTF) compliance in Zimbabwe.[335] To this end, there is a need for collaboration of, *inter alia*, the RBZ, telecommunications regulators and competition authorities to robustly regulate mobile money in order to promote the financial inclusion of the poor in Zimbabwe.[336]

3.3.4 The Exchange Control Act and the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe

The *Exchange Control Act*[337] provides for the registration and licensing of persons who may carry on business in gold, currency or securities in Zimbabwe. In this regard, the *Exchange Control Act* seeks to prohibit illicit dealings in foreign currency by unlicensed persons in Zimbabwe.[338] However, in 2020 there were allegations that mobile money platforms such as Ecocash have been conduits for illegal foreign currency dealings and money laundering activities in Zimbabwe.[339] Several persons

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333 Section 6 of the *RBZ Act*; see related comments by Tuba 2014 *Potchefstroom Electronic Law Journal* 2270; Ondiege PO "Regulatory Impact on Mobile Money and Financial Inclusion in African Countries-Kenya, Nigeria, Tanzania and Uganda" *Center for Global Development* (2015) 7.

334 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 444; see related comments by Tagoe 2016 *Journal of Business & Financial Affairs* 2.

335 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 444; see related comments by Tagoe 2016 *Journal of Business & Financial Affairs* 2.

336 See related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 444.

337 *Exchange Control Act* [Chapter 22:05] of 1965 as amended, see section 2(2)(a) and (h).

338 Section 2 of the *Exchange Control Act*.

339 *Ecocash Zimbabwe (Pvt) Ltd v Reserve Bank of Zimbabwe* (HH 333-20 HC 3007/20) [2020] ZWHC 333 para unknown; see related comments by Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 10.

were arrested in this regard and their cases are before the courts in Zimbabwe. Allegations are that the implicated individuals created multiple mobile money agent accounts that were used to channel money from bank accounts to purchase foreign currency on the unofficial market in Zimbabwe.[340] It is further alleged that money amounting to nearly two billion Zimbabwean dollars has been illegally moved from bank accounts to unlicensed foreign currency dealers through, *inter alia*, Ecocash, Onemoney and Telecash mobile money platforms.[341] Thus, mobile money platforms are not just used to breach provisions of the *Exchange Control Act* but for possible money laundering activities in Zimbabwe.[342] Thus, policymakers should consider to carefully amend the *Exchange Control Act* in order to adequately regulate technology-driven financial products such as mobile money in Zimbabwe. The Act should also prescribe tough penalties for those convicted of operating illegal foreign currency businesses in Zimbabwe. This can assist to restore order and confidence in the mobile money sector so that it continues to promote financial inclusion for the poor in Zimbabwe.

3.3.5 The Regulation and Use of Mobile Money to Promote Financial Inclusion in Zimbabwe under the Money Laundering and Proceeds of Crime Act

The *MLPC Act* as amended seeks to, *inter alia*, combat the abuse of the financial system and to identify, trace, freeze, seize and confiscate proceeds of money laundering and terrorist financing activities in Zimbabwe.[343] The definitions section of the *MLPC Act* does not expressly mention MNOs although they can be included as part of financial institutions in Zimbabwe.[344] At the advent of mobile money in Zimbabwe in 2011, there was no stringent application of AML/CTF measures for

340 *Ecocash v RBZ*, para unknown; see related comments by Chitimira and Ncube 2021 *Potchefstroom Electronic Law Journal* 10; Nemukuyu D "Crack Team Set Up for Mobile Money Crime…As Fight Moves a Gear Up" The Herald (4 October 2021) page unknown https://www.herald.co.zw/crack-team-set-up-for-mobile-money-crime-as-fight-moves-a-gear-up/ accessed on 20 October 2021.

341 *Ecocash v RBZ*, para unknown; see related comments by Chitimira and Ncube 2021 *Potchefstroom Electronic Law Journal* 10; Nemukuyu https://www.herald.co.zw/crack-team-set-up-for-mobile-money-crime-as-fight-moves-a-gear-up/.

342 *Ecocash v RBZ*, para unknown; see related comments by Chitimira and Ncube 2021 *Potchefstroom Electronic Law Journal* 10.

343 See the long title of the *MLPC Act*.

344 Section 2 of the *MLPC Act*.

mobile money as there was for conventional financial institutions such as banks.[345] As a result, mobile money platforms such as Ecocash, OneWallet and *Skwama* were exempted from applying strict KYC and CDD requirements on their customers since that could have impeded their growth.[346] A strict application of KYC requirements could potentially defeat financial inclusion efforts in Zimbabwe as some poor persons may not have the required identity documents required.[347] In the absence of simplified KYC and CDD measures for the poor in Zimbabwe, it is likely that some of the individuals can resort to unregulated informal financial channels which lack AML/CFT controls.[348] A variation of KYC requirements could result in the development of new and simplified requirements that improve financial inclusion while preventing the risk of money laundering in Zimbabwe.[349] In this regard, the RBZ's "wait-and-see" approach led to simplified KYC and CDD requirements, allowing the poor and unbanked persons to register for mobile money services.[350] It can also be argued that most mobile money users in Zimbabwe meet minimum KYC requirements as they are required to produce proof of identity when opening a mobile money account and during cash-in and cash-out transactions.[351] Bara posits that the RBZ also works with POTRAZ and the registrar general's office to combat

345 See related comments by Guild 2017 *Asian Journal of Public Affairs* 4; Ahmed, Green and Jiang 2020 *Journal of Economic Survey* 765; Mugarura 2019 *African Journal of International and Comparative Law* 312.

346 Chibango 2014 *International Journal of Humanities and Social Science* 65; Guild 2017 *Asian Journal of Public Affairs* 4; Ahmed, Green and Jiang 2020 *Journal of Economic Survey* 765.

347 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 18; see related comments by Lyman T, de Koker L, Meier CM and Kerse M *Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion* (Consultative Group to Assist the Poor Washington DC 2019) 7; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 299.

348 See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 18; Lyman *et al Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion* 10; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 299.

349 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 18; see related comments by Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 299; Lyman *et al Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion* 10.

350 Lyman *et al Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion* 10-11; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 18; Bara A "Mobile Money for Financial Inclusion: Policy and Regulatory Perspective in Zimbabwe" 2013 *African Journal of Science, Technology, Innovation and Development* 345, 348.

351 See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 18; Bara 2013 *African Journal of Science, Technology, Innovation and Development* 348.

identity theft or the registration of new SIM cards using dead persons' names.[352] The FAFT has recommended that countries such as Zimbabwe can adopt digital ID solutions to allow more people to register for digital money services during the COVID-19 pandemic.[353] Adopting digital ID solutions may require that Zimbabwe should equally invest in artificial intelligence (AI) in order to verify and correctly link the digital IDs to their owners.[354] AI can be described as the use of programed computer systems that emulate human cognitive behaviour through experience and interactions with different environments.[355] Thus, AI can assist through innovations such as the AFR technology that can be used to identify mobile money consumers in Zimbabwe.[356] In this regard, the AFR technology can improve the combating of financial crimes such as fraud and money laundering in the mobile money sector in Zimbabwe.[357] The AFR innovation has been useful in tracking people's movements and preventing COVID-19 infected persons from travelling in China.[358] Deploying the

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352 Bara 2013 *African Journal of Science, Technology, Innovation and Development* 348; see related comments by Lyman *et al Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion* 11.

353 Financial Action Task Force (FATF) 2020b *Guidance on Digital Identity Paris* page number unknown available at https://www.fatf gafi.org/publications/fatfrecommendations/documents /digital-identity guidance.html accessed on 8 September 2020; see related comments by Lyman *et al Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion* 15.

354 See related comments by Lyman *et al Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion* 14-15.

355 Carman K "The Genie is Out of the Bottle: What do we wish for the Future of AI?" 2021 *Penn State Journal of Law & International Affairs* 180, 187; see related comments by Fenwick MD, Kaal WA and Vermeulen EPM "Regulation Tomorrow: What Happens when Technology is Faster than the Law?" 2017 *American University Business Law Review* 561, 564-565; Robinson WK "Emerging Technologies Challenging Current Legal Paradigms" 2018 *Minnesota Journal of Law, Science & Technology* 355, 358; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 14-15.

356 Zens J "Face IT: Only Congress can Preserve Privacy from the Pervasive Use of Facial Recognition Technology by Police" 2021 *San Diego Law Review* 143, 153; see related comments by McClellan E "Facial Recognition Technology: Balancing the Benefits and Concerns" 2019 *Journal of Business & Technology Law* 363, 372; Wright E "The Future of Facial Recognition is not Fully Known: Developing Privacy and Security Regulatory Mechanisms for Facial Recognition in the Retail Sector" 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 611, 621-623; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15.

357 McClellan 2019 *Journal of Business & Technology Law* 373-374; see related comments by Zens 2021 *San Diego Law Review* 153; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; Wright 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 622-623.

358 McClellan 2019 *Journal of Business & Technology Law* 373-374; see related comments by Zens 2021 *San Diego Law Review* 153; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; Wright 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 622-623.

AFR technology could assist enforcement authorities to enhance the enforcement of AML/CTF measures in the mobile money sector during the ongoing COVID-19 pandemic in Zimbabwe.

3.3.6 The Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe under the Banking Regulations 2020

The *Banking Regulations 2020* provide some important definitions that are relevant for this research. One such is mobile banking which is given the same meaning as that in the Banking Act discussed above.[359] The *Banking Regulations 2020* also define mobile money wallet as an account which is on the mobile money service provider's network with the funds held in the mobile money provider's trust bank account in Zimbabwe.[360] The researcher argues that mobile money wallet is the mobile money equivalent of a bank account. Although the *Banking Regulations 2020* does not expressly mention MNOs, it defines a money transmission provider as any person who owns a payment system that facilitates transmission of funds from one person to the other in Zimbabwe.[361] Accordingly, the researcher submits that MNOs in Zimbabwe can be considered as money transmission providers. Furthermore, the *Banking Regulations 2020* provide that mobile money providers in Zimbabwe are deemed to be financial institutions in terms of the *Banking Act*. It is also apparent that the *Banking Regulations 2020* uses the term mobile banking in place of or instead of mobile money.[362] As argued in the discussion on the *Banking Act* above, mobile banking and mobile money are not synonyms and should not be confused one for the other. Additionally, in terms of the *Banking Regulations 2020*, mobile payments and mobile banking activities in Zimbabwe should be linked to a national payment switch that allows interconnectedness of all role-players in the national payments system.[363]

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359 Section 2 of the *Banking Regulations 2020*; section 2 of the *Banking Act*.
360 Section 2 of the *Banking Regulations 2020*.
361 Section 2 of the *Banking Regulations 2020*.
362 See section 4(1)-(10) of the *Banking Regulations 2020*.
363 Section 4(1)(2) of the *Banking Regulations 2020*.

Furthermore, the *Banking Regulations 2020* provides that mobile money providers in Zimbabwe should open trust bank accounts that are used for the safekeeping of consumers' funds.[364] In this regard, an MNO in Zimbabwe should deposit mobile money consumers' funds in a trust account at a commercial bank.[365] Such MNO does not have access to the funds and in the event of the MNO becoming insolvent, consumer funds in the trust account are free from third party claims.[366] The trust account gives regulators such as the RBZ the power to demand that MNOs should maintain a balance between the money in their mobile money system and the deposit in the trust accounts.[367] On this aspect, the *Banking Regulations 2020* made a significant contribution to the safe use of mobile money services in Zimbabwe. Moreover, the mobile money service providers should open up their payment systems to the RBZ for purposes of monitoring and supervision.[368] The *Banking Regulations 2020* also require that all mobile money service providers in Zimbabwe to put internal policies, procedures and controls on data security, cyber security to mitigate associated risks.[369] Among other requirements, mobile money service providers are prohibited from accepting transaction requests from unregistered mobile money consumers in Zimbabwe.[370] Failure to adhere to these measures makes the mobile money provider liable to various civil penalties in Zimbabwe.[371] Available punishment includes the withdrawal of the mobile money provider from the

364 Section 4(3)(4) of the *Banking Regulations 2020*.

365 Mas I and Radcliffe D "Mobile Payments Go Viral: M-Pesa in Kenya" 2010 *The Capco Institute Journal of Financial Transformation* 169, 170; see related comments by Ndung'u NS *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (African Economic Research Consortium Nairobi 2021) 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

366 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

367 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

368 Section 4(8) of the *Banking Regulations 2020*.

369 Section 4(9) of the *Banking Regulations 2020*.

370 Section 4(10)(a) of the *Banking Regulations 2020*.

371 Section 4(11)(a)-(c) of the *Banking Regulations 2020*.

national payments system, a fine or imprisonment for a period not exceeding six months.[372]

The *Banking Regulations 2020* also obliges the RBZ to levy transaction charges for mobile money services in Zimbabwe.[373] If a mobile money provider is found to have levied its own charges, the RBZ has the discretion to penalize such service provider.[374] It is probable that authorities in Zimbabwe envisage a central tariff mechanism in order to protect the poor and combat overpricing of mobile money services. Therefore, in light of the discussion on *Banking Regulations 2020*, the researcher submits that there are weaknesses in the regulation of mobile money services in Zimbabwe. The *Banking Regulations 2020* do not expressly provide for mobile money. Rather, the term mobile banking is used. The researcher argues that mobile banking and mobile money are different and should be treated as such. Nonetheless, the requirement for MNOs to open trust accounts where mobile money funds are deposited is crucial for consumer protection. In addition, giving the RBZ power to gazette mobile money transactions fees also curtails overpricing of mobile money services and keeps them affordable especially to the poor in Zimbabwe.

3.3.7 The Public Health Regulations 2020 and the Influence of COVID-19 on the Regulation and Use of Mobile Money in Zimbabwe

In response to the growing threat of the COVID-19 pandemic, the government of Zimbabwe declared a state of disaster and gazetted regulations to mitigate the spread of the disease through a statutory instrument in March 2020.[375] The *Public Health Regulations 2020* provide a raft of measures which include, *inter alia*, banning of public gatherings and curfews.[376] These measures resulted in a protracted national lockdown which brought business to a standstill, closure of schools and restrictions on movement except designated essential service workers

372 Section 4(12) and (13) of the *Banking Regulations 2020*.
373 Section 5(1) of the *Banking Regulations 2020*.
374 Section 5(2) of the *Banking Regulations 2020*.
375 See the *Public Health* (*Covid-19 Prevention, Containment and Treatment*) *Regulations 2020* Statutory Instrument 77 of 2020, (*Public Health Regulations 2020*), section 4.
376 Section 5 of the *Public Health Regulations 2020*.

such as health professionals, the army and police. Consequently, many poor people who are self-employed, unemployed or employed in non-essential services lost their livelihoods in Zimbabwe.[377] Persons found violating the regulations could be arrested, prosecuted and upon conviction they were liable to pay a fine or be imprisoned for a year or to both such fine and imprisonment.[378] The mobile money sector did not meet the essential service category in Zimbabwe since the COVID-19 pandemic started. As a result, mobile money agents could not go about their normal duties of recruiting and training the poor on the use of mobile money in Zimbabwe.

3.4 The Telecommunications Regulatory Framework, Mobile Money and Financial Inclusion for the Poor in Zimbabwe

In Zimbabwe, it is not clear whether regulators for conventional financial institutions such as banks can adequately regulate technology-driven mobile money services and their telecommunications aspects.[379] Like in many other developing countries, MNOs in Zimbabwe are providing money transmission and payments services, challenging the dominance of banks.[380] In this regard, mobile money is fairly new and has multiple regulators, a situation which potentially leads to regulatory overlaps and gaps.[381] However, MNOs are not money lenders. Money lending remains a banking function and could be one reason for the stringent regulation of banks in many

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377 See related comments by Shumba K, Nyamaruze P, Nyambuya VP and Meyer-Weitz "Politicising the COVID-19 Pandemic in Zimbabwe: Implications for Public Health and Governance" 2020 *African Journal of Governance and Development* 270, 281; Kasradze 2020 *European Journal of Marketing and Economics* 71; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 175.

378 See section 5(3) of the *Public Health Regulations 2020*.

379 See related comments by Zetzsche DA, Buckley RP, Barberis JN and Arner DW "Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation" 2017 *Fordham Journal of Corporate & Financial Law* 31, 55; Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 33; Jones E, Woods N and Ndung'u N *Consolidating Africa's Mobile Banking Revolution* (Global Economic Governance Oxford 2016) 6.

380 See related comments by Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 55-56; Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 33; Jones, Woods and Ndung'u *Consolidating Africa's Mobile Banking Revolution* 6.

381 Greenacre *Regulating Mobile Money: A Functional Approach* 5-6; see related comments by Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 33; McTaggart TR and Freese DW "Regulation of Mobile Payments" 2010 *Banking Law Journal* 485, 489.

countries, including Zimbabwe.[382] Accordingly, it has become a generally acceptable approach that MNOs be exempted from the stringent regulation that applies to banks.[383] Accordingly, the status of MNOs as financial institutions in Zimbabwe is not full defined in the financial sector in Zimbabwe.[384] As a result, it is unclear whether MNOs should be regulated under telecommunications or financial services in Zimbabwe.[385] Thus, policymakers in Zimbabwe should enact a statute that adequately caters for financial and telecommunications aspects of mobile money. The *Postal and Telecommunications Act* does not provide for the regulation of mobile money in in Zimbabwe. The telecommunications regulator, POTRAZ, oversees the licencing and operations of MNOs in Zimbabwe.[386] Other duties that POTRAZ performs include determining market entry for MNOs, regulating network interconnection, tariffs, anti-competitive practices and quality assurance.[387] There is no provision that regulates mobile money in the *Postal and Telecommunications Act* in Zimbabwe. Accordingly, the gap between the financial and telecommunications regulatory frameworks in Zimbabwe presents a weakness in the mobile money regulatory framework. In this regard, policymakers in Zimbabwe should consider enacting a statute that bridges the divide between the financial and telecommunications statutory frameworks. A new statute could assist in increasing the protection of mobile money consumer funds against fraud in Zimbabwe. There have been incidents of mobile money fraud in countries like Uganda, MTN

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382 See related comments by Kobor 2013 *Washington Journal of Law, Technology & Arts* 314; Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 56-57; Jones, Woods and Ndung'u *Consolidating Africa's Mobile Banking Revolution* 6.

383 See related comments by Goncalves DER "Financial Inclusion in Peru: Lessons from Kenya's Regulatory Approach on E-Money" 2013 *Washington Journal of Law, Technology & Arts* 31, 34-35; Kobor 2013 *Washington Journal of Law, Technology & Arts* 314; Jones, Woods and Ndung'u *Consolidating Africa's Mobile Banking Revolution* 6.

384 See related comments by Jones, Woods and Ndung'u *Consolidating Africa's Mobile Banking Revolution* 6; Greenacre *Regulating Mobile Money: A Functional Approach* 5; Goncalves 2013 *Washington Journal of Law, Technology & Arts* 38.

385 See related comments by Tagoe NA "Who Regulates the Mobile Money Operations by Telcos? The Need for and Effective and Robust Legislative and Regulatory Framework in Ghana" 2016 *Journal of Business & Financial Affairs* 1, 2-3; Goncalves 2013 *Washington Journal of Law, Technology & Arts* 38; Greenacre *Regulating Mobile Money: A Functional Approach* 5.

386 see related comments by Bångens L and Söderberg B *Mobile Banking–Financial Services for the Unbanked?* (Spinder Sweden 2008) 21.

387 See related comments by Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 21.

employees defrauded about $3.5 million of mobile money users' funds due to loopholes in the mobile money regulatory framework.[388] In the wake of the Uganda scandal, scholars argue that policymakers in countries using mobile money such as Zimbabwe should adopt policies that incorporate financial and telecommunication aspects of mobile money.[389] The absence of a robust mobile money legal framework in Zimbabwe could thus result in abuse of mobile money customers' funds.[390] The use of mobile money by many poor persons in Zimbabwe during the ongoing COVID-19 pandemic adds to the need for a statute that sufficiently regulates mobile money.[391] The following section briefly discusses the *Postal and Telecommunications Act* and how it fits in the mobile money regulatory framework in Zimbabwe.

3.4.1 The Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe under the Postal and Telecommunications Act

The *Postal and Telecommunications Act* provides that MNOs need a license to operate legally in the cellular telecommunications business in Zimbabwe.[392] POTRAZ is responsible for licencing all MNOs operating in Zimbabwe.[393] Importantly, the licence granted each registered MNO in Zimbabwe is a cellular telecommunication licence.[394] The licence is limited to the provision of cellular telecommunication service or a cellular telecommunication system in Zimbabwe.[395] In this regard, a cellular telecommunication service refers to a service carried by means of a cellular telecommunication system.[396] In turn, a cellular telecommunication system is the use

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388 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442; see related comments by Greenacre and Buckley 2014 *Singapore Journal of Legal Studies* 64.

389 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442-443; see related comments by Tagoe 2016 *Journal of Business and Financial Affairs* 2-3; Greenacre and Buckley 2014 *Singapore Journal of Legal Studies* 64.

390 Greenacre and Buckley 2014 *Singapore Journal of Legal Studies* 65; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442; Tagoe 2016 *Journal of Business and Financial Affairs* 3.

391 Tagoe 2016 *Journal of Business and Financial Affairs* 3; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442-443; Greenacre and Buckley 2014 *Singapore Journal of Legal Studies* 65.

392 Section 31(1) of the *Postal and Telecommunications Act*.

393 Section 4(1)(d) of the *Postal and Telecommunications Act*.

394 Section 2 of the *Postal and Telecommunications Act*.

395 Section 2 of the *Postal and Telecommunications Act*.

396 Section 2 of the *Postal and Telecommunications Act*.

of radio frequencies in connecting two or more people at different geographical locations.[397] POTRAZ has many functions but none of them is expressly or by necessary implication, related to mobile money.[398] Thus, according to the *Postal and Telecommunications Act*, POTRAZ can regulate mobile network connectivity and related aspects of MNOs but not mobile money services in Zimbabwe. Moreover, the *Postal and Telecommunications Act* does not have provisions on the need to combat AML/CFT in order to safeguard financial markets integrity in Zimbabwe.[399] As such, policymakers may not have envisaged that MNOs could run mobile money businesses in Zimbabwe. In this regard, policymakers in Zimbabwe may need to carefully consider amending the *Postal and Telecommunications Act* in order to incorporate financial functions of MNOs.

3.5 Consumer Protection in the Regulation and Use of Mobile Money to Promote Financial Inclusion in Zimbabwe

Consumer protection is a crucial aspect to consider when promoting financial inclusion for the poor in a country such as Zimbabwe.[400] Consumer protection refers to measures that seek to empower poor financial consumers with financial literacy and financial use capability skills so that they can access and make informed choices on suitable services that meet their needs.[401] When the poor are financially literate, they can assert their rights which helps contribute to a sound and competitive financial sector in Zimbabwe.[402] Sound consumer protection and financial literacy

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397 Section 2 of the *Postal and Telecommunications Act.*

398 Section 4 of the *Postal and Telecommunications Act*.

399 Greenacre *Regulating Mobile Money: A Functional Approach* 2; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 394-395; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 25.

400 Consultative Group to Assist the Poor (CGAP) *Financial Inclusion, Stability, Integrity and Protection: Observations and Lessons for the I-SIP Approach from the Philippines* (World Bank Washington DC 2017) 1.

401 Tomilova and Valenzuela 2018 *Financial Inclusion + Stability, Integrity, and Protection* (I-SIP) 3; see related comments by Hannig and Jansen 2010 *Asian Development bank Institute Working Paper Series* 19; Di Castri and Plaitakis 2018 *Centre for Financial Inclusion Working Paper* 6; Lumpkin S "Consumer Protection and Financial Innovation: A Few Basic Propositions" 2010 OECD of Financial Market Trends 1, 2.

402 Tomilova and Valenzuela 2018 *Financial Inclusion + Stability, Integrity, and Protection (I-SIP)* 3; see related comments by Di Castri and Plaitakis 2018 *Centre for Financial Inclusion Working Paper* 12; Simpson R "Mobile Payments and Consumer Protection" 2014 *Consumer International* 1, 3.

can assist in building the poor's trust and confidence in the financial institutions. In turn, this empowers financial consumers to demand quality services while it also compels financial institutions to provide suitable services that meet the poor's needs.[403] In this regard, the regulation and use of mobile money require policymakers to provide adequate consumer protection measures for the poor in Zimbabwe. Some of the statutes regulating consumer protection aspects in Zimbabwe are discussed below.

3.5.1 The Consumer Protection Act and the Regulation of Mobile Money to Promote Financial Inclusion in Zimbabwe

The *Constitution of Zimbabwe* provides for the right to privacy that entails, *inter alia*, the right not to have the privacy of one's communication infringed and the protection of personal data from unlawful disclosure.[404] In this regard, the *Consumer Protection Act* provides that all consumers have the right to confidentiality and privacy.[405] The right to confidentiality and privacy protects the poor financial consumers from potential abuse of their personal data for illicit commercial activities in Zimbabwe. The *CPA* provides that any person who receives, compiles, retains or reports any confidential information about a consumer or prospective consumer must protect the confidentiality of that information and must only use that information for a purpose permitted by the *CPA* or any other statute.[406] It further provides that confidential personal information can only be released to third parties to the extent allowed by the *CPA* or other national legislation or as directed by the consumer or a court order.[407] The *CPA* also places a duty on the supplier of goods and services by an electronic transaction to disclose the security procedures and privacy policy of that supplier in respect of payment, payment information and personal information.[408] Additionally, the *CPA* seeks to combat the abuse of

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403 Tomilova and Valenzuela 2018 *Financial Inclusion + Stability, Integrity, and Protection* (I-SIP) 3; see related comments by Di Castri and Plaitakis 2018 *Centre for Financial Inclusion Working Paper* 12.

404 *Constitution of Zimbabwe* 20 of 2013, see section 57.

405 *Consumer Protection Act* [Chapter 14:14] 5 of 2019 (the *CPA*), section 48.

406 Section 48 of the *CPA*.

407 Section 48 of the *CPA*.

408 Sections 52-54 of the *CPA*.

consumers' personal data by suppliers who harass consumers through unsolicited advertising.[409] Moreover, cybercrimes such as hacking are criminal offences in Zimbabwe.[410] Nonetheless, the above provisions do not adequately protect financial consumers from some of the rampant cybercrimes in e-commerce such as mobile money related fraud in Zimbabwe. In this regard, the researcher submits that the *CPA* does not sufficiently provide protection of personal data and privacy. Therefore, there are consumer protection flaws that weaken the regulation and se of mobile money to promote financial inclusion for the poor in Zimbabwe.

3.5.2 The Cyber Security and Data Protection Bill and the Regulation of Mobile Money to Promote Financial Inclusion in Zimbabwe

The legislature in Zimbabwe has promulgated the *Cyber Security and Data Protection Bill*[411] to improve data protection and related aspects. At the time of writing this thesis, the *House Bill* had passed through parliamentary processes and awaited presidential assent. Among others, the *House Bill* seeks to establish a cyber-security centre that will promote and coordinate activities that can improve cyber security and combat cyber-crime in Zimbabwe.[412] This can also assist to improve consumer protection for the poor financial consumers who previously did not have legislative support when their right to privacy was violated. The *House Bill* also seeks to establish a data protection authority and provide for the investigation and collection of evidence related to cybercrime and unauthorized data collection and sharing.[413] Furthermore, the *House Bill* spells out the levels of security, integrity and confidentiality required of those in control of personal data.[414] The *House Bill* further seeks to amend sections 163-166 of the Code to broaden their scope and application.[415] The proposed amendments are intended to provide for the admissibility of electronic evidence in court proceedings related to cybercrimes.

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409 Section 54 of the *CPA*.
410 See the *Criminal Law* (*Codification and Reform*) [Chapter 9:23] (the *Code*), section 163.
411 *Cyber Security and Data Protection Bill* 18 of 2019 (*House Bill*).
412 Clause 6 of the *House Bill*.
413 Clauses 7-8 of the *House Bill*.
414 Clauses 15-18 of the *House Bill*.
415 Clause 35 of the *House Bill*.

Although the Bill is still work-in-progress, it represents a major step towards consumer data protection in Zimbabwe. As and when the *House Bill* becomes law, it would require robust enforcement in order for it to improve the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe.

3.5.3 The Deposit Protection Corporation Act and the Regulation of Mobile Money to Promote Financial Inclusion in Zimbabwe

The legislature enacted the *Deposit Protection Corporation Act*[416] in the aftermath of the hyperinflation period to provide for the compensation of depositors in the event of financial institutions becoming insolvent in Zimbabwe. The *Deposit Protection Act* establishes the Deposit Protection Corporation (DPC).[417] Nonetheless, in its current frame, the *Deposit Protection Act* protects depositors from "contributory institutions" which appear to be traditional financial institutions such as banks but excludes MNOs.[418] Contributory institutions in this regard are banks, building societies or other organisations which contribute to the deposit protection scheme in Zimbabwe.[419] The DPC has a responsibility to set up and manage the deposit insurance scheme that shields depositors' savings against the risk of loss.[420] The exclusion of MNOs means that the poor who use mobile money for their financial needs are not protected. Furthermore, the DPC administers the deposit protection fund, levies contributions, processes payment of compensation to depositors in the event of insolvency and informs members of the public about its functions in Zimbabwe's financial sector.[421]

Although the DPC exercises its functions to protect depositors in general and small depositors in particular and enhances competition between financial services providers,[422] it does not directly regulate mobile money users and MNOs.

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416 *Deposit Protection Corporation Act* [Chapter 24:29] 7 of 2011 (*Deposit Protection Act*), see preamble.
417 Section 4 of the *Deposit Protection Act*.
418 See section 2 of the *Deposit Protection Act*.
419 Section 2 of the *Deposit Protection Act*.
420 Section 5(1) of the *Deposit Protection Act*.
421 Section 5(1) of the *Deposit Protection Act*.
422 Section 5(2) of the *Deposit Protection Act*.

Additionally, the claiming process as set out in the *Deposit Protection Act* is framed in a manner that does not accommodate mobile money users.[423] The *Deposit Protection Act* makes constant reference to contributory institutions, which, as discussed above, exclude MNOs. The researcher submits that mobile money continuously evolves and it could soon offer deposits yet the existing legislation does not anticipate this. Thus, the *Deposit Protection Act* fails to regulate mobile money in a manner that promotes financial inclusion for the poor in Zimbabwe.

3.6 Overall Analysis and Recommendations on the Regulation of Mobile Money in Zimbabwe

In light of the above, the evolving fintech requires suitable regulation of the payments system to combat systemic risks that could erode public confidence in the financial sector.[424] According to Lawack-Davids, a stable and secure payments system can only exist in a well-defined and regulated environment where the rights and obligations of each participant are clearly defined.[425] Like many other jurisdictions in Sub-Sahara Africa, Zimbabwe needs to put in place the necessary infrastructure and regulatory framework that supports optimal development of financial innovation.[426] Due to failures in quickly adopting technology, there has not been a robust regulatory approach to combat systematic risks while promoting innovation and financial inclusion for the poor in Zimbabwe.[427] This has resulted in numerous incidents where individuals have used mobile money to launder money and engage in illicit foreign currency trade in Zimbabwe.[428] Thus, Zimbabwe has

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423 Sections 39, 40 and 41 of the *Deposit Protection Act*.

424 See related comments by Forgor AT and Julie KA "Financing Innovative Development in Sub-Saharan Africa: The Role of Payment Systems" 2020 *International Conference on Arts, Humanity and Economics, Management (ICAHEM 2019)* 193; Lawack-Davids 2012 *South African Mercantile Law Journal* 81.

425 Lawack-Davids 2012 *South African Mercantile Law Journal* 81; also see Forgor and Julie 2020 *International Conference on Arts, Humanity and Economics, Management* (ICAHEM 2019) 193.

426 See related comments by Forgor and Julie 2020 *International Conference on Arts, Humanity and Economics, Management* (ICAHEM 2019) 194.

427 See related comments by Forgor and Julie 2020 *International Conference on Arts, Humanity and Economics, Management* (ICAHEM 2019) 194.

428 *Ecocash v RBZ*, para unknown; see related comments by Chitimira and Ncube 2021 *Potchefstroom Electronic Law Journal* 10; Nemukuyu https://www.herald.co.zw/crack-team-set-up-for-mobile-money-crime-as-fight-moves-a-gear-up/.

fared poorly in adapting regulation to the growing influence of mobile money in financial markets and this research seeks to contribute to literature in this regard.

3.7 Concluding Remarks

This chapter discussed the current mobile money statutory framework in Zimbabwe. There is no legislation that regulates mobile money to promote financial inclusion for the poor in Zimbabwe.[429] The COVID-19 pandemic has increased the use of mobile money in Zimbabwe owing to the relative safety it presents when compared to cash.[430] Owing to its contactless nature, mobile money could reduce contact during transactions thereby minimising chances of transmitting the coronavirus.[431] In a world increasing going digital, mobile money has made significant transformation to the financial sector in Zimbabwe. However, Zimbabwe does not have an express statute that regulates mobile money.[432] Consequently, various statutes and regulations are applied to mobile money operations. Regulators in Zimbabwe rely on various statutes such as the *NPS Act*, the *Banking Act*, the *MLPC Act* and the *Banking Regulations 2020* to supervise mobile money.[433] Although some of the statutes mention mobile money, there is no clear statutory definition of what mobile money is in Zimbabwe.[434] In addition, the *Banking Act* identifies and defines MNOs, but it does not expressly define or provide for mobile money in Zimbabwe.[435] Criminals also take advantage of technology to by-pass current statutes to commit crimes such as money laundering and illicit foreign currency trade using mobile money.[436] Consumer protection is another important aspect that should be enforced if financial inclusion for the poor is to be realised in Zimbabwe.[437] Legislation such as the *CPA* and the *Deposit Protection Act* should be carefully amended in order to sufficiently provide consumer protection for the poor mobile money users in

429 See paragraph 3.2 of this chapter.
430 See paragraph 3.2 of this chapter.
431 See paragraph 3.2 of this chapter.
432 See paragraph 3.3 of this chapter.
433 See paragraph 3.3 of this chapter.
434 See paragraph 3.3.6 of this chapter.
435 See paragraph 3.3.2 of this chapter.
436 See paragraph 3.3.6 of this chapter.
437 See paragraph 3.5 of this chapter.

Zimbabwe.[438] Thus, the mentioned statutes are insufficiently prepared to provide for the use and regulation of mobile money in order to promote financial inclusion for the poor in Zimbabwe.

[438] See paragraphs 3.5.1 and 3.5.3 of this chapter.

CHAPTER FOUR

SELECTED ROLE-PLAYERS IN THE REGULATION AND USE OF MOBILE MONEY IN ZIMBABWE

4.1 Introduction

Although mobile money allows the poor to access financial services previously out of their reach in Zimbabwe, it comes with regulatory gaps owing to the many distinct role-players involved.[439] Mobile money role-players in Zimbabwe include, *inter alia*, government, mobile network operators, banks, mobile money agents, financial and telecommunications regulators, the police and courts.[440] In this regard, there is need for a mobile money regulatory framework that allows all the role-players to work together so that mobile money can effectively promote financial inclusion for the poor in Zimbabwe.[441] The regulatory framework should carefully balance financial markets stability with the need to allow innovation that drives mobile money to thrive in order to contribute to financial inclusion for the poor in Zimbabwe.[442]

In order for the role-players to meaningfully contribute towards financial inclusion for the poor, they should cooperate, have enough resources and capacity to promote the legal use of mobile money in Zimbabwe.[443] The various regulatory bodies, the police and the courts should have the skills and resources to detect, investigate and

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439 Gukurume S and Mahiya IT "Mobile Money and the (Un)Making of Social Relations in Chivi, Zimbabwe" 2020 *Journal of Southern African Studies* 1203, 1204; see related comments by Lumsden E "The Future in Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business & Finance* 1, 35; Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 438.

440 See related comments by Lumsden 2018 *Stanford Journal of Law, Business & Finance* 35; Buckley, Greenacre and Malady 2015 *Washington University Global Law Review* 438; Buku MW and Meredith MW "Safaricon and M-Pesa in Kenya: Financial Inclusion and Financial Integrity" 2013 *Washington Journal of Law, Technology & Arts* 375, 386-387.

441 See related comments by Lumsden 2018 *Stanford Journal of Law, Business & Finance* 35; Buckley, Greenacre and Malady 2015 *Washington University Global Law Review* 438; Buku and Meredith 2013 *Washington University of Law, Technology & Arts* 386.

442 See related comments by Guild J "Fintech and the Future of Finance" 2017 *Asian Journal of Public Affairs* 1, 6; Buckley, Greenacre and Malady 2015 *Washington University Global Law Review* 438.

443 Lumsden 2018 *Stanford Journal of Law, Business & Finance* 35; Buckley, Greenacre and Malady 2015 *Washington University Global Law Review* 438.

prosecute mobile money crimes such as fraud, money laundering and terrorist financing in Zimbabwe's financial markets. Thus, this chapter seeks to examine the contribution of each role-player to the regulation and use of mobile money to promote financial inclusion for the poor even amidst the ongoing coronavirus disease (COVID-19 pandemic) in Zimbabwe.

4.2 Selected Role-Players in the Regulation and Use of Mobile Money in Zimbabwe

4.2.1 The Role of Government in the Regulation and Use of Mobile Money to Promote Financial Inclusion in Zimbabwe

The government, especially the Ministry of Finance and Economic Development, stands as the main policy stakeholder for the regulation and use of mobile money in Zimbabwe.[444] In this regard, the government has the power and ability to create a proper mobile money regulatory framework and develop appropriate financial inclusion policies that allow the poor to tap into fintech products such as mobile money.[445] Government encourage the poor to use mobile money by promoting financial literacy and encouraging the poor to open mobile money accounts.[446] The government can also introduce measures to reduce the amount of cash in circulation as a way to encourage cashless and contactless payment systems such as mobile money.[447] The government could take advantage of the COVID-19 pandemic that has caused a shift in transactions preferences from the cash-based to contactless payments in Zimbabwe.[448] However, the government of Zimbabwe has not been

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444 See related comments by Guild 2017 *Asian Journal of Public Affairs* 6; Buckley, Greenacre and Malady 2015 *Washington University Global Law Review* 438.

445 Guild 2017 *Asian Journal of Public Affairs* 6; Buckley, Greenacre and Malady 2015 *Washington University Global Law Review* 440-441.

446 Guild 2017 *Asian Journal of Public Affairs* 6; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Law Review* 451.

447 See related comments by Lu L "Decoding Alipay: Mobile Payments, a Cashless Society and Regulatory Challenges" 2018 *Butterworths Journal of International Banking and Financial Law* 40, 41; Buckley, Greenacre and Malady 2015 *Washington University Global Law Review* 441; Opare EA "The Advantages and Disadvantages of Mobile Money on the Profitability of the Ghanaian Banking Industry" 2018 *Texila International Journal of Management* 1, 6.

448 Mann "Driver for Contactless Payments" 177-178; see related comments by Chitimira and Torerai (2021) *Potchefstroom Electronic Law Journal* 21; Machasio 2020 *Africa Knowledge in Time Policy Brief* 1.

upfront in the adoption of fintech products such as mobile money or promoting financial education for the poor.[449] The only notable contribution to the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe is the development of the National Financial Inclusion Strategy (NFIS) 2016-2020.[450] However, the five-year strategy is yet to yield into a concrete mobile money policy in Zimbabwe. In this regard, the government of Zimbabwe has not adequately encouraged or promoted the use of mobile money to promote financial inclusion for the poor.

4.2.2 The Role of MNOs in the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe

MNOs are usually big telecommunications service providers using their mobile network infrastructure reach and brand recognition among consumers to provide mobile money services.[451] There are three main MNOs in Zimbabwe, Econet Wireless, Net One and Telecel that control Ecocash, OneMoney and Telecash mobile money platforms respectively. MNOs are not banks or financial institutions and their participation in the provision of mobile money services has raised regulatory concerns in Zimbabwe.[452] In most cases, MNOs partner with banks and mobile money agents to provide mobile money services in emerging economies like Zimbabwe.[453] MNOs have taken advantage of innovative developments in information communication technologies (ICTs) to provide mobile phone network

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449 See related comments on paragraph 1.3 of Chapter One of this thesis.

450 See Paragraph 2.3.1 of Chapter Two of this thesis.

451 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; see related comments by Shirono *et al International Monetary Fund Working Paper* (1 July 2021) 17; FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 7.

452 Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 5; see related comments by De Koker L "The 2012 Revisited FATF Recommendations: Assessing and Mitigating Mobile Money Integrity Risks within the New Standards Framework" 2013 *Washington Journal of Law, Technology & Arts* 165, 186; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1607.

453 Shirono *et al International Monetary Fund Working Paper* (1 July 2021) 15; see related comments by the IFC *IFC Mobile Money Study 2011: Summary Report* (International Finance Corporation Washington DC 2011) 74; FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1616.

infrastructure that reaches communities in rural areas and informal settlements in Zimbabwe.[454] MNOs have carved a unique niche leveraging innovative technologies to allow the poor access to affordable and convenient financial services in Zimbabwe.[455] MNOs can piggy-back on their existing network infrastructure to establish themselves and they do not need to invest in expensive and time-consuming infrastructure.[456] Generally, there is poor road infrastructure in Zimbabwe, making it uneconomical for banks to establish branches or deploy automated teller machines (ATMs) in areas outside towns and cities.[457] Therefore, MNOs have significantly enabled access to financial services for the poor, unbanked and low-income earners in Zimbabwe. In this regard, mobile money reaches the poor in areas that have not had formal financial services in a short space of time and has assisted million of the poor to be financially included in Zimbabwe.[458]

4.2.3 The Role of Mobile Money Agents in the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe

Mobile money agents are usually individuals, shops, supermarkets and garages contracted by MNOs to provide mobile money services in areas where they are resident.[459] In Zimbabwe, like many other developing countries, MNOs committed considerable resources in setting up mobile money agent networks to reach the

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454 Mashiri E, Dzingirai C and Nyamwanza L "Micro-determinants of Customer Level Interoperability: A Feasibility Study between Traditional Banks and Mobile Networks Operators in Zimbabwe" 2017 *Journal of Applied Finance & Banking* 93, 96; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2; Ondiege *Center for Global Development* (2015) 16; Kufandirimbwa *et al* 2013 *Online Journal of Social Sciences Research* 94-95.

455 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 96; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2; Ondiege *Center for Global Development* (2015) 2.

456 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 95-96; see related comments by Guild 2017 *Asian Journal of Public Affairs* 4.

457 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 95-96; see related comments by Ondiege *Center for Global Development* (2015) 3; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 439.

458 Mashiri, Dzingirai and Nyamwanza 2017 *Journal of Applied Finance & Banking* 95-96; see related comments by Guild 2017 *Asian Journal of Public Affairs* 4.

459 Gibson E, Lupo-Pasini F and Buckley R "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" 2017 *University of New South Wales Law Research Series* 1, 2; Munyoro *et al* 2017 *International Journal of Research in Business Management* 4; Chibango 2014 *The International Journal of Humanities and Social Studies* 61.

poor.[460] An extensive agent network is necessary to penetrate financially underserved communities and convince the poor and unbanked persons to take up financial products such as mobile money.[461] The presence of agents in communities reduces the cost of travelling to financial service centres since the same agents can also verify customers' identities, for KYC purposes, when they sign up and for all subsequent transactions.[462] In this regard, the researcher can argue that the success of mobile money largely depends on the quality and availability of agents recruited by MNOs. In most cases, MNOs started with reputable agents who owned businesses at strategic community service centres.[463] Moreover, agents with established businesses were preferred owing to them having readily available cash to meet customers' cash-out or withdrawals needs.[464] Possibly, the other rationale for choosing established businesses as preferred agents could be that it was easier for such agents to enforce MNOs' AML, CTF, KYC and CDD policy obligations. Furthermore, MNOs are obliged to train their agents so that they can provide customers with consistent and positive mobile money experiences.[465] In this regard, agents provided a vital interface between MNOs and mobile money users in financially underserved communities, something traditional financial institutions and

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460 Mazambani L, Rushwaya TJ and Mutambara E "Financial Inclusion: Disrupted Liquidity and Redundancy of Mobile Money Agents in Zimbabwe" 2018 *Investment Management and Financial Innovations* 131, 132; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451; Donovan K "Mobile Money for Financial Inclusion" 2012 *Information and Communications for Development* 61, 68.

461 Shirono *et al International Monetary Fund Working paper* (1 July 2021) 15; see related comments by Mazambani, Rushwaya and Mutambara 2018 *Investment Management and Financial Innovations* 135; Donovan 2012 *Information and Communications for Development* 68.

462 Pazarbasioglu *et al Digital Financial Services* 4; Mazambani, Rushwaya and Mutambara 2018 *Investment Management and Financial Innovations* 135; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

463 Mazambani, Rushwaya and Mutambara 2018 *Investment Management and Financial Innovations* 135; see related comments by Gibson, Lupo-Pasini and Buckley 2017 *University of New South Wales Law Research Series* 2; Donovan 2012 *Information and Communications for Development* 68; Gibson E, Lupo-Pasini F and Buckley RP "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" 2015 *Singapore Journal of Legal Studies* 26, 27.

464 Mazambani, Rushwaya and Mutambara 2018 *Investment Management and Financial Innovations* 135; see related comments by Donovan 2012 *Information and Communications for Development* 68; Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 27.

465 Gibson, Lupo-Pasini and Buckley 2017 *University of New South Wales Law Research Series* 2; see related comments by Donovan 2012 *Information and Communications for Development* 68; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

banks could not do.[466] Thus, mobile money agents serviced remote villages, informal settlements and other financially underserviced communities in innovative ways in Zimbabwe.[467]

However, each MNO had contractual obligations to its network of agents and this relationship is critical for the success of mobile money in reaching the poor in Zimbabwe.[468] Agents normally got paid on a commission basis although they received training and branding resources from their principal MNOs.[469] Agents also provided over the counter services to clients. They registered persons who wanted to use mobile money services and they process transactions for existing customers.[470] Above all, agents established relationships of trust with communities they served, something the traditional financial institutions had long lost.[471] It suffices to argue that without agents on the ground, mobile money may not have been successful in reaching millions of the poor in Zimbabwe's rural areas and other poor communities. Therefore, mobile money agents played a critical role in contributing to the use of mobile money by the poor in Zimbabwe.

The absence of a clear policy regulating mobile money agents' activities in Zimbabwe became apparent in 2020. The RBZ froze some mobile money accounts and banned agents from conducting transactions on allegations that Econet was manufacturing

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466 Mazambani, Rushwaya and Mutambara 2018 *Investment Management and Financial Innovations* 135; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451; Nakouwo SN and Akplehey FN "Covid-19 and Mobile Money Agents in Ghana" 2020 *African Journal of Emerging Issues* 75, 77.

467 See related comments by Kendall and Voorhies 2014 *Foreign Affairs* 13; Munyoro *et al* 2017 *International Journal of Research in Business Management* 4; Kufandirimbwa *et al* 2013 *Online Journal of Social Sciences Research* 93-94.

468 Munyoro *et al* 2017 *International Journal of Research in Business Management* 4; see related comments by Kufandirimbwa *et al* 2013 *Online Journal of Social Sciences Research* 101; Hughes and Lonie 2007 *Innovations* 74.

469 Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 77; see related comments by Munyoro *et al* 2017 *International Journal of Research in Business Management* 4; Hughes and Lonie 2007 *Innovations* 74; Gibson.

470 Munyoro *et al* 2017 *International Journal of Research in Business Management* 4; see related comments by Chibango 2014 *The International Journal of Humanities and Social Studies* 61.

471 Gukurume S and Mahiya IT "Mobile Money and the (Un)Making of Social Relations in Chivi, Zimbabwe" 2020 *Journal of Southern African Studies* 1203, 1214-1215; see related comments by Zikhali W "Changing Money, Changing Fortunes: Experiences of Money Changers in Nkayi, Zimbabwe" 2020 *Canadian Journal of African Studies* 1, 9-10; Matanda E, Dube H and Madzokere N "'Blessing or Curse'? Introduction of Bond Notes as an Antidote to Zimbabwe's Liquidity Crises" 2018 *Journal of Modern Accounting and Auditing* 252, 257.

fictitious money.[472] According to the RBZ governor, John Mangudya, agents had become conduits for illicit trade in foreign currency and they were overcharging mobile money customers.[473] Either the internal AML/CTF, CDD and KYC controls by MNOs had failed to reign in agents or the concerned MNO simply dismissed the RBZ governor's allegations.[474] Mobile money agents were not limited in the number of mobile money accounts they could own and this could have been complicit in money laundering activities in Zimbabwe.[475] To this end, it the researcher argues that the activities of mobile money agents had become a potential systemic risk in Zimbabwe. As a result, the RBZ ordered the Financial Intelligence Unit (FIU) to audit all frozen mobile money wallets to ascertain the legitimacy of the sources of funds before they are cleared.[476] The banning of mobile money agents removed a critical pillar in the mobile money value chain, threatening the promotion of financial inclusion for the poor in Zimbabwe.

4.2.4 The Role of Banks in the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe

Banks are also a vital component in the mobile money value chain in Zimbabwe. In this regard, banks functions as a deposit holders for consumer funds that MNOs

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472 Reserve Bank of Zimbabwe (RBZ) *Monetary Policy statement 2020* (RBZ Harare 2020) 18; see related comments by Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 10.

473 *Ecocash Zimbabwe (Pvt) Ltd v RBZ* (HH 333-20, HC 3007/20) [2020] ZWHC 333 (26 May 2020) para unknown; see related comments by RBZ 2020 *Monetary Policy 2020* 18; Chitimira and Ncube *Potchefstroom Electronic Law Journal* 10; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 44.

474 *Ecocash Zimbabwe v RBZ* 2020 para unknown; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 44; RBZ 2020 *Monetary Policy 2020* 18; Chitimira and Ncube 2021 *Potchefstroom Electronic Law Journal* 10.

475 *Ecocash Zimbabwe v RBZ* 2020 para unknown; see related comments by RBZ 2020 *Monetary Policy 2020* 18; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 44; Chitimira and Ncube 2021 *Potchefstroom Electronic Law Journal* 10.

476 *Ecocash Zimbabwe v RBZ* 2020 para unknown; see related comments by RBZ 2020 *Monetary Policy 2020* 18; Chitimira and Ncube 2021 *Potchefstroom Electronic Law Journal* 10; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 44.

deposit for safekeeping.[477] MNOs are required to deposit all mobile money funds from consumers in trust accounts at commercial banks in Zimbabwe.[478] This is done to bar MNOs from using consumer funds in trust accounts for any other purpose except for mobile money transactions.[479] As such, the banks act as the custodians of mobile money consumer funds in line with prudential requirements.[480] Thus, the MNO or bank cannot intermediate these funds, which are also protected from the insolvency or bankruptcy of the mobile money operator.[481] To this end, the duty of the banks is to be mobile money account holders. The opening of trust accounts at commercial banks could protect customers' money where there is systemic failure, bankruptcy or collapse of MNOs.[482] In summary, banks are there to safeguard consumer funds and to give the poor confidence to use fintech products such as mobile money for their financial needs.

4.2.5 The Role of the RBZ in the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe

The Reserve Bank of Zimbabwe (RBZ) is responsible for providing financial and banking services to the government and commercial banks, supervising and regulating financial institutions, issuing currency and managing the monetary policy

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477 Shirono K, Das B, Fan Y, Chhabra E and Carcel-Villanova H "Is Mobile Money Part of Money? Understanding the Trends and Measurement" *International Monetary Fund Working Paper* (1 July 2021) 15; see related comments by Lal R and Sachdev I "Mobile Money Services – Design and Development for Financial Inclusion" *Harvard Business School Working Paper* (July 2015) 5; Chatain *et al* 2011 *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 67.

478 *Banking* (*Money Transmission, Mobile Banking and Mobile Money Interoperability*) *Regulations*, 2020 (*Banking Regulations 2020*), section 4(1)(3); Robb and Vilakazi 2016 *The African Journal of Information and Communication* 27-28.

479 Greenacre *Regulating Mobile Money: A Functional Approach* 9; see related comments by Greenacre and Buckley 2014 *Singapore Journal of Legal Studies* 68; Shirono *et al International Monetary Fund Working Paper* (1 July 2021) 18.

480 Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 5; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 67; Jenkins *Developing Mobile Money Ecosystems* 11.

481 Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 5; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 67; IFC *IFC Mobile Money Study 2011: Summary Report* (International Finance Corporation Washington DC 2011) 9.

482 Greenacre J and Buckley RP "Using Trusts to Protect Mobile Money Customers" 2014 *Singapore Journal of Legal Studies* 59, 67; see related comments by Shirono *et al International Monetary Fund Working Paper* (1 July 2021) 18; Greenacre *Regulating Mobile Money: A Functionl Approach* 9.

in Zimbabwe.[483] In addition, the RBZ has powers to print money, accept money from customers, grant loans, buy and sell securities, buy and sell precious metals, buy foreign currency and be the bank of the state.[484] The stated powers seem to have little or no bearing on MNOs' mobile money functions. The RBZ has the statutory responsibility to oversee the smooth operation of the payment systems participants, which include mobile money in Zimbabwe. Put differently, the RBZ stands as the gatekeeper that uses policies and legislation to maintain a safe and efficient payments system in line with the *National Payments Systems (NPS) Act*.[485] Furthermore, the RBZ can also assist in providing regulatory clarity on financial technology (fintech) products such as mobile money in the absence of express legislation.[486] According to Guild, regulatory clarity reduces uncertainties for investors and consumers, spells out the rules of the game and gives fintech companies confidence to develop financially inclusive strategies.[487] Therefore, the RBZ has a very important role to play in setting the tone and pace for the adoption and use of fintech to promote financial inclusion for the poor in Zimbabwe. Where the central bank actively supports fintech, there is a likelihood that the promotion of financial inclusion for the poor becomes a success.

Above all, the RBZ has the responsibility to monitor mobile money operations for compliance purposes and it does this through the Financial Intelligence Unit (FIU).[488] The RBZ can also appoint supervisors and inspectors who monitor financial sector activities which include mobile money in Zimbabwe.[489] If a mobile money operator contravenes set requirements, the RBZ can investigate, issue a warning, prescribe a

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483 Makulilo AB "Privacy in Mobile Money: Central Banks in Africa and their Regulatory Limits" 2015 *International Journal of Law and Information Technology* 372, 378; see related comments by Tagoe NA "Who Regulates the Mobile Money Operations by Telco's? The Need for an Effective and Robust Legislative and Regulatory Framework in Ghana" 2016 *Journal of Business & Financial Affairs* 1, 2; BIS and the World Bank Group 2016 20 available at https://www.bis.org accessed 22 May 2020.

484 Section 7 of the *RBZ Act*.

485 *National Payment Systems Act* [Chapter 24:23] 21 of 2001 as amended (*NPS Act*), section 3.

486 Guild 2017 *Asian Journal of Public Affairs* 4.

487 Guild 2017 *Asian Journal of Public Affairs* 4.

488 See section 45 of the *Banking Act*; see related comments by Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 10..

489 Sections 46-47 OF the *Banking Act*.

fine or take any other action commensurate with the offence committed.[490] The challenge though is that these actions are not meant for mobile money operators but banking institutions. In this regard, policymakers should carefully amend the *Banking Act* so that they add provisions that specifically apply to mobile money.

4.2.6 The Role of POTRAZ in the Regulation and Use of Mobile Money in Zimbabwe

Zimbabwe adopted the collaborative mobile money business model in which MNOs provide the mobile money service in partnership with certain banks and mobile money agents.[491] The telecommunications regulator in Zimbabwe is the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ). The regulator derives its telecommunications supervisory and regulatory authority from the *Postal and Telecommunications Act*.[492] POTRAZ's key functions are to monitor and supervise the rollout of mobile telecommunication services in Zimbabwe.[493] Although POTRAZ's mandate is broad, mobile money aspects fall outside its scope.[494] Nonetheless, POTRAZ is tasked with the promotion of technology and innovation, aspects that have made the ICT sector a critical aspect of the unravelling fourth industrial revolution (4IR).[495] While the supervision and regulation of telecommunications and innovative aspects of MNOs is provided for in the *Postal and Telecommunications Act*, the same statute does not have any express provisions on mobile money.

In addition, the issuing and licencing of the Unstructured Supplementary Service Data (USSD) codes used by MNOs to provide mobile money services has potential competition issues that need to be addressed.[496] The USSD codes are encryptions such as *151*200# that, when dialled, present mobile money customers with a

490 Sections 48-51 of the *Banking Act*.
491 Ondiege *Center for Global Development* (2015) 10.
492 *Postal and Telecommunications Act* [Chapter 12: 05] 4 of 2000 as amended, see sections 4.
493 Section 4(1) of the *Postal and Telecommunications Act*.
494 Section 4 of the *Postal and Telecommunications Act*.
495 Section 4(1)(k) of the *Postal and Telecommunications Act*.
496 Robb G, Tausha I and Vilakazi T "Competition and Regulation in Zimbabwe's Emerging Mobile Payments Markets" in Klaaren J, Roberts S and Valodia I *Competition Law and Economic Regulation in Southern Africa: Addressing Market Power in Southern Africa* (Wits University Press 2016) 216; see related comments by Robb and Vilakazi 2016 *The African Journal of Information and Communication* 24.

menu of functions that allows them to process transactions.[497] Powerful MNOs such as Econet in Zimbabwe, control access to USSD codes for smaller players and other non-telecommunications institutions like banks which have been a source of friction in the financial sector.[498] In this regard, policy-makers may need to consider providing regulation that governs USSD access to even out the competition between big and small MNOs and between MNOs and banks. The researcher submits that there is a need to synergise the finance and telecommunications regulatory frameworks in order to have sustained growth of innovative technology and the promotion of financial inclusion for the poor in Zimbabwe.[499] Therefore, the researcher argues that a fusion of the finance and telecommunications services regulation is necessary for the effective regulation of mobile money services in Zimbabwe.

4.2.7 The Role of the Police, National Prosecuting Authority (NPA) and the Courts in the Regulation and Use of Mobile Money to Promote Financial Inclusion in Zimbabwe

4.2.7.1 The police

The police are custodians of law and order and they should be able to effectively prevent, investigate and detect crime in Zimbabwe.[500] However, many of the reported criminal activities involving mobile money seem to have eluded the policy in Zimbabwe. As a result, the police appear to be visible to arrest suspects long after

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497 Sekyere BO, Abiew NAK, Acquah JBH and Vormawor C "Improving Electronic Banking in Ghana Using USSD" 2018 *International Journal of Computer Applications* 8, 8; see related comments by Robb and Vilakazi 2016 *The African Journal of Information and Communication* 24; Andiva B "Mobile Financial Services and Regulation in Kenya" *1st Annual Competition and Economic Regulation (ACER) Conference* (Victoria Falls 21 March 2015) 8; Robb, Tausha and Vilakazi "Competition and Regulation in Zimbabwe's Emerging Mobile Payments Markets" 216.

498 Robb and Vilakazi 2016 *The African Journal of Information and Communication* 24-25; see related comments by Andiva *1st ACER Conference* (Victoria Falls 21 March 2015) 8-9; Robb, Tausha and Vilakazi "Competition and Regulation in Zimbabwe's Emerging Mobile Payments Markets" 216.

499 Ahmad AH, Green C and Jiang F "Mobile Money, Financial Inclusion and Development: A Review with Reference to African Experience" 2020 *Journal of Economic Surveys* 753, 770; see related comments by Greenacre *PRegulating Mobile Money; A Funtional Approach* 2; Buku and Meredith 2013 *Washington Journal of Law, Technology and Arts* 395.

500 Section 219(1) of the *Constitution of Zimbabwe* 2013 (the *Constitution*).

the offences have been committed.[501] In this regard, it is necessary that the Zimbabwean government should designate the police to investigate money laundering and terrorist financing and fraud in the mobile money sector within the national anti-money laundering and counter-terrorist financing (AML/CTF) framework.[502] Moreover, the police in Zimbabwe should be adequately trained in money laundering investigation techniques in order for them to pick all predicate offences and build solid cases for successful prosecution.[503] The researcher submits that police in Zimbabwe have largely failed to prevent, investigate and detect crimes in the mobile money sector. Therefore, it is imperative that the government provides the police with requisite skills in order for them to perform their duties fully in Zimbabwe. Accordingly, once police are able to effectively execute their duties, poor financial consumers can have confidence in using mobile money in Zimbabwe.

4.2.7.2 The National Prosecuting Authority (NPA)

The NPA is responsible for instituting and undertaking criminal prosecutions on behalf of the state in Zimbabwe.[504] However, the researcher argues that very little has been done to prosecute persons alleged to have used mobile money platforms to commit crime in Zimbabwe. In line with the discussion on the police above, it is possible that the NPA in Zimbabwe does not have sufficiently experienced and resourced prosecutors who can speedily deal with cases.[505] Furthermore, the NPA does not have a team that is dedicated to investigate and prosecute money laundering and other sophisticated financial crimes in Zimbabwe.[506] In this regard, the government of Zimbabwe should provide adequate training to prosecutors and avail all the necessary resources in order to enhance the quality of investigations

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501 See related comments by Nemukuyu D "Crack Team Set Up for Mobile Money Crime…As Fight Moves a Gear Up" The Herald (4 October 2021) page unknown https://www.herald.co.zw/crack-team-set-up-for-mobile-money-crime-as-fight-moves-a-gear-up/ accessed on 20 October 2021.

502 Financial Action Task Force (FATF) *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (FATF Paris 2019) 22.

503 FATF *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* 23.

504 Section 258 of the *Constitution*.

505 See related comments by Nemukuyu https://www.herald.co.zw/crack-team-set-up-for-mobile-money-crime-as-fight-moves-a-gear-up/.

506 Nemukuyu https://www.herald.co.zw/crack-team-set-up-for-mobile-money-crime-as-fight-moves-a-gear-up/.

and prosecution.[507] Successful prosecution of mobile money related crimes gives the poor assurance that using mobile money is safe and this assists in improving financial inclusion in Zimbabwe.

4.2.7.3 The courts

Effective regulation of mobile money can be fully achieved if the courts effectively and expeditiously prosecute related offences in Zimbabwe. Although there is no express statute regulating mobile money in Zimbabwe, the courts have the legal authority to enforce civil and criminal sanctions for offences related to mobile money.[508] Nonetheless, there has been an inordinate delay in resolving mobile money-related cases that have been before courts since early 2020.[509] Delays in finalising cases infringe on the rights of the accused to liberty, a free and fair trial within a reasonable period.[510] The Researcher submits that delays in finalising cases also affect the public's confidence in the judiciary system. In this regard, courts should be run by competent officers who have the necessary skills and resources to discharge their duties competently and expeditiously in Zimbabwe.

4.3 Concluding Remarks

The role-players in the mobile money sector in Zimbabwe include the government, police, the NPA, courts, RBZ, POTRAZ, the MNOs and mobile money agents. The diversity of the role-players shows the complexity of regulating mobile money and promoting financial inclusion for the poor in Zimbabwe. The government sets policy on the adoption and use of fintech products such as mobile money.[511] It has been argued that government can actively encourage the use of mobile money and

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507 FATF *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* 23.

508 See related comments by Nemukuyu https://www.herald.co.zw/crack-team-set-up-for-mobile-money-crime-as-fight-moves-a-gear-up/.

509 See related comments by Gona S, Gwanzura S and Matsa CL "Delays in Finalising Criminal Trials" 2014 *International Journal of Innovative Research and Development* 177, 183-184; Nemukuyu https://www.herald.co.zw/crack-team-set-up-for-mobile-money-crime-as-fight-moves-a-gear-up/.

510 Sections 49 and 69 of the *Constitution*; see related comments by Gona, Gwaunza and Matsa 2014 *International Journal of Innovative Research and Development* 183-184.

511 See paragraph 4.2.1 of this chapter.

improve financial literacy for the poor so that they can meaningfully benefit from mobile money.[512] On the other hand, MNOs use their network infrastructure to provide mobile money services in areas where banks have failed to reach in Zimbabwe.[513] However, the regulation of mobile money remains a challenge as there are no sufficiently robust provisions on the RBZ's regulatory oversight of mobile money in Zimbabwe.[514] The telecommunications aspects of mobile money do not provide POTRAZ with any meaningful contribution towards the regulation of mobile money.[515] In 2020, the RBZ prohibited the role of mobile money agents on grounds that they had become conduits for criminal activities involving illicit foreign currency trade and many other unlawful deeds.[516] The banning of mobile money agents exposed the absence of appropriate checks and balances and the effect thereof in compromising financial markets in Zimbabwe. Although mobile money agents were banned on serious allegations related to economic sabotage, there has not been any prosecution of the cases to date. In this regard, there is need to improve the skills set of the police in Zimbabwe to enhance the investigation of mobile money related crimes in Zimbabwe.[517] In addition, the NPA and the courts in Zimbabwe should be run by competent officials to expedite the conclusion of cases.[518] Above all, policymakers should develop a statute that expressly regulates mobile money in order to provide legal guidance on the roles of the stakeholders discussed in this chapter. The researcher submits that policymakers should consider enacting a statute that addresses the highlighted regulatory weaknesses in order to improve the use of mobile money to promote financial inclusion for the poor in Zimbabwe.

512 See paragraph 4.2.1 of this chapter.
513 See paragraph 4.2.2 of this chapter.
514 See paragraph 4.2.5 of this chapter.
515 See paragraph 4.2.6 of this chapter.
516 See paragraph 4.2.3 of this chapter.
517 See paragraph 4.2.7.1 of this chapter.
518 See paragraphs 4.2.7.2 and 4.2.7.3 of this chapter.

CHAPTER FIVE

THE REGULATION AND USE OF MOBILE MONEY TO PROMOTE FINANCIAL INCLUSION FOR THE POOR IN KENYA

5.1 Introduction

Kenya is arguably the best practical example of how the use of mobile money can promote financial inclusion for the poor in a developing economy.[519] In this regard, Kenya probably has one of the best-known mobile money platforms in the world, M-Pesa.[520] The M-Pesa platform has opened doors for millions of poor Kenyans to access financial services using their mobile phones.[521] Mobile money platforms such as M-Pesa provide safe and convenient financial services that reduce the use of cash and contact during transactions, thus assisting to combat the spread of the

519 Buku MW and Meredith MW "Safaricom and M-Pesa in Kenya: Financial Inclusion and Financial Integrity" 2013 *Washington Journal of Law, Technology & Arts* 375, 379; see related comments by Ndung'u NS *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (African Economic Research Consortium Nairobi 2021) 1; Kanobe F, Alexander PM and Bwalya K "Policies, Regulations and Procedures and their Effects on Mobile Money Systems in Uganda" 2017 *The Electronic Journal of Information Systems in Developing Countries* 1, 8; Mutsune T "No Kenyan Left Behind: The Model of Financial Inclusion Through Mobile Banking" 2015 *Review of Business and Finance Studies* 35, 36; Goncalves DER "Financial Inclusion in Peru: Lessons from Kenya's Regulatory Approach to E-Money" 2013 *University of Miami International and Comparative Law Review* 31, 32.

520 The "M" in M-Pesa stands for "mobile" while "Pesa" is the Swahili word for "money". Thus, M-Pesa is short for "mobile money"; see related comments by Lumsden E "The Future is Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business and Finance* 1, 27; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378.

521 Kernan AB "Sustaining the Growth of Mobile Money Services in Developing Nations: Lessons from Overregulation in the United States" 2018 *Vanderbilt Journal of Transitional Law* 1109, 1116-1117; see related comments by Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 437-438; Kobor ES "The Role of Anti-Money Laundering Law in Mobile Money Systems in Developing Countries" 2013 *Washington Journal of Law, Technology & Arts* 303, 307; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 1; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 27; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378; Mutsune 2015 *Review of Business and Finance Studies* 36.

coronavirus disease (COVID-19 pandemic) in Kenya.[522] In this regard, poor financial consumers in countries like Kenya had a smooth transition from cash-based to digital payments during the COVID-19 pandemic. M-Pesa is aptly named: the "M" in M-Pesa stands for mobile while "Pesa" is the Swahili word for money.[523] Thus, M-Pesa simply means mobile money. Kenya's leading mobile network operator (MNO), Safaricom,[524] runs the M-Pesa platform in partnership with Equity Bank. M-Pesa allows financial consumers in Kenya to send and receive money using their mobile phones without the need for bank accounts.[525] Since its launch in 2007, M-Pesa has enabled millions of poor people in Kenya to access formal financial services such as payments, savings and credit through their mobile phones.[526] The main mobile money platforms in Kenya include M-Pesa, Telkom Kash (T-Kash) and Airtel Money and they are all run by MNOs.[527] The most recent statistics used in this research are

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522 Alexander K "Financial Inclusion and banking Regulation: The Role of Proportionality" 2021 *Law and Contemporary Problems* 129, 131; see related comments by Lupo-Pasini F "Financial Inclusion and the 'War for Cash'" 2021 *Law and Contemporary Problems* 17, 28; Alexander K "Financial Inclusion and Banking Regulation: The Role of Proportionality" 2021 *Law and Contemporary Problems* 129, 142; Mann RJ "Driver for Contactless Payments" in K Pistor (ed) *Law in the Time of Covid-19* (Columbia Law School 2020) 177; Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 21.

523 Mas I and Radcliffe D "Mobile Payments Go Viral: M-Pesa in Kenya" 2010 *The Capco Institute Journal of Financial Transformation* 169, 170; Aron J and Muellbauer J *The Economics of Mobile Money: Harnessing the Transformative Power of Technology to Benefit the Global Poor* (Centre for the Study of African Economies University of Oxford 2019) 1; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 27; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378.

524 Safaricom Limited is a duly licensed converged telecommunications service provider incorporated in Kenya as a limited liability company. It has ties with the Vodafone Group in the United Kingdom and the Vodacom Group in South Africa.

525 Harris KK and Terkel a "Mobile Banking–Can the Unbanked Bank on it?" 2012 *Journal of Poverty Law and Policy* 160, 165; see related comments by Mutsune 2015 *Review of Business and Finance Studies* 36; Buku and Meredith2013 *Washington Journal of Law, Technology & Arts* 379; Goncalves 2013 *University of Miami International and Comparative Law Review* 32.

526 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437-438; see related comments by Kobor 2013 *Washington Journal of Law, Technology & Arts* 308; Nyagilo VO, Sakwa MM and Namusonge GS "Efficiency of Mobile Led Financial Services and its Effect on Financial Inclusion in Kenya" 2017 *International Journal of Business Management & Finance* 554, 560-561; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 27; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

527 Communications Authority of Kenya (CAK) 2021 "First Quarter Sector Statistics Report for the Financial Year 2020/2021 (July–September 2020)" https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf accessed on 24 March 2021; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 39-40. T-Kash is operated by Essar Telecom-Yu Mobile and it started in 2009. Airtel Money is operated by Bharti Airtel and it was launched in 2011.

from the period July to September 2020.[528] In this regard, there are 31.8 million mobile money users in Kenya.[529] Out of this number of mobile money users, M-Pesa accounts for 31.4 million active subscribers.[530] Airtel Money and T-Kash share the remaining 400 000 mobile money subscribers.[531]

5.2 Overview of the Regulation and Use of Mobile Money to Promote Financial Inclusion in Kenya

The M-Pesa model has inspired and influenced the development of other mobile money products in Kenya and other countries.[532] Goncalves argues that from 2007 to 2012, M-Pesa processed an average of 50 million transactions per month and helped increase the financial inclusion of Kenyan adults from 19 per cent to 74 per cent.[533] Some countries have tried to copy the M-Pesa example but failed to replicate the success experienced in Kenya.[534] In its Vision 2030, Kenya seeks to introduce legal and institutional reforms to enhance transparency, build trust and improve the

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528 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf accessed on 24 March 2021; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 38-39.

529 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 10; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 38; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437-438; Kobor 2013 *Washington Journal of Law, Technology & Arts* 308.

530 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 10; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 39; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437-438; Kobor 2013 *Washington Journal of Law, Technology & Arts* 308.

531 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 1; see related comments by Lumsden 2018 *Stanford Journal of Law, Business and Finance* 27.

532 Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379; Goncalves 2013 *University of Miami International and Comparative Law Review* 33; Mutsune 2015 *Review of Business and Finance Studies* 36.

533 Goncalves 2013 *University of Miami International and Comparative Law Review* 33; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379; Mutsune 2015 *Review of Business and Finance Studies* 36; Nyagilo, Sakwa and Namusonge 2017 *International Journal of Business Management & Finance* 561.

534 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 1; see related comments by Kobor 2013 *Washington Journal of Law, Technology & Arts* 307; Aron and Muellbauer 2019 *The Economics of Mobile Money: Harnessing the Transformative Power of Technology to Benefit the Global Poor* 1; Di Castri S and Plaitakis A "Getting Financial Inclusion Policies right in the Digital Era: Focus on Competition and Innovation as Policy Objectives" Centre for Financial Inclusion Working Paper (2018) 1-2; Batista C, Simione F and Vicente PC "International Experiences of Mobile Banking Regulation" International Growth Centre Policy Brief (2012) 2.

enforcement of justice in the financial sector.[535] However, there are regulatory loopholes and gaps in the mobile money in Kenya and regulators may not be able to keep the mobile money sector free from money laundering, terrorism financing, fraud and corruption.[536] Despite the successful adoption and use of mobile money, there is no express statute that regulates its use to promote financial inclusion for the poor in Kenya. Possibly, policymakers in Kenya find it difficult to regulate ever-evolving innovative financial technology (fintech) products like mobile money.[537] According to Ndung'u, the regulation of mobile money in Kenya tends to react to rather than anticipate innovation and this could pose significant money laundering and terrorist financing risks.[538] To this end, the researcher submits that there is a need for policymakers in Kenya to adopt new approaches that are suitable for the regulation of fintech products such as mobile money in order to promote financial inclusion for the poor while combating financial crimes. Moreover, there is another regulatory weakness in that M-Pesa and Safaricom have become monopolies in mobile money and telecommunications respectively, limiting the chances for health competition in the mentioned sectors in Kenya.[539] M-Pesa's mobile money dominance could hinder new service providers from effectively competing in terms of

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535 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 36; see related comments by Kobor 2013 *Washington Journal of Law, Technology & Arts* 309; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 43-44; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1148.

536 Greenacre J "What Regulatory Problems Arise when Fintech Lending Expands into Fledgling Credit Markets?" 2020 *Washington University Journal of Law & Policy* 229, 247-248; see related comments by Kobor 2013 *Washington Journal of Law, Technology & Arts* 309-310; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 64; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 33-34.

537 Greenacre 2020 *Washington University Journal of Law & Policy* 248; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 66; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 33-34; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442.

538 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 66; see related comments by Greenacre 2020 *Washington University Journal of Law & Policy* 251; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 33-34; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442.

539 Pazarbasioglu C, Mora AG, Uttamchandani M, Natarajan H, Feyen E and Saal M *Digital Financial Services* (World Bank Washington DC 2020) 8; see related comments by Nleya L and Robb G *Mobile Money Monopolies in Kenya and Zimbabwe: Where should the Balance with Rivals Be?* 2014 page number unknown available at http://mgafrica.com/article/2014-11-19-mobile-money-monopolies accessed on 20 April 2021; Di Castri and Plaitakis *Centre for Financial Inclusion Working Paper* (2018) 5.

price and quality of mobile money services in Kenya.[540] The researcher submits that M-Pesa's market share gives it control of some of the infrastructure that smaller service providers may want to use to reach their own customers. In this regard, M-Pesa can micro-manage smaller service providers to operate in ways that do not threaten its clientele base. Limited competition could result in reduced innovation and higher prices that could affect the affordability of financial services by the poor in Kenya.[541] The researcher submits that the affordability of mobile money services is dependent on continuous innovation hence competition is key in keeping fintech products accessible to the poor. In light of this, this chapter explores the regulation and use of mobile money to promote financial inclusion for the poor in Kenya. 5.2 Overview of the Use of Mobile Money to Promote Financial Inclusion for the Poor amidst the COVID-19 Pandemic in Kenya

The use of mobile money services has increased in Kenya since the outbreak of the COVID-19 pandemic owing to fears that cash could transmit the virus during transactions.[542] Thus, mobile money cushioned the poor from financial shocks caused by the COVID-19 pandemic and the related lockdowns in Kenya. The introduction of M-Pesa in Kenya promoted the financial inclusion of many poor individuals who could not afford or access banking services.[543] The widespread use of mobile phones by the poor in Kenya contributed to an increase in the use of M-

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[540] Guild J "Fintech and the Future of Finance" 2017 *Asian Journal of Public Affairs* 1, 4; see related comments by Robb G and Vilakazi T "Mobile Payments Markets in Kenya, Tanzania and Zimbabwe: A Comparative Study of Competitive Dynamics and Outcomes" 2016 *The African Journal of Information and Communication* 9, 33; Pazarbasioglu *et al* 2020 *Digital Financial Services* 8; Nleya and Robb 2014 http://mgafrica.com/article/2014-11-19-mobile-money-monopolies page number unknown.

[541] Robb and Vilakazi 2016 *The African Journal of Information and Communication* 33; see related comments by Pazarbasioglu et al 2020 *Digital Financial Services* 8; Guild 2017 *Asian Journal of Public Affairs* 4; Di Castri and Plaitakis *Centre for Financial Inclusion Working Paper* (2018) 5; Nleya and Robb 2014 http://mgafrica.com/article/2014-11-19-mobile-money-monopolies page number unknown.

[542] Kasradze T "Challenges Facing Financial Inclusion due to the Covid-19 Pandemic" 2020 *European Journal of Marketing and Economics* 63, 70; see related comments by Lupo-Pasini 2021 *Law and Contemporary Problems* 28; Alexander 2021 *Law and Contemporary Problems* 142; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21.

[543] Robb and Vilakazi 2016 *The African Journal of Information and Communication* 15; see related comments by Hughes N and Lonie S "M-Pesa: Mobile Money for the 'Unbanked': Turning Cellphones into 24-Hour Tellers in Kenya" 2007 *Innovations: Technology, Governance and Globalization* 63, 77-78; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 27.

Pesa services.[544] Financial consumers first have to acquire Safaricom's subscriber identification module (SIM) cards and then they register for M-Pesa services to send, receive and store funds in their mobile wallets in Kenya using a short message service (SMS) interface without the need for a bank account.[545] Safaricom agents require identification documents such as the Kenyan national identity card (ID), passport, military ID, Diplomatic ID or Alien ID in order to record the name, surname and date of birth of an individual.[546] There are no monthly charges for a mobile money account but the M-Pesa service is only available to registered Safaricom mobile network users.[547] Thus, the researcher avers that mobile money is affordable to the poor in Kenya and it assists in promoting financial inclusion. Electronic or mobile wallets are created for registered M-Pesa users where the electronic money (e-float) was issued at shilling-for-shilling par value with the deposited funds.[548] Put differently, for every shilling deposited, the recipient will get an equivalent value. Recipients of the transferred value can withdraw cash or use the value in its electronic form to pay for bills and purchase goods and services.[549] M-Pesa also

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544 Jack W and Suri T "Mobile Money: The Economics of M-Pesa" *National Bureau of Economic Research* (2011) 1-2; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378; Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 437; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 7.

545 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437; see related comments by Jack and Suri *National Bureau of Economic Research* (2011) 1; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378; De Koker L and Jentzsch N "Financial Inclusion and Financial Integrity: Aligned Incentives?" 2013 *World Development* 267, 271. Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 74.

546 Goncalves 2013 *University of Miami International and Comparative Law Review* 41; see related comments by Ismail T and Masinge K "Mobile Banking: Innovation for the Poor" 2012 *African Journal of Science, Technology, Innovation and Development* 98, 105; Abrahams R "Financial Inclusion in South Africa: A Review of the Literature" 2017 *Southern African Accounting Association* 632, 653.

547 Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 77-78; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378-379; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Goncalves 2013 *University of Miami International and Comparative Law Review* 41.

548 Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 78; see related comments by Jack and Suri *National Bureau of Economic Research* (2011) 6; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 18.

549 Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 73-74; see related comments by Jack and Suri *National Bureau of Economic Research* (2011) 1; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378.

bridged the rural-urban divide in Kenya by facilitating an affordable way for individuals in towns to send money to their families in rural areas using mobile phones.[550] Like in other developing countries like South Africa, many breadwinners in Kenya migrated to urban areas in search for employment opportunities.[551] However, many of these individuals could not meet the requirements to open bank accounts because they lacked proper documentation such as proof of residence.[552] On the other hand, there were no banking services such as bank branches or automated teller machines (ATMs) in Kenya's rural areas for their families to receive money in a safe, convenient and fast manner.[553] Ultimately, those residing in urban areas relied on informal means such as bus drivers, friends and relatives to remit funds at great risk of funds getting lost or stolen.[554]

Notably, M-Pesa has become a monopoly controlling over 98 per cent of market share for all mobile money activities in Kenya. It is followed by Airtel Money with about 1.1 per cent and T-Kash at 0.05 per cent.[555] Between July and September 2020, M-Pesa handled over one trillion shillings in business-to-business (B2B) transfers, about 896 billion shillings in person-to-person (P2P) transfers and 886

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550 Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 76; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 60-61; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 378.

551 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 5; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 381; Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 77-78.

552 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 5-6; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 383.

553 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 6; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 383.

554 Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 78; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case* Study 5; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 383; Batista, Simione and Vicente 2012 *International Growth Centre Policy Brief* 5.

555 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 10; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 38-39; Gilbert P "M-Pesa has Almost 99% Market Share in Kenya" *Connecting Africa* http://www.connectingafrica .com/author.asp?section_id=761&doc_id=762180 accessed on 24 March 2021.

billion shillings in total deposits received.[556] These figures show the degree of growth and use of mobile money services in Kenya.

5.2.1 The Operation of Mobile Money in Kenya

The availability of mobile money agents (agents) in communities where the poor live has also contributed to M-Pesa's success in Kenya.[557] In Kenya, agents can be individual airtime sellers, shops, fuel service stations, supermarkets, post offices, banks, chemists and many other retail outlets contracted to Safaricom.[558] These agents, *inter alia*, register new clients, receive deposits and process payments from client accounts on behalf of Safaricom.[559] When a financial consumer registers for M-Pesa, she or he is supposed to have an active Safaricom SIM card and a mobile phone.[560] The person also needs to produce an ID or passport, fill in a form and the registration would be confirmed.[561] There is no need for other validation documents such as proof of residence required when opening a bank account.[562] In addition, opening a mobile money account and keeping it active is free with only nominal fees

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556 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 10; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 38-39.

557 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 78; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Gibson E, Lupo-Pasini F and Buckley R "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" University of New South Wales Law Research Series (2017) 2; Jack and Suri *National Bureau of Economic Research* (2011) 7.

558 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; see related comments by Jack and Suri 2011 *National Bureau of Economic Research* 7; Gibson, Lupo-Pasini and Buckley 2017 *University of New South Wales Law Research Series* 2; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170.

559 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 78; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Jack and Suri 2011 *National Bureau of Economic Research* (2011) 7; Gibson, Lupo-Pasini and Buckley 2017 *University of New South Wales Law Research Series* 2.

560 Jack and Suri *National Bureau of Economic Research* (2011) 7; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170.

561 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Jack and Suri *National Bureau of Economic Research* (2011) 7; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11.

562 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Jack and Suri *National Bureau of Economic Research* (2011) 7; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11.

charged when users send or receive money.[563] For a financial consumer to deposit cash, the agent would transfer e-float to the client and the client pays an equivalent amount to the agent.[564] For cash-out or cash withdrawal, the client transfers the e-float to the agent and the agent gives cash in return.[565] All these transactions are confirmed through an SMS from Safaricom.

Using M-Pesa, individuals can pay bills, process payments and buy goods in a fast and efficient manner.[566] M-Pesa also introduced low-cost international remittance services which brought all Kenyans into the financial mainstream from wherever they are resident across the world.[567] Thus, M-Pesa's user-friendly platform has allowed many poor persons in Kenya to join the formal financial services sector.

To address concerns regarding the safety of mobile money users' funds, the Central Bank of Kenya (CBK) demanded that M-Pesa should deposit mobile money consumers' funds in a trust account at a commercial bank.[568] M-Pesa does not have access and cannot use money held in the trust account as a safeguard to shield mobile money users' funds against abuse.[569] Additionally, M-Pesa was required to

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563 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 393; Goncalves 2013 *University of Miami International and Comparative Law Review* 41.

564 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; see related comments by Mazambani L, Rushwaya TJ and Mutambara E "Financial Inclusion: Disrupted Liquidity and Redundancy of Mobile Money Agents in Zimbabwe" 2018 *Investment Management and Financial Innovations* 131, 132; Jack and Suri *National Bureau of Economic Research* (2011) 7.

565 Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 78; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Jack and Suri *National Bureau of Economic Research* (2011) 7; Mazambani, Rushwaya and Mutambara 2018 *Investment Management and Financial Innovations* 132-133.

566 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 171; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 391-392; Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 81.

567 Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 392; see related comments by Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 81; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 173; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 53-54.

568 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379; Batista, Simione and Vicente *International Growth Centre Policy Brief* (2012) 7.

569 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; see related comments by Batista, Simione and Vicente 2012 *International Growth Centre Policy Brief* (2012) 7; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

maintain a balance of the money in the payment system and the deposit in the trust account.[570] Thus, in Kenya, the CBK demanded that MNOs should separate their funds from those of mobile money users to guard against potential abuse.[571] In this regard, MNOs do not have mobile money users' funds at their disposal meaning that they cannot use the money for their operations nor can such funds be subject to third party claims should the MNO gets liquidated. The researcher submits that this measure gives the poor assurance that their funds in the mobile money value chain are safe and it encourages them to use the formal financial channels.

5.3 Key Factors and Role-Players in the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor in Kenya

5.3.1 The CBK and its Role in the Regulation and Use of Mobile Money to Promote Financial Inclusion in Kenya

The success of M-Pesa in promoting financial inclusion for the poor can be down to the regulatory support it received from the Kenyan government through the CBK.[572] The CBK worked together with Safaricom in the build-up, launch and development of M-Pesa.[573] The CBK and Safaricom agreed on a model for M-Pesa that provided safeguards to the central bank's prudential duties and ensured the safety of consumer funds.[574] The CBK also stated that Safaricom was not a bank and should

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570 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379; Batista, Simione and Vicente *International Growth Centre Policy Brief* (2012) 7.

571 See related comments by Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379; Batista, Simione and Vicente *International Growth Centre Policy Brief* (2012) 7.

572 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174; see related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386; International Finance Corporation (IFC) *IFC Mobile Money Study 2011 Summary Report* (International Finance Corporation Washington DC 2011) 18.

573 Goncalves 2013 *University of Miami International and Comparative Law Review* 35; see related comments by Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386.

574 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174; see related comments Goncalves 2013 *University of Miami International and Comparative Law Review* 40.

not be regulated like one.[575] In this regard, the CBK allowed M-Pesa to operate as a payment system whose functions are outside the ambit of banking laws in Kenya.[576] Furthermore, the CBK requested that consumer funds be deposited in a trust account at a commercial bank and that the e-float in the M-Pesa system should always be supported by a corresponding balance in the bank.[577] Moreover, the CBK released a 'letter of no objection' to allow the roll-out of M-Pesa. Additionally, the CBK adopted the 'test-and-learn' regulatory approach to mobile money.[578] In this regard, the CBK observed M-Pesa dynamics from a distance albeit enforcing compliance mechanisms where and when necessary.[579] The CBK adopted the 'test-and-learn' in the face of pressure from traditional financial institutions that viewed mobile money as an unnecessary risk to the financial sector.[580] The 'test-and-learn' approach allowed Safaricom several years of unrestrained M-Pesa roll-out before policymakers in Kenya could regulate mobile money operations.[581] Thus, for several years, M-Pesa had time and space to grow its market share while the CBK gathered information that assisted policymakers to develop appropriate regulations.[582] The

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575 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 13; see related comments by Jack and Suri *National Bureau of Economic Research* (2011) 7; IFC 2011 *IFC Mobile Money Study: Summary Report* (2011) 18.

576 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 15; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386.

577 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 17-18; see related comments by Goncalves 2013 *University of Miami International and Comparative Law Review* 46; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174.

578 Pazarbasioglu *et al* 2020 *Digital Financial Services* 12; see related comments by Greenacre *Regulating Mobile Money: A Functional Approach* 4; Goncalves 2013 *University of Miami International and Comparative Law Review* 35; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386; Biscaye *et al Evans School Policy Analysis and Research* (2015) 17.

579 Pazarbasioglu *et al* 2020 *Digital Financial Services* 12; see related comments by Goncalves 2013 *University of Miami International and Comparative Law Review* 33; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 14-15; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386.

580 Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 13; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174.

581 Jack and Suri *National Bureau of Economic Research* (2011) 7; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 17; Goncalves 2013 *University of Miami International and Comparative Law Review* 33.

582 Goncalves 2013 *University of Miami International and Comparative Law Review* 33-34; see related comments by Jack and Suri *National Bureau of Economic Research* (2011) 7; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 17.

process of developing the relevant statute that regulates mobile money in Kenya started in 2009.[583] MNOs in Kenya were also allowed to submit inputs that shaped mobile money regulation.[584] The CBK's approach is commendable because it allowed mobile money to roll out while authorities learnt the dynamics of mobile money before regulating it.[585] The 'test-and-learn' approach enabled many poor financial consumers in Kenya to adopt and use mobile money to meet their financial needs. In this regard, the CBK played a crucial role in promoting the use of mobile money to enhance financial inclusion for the poor in Kenya.

5.3.2 The Role of the Communication Authority of Kenya in the Regulation and Use of Mobile Money to Promote Financial Inclusion in Kenya

The Communications Authority of Kenya (CAK) also plays a crucial role in the regulation of mobile money services to promote financial inclusion for the poor in Kenya. Ndung'u argues that the CAK and the Ministry of Communication actively supported the CBK's efforts when mobile money was introduced in Kenya.[586] The CAK regulates the postal, information and communication services in Kenya and it is responsible for licensing MNOs in line with the *Kenya Information and Communication Act*.[587] Thus, without CAK's license, MNOs cannot legally operate in Kenya both in providing mobile phone networks and mobile money services. However, the *KICA* does not have express and comprehensive provisions on the regulation of mobile money services in Kenya. Hence, CAK's role is limited in this regard.

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583 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 13-14; see related comments by Goncalves 2013 *University of Miami International and Comparative Law Review* 34; IFC 2011 *IFC Mobile Money Study: Summary Report* (2011) 18.

584 Goncalves 2013 *University of Miami International and Comparative Law Review* 36; see related comments by Donovan K "Mobile Money for Financial Inclusion" 2012 *Information and Communications for Development* 61, 65.

585 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 13; see related comments by Goncalves 2013 *University of Miami International and Comparative Law Review* 34; Donovan 2012 *Information and Communications for Development* 65.

586 Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 13; see related comments by Goncalves 2013 *University of Miami International and Comparative Law Review* 33-34; Jack and Suri *National Bureau of Economic Research* (2011) 7.

587 *Kenya Information and Communications Act* [Chapter 411] as amended (*KICA*), section 25.

5.3.3 The Role of MNOs in the Regulation and Use of Mobile Money to Promote Financial Inclusion in Kenya

Kenya has four main mobile money platforms namely; M-Pesa, Yu Cash, Iko Pesa and Airtel Money, all run by MNOs.[588] Through their mobile money platforms, MNOs in Kenya have opened up opportunities for the poor to access formal financial services in a convenient and affordable manner. As discussed earlier, M-Pesa's parent company, Safaricom, is not only the mobile money pioneer and biggest player in Kenya, but it commands almost two thirds of Kenya's mobile network market share as well.[589] MNOs have invested heavily in network towers erected across Kenya to reach people in rural areas and other informal settlements.[590] In 2020, Safaricom commanded 63.7 per cent of all mobile telephone subscriptions in Kenya. It was followed by Airtel with 27.2 per cent, then Telkom Kenya with 6.3 per cent and Orange with 2.8 per cent.[591] Nevertheless, Safaricom's dominance is a potential barrier to new service providers and innovation through possible predatory pricing and refusal to share network infrastructure. It is submitted that sufficient regulation is required to even out the playing field in the mobile money industry to promote competition.

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588 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 9; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 39-40. Yu Cash is operated by Essar Telecom-Yu Mobile and it started in 2009. Iko Pesa was launched in 2010 and it is run by Orange while Bharti Airtel-operated Airtel Money began in 2011.

589 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 9; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 39-40.

590 Jack and Suri *National Bureau of Economic Research* (2011) 8; see related comments by Mashiri E, Dzingirai C and Nyamwanza L "Micro-Determinants of Customer Level Interoperability: A Feasibility Study between Traditional Banks and Mobile Networks Operators in Zimbabwe" 2017 *Journal of Applied Finance & Banking* 93, 96; Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 2.

591 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 9; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (2021) 39-40.

5.3.4 The Role of Mobile Money Agents in the Use of Mobile Money to Promote Financial Inclusion in Kenya

As earlier indicated, agents are usually individual traders, grocery stores and fuel service stations contracted by an MNO to provide mobile money services in their communities.[592] Agents are central to the cash-in and cash-out services that form the bulk of poor persons' mobile money activities in Kenya.[593] Apart from cash-in and cash-out services, agents assist in mobile money account opening, bill payments, remittances, P2P payments, insurance services, credit and airtime sales.[594] Agents provide cost-effective, less capital intensive but greater coverage than financial institutions such as banks.[595] As such, agents are central to the success of mobile money enterprises. The latest statistics show that there are about 245 000 agents across Kenya.[596] Of the given number, 215 300 agents are contracted to M-Pesa while Airtel comes second with 25 200 and T-Kash has 4 500 agents.[597] MNOs should exercise due diligence when contracting agents. MNOs should also adequately train agents in order to combat the abuse of mobile money platforms.[598]

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592 Jack and Suri *National Bureau of Economic Research* (2011) 7-8; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (2021) 11; Gibson, Lupo-Pasini and Buckley 2017 *University of New South Wales Law Research Series* 2; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170.

593 Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (2021) 11; see related comments by Jack and Suri *National Bureau of Economic Research* (2011) 7; Gibson, Lupo-Pasini and Buckley *University of New South Wales Law Research Series* (2017) 2; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170.

594 Pazarbasioglu *et al* 2020 *Digital Financial Services* 4; see related comments by Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

595 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451; Nakouwo SN and Akplehey FN "Covid-19 and Mobile Money Agents in Ghana" 2020 *African Journal of Emerging Issues* 75, 77.

596 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 11; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (2021) 39-40.

597 Communications Authority of Kenya 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 11; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (2021) 39-40.

598 Lal R and Sachdev I "Mobile Money Services – Design and Development for Financial Inclusion" *Harvard Business School Working Paper* (2015) 9; see related comments by Batista, Simione and Vicente *International Growth Centre Policy Brief* (2012) 9; Gibson, Lupo-Pasini and Buckley *University of New South Wales Law Research Series* (2017) 2; Donovan 2012 *Information and Communications for Development* 68.

Agents are expected to manage their e-float accounts in a manner that matches the actual funds in the bank account.[599] This bank account balance is crucial because it assists financial regulators such as the CBK to keep track of the money supply to minimise the risk of hyperinflation.[600] It is submitted that an oversupply of e-float without an equivalent bank balance may disrupt the flow of money and cause financial markets failure in Kenya. MNOs also need to pay competitive commissions to agents to mitigate fraud and other financial crimes that could cause systemic risks to the financial markets.[601] In Kenya, agents operate like independent contractors and MNOs such as Safaricom are not legally liable for the actions or omissions of their agents.[602] The liability rule assigns responsibility to a party that bears the risk or cost of an action.[603] In this regard, there might be a need for MNOs in Kenya to reconsider their contractual relationship with agents given the liability rule.

5.4 The Mobile Money Regulatory Framework in Kenya

Although mobile money contributes to the promotion of financial inclusion for the poor in Kenya, it should operate legally in line with anti-money laundering and counter-terrorist financing (AML/CTF) measures.[604] As discussed earlier, the use of mobile money has increased among the poor in Kenya since the outbreak of the COVID-19 pandemic owing to its convenience and relative safety as compared to

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599 See related comments by Jenkins *Developing Mobile Money Ecosystems* (2008) 17-18; Hughes and Lonie 2007 *Innovations: Technology, Governance and Globalization* 78-79.

600 Gibson E, Lupo-Pasini F and Buckley RP "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" 2015 *Singapore Journal of Legal Studies* 26, 33-34.

601 Lal and Sachdev *Harvard Business School Working Paper* (2015) 9-10; see related comments by Batista, Simione and Vicente *International Growth Centre Policy Brief* (2012) 9; Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 77; Chatain *et al* 2011 *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 96.

602 Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 33; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 96; Batista, Simione and Vicente *International Growth Centre Policy Brief* (2012) 9; Maurer B, Nelms TC and Rea SC "'Bridges to Cash' Channeling Agency in Mobile Money" 2013 *The Journal of the Royal Anthropological Institute* 52, 62-63.

603 Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 30-31; see related comments by Maurer, Nelms and Rea 2013 *The Journal of the Royal Anthropological Institute* 62; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 177.

604 Greenacre 2020 *Washington University Journal of Law & Policy* 233; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (2021) 66; Donovan 2012 *Information and Communications for Development* 68; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

cash.[605] However, mobile money has novel regulatory issues that require policymakers to design approaches that differentiate mobile money from the traditional highly regulated banking services without compromising financial markets stability and consumer protection in Kenya.[606] In this regard, mobile money requires policymakers to develop a regulatory framework that allows cooperation of financial, telecommunications, consumer and competition regulators to collaborate.[607] Currently, there is no legislation enacted to regulate mobile money in Kenya.[608] Furthermore, there is no single regulatory body/authority assigned to supervise mobile money in Kenya.[609] Although the CBK is the main financial regulator, it does not have the legislative authority to regulate fintech products. The legislative authority to enact legislation is vested in Kenya's parliament. However, the CBK can work together with insurance and communication regulators to lobby policymakers to enact statutes.[610] Although there has not been serious financial crimes linked to mobile money in Kenya, the possibility that it can be used to launder money and finance terrorism is high.[611] In the absence of effective regulation, mobile money is susceptible to the risk of crimes such as fraud, terrorist financing and money

605 See paragraph 5.2 of this chapter.

606 Blenchman JG "Mobile Credit in Kenya and Tanzania: Emerging Regulatory Challenges in Consumer Protection, Credit Reporting and Use of Customer Transactional Data" 2016 *The African Journal of Information and Communication* 61, 63.

607 Blenchman 2016 *The African Journal of Information and Communication* 63.

608 Greenacre 2020 *Washington University Journal of Law & Policy* 233; see related comments by Tuba MD "The Technology-Neutral Approach and Electronic Money Regulation in the EU: Identifying the Promises and Challenges for Future Regulation in South Africa" 2014 *Comparative and International Law Journal of Southern Africa* 372, 387; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira H and Ncube M "The Role of Regulatory Bodies and Other Role-Players in the Promotion of Financial Inclusion in South Africa" 2020 *Acta Universitatis Danubius Juridica* 24, 25.

609 Greenacre 2020 *Washington University Journal of Law & Policy* 233; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25; Tuba 2014 *Comparative and International Law Journal of Southern Africa* 387.

610 Greenacre 2020 *Washington University Journal of Law & Policy* 233; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25; Tuba 2014 *Comparative and International Law Journal of Southern Africa* 387.

611 Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 396; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 27-28; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1119.

laundering.[612] The absence of a robust mobile money framework in Kenya falls short of the Financial Action Task Team (FATF) Recommendation 26.[613] Accordingly, Recommendation 26 requires that all financial institutions in Kenya be adequately and sufficiently regulated and supervised.[614] In addition, Recommendation 26 demands that regulators should have the adequate legislative authority to monitor and enforce compliance to anti-money laundering and counter-terrorist financing (AML/CTF) for all financial institutions.[615] Moreover, Recommendation 30 requires that a country like Kenya must accord law enforcement authorities power and necessary support to conduct AML/CTF investigations in order to combat financial crimes.[616] The novel regulatory challenges that came with mobile money require policymakers to design a new statutory framework that sufficiently address AML/CTF concerns in Kenya.[617] In doing this, policymakers in Kenya should balance the need to enforce AML/CTF measures and the promotion of financial inclusion to the poor.[618] In fact, policymakers are encouraged to adopt a risk-based approach when enforcing AML/CTF measures especially on fintech products such as mobile

612 Blenchman 2016 *The African Journal of Information and Communication* 63.

613 Financial Action Task Force (FATF) *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (FATF, Paris 2012-2019) 21; Recommendation 26 requires adequate supervision of financial institutions in order to bar criminals from or their associates from controlling financial institutions; see related comments by Chatain *et al* 2011 *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125.

614 FATF 2019 *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 21; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125; Chatain *et al* 2011 *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4.

615 FATF 2019 *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 21; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125; Chatain et al 2011 Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions 4.

616 FATF 2019 *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 22; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1126; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4.

617 Blenchman 2016 *The African Journal of Information and Communication* 63.

618 FATF 2019 *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 12-13; see related comments by De Koker L "Aligning Anti-Money Laundering, Combating of Financing of Terror and Financial Inclusion: Questions to Consider when FATF Standards are Clarified" 2011 *Journal of Financial Crime* 361, 364.

money.[619] Buku and Meredith state that Safaricom, the M-Pesa parent company, developed its own internal AML/CTF measures that were used as a benchmark by the United States Agency for International Development (USAID) Booz Allen Hamilton group to develop the Mobile Financial Services Risk Matrix.[620] The researcher submits that while internally developed AML/CTF measures are good, smaller mobile money providers like T-Kash may not have the resources to develop and enforce internal controls. To this end, the researcher submits that AML/CTF measures as recommended by FATF should be prioritised. It appears that a variety of statutes are used to regulate mobile money in Kenya. This could pose a risk of regulatory arbitrage. In the following section, the researcher discusses some of the relevant statutes that affect the regulation of mobile money in Kenya.

5.4.1 The National Payment Systems Act and the Regulation and Use of Mobile Money to Promote Financial Inclusion in Kenya

The *National Payment Systems Act*[621] provides a single regulatory framework for all payment service providers, including MNOs in Kenya. Apart from banks and other traditional financial institutions, the *Payment Systems Act* also covers MNOs as participants in Kenya's payment systems.[622] In this regard, a participant in payments systems in Kenya refers to a company that owns, operates or controls a public switched network for the provision of payment systems or for storing or sending payments through an electronic system.[623] A payment system is an arrangement that enables payments to be processed between a payer and a beneficiary. A payment system can also be defined as a system that facilitates the circulation of money including any instruments and procedures involved.[624] Under the *Payment Systems Act*, the CBK supervises all financial service providers to maintain safety and

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619 FATF 2019 *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 9; De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 283.

620 Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 399-400; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 127.

621 *National Payments Systems Act* 39 of 2011 (*Payment Systems Act*), see preamble.

622 Section 2 of the *Payment Systems Act*.

623 Section 2 of the *Payment Systems Act*.

624 Section 2 of the *Payment Systems Act*.

certainty within the Kenyan financial markets.[625] Furthermore, the CBK can issue a designation and revoke or vary such designation to combat systemic risk, protect the public interest and maintain the integrity of the payment systems in Kenya.[626] In addition, the *Payment Systems Act* puts the CBK firmly in charge of Kenya's payment systems by providing the central bank with powers to approve or disapprove any conduct in the financial sector.[627] In this regard, the *Payments Systems Act* provides checks and balances MNOs which should provide mobile money in a regulated manner that enhances financial inclusion for the poor in Kenya.

The CBK is also responsible for implementing policies that promote the establishment, regulation and supervision of an efficient payment system in Kenya.[628] The CBK can also delegate any of its officers to carry out specific responsibilities in an efficient and proper manner.[629] According to the *Payment Systems Act*, the CBK is the custodian of an efficient payment system that works for all stakeholders including the poor and unbanked financial consumers in Kenya.[630] Additionally, the CBK has a duty to expeditiously resolve disputes arising between participants in Kenya's payment system.[631] In the event that the CBK's internal mechanisms fail to resolve any matter, such disputes can be referred for mediation.[632] In this regard, it is submitted that there is a clear dispute resolution framework in Kenya's payment systems. Thus, the dispute resolution mechanism provides the poor with a platform to raise grievances and have them resolved in Kenya. The ability of poor mobile money users to assert their rights is an important attribute of financial inclusion.[633]

From time to time, the CBK may issue directives if it is of the view that actions of certain participants in the payments system could lead to systemic risk, compromise

625 Section 3 of the *Payment Systems Act*.
626 Section 3(1)(a)-(c) of the *Payment Systems Act*.
627 Sections 3-8 of the *Payment Systems Act*.
628 Section 17(1) of the *Payment Systems Act*.
629 Section 17(2) of the *Payment Systems Act*.
630 Section 19(1) and (2) of the *Payment Systems Act*.
631 Section 21(1) and (2) of the *Payment Systems Act*.
632 Section 21(3) of the *Payment Systems Act*.
633 See parapraph 1.1 of Chapter One of this thesis on the definitional aspects of financial inclusion.

financial markets integrity or adversely affect the public.[634] A systemic risk can occur as a result of a failure by a participant in the payments system to meet its financial obligations which cause other participants to fail in their financial obligations.[635] It is submitted that by monitoring possible systemic risk-inducing activities, the CBK works to the advantage of the poor who often suffer more when financial systems fail. The CBK's proactive stance is commendable in that it could forestall challenges that may adversely affect financial markets in Kenya. Moreover, the CBK can compel a participant in the payment systems to refrain from actions that potentially compromise financial markets.[636] A natural person participant that disregards the directives issued by the CBK commits an offence and could be fined half a million shilling or be imprisoned for a period not exceeding three years or both.[637] This demonstrates the seriousness with which the protection of financial markets integrity is taken in Kenya. In this regard, safeguarding financial markets stability and integrity assist in promoting financial inclusion for the poor in Kenya.

5.4.2 The Central Bank of Kenya Act and the Regulation and Use of Mobile Money to Promote Financial Inclusion in Kenya

The *Central Bank of Kenya Act*[638] establishes the CBK as a legal person that can acquire, own, possess and dispose of property, contract, sue and be sued in its name.[639] The CBK has the prerogative to make its own rules of conduct or procedure that should be consistent with the *CBK Act* and good management ethos.[640] Furthermore, the CBK's principal object is to formulate and implement Kenya's monetary policy to achieve and maintain stability in the general level of prices.[641] The CBK should also ensure the liquidity, solvency and proper functioning of a stable market-based financial system in Kenya.[642] Moreover, the CBK licenses and

634 Section 22(1) and (2) of the *Payment Systems Act*.
635 Section 2 of the *Payment Systems Act*.
636 Section 22(3)(a) of the *Payment Systems Act*.
637 Section 22(7) of the *Payments Systems Act*.
638 *Central Bank of Kenya Act* [Chapter 491] 16 of 1966 as amended (*CBK Act*), section 3(1).
639 Section 3(2) of the *CBK Act*.
640 Section 3(4) of the *CBK Act*.
641 Section 4(1) of the *CBK Act*.
642 Section 4(2) of the *CBK Act*.

supervises authorised financial dealers, and formulates and implements policies that promote the establishment, regulation and supervision of an efficient and effective payment, clearing and settlement systems.[643] This is probably the most important provision regarding mobile money services as they form a significant portion of Kenya's payments system. However, the *CBK Act* does not expressly provide for the regulation of mobile money. For instance, the definitions of a 'bank' and 'financial institution' exclude MNOs who are the main players in the mobile money sector.[644] It also appears that MNOs do not form part of the authorised dealers.[645] However, it should be noted that the CBK is obligated to support the economic policy of the Kenyan government, including its objectives for growth and employment.[646] The Minister of Finance can work with the CBK to advance the economic policy taken by the Kenyan government.[647] As mentioned above, the cooperation between the CBK and the Kenyan government to promote economic growth has been key to the success of mobile money in Kenya. This cooperation creates a synergy which is important in the promotion of financial inclusion for the poor in Kenya.

5.4.3 The Banking Act and the Regulation and Use of Mobile Money to promote Financial Inclusion in Kenya

The *Banking Act* regulates banking and related activities in Kenya.[648] A bank is defined as a company that carries on or proposes to carry on banking activities in Kenya excluding the CBK.[649] In this regard, banking activities include accepting deposits from members of the public, accepting money from members of the community on current accounts and using the money held as a deposit by lending it out of investing at the risk of the bank so doing.[650] Banks need to register before they can conduct any banking activities in Kenya.[651] It is submitted that the

643 Section 4A(1)(d) of the *CBK Act*.
644 Section 2 of the *CBK Act*.
645 Section 4A(1)(c) of the *CBK Act*.
646 Section 4(3) of the *CBK Act*.
647 Section 4(4)(b) of the *CBK Act*.
648 *Banking Act* [Chapter 488] 9 of 1989 (as amended), section 2.
649 Section 2 of the *Banking Act*.
650 Section 2 of the *Banking Act*.
651 Section 5 of the *Banking Act*.

registration requirements set for banks do not apply to mobile money and MNOs in Kenya. MNOs are not deposit-taking institutions and they are not required to register as banks. A financial institution is described as a company, other than a bank, that carries on or proposes to carry on financial business and this includes a company the Minister may declare to be a financial institution.[652] However, such a company can only be declared a financial institution if its operations can be described as banking activities. Thus, MNOs and their mobile money business do not satisfy the requirements of financial institutions as set out in the *Banking Act*. In this regard, the *Banking Act* does not provide sufficient regulation of mobile money and/or the promotion of financial inclusion for the poor in Kenya.

Furthermore, the *Banking Act* establishes the Deposit Protection Fund Board (DPFB) which seeks to cushion consumers and possibly reimburse some of their deposits in the event that a banking institution collapses or is closed.[653] Conventional banks and other deposit-taking financial institutions have an obligation to protect depositors' interests.[654] In addition, the *Banking Act* provides for the protection of consumer contributions.[655] Banks and financial institutions make contributions towards the depositors' protection fund. Although contributors to the deposit protection fund include every institution licensed to carry on banking business in Kenya, it is not clear whether this applies to MNOs given their exclusion from the *Banking Act*'s definition. As a result, these consumer protection measures appear to exclude the poor who rely on mobile money services in Kenya.

5.4.4 The Kenya Deposit Insurance Act and the Regulation and Use of Mobile Money to Promote Financial Inclusion in Kenya

The *Kenya Deposit Insurance Act*[656] provides for the protection of consumer funds in the event that a deposit-taking institution gets liquidated in Kenya. The *Deposit Insurance Act* establishes the Kenya Deposit Insurance Corporation (KDIC) to

652 Section 2 of the *Banking Act*.
653 Section 36 of the *Banking Act*.
654 Section 37 of the *Banking Act*.
655 Section 38 of the *Banking Act*.
656 *Kenya Deposit Insurance Act* 10 of 2012 (*Deposit Insurance Act*), see the preamble.

provide a deposit insurance scheme and deal with insurance-related matters.[657] Among other functions, the KDIC levies and collects contributions from member institutions.[658] In this regard, member institutions include all banks and financial institutions that offer deposit-taking services and act as sources of investable funds.[659] As discussed under the *Banking Act* above, MNOs are neither deposit-taking institutions nor financial institutions. Thus, MNOs are excluded from the membership of the KDIC. Therefore, the *Kenya Deposit Insurance Act* does not sufficiently regulate mobile money in a manner that promotes financial inclusion for the poor in Kenya. The following section explores the telecommunications regulatory aspects of mobile money in Kenya.

5.5 The Telecommunications Regulatory Framework and the Use of Mobile Money to Promote Financial Inclusion in Kenya

As argued above, mobile money is a fintech product that is at the intersection of the finance and telecommunications domains.[660] Consequently, the adequate regulation of mobile money requires a collaboration of financial and telecommunications regulators.[661] The legislature in Kenya has not managed to enact a statute that adequately bridges the gap between the two mentioned domains. Given the increased use of mobile money and its relative safety since the outbreak of the COVID-19 pandemic, there is need for a more coherent regulatory approach that can assist to promote financial inclusion for the poor in Kenya.[662]

5.5.1 The Kenya Information and Communications Act (KICA) and the Regulation of Mobile Money to Promote Financial Inclusion in Kenya

The Communications Commission of Kenya (CCK) is empowered by the *KICA* to license MNOs operating in Kenya.[663] The CCK also endeavours to protect the

657 Sections 4 and 5 of the *Deposit Insurance Act*.
658 Section 5(2)(a) of the *Deposit Insurance Act*.
659 Section 2 of the *Deposit Insurance Act*.
660 See paragraph 5.4 of this chapter.
661 See paragraph 5.4 of this chapter.
662 See paragraph 5.2 of this chapter.
663 Sections 3 and 23 of the *KICA*.

interests of telecommunication services users through quality service provision and reasonable pricing.[664] Furthermore, the CCK oversees the competition between or among MNOs to ensure efficiency in the telecommunications sector and to encourage more investment.[665] The CCK also seeks to promote and encourage MNOs in Kenya to provide competitive international transit services.[666] However, the *KICA* is silent on the regulation of mobile money services in Kenya. In this regard, the *KICA* has a narrow focus on telecommunications regulation of MNOs and has nothing express or implied on mobile money regulation and the promotion of financial inclusion for the poor in Kenya. This omission could point to the lack of regulatory coordination between financial and telecommunication regulators in Kenya.

5.6 Competition, Monopolies and Data Protection in the Regulation of Mobile Money to promote Financial Inclusion in Kenya

Although Kenya's mobile money industry has been successful, it has several weaknesses which could reduce competition and adversely affect innovation in the sector.[667] For example, the dominance of Safaricom's mobile money platform, M-Pesa, gives it unfettered market power at the expense of smaller players.[668] The researcher discusses some of the challenges that have emerged in Kenya's mobile money sector and the effects on the promotion of financial inclusion for the poor.

5.6.1 Interoperability of Mobile Money Services in Kenya

In the context of this research, interoperability can be defined as the interconnection of mobile money service platforms using common or the same standards and

664 Section 23(2)(a) of the *KICA*.
665 Section 23(2)(b) and (c) of *KICA*.
666 Section 23(2)(d) and (e) of *KICA*.
667 Robb and Vilakazi 2016 *The African Journal of Information and Communication* 33; see related comments by Pazarbasioglu *et al* 2020 *Digital Financial Services* 8; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174; Donovan 2012 *Information and Communications for Development 69; Ondiege Center for Global Development* (2015) 26.
668 Robb and Vilakazi 2016 *The African Journal of Information and Communication* 33; see related comments by Pazarbasioglu *et al* 2020 *Digital Financial Services* 8; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 174; Donovan 2012 *Information and Communications for Development* 69; Di Castri and Plaitakis *Centre for Financial Inclusion Working Paper* (2018) 1.

protocols.[669] Interoperability could enhance the financial inclusion of the poor in that it increases convenience, cut costs, broadens the range of services and improves liquidity management for agents.[670] Interoperability could also be pertinent in the management and regulation of competition in the mobile money sector. In this regard, interoperability reduces mobile network effects that restrict consumers' choice to switch mobile money providers or networks and encourages the portability of SIM cards.[671] Without interoperability, financial consumers have little room to choose a service provider who meets their financial needs and expectations.[672] In addition, interoperability allows financial consumers to transact across networks or platforms without incurring more costs than they would if they use the same platform.[673] Moreover, interoperability removes agents' exclusivity whereby a particular MNO would contract agents that only serve its subscribers.[674] Agents' exclusivity could limit mobile money consumers' choices especially the poor in rural areas where only big MNOs may have agents.[675] In this regard, interoperability allows inter-linkages that assist the poor to access a variety of financial services conveniently.[676]

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669 Hoernig S and Bourreau M "Interoperability of Mobile Money: International Experience and Recommendations for Mozambique" *International Growth Centre Policy Brief* (2017) 1-2; see related comments by Mazer R and Rowan P "Competition in Mobile Financial Services: Lessons from Kenya and Tanzania" 2016 *The African Journal of Information and* Communication 39, 46.

670 Arabehety PG, Chen G, Cook W and McKay C *Digital Finance Interoperability & Financial Inclusion: A 20-Country Scan* (Consultative Group to Assist the Poor Washington DC 2016) 1; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 46; Hoernig and Bourreau *International Growth Centre Policy Brief* (2017) 2.

671 Hoernig and Bourreau *International Growth Centre Policy Brief* (2017) 2; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 46.

672 Hoernig and Bourreau *International Growth Centre Policy Brief* (2017) 2; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 46.

673 Hoernig and Bourreau *International Growth Centre Policy Brief* (2017) 2; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 46.

674 Sitbon E "Addressing Competition Bottlenecks in Digital Financial Services" 2015 *Journal of Payments Strategy & Systems* 351, 355; see related comments by Robb G and Vilakazi T "Mobile Payments Markets in Kenya, Tanzania and Zimbabwe: A Comparative Study of Competitive Dynamics and Outcomes" 2016 *The African Journal of Information and Communication* 9, 23.

675 Mazer and Rowan 2016 *The African Journal of Information and Communication* 46; see related comments by Hoernig and Bourreau *International Growth Centre Policy Brief* (2017) 2; Robb and Vilakazi 2016 *The African Journal of Information and Communication* 23.

676 Mazer and Rowan 2016 *The African Journal of Information and Communication* 46; see related comments by Sitbon 2015 *Journal of Payments Strategy & Systems* 355-356; Hoernig and Bourreau *International Growth Centre Policy Brief* (2017) 2.

It should be noted that although mobile money services started in 2007 in Kenya, interoperability was officially implemented only in 2018.[677] Although the *Payment Systems Act* provides that interoperability is one of its goals for the mobile money sector, the absence of noticeable progress towards this goal for seven years exposes the flaws of a market dominated by a monopoly.[678] Mazer and Rowan opine that mobile money interoperability in Kenya could only be realised if it was forced on the market by the authorities, as was done by the CBK in 2018.[679] For an example, when the Competition Authority of Kenya (CAK) investigated a complaint from Airtel in which Safaricom was accused of charging high tariffs to non-registered M-Pesa users and dissuading its agents from serving rival service providers.[680] In defence of the alleged actions, Safaricom argued that it had invested billions of shillings to develop its infrastructure and network of agents and that it would be unfair for rivals to have a free ride.[681] Charging high tariffs to mobile money consumers using rival platforms could be illustrative of monopoly tendencies that seek to hinder competition and entrench the dominant incumbents' power.[682] Nleya and Robb argue that Safaricom's actions could result in monopoly profits, exclusion of competitors and high switching

677 Central Bank of Kenya (CBK) 2018 *Mobile Money Interoperability* 2018 page number unknown https://www.centralbank.go.ke/uploads/press_releases/1648360391_Press%20Release%20-%20Mo bile%20Money%20Interoperability.pdf accessed on 20 April 2021; see related comments by Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 44.

678 Section 8(1)(c) of the *Payments Systems Act*; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 47; Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 44.

679 Mazer and Rowan 2016 *The African Journal of Information and Communication* 47; see related comments by Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 44.

680 Sitbon 2015 *Journal of Payments Strategy & Systems* 355; see related comments by Nleya and Robb 2014 *Mobile Money Monopolies in Kenya and Zimbabwe: Where should the Balance with Rivals be?* page number unknown https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-and-zimbabwe-where-should-the-balance-with-rivals-be accessed on 20 April 2021.

681 Robb and Vilakazi 2016 *The African Journal of Information and Communication* 24; see related comments by Sitbon 2015 *Journal of Payments Strategy & Systems* 355; Nleya and Robb 2014 https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-and-zimbabwe -where-should-the-balance-with-rivals-be page number unknown.

682 Robb and Vilakazi 2016 *The African Journal of Information and Communication* 24; see related comments by Nleya and Robb 2014 https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-and-zimbabwe-where-should-the-balance-with-rivals-be page number unknown.

costs for consumers contemplating to join rival platforms.[683] However, it is submitted that insisting on interoperability without paying due regard to efforts taken to establish agent networks could be tantamount to promoting free-riders. Thus, regulators such as the CBK need to enforce interoperability in a manner that is responsive to the investment MNOs make in developing their mobile money network in Kenya.

5.6.2 Data Protection and the Regulation of Mobile Money to Promote Financial Inclusion in Kenya

Mazer and Rowan argue that data sharing may be imperative if the mobile financial services market is to promote competition, reduce barriers to entry and ultimately promote innovation.[684] It is possible that regulators can work on modalities to improve data sharing among mobile money providers in Kenya.[685] This is a result of emerging financial products such as credit, savings and insurance that are boosting the financial inclusion of the poor in Kenya.[686] Most of the new product offerings require the risk profiles of consumers and as such, data on their past records becomes crucial. Thus, before a mobile money provider can offer credit or insurance services to consumers, it may need to have such consumers' voice, SMS, data and mobile money activities records.[687] To this end, mobile money customers' digital

683 Robb and Vilakazi 2016 *The African Journal of Information and Communication* 24; see related comments by Nleya and Robb *Mobile* 2014 https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-and-zimbabwe-where-should-the-balance-with-rivals-be page number unknown.

684 Mazer and Rowan 2016 *The African Journal of Information and Communication* 51; see related comments by Blechman JC "Mobile Credit in Kenya and Tanzania: Emerging Regulatory Challenges in Consumer Protection, Credit Reporting and use of Customer Transactional Data" 2016 *The African Journal of Information and Communication* 61, 64; Robb and Vilakazi 2016 *The African Journal of Information and Communication* 24.

685 Blechman 2016 *The African Journal of Information and Communication* 64; see related comments by Robb and Vilakazi 2016 *The African Journal of Information and Communication* 24; Mazer and Rowan 2016 *The African Journal of Information and Communication* 51.

686 Robb and Vilakazi 2016 *The African Journal of Information and Communication* 24-25; see related comments by Blechman 2016 *The African Journal of Information and Communication* 67-68; Mazer and Rowan 2016 *The African Journal of Information and Communication* 51.

687 Blechman 2016 *The African Journal of Information and Communication* 70; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 51; Robb and Vilakazi 2016 *The African Journal of Information and Communication* 26-27.

footprints could unlock more doors to financial inclusion for the poor.[688] Nonetheless, there is limited data sharing among mobile money providers in Kenya to the extent that the poor financial consumers may not have access to their records or use such data to bargain for competing offers in the market.[689] This could partly explain the reluctance by dominant MNOs such as Safaricom to embrace interoperability as discussed above.[690] To this end, scholarly debate on data ownership and sharing is a topical subject in present-day mobile money services in Kenya.

5.6.2.1 Possible advantages of data sharing in the regulation of mobile money to promote financial inclusion in Kenya amidst the raging COVID-19 pandemic

Robust regulation of data ownership and sharing could contribute various possible advantages towards promoting financial inclusion for the poor in Kenya. For instance, if consumer data is readily available, lenders can be better informed to determine who qualifies for credit.[691] This may mean that poor financial consumers could also access credit, contribute to reduced costs of lending and a greater availability of credit.[692] Additionally, data sharing could help creditors or other financial service providers to have access to consumer information held by monopolies.[693] In this regard, data sharing can remove barriers to entry for new

688 Mazer and Rowan 2016 *The African Journal of Information and Communication* 51; see related comments by Blechman 2016 *The African Journal of Information and Communication* 70; Nleya and Robb 2014 https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-andzimbabwe-where-should-the-balance-with-rivals-be page number unknown.

689 Mazer and Rowan 2016 *The African Journal of Information and Communication* 51; Nleya and Robb 2014 https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-and-zimb abwe-where-should-the-balance-with-rivals-be page number unknown.

690 Sitbon 2015 *Journal of Payments Strategy & Systems* 355; see related comments by Nleya and Robb 2014 https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-andzimb abwe-where-should-the-balance-with-rivals-be page number unknown; Robb and Vilakazi 2016 *The African Journal of Information and Communication* 27.

691 Mazer and Rowan 2016 *The African Journal of Information and Communication* 52; see related comments by Blechman 2016 *The African Journal of Information and Communication* 82-83.

692 Nleya and Robb 2014 https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-andzimbabwe-where-should-the-balance-with-rivals-be page number unknown; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 52.

693 Blechman 2016 *The African Journal of Information and Communication* 82-83; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 52; Nleya and Robb 2014 https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-and-zim babwe-where-should-the-balance-with-rivals-be page number unknown.

entrants into the financial services sector. Furthermore, data sharing can broaden consumer choices and even out competition among mobile money service providers.[694] In the absence of data sharing, the poor financial consumers could be limited to incumbent mobile money providers while rivals find it impossible to grow their market share.[695] Mazer and Rowan further argue that data sharing may bring about more competition and innovation in the ever-changing mobile money sector to enhance financial inclusion for the poor especially given the effects of the ongoing COVID-19 pandemic.[696]

It is submitted that facilitating data sharing in the mobile money sector is crucial for promoting the financial inclusion of the poor in Kenya. Therefore, there may be a need to set out permitted and non-permitted uses of consumers' data to combat potential anti-competitive behaviour and data security risks evident in Kenya.[697] Financial, telecommunications and competition regulators need to work together and adopt new standards that clearly set out how consumer data in the mobile money sector is owned, accessed and shared in Kenya.[698]

5.7 Concludig Remarks

This chapter explored factors that made mobile money in Kenya one of the most successful fintech products so far.[699] Kenya's biggest mobile money platform, M-Pesa, has significantly contributed to the financial inclusion of the poor.[700] Like in other developing countries, mobile money in Kenya has assisted the poor to access

694 Mazer and Rowan 2016 *The African Journal of Information and Communication* 52; see related comments by Blechman 2016 *The African Journal of Information and Communication* 64.

695 Di Castri *Centre for Financial Inclusion Working Paper* (2018) 3; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 52.

696 Di Castri *Centre for Financial Inclusion Working Paper* (2018) 3; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 52.

697 Nleya and Robb 2014 https://www.competition.org.za/news/2016/2/18/mobile-money monopolies-in-kenya-andzimbabwe-where-should-the-balance-with-rivals-be page number unknown; Mazer and Rowan 2016 *The African Journal of Information and Communication* 53.

698 Mazer and Rowan 2016 *The African Journal of Information and Communication* 53; see related comments by Nleya and Robb 2014 https://www.competition.org.za/news/2016/2/18/mobile-money-monopolies-in-kenya-andzimbabwe-where-should-the-balance-with-rivals-be page number unknown; Chatain *et al* 2011 *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 40.

699 See paragraph 5.1 of this chapter.

700 See paragraph 5.1 of this chapter.

formal financial services such as payments, savings and credit.[701] The CBK's "test-and-learn" regulatory approach to M-Pesa is a crucial factor that facilitated the growth of mobile money services in Kenya.[702] For several years, M-Pesa operated without having to meet set legal requirements. This approach allowed M-Pesa to establish and reach out to the poor without regulatory restrictions.[703] However, policymakers in Kenya have tended to follow rather than anticipate the direction technology takes. As a result, there has not been a sound mobile money regulatory framework in Kenya.[704] Although Safaricom established its own internal AML/CTF measures, they are not enough to regulate mobile money in order to promote financial inclusion for the poor in Kenya. There should be standard guidelines for all mobile money providers in Kenya. Furthermore, mobile money regulation requires cooperation and coordination between financial and telecommunications regulators in Kenya.[705] Ideally, there may be a need for a single statute that specifically addresses fintech products such as mobile money.[706] Competition regulation should also be empowered to promote innovation that often leads to new and cheaper financial products that would ultimately expand the financial inclusion net for the poor in Kenya.[707] As a contactless payment method, mobile money has become a safe and convenient transaction mechanism which possibly mitigates the spread of coronavirus through the exchange of cash during transactions.[708] In this regard, mobile money allows the poor in Kenya to transact from the relative safety of their devices as the COVID-19 pandemic rages on.

701 See paragraph 5.2 of this chapter.
702 See paragraph 5.3.1 of this chapter.
703 See paragraph 5.3.1 of this chapter.
704 See paragraph 5.4 of this chapter.
705 See paragraph 5.4 of this chapter.
706 See paragraph 5.4 of this chapter.
707 See paragraph 5.6.1 of this chapter.
708 See paragraph 5.6.2.1 of this chapter.

CHAPTER SIX

THE REGULATION AND USE OF MOBILE MONEY TO PROMOTE FINANCIAL INCLUSION FOR THE POOR IN SOUTH AFRICA

6.1 Introduction

The use of mobile money has become an efficient, convenient, quick and safe avenue to promote the financial inclusion of the poor in many developing economies including South Africa.[709] Since the outbreak of the coronavirus pandemic (COVID-19), mobile money has become one of the safest payment systems owing to public health concerns that the virus could be transmitted through notes and coins during transactions.[710] However, in South Africa, mobile money is still at a preliminary stage after several attempts to launch this financial technology (fintech) product by mobile network operators (MNOs) flopped.[711] There could be several reasons why mobile money previously failed and one of them is the requirement that mobile money service providers ought to be registered banks in South Africa.[712] In 2020, Mobile Telephone Network (MTN) revived its Mobile Money (MoMo) platform and

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709 Kersop M and Du Toit SF "Anti-money Laundering Regulations and the Effective Use of Mobile Money in South Africa – Part 1" 2015 *Potchefstroom Electronic Law Journal* 1603, 1604; see related comments by Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 437; Tuba MM "The Regulation of Electronic Money Institutions in the SADC Region: Some Lessons from the EU" 2014 *Potchefstroom Electronic Law Journal* 2268, 2269; Lawack VA "Mobile Money, Financial Inclusion and Financial Integrity: The South African Case" 2013 *Washington Journal of Law, Technology & Arts* 317, 318.

710 Mann RJ "Driver for Contactless Payments" in K Pistor (ed) *Law in the Time of Covid-19* (Columbia Law School New York 2020) 177; see related comments by Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe"2021 *Potchefstroom Electronic Law Journal* 1, 21; Kasradze T "Challenges Facing Financial Inclusion due to the Covid-19 Pandemic" 2020 *European Journal of Marketing and Economics* 63, 70.

711 Lumsden E "The Future is Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business & Finance* 1, 30; see related comments by Evans DS and Pirchio A "An Empirical Examination of Why Mobile Money Schemes Ignite in Some Developing Countries but Flounder in Most" *Coase-Sandor Working Paper Series in Law and Economics* (2015) 25-26.

712 Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1617; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 328; Evans and Pirchio *Coase-Sandor Working Paper Series in Law and Economics* (2015) 25-26; Botchey FE, Qin Z and Hughes-Lartey K "Mobile Money Fraud Prediction- A Cross-Case Analysis on the Efficiency of Support Vector Machines, Gradient Boosted Decision Trees and Naïve Bayes Algorithms" 2020 *Information* 1, 4.

more such initiatives could be introduced to the South African financial markets soon.[713] It appears that previous attempts to offer mobile money failed due to a rigid financial regulatory framework that does not seem to support innovative financial products that are not linked to or provided by banks.[714] MTN's MoMo platform could be a test case on the financial regulatory framework that has hardly changed since the failure of earlier mobile money initiatives in South Africa.[715] In South Africa, it appears that mobile money has had an additive effect rather than a transformative effect.[716] In this regard, mobile money has an additive effect when it is used as an aesthetics or additional channel for the convenience of individuals who are already banked.[717] On the other hand, a transformative effect refers to the use of mobile money services primarily and possibly as the only option for the poor to access financial services.[718] In this regard, South Africa appears to have had more bank-driven financial inclusion initiatives than non-bank-driven products like mobile money. For example, in 2005, major banks in South Africa made efforts to distribute

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713 McLeod D 2020 *MTN in Big E-Commerce Play with Mobile Money* page number unknown https://techcentral.co.za/mtn-mobile-money-can-now-be-used-for-online-shopping/99192/ accessed on 10 December 2020; see related comments by Robb G 2015 *Why Mobile Money has Flopped in South Africa* page number unknown http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ accessed 20 April 2021.

714 Abrahams R "Financial Inclusion in South Africa: A Review of the Literature" 2017 *Southern African Accounting Association* 632, 650; see related comments by Chatain PL, Zerzan A, Noor W, Dannaoui N and De Koker L *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* (The World Bank Washington DC 2011) 66; Lumsden 2018 *Stanford Journal of Law, Business & Finance* 30-31; Evans and Pirchio *Coase-Sandor Working Paper Series in Law and Economics* (2015) 27.

715 Robb 2015 http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ page number unknown; see related comments by Lumsden 2018 *Stanford Journal of Law, Business & Finance* 31; Evans and Pirchio *Coase-Sandor Working Paper Series in Law and Economics* (2015) 27; Chatain *et al Protecting Mobile Money Against Financial Crimes* 66.

716 Abrahams 2017 *Southern African Accounting Association* 638; see related comments by Chinakidzwa M, Mbengo P and Nyatsambo M "Mobile Money Usage in Rural Areas in Zimbabwe – Case of Mudzi District" 2015 *International Journal of Scientific & Engineering Research* 128, 129; Bara A "Mobile money for financial inclusion: Policy and regulatory perspective in Zimbabwe" 2013 *Journal of Science, Technology, Innovation and Development* 345, 351.

717 Porteous D *The Enabling Environment for Mobile Banking in Africa* (Bankable Frontier Associates Boston 2006) 15; see related comments by Bångens L and Söderberg B *Mobile Banking–Financial Services for the Unbanked?* (Spinder Sweden 2008) 14; Ndlovu I and Ndlovu M "Mobile Banking the Future to Rural Financial Inclusion: Case Study of Zimbabwe" 201 *International Organisation of Scientific Research Journal of Humanities and Social Science* 70, 70-71.

718 Porteous *The Enabling Environment for Mobile Banking in Africa* 15; see related comments by Ndlovu and Ndlovu 2013 *IOSR Journal of Humanities and Social Science* 70; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 14; Evans and Pirchio *Coase-Sandor Working Paper Series in Law and Economics* (2015) 19.

automated teller machines (ATMs) in rural areas and introduced low-cost bank accounts, such as the Mzansi account, to drive financial inclusion for the poor.[719] The Mzansi account initiative received a special waiver that relaxed client identification and verification (CIV) requirements under the *Financial Intelligence Centre Act*.[720] While individuals were required to furnish financial institutions with their full names, date of birth and identity number before opening Mzansi accounts, Exemption 17 waived the requirement for proof of a residential address was waived.[721] Although some of the poor managed to open bank accounts, a considerable number remained financially excluded in South Africa.[722]

Exemption 17 has important implications on anti-money laundering and counter-terrorist financing (AML/CTF) controls for the mobile money sector in South Africa.[723] The Registrar of Banks in South Africa (Registrar) issued guidance on how

719 De Koker L "The Money-Laundering Risk Posed By Low-Risk Financial Products in South Africa: Findings and Guidelines" 2009 *Journal of Money Laundering & Control* 323, 324; see related comments by 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* 21, 41; Chitimira H and Magau PT "A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa" 2021; *Potchefstroom Electronic Law Journal* 1, 6-7; 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, 179.

720 38 of 2001 as amended by the *Financial Intelligence Centre Amendment Act* I of 2017 (FICA), section 21; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 80; De Koker 2006 *Journal of Financial Crime* 41; De Koker 2009 *Journal of Money Laundering & Control* 324-325.

721 Exemption 17 of the *Exemptions to FICA* exempts financial institutions such as banks from complying with certain client identification and verification obligations required by *FICA*; section 21 of *FICA*; see related comments by De Koker 2006 *Journal of Financial Crime* 41-42; De Koker 2009 *Journal of Money Laundering & Control* 325-326; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 80.

722 Lawack 2013 *Washington Journal of Law, Technology & Arts* 322; see related comments by De Koker 2009 *Journal of Money Laundering & Control* 323; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 80; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 184.

723 De Koker 2009 *Journal of Money Laundering & Control* 327; see related comments by *Chatain et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 80; Lawack 2013 *Washington Journal of Law, Technology & Arts* 337-338.

Exemption 17 applied to mobile money services offered by banks.[724] The Registrar indicated that while clients could remotely register for mobile money services, the relevant bank should take necessary steps to verify the identity of such customers or clients.[725] Additionally, the Registrar set three conditions on the operation of mobile money regarding users who decide to register remotely. Firstly, the Registrar determined that banks should limit transactions for such individuals to R1 000 per day. Second, financial consumers who register for mobile money remotely may not be allowed to have more than one account. Lastly, the Registrar provided that banks should increase their monitoring of such accounts for suspicious activity.[726] In this regard, it is submitted that if these measures were applied to mobile money, it would become more expensive and unattractive for the poor. The Registrar reiterated that banks had a common law duty to verify the identity of their customers hence the need for heightened vigilance when it comes to mobile money.[727] In light of this, it is unclear whether the Exemption 17 could also be applied to mobile money services run by MNOs in South Africa. However, a rigid enforcement of AML/CTF measures in mobile money regulation stifles innovation and

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724 South African Reserve Bank (SARB) *Guidance Note 6/2008 Issued in Terms of Section 6(5) of the Banks Act, 1990: Cell-Phone Banking* (South African Reserve Bank Pretoria 2008); see related comments by De Koker 2009 *Journal of Money Laundering & Control* 327; Lawack 2013 *Washington Journal of Law, Technology & Arts* 337-338; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 80.

725 SARB 2008 *Guidance note 6/2008*; see related comments by De Koker 2009 *Journal of Money Laundering & Control* 327; Chatain *et al Protecting Mobile Money Against Financial Crimes: Global Policy Challenges and Solutions* 80; Lawack 2013 *Washington Journal of Law, Technology & Arts* 337.

726 SARB 2008 *Guidance note 6/2008*; see related comments by De Koker 2009 *Journal of Money Laundering & Control* 327; Lawack 2013 *Washington Journal of Law, Technology & Arts* 338; Chatain *et al 2011 Protecting Mobile Money Against Financial Crimes: Global Policy Challenge and Solutions* 80.

727 SARB 2008 *Guidance note 6/2008*; see related comments by De Koker 2009 *Journal of Money Laundering & Control* 327; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 80; Lawack 2013 *Washington Journal of Law, Technology & Arts* 338.

hinders the growth of fintech products that can assist in promoting financial inclusion for the poor in South Africa.[728]

6.2 Overview on the Regulation and Use of Mobile Money to Promote Financial Inclusion in South Africa

South Africa is targeting to achieve at least 90 per cent financial inclusion by the year 2030.[729] Financial inclusion could assist in eliminating poverty and reducing economic inequality which leads to sustainable livelihoods in South Africa.[730] Since 1994, efforts to promote financial inclusion of the poor in South Africa have been curtailed by prohibitive bank fees, onerous documentary requirements and over-concentration of banking facilities in urban areas.[731] The researcher submits that some of the onerous documentary requirements should be reconsidered to accommodate low-risk poor individuals in the formal financial sector in South Africa. The National Planning Commission (NPC) proposes the use of innovative information communication technologies (ICTs) to deliver inclusive financial services to all people

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728 Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions" 2020 *Journal of Comparative Law in Africa* 42, 48-49; see related comments by Evans and Pirchio *Coase-Sandor Institute for Law and Economics Working Paper* (2015) 4; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 172; Lumsden 2018 *Stanford Journal of Law, Business & Finance* 30-31.

729 National Planning Commission (NPC) *National Development Plan 2030: Our Future - Make it Work* (Government of South Africa Pretoria 2012) 150; see related comments by Mhlanga D and Denhere V "Determinants of Financial Inclusion in Southern Africa" 2020 *Studia Universitatis Babes-Bolyai Oeconomica* 39, 40; Chitimira H and Ncube M "The Role of Regulatory Bodies and Other Role-Players in the Promotion of Financial Inclusion in South Africa" 2020 *Acta Universitatis Danubius Juridica* 24, 25; Abrahams 2017 *Southern African Accounting Association* 634.

730 Mhlanga and Denhere 2020 *Studia Universitatis Babes-Bolyai Oeconomica* 40; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25; Abrahams 2017 *Southern African Accounting Association* 634; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3.

731 Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 45-46; see related comments by NPC 2012 *National Development Plan 2030: Our Future - Make it Work* 150, Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 6-7; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 34; Ikdal A 2017 *6 Challenges to Financial Inclusion in South Africa* page number unknown https://www.Weforum.org/agenda/2017/04/financial-inclusion-south-africa/ accessed on 5 May 2021.

at a lower cost.[732] The researcher argues that the NPC's proposal bodes well for innovative financial products such as mobile money to play a part in broadening financial access in South Africa. However, as pointed out earlier, the rigid regulatory framework and lack of a clear policy on the use of innovative financial products like mobile money to promote financial inclusion for the poor are challenges in South Africa.[733] Consequently, many poor persons in South Africa extensively rely on cash despite associated risks such as impulse buying, money laundering, theft, robberies and cash-in-transit heists.[734] The use of cash has also become a health hazard since the outbreak of COVID-19 globally, including in South Africa.[735] A considerable percentage of financially excluded poor people use relatives and friends to send money to their families residing in rural areas.[736] Some of the poor individuals in South Africa are at the mercy of predatory schemes of unregulated and informal

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732 NPC 2012 *National Development Plan 2030: Our Future - Make it Work* 150; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; Gibson E, Lupo-Pasini F and Buckley RP "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" 2015 *Singapore Journal of Legal Studies* 26, 27; Klein M and Mayer C *Mobile Banking and Financial Inclusion: The Regulatory Lessons* (The World Bank 2011) 4.

733 Abrahams 2017 *Southern African Accounting Association* 650; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; Robb 2015 http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ page number unknown; Lumsden 2018 *Stanford Journal of Law, Business & Finance* 31; Evans and Pirchio 2015 *Coase-Sandor Working Paper Series in Law and Economics* 27; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 66.

734 Chitimira H and Ncube M "Legislative and Other Selected Challenges Affecting Financial Inclusion of the Poor and Low Income Earners in South Africa" 2020 *Journal of African Law* 337, 351; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 35; Nyanhete A "The Role of International Mobile Remittances in Promoting Financial Inclusion and Development" 2017 *European Journal of Sustainable Development* 256, 257; Mugarura N "The Use of Mobile Phones in Changing the Banking Regulatory Landscape in Africa" 2019 *African Journal of International and Comparative Law* 308, 312.

735 De R, Pandey N and Pal A "Impact of Digital Surge During Covid-19 Pandemic: A Viewpoint on Research and Practice" 2020 *International Journal of Information Management* 1, 3; see related comments by Mann "Driver for Contactless Payments" 176; Kasradze 2020 *European Journal of Marketing and Economics* 70; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22.

736 Robb 2015 http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ page number unknown; see related comments by Buku MW and Meredith MW "Safaricom and M-Pesa in Kenya: Financial Inclusion and Financial Integrity" 2013 *Washington Journal of Law, Technology & Arts* 375, 383.

credit providers.[737] Others turn to stokvels, an informal savings practice common in South Africa where they make contributions for a specified period and later share the money.[738] In this regard, informal financial services pose considerable challenges to the enforcement of AML/CTF measures in South Africa and other countries globally.[739] The inability to have records of informal financial transactions makes it difficult, if not impossible for authorities to detect money laundering and other crimes.[740] The researcher submits that the use of mobile money by the poor in South Africa could curb the use of informal financial channels.

In addition to the aforementioned challenges, banks in South Africa demand documents such as proof of residence and they often take too long to process loans or credit applications.[741] Furthermore, South Africa does not have a clear financial inclusion policy and sufficient redress to poverty that keeps the poor at the periphery of the economy.[742] In this regard, some of the factors that keep many poor persons in South Africa financially excluded include high costs of bank services, onerous

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737 Matuku S and Kaseke E "The Role of Stokvels in Improving People's Savings: The Case in Orange Farm, Johannesburg, South Africa" 2014 *Social Work/Maatskaplike* 502, 505; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 172-173; Abrahams 2017 *Southern African Accounting Association* 651; Ikdal 2017 https://www.weforum.org/agenda/2017/04 /financial-inclusion-south-africa/ page number unknown. Loan sharks are individuals who provide informal loans in return for interest which often keeps their clients in perpetual debt.

738 Van Wyk MM "Stokvels as a Community-based Savings Club Aimed at Eradicating Poverty: A Case of South African Rural Women" 2018 *International Journal of Community Diversity* 1, 15; see related comments by Abrahams 2017 *Southern African Accounting Association* 651; Chitimira and Ncube 2020 *Journal of African Law* 351-352.

739 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; see related comments by Chitimira and Ncube 2020 *Journal of African Law* 352.

740 De Koker 2006 *Journal of Financial Crime* 27. See related comments by Chitimira and Ncube 2020 *Journal of African Law* 352; Robb 2015 http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ page number unknown.

741 Kanobe F, Alexander PM and Bwalya KJ "Policies, Regulations and Procedures and their Effects on Mobile Money Systems in Uganda" 2017 *The Electronic Journal of Information Systems in Developing Countries* 1, 8 see related comments by Chitimira and Ncube 2020 *Journal of African Law* 352; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15-16; Abrahams 2017 *Southern African Accounting Association* 639-640; Ikdal 2017 https://www.Weforum.org/agenda/2017/04 /financial-inclusion-south-africa/ page number unknown.

742 Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; see related comments; Chitimira and Ncube 2020 *Journal of African Law* 341-342; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 174; Abrahams 2017 *Southern African Accounting Association* 639-640.

documentary requirements, the slow turn-around time for credit and loan applications, cultural and psychological hindrances.[743] Financial inclusion for the poor could be improved by addressing some of the regulatory bottlenecks in South Africa.[744] There could be a need for a rethink of the financial regulatory framework, innovation and a "democratisation" of the financial system in South Africa.[745] Louis and Chartier argue that South Africa has a two-tier economy, a formal one that attracts rich investors and an informal one for the poor.[746] While South Africa appears to be above the global average of adult persons with access to formal financial services, the rate of financial inclusion among the poor may be very low.[747] About 77 per cent of South African adults have bank accounts but a majority of these accounts are only used to receive social grants rather than for other financial services such as savings and credit.[748] In most cases, the accounts are withdrawn empty as soon as money is deposited. As a result, this presents a distorted picture of

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743 Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; see related comments by Chitimira and Ncube 2020 *Journal of African Law* 352; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 173; Abrahams 2017 *Southern African Accounting Association* 639-640; Ikdal 2017 https://www.weforum.org/agenda/2017/04 /financial-inclusion-south-africa/ page number unknown.

744 Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 174; see related comments by Robb 2015 http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ page number unknown; Ikdal 2017 https://www.weforum. org/agenda/2017/04/financial-inclusion-south-africa/ page number unknown.

745 Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 174; see related comments by Robb 2015 http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ page number unknown; Mhlanga and Denhere 2020 *Studia Universitatis Babes-Bolyai Oeconomica* 42; Ikdal 2017 https://www.weforum.org/agenda/2017/04/financial-inclusion-south-africa/ page number unknown.

746 Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 180-181; see related comments by Mhlanga and Denhere 2020 *Studia Universitatis Babes-Bolyai Oeconomica* 42; The Banking Association of South Africa 2019 *Banking Matters: 2019 and Beyond* 16 http://www.banking.org.za/wp-content/uploads/2019/ 04/ Banking-Matters-Publication.pdf accessed on 29 August 2021.

747 Mhlanga and Denhere 2020 *Studia Universitatis Babes-Bolyai Oeconomica* 42; see related comments by Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 183; Ikdal 2017 https://www.weforum.org/agenda/2017/04 /financial-inclusion-south-africa/ page number unknown.

748 Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 35; see related comments by Mhlanga and Denhere 2020 *Studia Universitatis Babes-Bolyai Oeconomica* 42; Abrahams 2017 *Southern African Accounting Association* 652-653; Mathe K "Financial Inclusion: More than just Bank Accounts" in The Banking Association of South Africa 2019 *Banking Matters: 2019 and Beyond* 8 http://www.Banking.org.za/wp-content/uploads/2019/04/Banking-Matters-Publication .pdf accessed on 29 August 2021.

financial inclusion in South Africa.[749] In this regard, lack of financial literacy limits the ability of the poor and low-income earners to make use of opportunities available to them.[750] Financial literacy refers to the ability, knowledge and opportunity by financial consumers to make sound and empowering financial choices.[751] According to Louis and Chartier, the formal financial industry in South Africa, especially the banking sector, is a highly concentrated source of wealth that limits capital primarily to the wealthy few.[752] Therefore, it is submitted that embracing innovative financial products such as mobile money could be an avenue to assist the poor to access formal financial services in South Africa.

6.3 Mobile Money Initiatives and Financial Inclusion of the Poor in South Africa

Before discussing some of the mobile money initiatives in South Africa, it is useful to explore the mobile phone subscription statistics in South Africa. At the time of writing this thesis, the latest available statistics showed that as of 2020, there were about 95 million mobile phone subscriptions in South Africa.[753] Despite the COVID-19 pandemic, the number of active mobile phones increased from 53 million in 2019

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749 Porteous D "Low-Balance Bank Accounts – Part 2: Must Banks Collaborate to Succeed?" 2015 *Journal of Payments Strategy & Systems* 311, 315-316 see related comments by Abrahams 2017 *Southern African Accounting Association* 652-653; Mathe "Financial Inclusion: More than just Bank Accounts" 9; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 184.

750 Abrahams 2017 *Southern African Accounting Association* 653; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 8; Chitimira and Ncube 2020 *Journal of African Law* 342; Mathe "Financial Inclusion: More than just Bank Accounts" 9; Porteous 2015 *Journal of Payments Strategy & Systems* 316.

751 *National Credit Act* 34 of 2005 (*NCA*) as amended, section 1; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 8; Coetzee H "An Opportunity for No Income No Asset (NINA) Debtors to Get Out of Check? An Evaluation of the Proposed Debt Intervention Measure" 2018 *THRHR* 593, 609; Chitimira and Ncube 2020 *Journal of African Law* 342.

752 Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 184; see related comments by Abrahams 2017 *Southern African Accounting Association* 655; Ikdal 2017 https://www.weforum.org/agenda/2017/04/financial-inclusion-south-africa/ page number unknown.

753 Independent Communications Authority of South Africa (ICASA) 2021 *The State of The ICT Sector Report in South Africa 2021* 38 https://www.icasa.org.za/uploads/files/State-of-the-ICT-Sector-Report-March-2021.pdf accessed on 15 June 2021; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 8; Lawack 2013 *Washington Journal of Law, Technology & Arts* 322.

to about 64 million in 2020, out of a population of about 59 million South Africans.[754] Although some individuals have multiple subscriptions, the researcher submits that mobile phone ownership in South Africa has a fairly even distribution and many poor persons who live in rural areas and informal settlements own cellphones.[755] In this regard, it is submitted that ownership of mobile phones is very high among the poor in South Africa and policymakers can create a conducive environment where mobile money can be used as an avenue to promote financial inclusion for the poor in South Africa. Below are some mobile money initiatives in South Africa.

6.3.1 WIZZIT

The *WIZZIT* initiative presented unexpected competition to South Africa's major banks namely, Standard Bank, Amalgamated Banks of South Africa (ABSA), First National Bank (FNB) and Nedbank.[756] The *WIZZIT* initiative targeted the poor in South African townships using "whizz kids" to recruit potential users and urge them to open banks accounts.[757] *WIZZIT* operated across all mobile networks in South Africa. WIZZIT users could access the service through their mobile phones.[758] *WIZZIT* allowed users to open a banking account that could be accessed through a mobile phone and/or debit card and they were required to maintain a minimum bank

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754 ICASA 2021 https://www.icasa.org.za/uploads/files/State-of-the-ICT-Sector-Report-March 2021.pdf 39; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 8; Lawack 2013 *Washington Journal of Law, Technology & Arts* 322.

755 See related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 8

756 Lawack 2013 *Washington Journal of Law, Technology & Arts* 320; see related comments by Kobor ES "The Role of Anti-money Laundering Law in Mobile Money Systems in Developing Countries" 2013 *Washington Journal of Law, Technology & Arts* 303, 308; Lawack-Davids V "The Legal and Regulatory Framework of Mobile Payments in South Africa: A Trade-off?" 2012 *South African Mercantile Law Journal* 77, 79.

757 Kobor 2013 *Washington Journal of Law, Technology & Arts* 308; see related comments by Lawack 2013 *Washington Journal of Law, Technology and Arts* 320; Abrahams 2017 *Southern African Accounting Association* 654.

758 Lawack-Davids 2012 *South African Mercantile Law Journal* 80; Alampay EA "Mobile Banking, Mobile Money and Telecommunication Regulations" 2010 *Social Sciences Research Network Electronic Journal* 1, 11; Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 320.

balance.[759] Although it collapsed, *WIZZIT* introduced innovative mechanisms such as innovative electronic identification mechanisms that allowed WIZZIT agents to verify customers' identities, including those who did not have identification cards or other documentary proof of their identities.[760] Policymakers can build on such innovative ideas to reduce the onerous know your customer (KYC) documentary requirements on the poor in South Africa.

6.3.2 M-Pesa

In 2010, Nedbank and Vodacom formed a partnership to try and replicate Kenya's M-Pesa in South Africa.[761] M-Pesa users in South Africa could open mobile money accounts even if they did not have bank accounts. There were no monthly charges or any minimum account balance required.[762] In this regard, it is submitted that M-Pesa in South Africa provided affordable financial services to the poor.[763] Thus M-Pesa was relatively affordable and it could have attracted many poor people to use it in South Africa.[764] However, M-Pesa was not successful in South Africa as few people used this fintech product and after several re-launches, Vodacom decided to

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759 IIvatury G and Pickens M "Mobile Phone Banking and Low-Income Customers Evidence from South Africa" *Consultative Group to Assist the Poor* (2006) 2; see related comments by Lawack-Davids 2012 *South African Mercantile Law Journal* 80; Ismail T and Masinge K "Mobile Banking: Innovation for the Poor" 2012 *African Journal of Science, Technology, Innovation and Development* 98, 105.

760 Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 50; see related comments by IIvatury and Pickens *Consultative Group to Assist the Poor* (2006) 2; Abrahams 2017 *Southern African Accounting Association* 654; Lawack-Davids 2012 *South African Mercantile Law Journal* 80; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 184.

761 See paragraph 5.1 of Chapter Five of this thesis; see related comments by Abrahams 2017 *Southern African Accounting Association* 653; Lawack 2013 *Washington Journal of Law, Technology & Arts* 321; Louis and Chartier 2012 *Journal of Comparative Urban Law and Policy* 184.

762 Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 105; see related comments by Abrahams 2017 *Southern African Accounting Association* 653; Lawack 2013 *Washington Journal of Law, Technology & Arts* 321.

763 Louis and Chartier 2012 *Journal of Comparative Urban Law and Policy* 184-185; see related comments by Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 105; Abrahams 2017 *Southern African Accounting Association* 653.

764 Lawack 2013 *Washington Journal of Law, Technology & Arts* 321; see related comments by Louis and Chartier 2012 *Journal of Comparative Urban Law and Policy* 184-185; see related comments by Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 105; Lourie G "Vodacom, Nedbank Launch Mobile Cash Service" *Mail & Guardian* (31 August 2010) page number unknown.

discontinue it in 2016.[765] Some of the reasons cited for M-Pesa's failure service include low use by consumers and the general unfair competition between banks and MNOs in South Africa.[766] To this end, M-Pesa failed to meaningfully contribute to the financial inclusion of the poor in South Africa.

6.2.3 The MTN Mobile Money (MoMo)

MTN's initial efforts to venture into mobile money services ended in 2016 after its mobile money platform failed to become economically viable despite a promising start.[767] The MTN Mobile Money (MoMo) subscription base did not significantly grow as only a small percentage of the registered customers actively used the product.[768] However, in 2020, MTN revived MoMo which is provided in partnership with Ubank.[769] The current MoMo platform was launched in February 2020 when the Covid-19 pandemic had reached South Africa.[770] Currently, MoMo has some innovative features which include the option to allow consumers to purchase goods

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765 Abrahams 2017 *Southern African Accounting Association* 653; see related comments by Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 184; Iraki XN "Five Reasons M-Pesa Failed in South Africa" *The Standard* (15 May 2016) page number unknown; Gilbert P "What went Wrong for M-Pesa in SA" (10 May 2016) page number unknown https://www.Itweb.co.za/content/lP3gQ2MG2897nRD1 accessed on 30 August 2021.

766 Abrahams 2017 *Southern African Accounting Association* 653; see related comments by Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 184; Iraki *The Standard* page number unknown; Gilbert https://www.Itweb.co.za/content/lP3gQ2MG2897nRD1.

767 Lumsden 2018 *Stanford Journal of Law, Business and Finance* 30; Gedeye L "Cellphone Banking Needs Laws" *Mail & Guardian* (7 December 2012) page number unknown https://mg.co.za/article /2012-12-07-cellphone-banking-needs-laws.

768 See related comments by Lumsden 2018 *Stanford Journal of Law, Business and Finance* 30; McLeod D "Why Vodacom, MTN Failed at Mobile Money" Tech Central 21 September 2016 (page number unknown) available at https://techcentral.co.za/why-vodacom-mtn-failed-at-mobile-money/68637/; Chutel "MTN is giving up on Mobile Money in South Africa" Quartz 16 September 2016 (page number unknown).

769 Shapshak T "MTN 'Stubbornly Optimistic' Relaunched Mobile Money will Word in South Africa" *Forbes* (31 January 2020) available at https://www.forbes.com/sites/toby shapshak/2020/01/31/mtn-stubbornly-optimistic-relaunched-mobile-money-will-work-in-south-africa/ ?sh=4a8c3da7492a accessed on 10 December 2020; My Broadband "MTN Launches Mobile Money in South Africa" *BusinessTech* (30 January 2020) available at https:// businesstech.co.za/news/telecommunications/369420/mtn-launches-mobile-money-in-south-africa/ accessed on 10 December 2020.

770 See related comments by Lupo-Pasini F "Financial Inclusion and the 'War for Cash'" 2021 *Law and Contemporary Problems* 17, 28; Alexander K "Financial Inclusion and Banking Regulation: The Role of Proportionality" 2021 *Law and Contemporary Problems* 129, 142; McLeod D "MTN in Big E-commerce Play with Mobile Money" *Fintech* (29 June 2020) available at https://techcentral .co.za/mtn-mobile-money-can-now-be-used-for-online-shopping/99192/ accessed on 10 December 2020.

and services online using their mobile phones. In the first five months after its launch, MoMo showed signs of exponential growth, attracting over a million registered users.[771] Moreover, MoMo users should be MTN subscribers although it allows money transfer to any local South African mobile phone number regardless of the network of the recipient.[772] The MoMo users who have bank or credit cards can also purchase goods and services online. Additionally, MoMo does not require users to pay a minimum balance or monthly charges.[773] In this regard, the MoMo platform is affordable and can contribute meaningfully to the financial inclusion of the poor in South Africa.

6.4 Other Related Mobile Money Products and their Use to Promote Financial Inclusion for the Poor During the COVID-19

There are several other money transfer services offered by major banks and some retail outlets in South Africa. Standard Bank's "instant money" allows a Standard Bank account holder to send money to any person who has a valid mobile phone number in South Africa.[774] An instant money recipient can withdraw the equivalent of the value received or in smaller quantities. It is not necessary for the recipient to

771 McLeod "MTN in Big E-commerce Play with Mobile Money" *Fintech* (29 June 2020); see related comments by Robb G and Vilakazi T "Mobile Payment Markets in Kenya, Tanzania and Zimbabwe: A Comprehensive Study of Competitive Dynamics and Outcomes" 2016 *The African Journal of Information and Communication* 9, 12.

772 My Broadband "MTN Launches Mobile Money in South Africa" BusinessTech (30 January 2020) page number unknown; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 392; Mas I and Radcliffe D "Mobile Payments Go Viral: M-Pesa in Kenya" 2010 *The Capco Institute Journal of Financial Transformation* 169, 173.

773 Abrahams 2017 *Southern African Accounting Association* 653; see related comments by My Broadband "MTN Launches Mobile Money in South Africa" BusinessTech (30 January 2020) page number unknown Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 105.

774 Lawack 2013 *Washington Journal of Law, Technology & Arts* 321; see related comments by Alam MM, Awawdeh AE and Muhamad AIB "Using E-Wallet for Business Process Development: Challenges and Prospects in Malaysia" 2021 *Business Process Management Journal* 1142; 1146-1147; Sinha AK and Shanakar N "Role of E-Wallets in Financial Inclusion in Emerging Economies: An Indian Perspective" in Gupta R, Chowdhry DG and Singh R *Advances in Agri-Management: General Management, Business Development and Innovative Practices* (New India Publishing Agency New Delhi 2017) 33-35.

have a bank account in South Africa.[775] The FNB and ABSA also offer similar services, namely "e-wallet" and "cash send" respectively.[776] Recipients of money sent through these services can choose either withdraw the money from ATMs, keep the value in the mobile phone for later use or use it to purchase goods and services.[777] Thus, these services assist the poor to receive money at no cost to them as long as they have active mobile phone numbers.[778] Some poor financial consumers who do not have bank accounts can receive their salaries and wages through their mobile phones which is convenient during crisis times such as the COVID-19 pandemic.[779] The researcher submits that these banks and retail-based products might not be useful for the poor in rural areas where there are no bank outlets and big retail shops to access these services.

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775 See related comments by Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 106; Lawack 2013 *Washington Journal of Law, Technology & Arts* 321; see related comments by Alam, Awawdeh and Muhamad 2021 *Business Process Management Journal* 1146; Sinha and Shanakar "Role of E-Wallets in Financial Inclusion in Emerging Economies: An Indian Perspective" 33-34.

776 Lawack 2013 *Washington Journal of Law, Technology & Arts* 321; see related comments by Alam, Awawdeh and Muhamad 2021 *Business Process Management Journal* 1146; Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 106; Sinha and Shanakar "Role of E-Wallets in Financial Inclusion in Emerging Economies: An Indian Perspective" 34.

777 Lawack 2013 *Washington Journal of Law, Technology & Arts* 321; see related comments by Alam, Awawdeh and Muhamad 2021 *Business Process Management Journal* 1147; Sinha and Shanakar "Role of E-Wallets in Financial Inclusion in Emerging Economies: An Indian Perspective" 34-35; Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 106

778 Lawack 2013 *Washington Journal of Law, Technology & Arts* 321; see related comments by Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 106; Alam, Awawdeh and Muhamad 2021 *Business Process Management Journal* 1147; Sinha and Shanakar "Role of E-Wallets in Financial Inclusion in Emerging Economies: An Indian Perspective" 35.

779 Ismail and Masinge 2012 *African Journal of Science, Technology, Innovation and Development* 106; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 321; see related comments by Alam, Awawdeh and Muhamad 2021 *Business Process Management Journal* 1147; Sinha and Shanakar "Role of E-Wallets in Financial Inclusion in Emerging Economies: An Indian Perspective" 35.

6.5 The Mobile Money Regulatory Framework and Financial Inclusion in South Africa

There is no specific statute that expressly regulates the use of mobile money to promote financial inclusion for the poor in South Africa.[780] Consequently, South Africa does not have a single specific regulatory body that supervises mobile money services or enforces the promotion of financial inclusion for the poor.[781] However, the current mobile money statutory framework in South Africa will be discussed below and it has laws such as, the *South African Reserve Bank Act*,[782] the *Prevention of Organised Crime Act*,[783] the *National Payment Systems Act*,[784] the *Financial Intelligence Centre Act*,[785] the *Financial Sector Regulation Act*,[786] the *Consumer Protection Act*,[787] and the *South African Reserve Bank Position Paper on Electronic Money* and the *Exchange Control Regulations*.

6.5.1 The SARB Act and the Regulation of Mobile Money to promote Financial Inclusion for the Poor in South Africa

The *SARB Act* established the SARB as a juristic person.[788] The SARB has two primary objectives namely to protect the value of the South African currency in the interest of a balanced and sustainable economic development[789] and to protect and maintain financial stability in South Africa.[790] Furthermore, the SARB is responsible for issuing banknotes and coins, and it supervises monetary circulation in South

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780 Tuba MD "The Technology-Neutral Approach and Electronic Money Regulation in the EU: Identifying the Promises and Challenges for Future Regulation in South Africa" 2014 *Comparative and International Law Journal of Southern Africa* 372, 387; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 4.

781 See related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25; Tuba 2014 *Comparative and International Law Journal of Southern Africa* 387; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 4.

782 *South African Reserve Bank Act* 90 of 1989 as amended (*SARB Act*), sections 3-38.

783 *Prevention of Organised Crime Act* 121 of 1998 as amended (*POCA*), section 48.

784 *National Payment Systems Act* 78 of 1998 as amended (*NPSA*), section 2.

785 *Financial Intelligence Centre Act* 38 of 2001 as amended (*FICA*), sections 20A-21H.

786 *Financial Sector Regulation Act* 9 of 2017 (*FSRA*), sections 57(b) and 58.

787 *Consumer Protection Act* 68 of 2008 as amended (*CPA*), sections 3, 4, 8-78.

788 Sections 2, 3, 10, 11, 14 and other related sections of the *SARB Act*.

789 Section 3(1) of the *SARB Act*.

790 Section 3(2) of the *SARB Act*; also see section 4 of the *FSRA*.

Africa.[791] Although there is no express mention of mobile money in the *SARB Act*, it is important to mention that the SARB has the power to develop rules and procedures that guide the establishment, conduct, monitoring, regulation and supervision of the payment, clearing and/or settlement systems in South Africa.[792] Mobile money is a payment system and as such falls within the regulatory ambit of the SARB. In addition, the SARB exercises oversight over all banks and other financial institutions in South Africa.[793] In this regard, it is submitted that the SARB's supervision of banking institutions includes the monitoring of mobile money transactions as commercial banks play a role in the mobile money value chain.[794] Furthermore, the SARB regulates currency and exchange rates to combat money laundering practices and related financial crimes in transactions done either within or outside South Africa.[795] The researcher submits that the SARB could leverage mobile money innovation to promote financial inclusion for the poor in South Africa.[796]

6.5.2 The NPSA and the Regulation of Mobile Money to Promote Financial Inclusion for the Poor in South Africa

The *NPSA* empowers the SARB to establish, operate, oversee and regulate South Africa's payment, clearing and settlement systems.[797] MNOs are not expressly mentioned as participants in the South African national payment systems.[798] Additionally, there is no direct or express reference to mobile money as a financial instrument that can be used in the payment, clearing or settlement systems in South Africa.[799] The *NPSA* obligates the SARB to recognise a payment system management body whose establishment may assist the central bank in discharging its

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791 Sections 10, 11 and 14 of the *SARB Act*; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 29.

792 Section 10(1)(c)(i) of the SARB Act; Lawack 2013 *Washington Journal of Law, Technology & Arts* 325.

793 Section 10 and 10A of the *SARB Act*.

794 Section 10A of the *SARB Act*.

795 Section 10 of the *SARB Act*.

796 Sections 10 and 10A of the *SARB Act*; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 29; Lawack 2013 *Washington Journal of Law, Technology & Arts* 325.

797 Section 2 of the *NPSA*; section 10(1)(c) of the *SARB Act*; Lawack 2013 *Washington Journal of Law, Technology & Arts* 325.

798 See section 1 of the *NPSA*.

799 Section 1 of the *NPSA*.

responsibilities within the South African payment systems.[800] The SARB can withdraw recognition of a payment system management body that may no longer be serving its purpose.[801] The *NPSA* further bars any unrecognised persons or persons who are not members of a recognised payment system management body from participating in the national payment systems in South Africa.[802] Furthermore, the SARB has the right to access any information that relates to the payment system in South Africa.[803] To this end, all participants in the payment system have an obligation to provide information as and when requested to do so by the SARB. Where a person fails to comply with the request for information, the SARB can issue directives in consultation with the payment system management body and other role-players.[804] However, none of the above provisions directly or expressly deal with mobile money. Thus, the researcher submits that the *NPSA* should be carefully amended to include MNOs as participants in South Africa's payment systems.

6.5.3 POCA and the Regulation of Mobile Money to Promote Financial Inclusion for the Poor in South Africa

The *POCA* introduces measures that can combat organised crime, money laundering, prohibit racketeering and criminalise related activities.[805] Furthermore, *POCA* makes it a criminal offence for persons who engage in or enable money laundering activities such as conversion or transfer, concealment or disguise, possession and acquisition of property which is or forms part of proceeds of crime.[806] It is also a criminal offence for any person to assist another to benefit from proceeds of unlawful activities or acquire, possess or use proceeds of unlawful activities.[807] Money laundering is a very serious crime in South Africa as convicted persons could either

800 Section 3(1)(2) of the *NPSA*; section 10(1)(c) of the *SARB Act*.
801 Section 3(2A) of the *NPSA*.
802 Section 3(4)(5) of the *NPSA*.
803 Section 10 of the *NPSA*.
804 Section 12(1) of the *NPSA*.
805 See the long title of *POCA*; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 330.
806 Section 4 of *POCA*.
807 See sections 5 and 6 of *POCA*.

pay a fine of up to R100m or get imprisoned for up to 30 years.[808] The researcher submits that the hefty sanctions *POCA* provides could be useful in deterring organised crime in the mobile money sector in South Africa. Kersop and Du Toit argue that *POCA* conforms to international standards that require money laundering to be applied widely to cover predicate offences.[809] Thus, *POCA* requires financial institutions, including MNOs, to avoid activities that may amount to money laundering in South Africa.

6.5.4 FICA and the Regulation of Mobile Money to Promote Financial Inclusion for the Poor in South Africa

The *FICA* obligates financial institutions, including mobile money service providers, to establish and verify the identity of their clients for know your customer and consumer due diligence (KYC/CDD) purposes.[810] De Koker argues that identifying financial consumers using IDs or passports may not be enough to have comprehensive profiles that may assist in detecting suspicious financial activities of such persons.[811] In this regard, ascertaining the source of financial consumers' funds may be necessary to ensure that money does not form part of the proceeds of criminal activities.[812] The *FICA* further obliges financial institutions, possibly including MNOs, to keep a record of all transactions and to report suspicious transactions of their clients.[813] In this regard, it is submitted that artificial intelligence (AI) could be used on mobile money to enhance the monitoring of transactions to combat financial

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808 See section 8(1) of *POCA*.

809 Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1625; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 330.

810 Sections 21, 22 and 22A of the *FICA*; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 331; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; De Koker 2006 *Journal of Financial Crime* 41-42.

811 De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *Journal of South African Law* 715, 723; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 335; De Koker 2006 *Journal of Financial Crime* 42.

812 De Koker 2004 *Journal of South African Law* 723; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 335; De Koker 2006 *Journal of Financial Crime* 42; De Koker 2006 *Journal of Financial Crime* 42.

813 Section 29 of the *FICA*; see related comments by Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1626; Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 51; De Koker 2006 *Journal of Financial Crime* 43.

crimes such as money laundering and fraud in South Africa. AI refers to the use of computer systems that are programmed to mimic human cognitive behaviour through experience and interactions with the external environment.[814] Moreover, financial institutions in South Africa can only render services to their clients after satisfying all CIV requirements.[815] AI can also assist in this regard through innovations like automated facial recognition (AFR) technology or digital ID that can be used to identify financial consumers.[816] The AFR technology can be easily made available to the poor and it can enhance the combating of financial crimes such as fraud and money laundering in South Africa.[817] In China, the AFR technology has been used during the COVID-19 pandemic to track people's movements and preventing infected individuals from travelling.[818] China is an example of the immense possibility of the use of AFR technology to combat financial crimes such as money laundering, terrorist financing and fraud. It is submitted that the benefits of AFR especially during the ongoing COVID-19 pandemic far outweigh its shortcomings.[819] Additionally, as argued earlier, the current onerous documentary

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814 Carman K "The Genie is Out of the Bottle: What do we Wish for the Future of AI?" 2021 *Penn State Journal of Law & International Affairs* 180, 187; see related comments by Fenwick MD, Kaal WA and Vermeulen EPM "Regulation Tomorrow: What Happens when Technology is Faster than the Law?" 2017 *American University Business Law Review* 561, 564-565; Robinson WK "Emerging Technologies Challenging Current Legal Paradigms" 2018 *Minnesota Journal of Law, Science & Technology* 355, 358; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 14-15.

815 Sections 20A-45 of the *FICA*; see related comments by Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 52.

816 Zens J "Face IT: Only Congress can Preserve Privacy from the Pervasive Use of Facial Recognition Technology by Police" 2021 *San Diego Law Review* 143, 153; see related comments by McClellan E "Facial Recognition Technology: Balancing the Benefits and Concerns" 2019 *Journal of Business & Technology Law* 363, 372; Wright E "The Future of Facial Recognition is not Fully Known: Developing Privacy and Security Regulatory Mechanisms for Facial Recognition in the Retail Sector" 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 611, 621-623; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15.

817 McClellan 2019 *Journal of Business & Technology Law* 373-374; see related comments by Zens 2021 *San Diego Law Review* 153; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; Wright 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 622-623.

818 McClellan 2019 *Journal of Business & Technology Law* 373-374; see related comments by Zens 2021 *San Diego Law Review* 153; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; Wright 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 622-623.

819 Zens 2021 *San Diego Law Review* 154-155; see related comments by McClellan 2019 *Journal of Business & Technology Law* 375; Wright 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 624.

requirements make it impossible for the poor to fully meet *FICA* requirements in South Africa.[820] The FATF provides that its member countries like South Africa can adopt the risk-based approach to AML/CTF by using flexible measures commensurate with the risk profile of financial consumers.[821] However, the *FICA* appears to adopt the 'enhanced customer due diligence' approach where financial institutions in South Africa apply AML/CTF measures uniformly to both high-risk and low-risk transactions.[822] It is submitted that the *FICA* requirements make the delivery of low-cost innovative financial products like mobile money expensive. As a result, the poor remain financially excluded in South Africa.

In addition, the *FICA*'s CDD/KYC standards lack sufficient explanations and have not been consistently enforced by the Financial Intelligence Centre (FIC) and other financial institutions in South Africa.[823] As a result, many poor individuals such as asylum seekers and undocumented foreigners who do not have sufficient money and all required documents have been denied access to formal financial services in South Africa.[824] The researcher submits that the *FICA*'s CDD requirements make it burdensome for the poor to access formal financial services. Consequently, they end up opting for informal financial services with little or no procedural demands.[825] The

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820 Lawack 2013 *Washington Journal of Law, Technology & Arts* 336; see related comments by Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 47; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 6-7; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 34.

821 Financial Action Task Force (FATF) 2019 *International Standards on Combating Money Maundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* 7 https://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20(approved%20February%202012)%20reprint%20May%202012%20web%20version.pdf accessed on 20 April 2021; see related comments by De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 282-283.

822 Section 42(2)(m) of the *FICA*; see related comments by Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 53; Lawack 2013 *Washington Journal of Law, Technology & Arts* 338; De Koker 2014 *Journal of Money Laundering Control* 283.

823 Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 56; see related comments by De Koker 2014 *Journal of Money Laundering Control* 285; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15-16; Lawack 2013 *Washington Journal of Law, Technology & Arts* 339.

824 Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 56; see related comments by De Koker 2006 *Journal of Financial Crime* 42; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15-16; Lawack 2013 *Washington Journal of Law, Technology & Arts* 339.

825 See sections 20A-21H of the *FICA*, see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 16; De Koker 2006 *Journal of Financial Crime* 42-43.

requirement of financial consumers to produce proof of residence as part of AML/CTF measures works against the poor and those who stay in informal settlements and rural areas in South Africa.[826] Thus, if the provisions of *FICA* are rigidly enforced for AML/CTF purposes many poor South Africans could remain financially excluded.[827] In this regard, it is submitted that *FICA* should be amended to streamline some of the documentary requirements in line with South Africa's socio-economic dynamics. AI systems such as the AFR technology can also be adopted in South Africa to enhance the CDD/KYC requirements especially with limitations on face-to-face procedures due to the COVID-19 pandemic.

6.5.5 The Financial Sector Regulation Act and the Regulation of Mobile Money to Promote Financial Inclusion for the Poor in South Africa

The *Financial Sector Regulation Act*[828] established the Prudential Authority (PA)[829] and the Financial Sector Conduct Authority (FSCA).[830] These two entities seek to, *inter alia*, supervise financial institutions and protect financial consumers in South Africa. In their respective roles, the PA and the FSCA have an obligation to regulate financial institutions in a way that promotes the financial inclusion of the poor in South Africa.[831] The *FSR Act* also provides for the promotion of financial education, fair treatment and protection of consumers to improve financial literacy and financial inclusion in South Africa.[832] In this regard, the researcher submits that the *FSR Act* seeks to realise the financial inclusion of the poor in South Africa.[833] Nonetheless, the *FSR Act* does not expressly mention the use of innovative products such as mobile money as one of the means to drive financial inclusion for the poor. In this regard, the researcher submits that policymakers should enact a statute that

826 Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; De Koker 2006 *Journal of Financial Crime* 42-43; Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 56.

827 De Koker 2006 *Journal of Financial Crime* 42-3; see related comments by Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 56; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 16.

828 *Financial Sector Regulation Act* 9 of 2017 (*FSR Act*), see section 17(1).

829 See sections 32-55 of the *FSR Act*

830 Sections 56-72 of the *FSR Act*

831 Section 34(1)(e) of the *FSR Act*

832 Section 17(1) of the *FSR Act*.

833 Section 57(b) of the *FSR Act*.

specifically promotes the use of innovative technologies in the financial sector in South Africa. Moreover, the *FSR Act* appears to be clear on matters related to the regulation and soundness of financial markets, while it is ambiguous on how financial inclusion should be promoted and achieved.[834] The researcher argues that the aforementioned proposed statute should provide clear and express guidance on the promotion of financial inclusion for the poor in South Africa.

6.5.6 The Consumer Protection Act and the Regulation of Mobile Money to Promote Financial Inclusion in South Africa

The *Consumer Protection Act* provides for equitable access to goods and services markets, including financial services, for all consumers in South Africa.[835] Further, the *CPA* is one of the affirmative action statutes that seek to address historical imbalances where the poor were excluded from formal financial services in South Africa.[836] For instance, the *CPA* promotes financial inclusion by providing for the extension of credit to the poor who previously did not have access.[837] In addition, the *CPA* provides legal protection to South Africa's financial consumers against unscrupulous service providers, unfair business practices, and deceptive, misleading and fraudulent business conduct.[838] Although the *National Credit Act* established the National Credit Regulator (NCR) that deals with reckless lenders and assists highly indebted financial consumers to get out of over-indebtedness in South Africa, there is nothing express on mobile money users.[839] Furthermore, the *CPA* provides that every consumer has the right to safe, quality, convenient and affordable goods and services.[840] Notably, the *CPA* does not expressly mention the use of mobile money to promote the financial inclusion of the poor in South Africa. In this regard, the researcher submits that policymakers should amend the *CPA* so that it expressly

834 See section 33 of the *FSR Act*.
835 *Consumer Protection Act* 68 of 2008 as amended (*CPA*), see long title and section 3(1)(a).
836 Section 3(1)(b) of the *CPA*.
837 Section 3(a) of the *CPA*.
838 See section 3(1)(d)(i)-(ii) of the *CPA*.
839 *National Credit Act* 34 of 2005 (*NCA*), see section 12.
840 Section 55(2) of the *CPA*.

regulates the use of innovative financial products such as mobile money in South Africa.

6.5.7 Position Papers, Mobile Money and Financial Inclusion in South Africa

From time to time, the SARB issues 'position papers' to clarify its regulatory position in response to the situation at hand. Although the SARB has not issued express directives on mobile money or financial inclusion, it has set out its position on electronic money and the national payment systems. In 2018, the SARB released a position paper on the *Principles for Financial Market Infrastructures*[841] that reinforce the central bank's duty to protect and enhance financial stability in an ever-changing sector. The position paper is inspired by the principles for the safe and efficient design and operation of payment systems developed by the Bank for International Settlements (BIS's) committee on payments and market infrastructures (CPMI) and the technical committee of the International Organisation of Securities Commissions (IOSCO).[842] Importantly, this position paper highlights that there are efforts to amend the *NPSA* that should have been concluded in 2020.[843] The amended *NPSA* is likely to give the SARB sufficient powers to regulate new innovative products such as mobile money that form part of the national payment system.

In addition, mobile money is a form of electronic money and in this regard, the 2009 *Position Paper on Electronic Money*[844] released is worth consideration. For example,

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841 South African Reserve Bank (SARB) 2018 *Position paper on the Principles for Financial Market Infrastructures* available at https://www.resbank.co.za/content/dam/sarb/what-we-do/financial-surveillance/generalpublic/Position%20paper%20no%20%2001_2018%20on%20%20the%20PFMIs.pdf accessed on 5 May 2021; see related comments by Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 322; Lawack 2013 *Washington Journal of Law, Technology & Arts* 327.

842 SARB 2018 *Position Paper on the Principles for Financial Market Infrastructures* 3; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 327; Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 322.

843 SARB 2018 *Position paper on the Principles for Financial Market Infrastructures* 4; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 327; Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 322.

844 SARB 2009 *Position Paper on Electronic Money* https://www.resbank.co.za/content/dam/sarb/what - we- do /financial-surveillance/general-public/PP2009_01.pdf accessed on 30 April 2021; see related comments by Tuba 2014 *Comparative and International Law Journal of Southern Africa* 389; Lawack 2013 *Washington Journal of Law, Technology & Arts* 327; Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 322.

the position paper defines electronic money as the monetary value stored electronically and is generally accepted as a means of payment by persons other than the issuer and can be redeemed for cash or a deposit into a bank account on demand.[845] This definition appears to include mobile money. For the purposes of this research, mobile money is issued by non-banking institutions but it should be sufficiently regulated to combat financial crimes such as money laundering and fraud.[846] Importantly, the position paper states that only registered banks could issue mobile money services in South Africa.[847] This possibly explains why MNO-issued mobile money initiatives failed in South Africa. In this regard, the researcher submits that policymakers may need to adjust the financial regulatory framework to accommodate non-bank issued fintech products like mobile money in South Africa.

6.6 Telecommunications Regulation and the Use of Mobile Money to Promote Financial Inclusion in South Africa

Mobile money in South Africa tends to have financial and telecommunications aspects that are regulated separately. MNOs in South Africa are regulated in terms of the *Electronic Communications Act*.[848] Before MNOs can operate within the telecommunications and mobile money sectors, they should register in terms of the *ECA*.[849] However, the main telecommunications regulator is the Independent Communications Authority of South Africa (ICASA).[850] Nevertheless, apart from registering MNOs and providing Unstructured Supplementary Service Data (USSD) codes, the telecommunications regulator has nothing to do with mobile money in South Africa.

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845 SARB 2009 *Position Paper on Electronic Money* 3; see related comments by Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 322; Tuba 2014 *Comparative and International Law Journal of Southern Africa* 389; Lawack 2013 *Washington Journal of Law, Technology & Arts* 327.

846 Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 323; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 327; Tuba 2014 *Comparative and International Law Journal of Southern Africa* 389-390.

847 SARB 2009 *Position Paper on Electronic Money* 3; see related comments by Lawack-Davids 2012 *Journal of International Commercial Law and Technology* 324; Tuba 2014 *Comparative and International Law Journal of Southern Africa* 390; Lawack 2013 *Washington Journal of Law, Technology & Arts* 327.

848 *Electronic Communications Act* 36 of 2005 (*ECA*) as amended, section 2.

849 Section 5 of the *ECA*.

850 *Independent Communications Authority of South Africa Act* 13 of 2000 (*ICASA Act*) section 3.

6.6.1 The Regulation of Interception of Communications and Provision of Communications-Related Information Act, Mobile Money and Financial Inclusion

The *Regulation of Interception of Communications and Provision of Communication-Related Information Act* provides that holders of active subscriber identity modules (SIM) cards in South Africa are registered on MNOs databases.[851] Upon purchasing a new mobile phone or SIM card, the subscriber's cell phone number, full names, device identity number and residential address are captured before the phone or SIM card is activated.[852] The RICA process and the *FICA*'s CIV procedure (discussed above) are strikingly similar which could expose a policy misalignment in South Africa.[853] For Chatain *et al*, an individual who completes the *RICA* process would undergo the same procedure in the event of opening a mobile money account to meet *FICA* requirements.[854] However, the *RICA* process has not been robustly and consistently enforced owing to, *inter alia*, rampant identity fraud and corruption in South Africa.[855] Many individuals who do not have the required documents can still buy activated mobile phones and SIM cards from airtime dealers across South

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851 *Regulation of Interception of Communications and Provision of Communications-Related Information Act* 20 of 2002 (*RICA*), sections 39-40; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 56; Lawack 2013 *Washington Journal of Law, Technology & Arts* 340; De Koker L and Jentzsch N "Financial Inclusion and Financial Integrity: Aligned Incentives?" 2013 *World Development* 267, 271.

852 Sections 39-40 of the *RICA*; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 56; De Koker and Jentzsch 2013 *World Development* 271; Lawack 2013 *Washington Journal of Law, Technology & Arts* 340. South African identity documents are requested for citizens while foreigners can use their passports or related travel documents.

853 Jentzsch N "Implications of Mandatory Registration on Mobile Phone Users in Africa" 2012 *Telecommunications Policy* 608, 611; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 56; De Koker and Jentzsch 2013 *World Development* 271; Lawack 2013 *Washington Journal of Law, Technology & Arts* 340.

854 Jentzsch 2012 *Telecommunications Policy* 611; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 56; Lawack 2013 *Washington Journal of Law, Technology & Arts* 340; De Koker and Jentzsch 2013 *World Development* 271.

855 Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 56-57; see related comments by De Koker and Jentzsch 2013 *World Development* 271; Jentzsch 2012 *Telecommunications Policy* 613.

Africa.[856] In this regard, the researcher argues that individuals who use SIM cards registered in other people's names could face difficulties if they want to register for mobile money services in South Africa due to *FICA* requirements. In this regard, policymakers may need to amend the *RICA* process to enable people to register SIM cards in their names. The adoption of AI mechanisms such as AFR technology should be considered in order to have SIM cards registered against the names of persons who use them in South Africa. This could also enhance the chances of poor persons opening mobile money accounts and have access to formal financial services in South Africa.

6.7 The Regulation of Data Protection, Mobile Money and Financial Inclusion in for the Poor in South Africa

Although the FATF recommendations on transparency and record-keeping are good for AML/CTF measures, consumer data protection and privacy challenges could affect the poor in South Africa.[857] De Koker and Jentzsch opine that governments should prioritise the protection of consumer privacy so that the poor can have confidence in the formal financial services sector.[858] Many countries, including South Africa, lack adequate legislative mechanisms that protect financial consumers' personal information from abuse by the state or other unauthorised parties.[859] Lawack argues that personal information or funds transfer records within the payment system should be protected from possible interception by unauthorised

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856 See related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 56-57; De Koker and Jentzsch 2013 *World Development* 271; Jentzsch 2012 *Telecommunications Policy* 613.

857 See FATF Recommendations 10 and 11 FATF 2012 *International Standards on Combating Money Maundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* 14-15; Harris A, Goodman S and Traymor P "Privacy and Security Concerns Associated with Mobile Money Applications in Africa" 2013 *Washington Journal of Law, Technology & Arts* 245, 248; Jentzsch 2012 *Telecommunications Policy* 618.

858 De Koker and Jentzsch 2013 *World Development* 277; see related comments by Jentzsch 2012 *Telecommunications Policy* 618; Packin NG "Show me the (Data about the) Money!" 2021 *Utah Law Review* 1277, 1328.

859 United Nations Conference on Trade & Development (UNCTAD) *Mobile Money for Business Development in the East African Community* 2012 page 20 available at http://unctad.org/en/PublicationsLibrary/dtlstict2012d2_en.pdf accessed on 30 April 2020; see related comments by Packin 2021 *Utah Law Review* 1328-1329; Jentzsch 2012 *Telecommunications Policy* 618.

persons.[860] Where there is no sufficient data protection, personal information is susceptible to abuse by government agents and data brokers and it is prone to theft or leakage which could diminish consumer trust in fintech products.[861] Mobile money services ought to be designed and operated in a manner that at least guarantees confidentiality, integrity, authenticity and customer information security.[862] This might be necessary as the direct link of mobile phones to financial accounts and rich data sets makes the gadgets susceptible to hacking and cyber-attacks.[863] Since the outbreak of the COVID-19 pandemic, more individuals have been pushed to use fintech products through their mobile phones hence the need for more protection.[864] It may also be necessary for authorities to increase financial education where individuals are empowered to demand accountability from organisations that handle their personal information.

6.7.1 The Protection of Personal Information Act and the Regulation of Mobile Money to Promote Financial Inclusion for the Poor in South Africa

The right to privacy is a fundamental human right in South Africa.[865] The legislature enacted the *Protection of Personal Information Act*[866] in 2013 to regulate and enforce the protection of privacy in South Africa. *POPIA* regulates the processing of personal data by both public and private organisations that operate in South Africa.[867] Individuals have the right to be informed when their personal information is collected, how it is stored or kept and whether it is accessible to third parties.[868]

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860 Lawack-Davids 2012 *South African Mercantile Law Journal* 90; see related comments by Jentzsch 2012 *Telecommunications Policy* 618; Packin 2021 *Utah Law Review* 1328-1329.

861 Harris, Goodman and Traymor 2013 *Washington Journal of Law, Technology & Arts* 248; see related comments by Jentzsch 2012 *Telecommunications Policy* 618; Packin 2021 *Utah Law Review* 1329.

862 Jentzsch 2012 *Telecommunications Policy* 618; see related comments by Packin 2021 *Utah Law Review* 1328-1329-1330; Lawack-Davids 2012 *South African Mercantile Law Journal* 90.

863 Harris, Goodman and Traymor 2013 *Washington Journal of Law, Technology & Arts* 252; see related comments by Jentzsch 2012 *Telecommunications Policy* 618; Packin 2021 *Utah Law Review* 1329-1330.

864 Packin 2021 *Utah Law Review* 1280; see related comments by De Koker and Jentzsch 2013 *World Development* 277; Jentzsch 2012 *Telecommunications Policy* 618; Lawack-Davids 2012 *South African Mercantile Law Journal* 90.

865 Constitution of the Republic of South Africa 1996 (the Constitution), see section 14(d).

866 *Protection of Personal Information Act* 4 of 2013 (*POPIA*), see the preamble and section 2.

867 Section 3 of *POPIA*.

868 Section 5 of *POPIA*.

Further, a person whose personal information has been collected can request to correct or delete aspects of his or her data and has the right to object to the processing of personal information for marketing purposes.[869] Persons or organisations that hold personal information are obligated to process such information lawfully in a manner that does not infringe on the privacy of data subjects.[870] In the case where personal information is shared with third parties for legitimate purposes, there ought to be a written contract between the responsible party and the third party guaranteeing that security measures will be taken to ensure the integrity and confidentiality of the personal information.[871] *POPIA* also bars holders of personal information from transferring such data to third parties domiciled outside South Africa unless there is a binding code of conduct or contract or unless the data subject has given his/her consent.[872] Nevertheless, it appears that the *POPIA* does not sufficiently protect financial consumers' privacy owing to several breaches reported since its enactment. For example, the Master Deed's breach resulted in the identity numbers and addresses belonging to about 60 million persons ending up in the hands of hackers.[873] The other breach involved an insurance organisation, Liberty Holdings, whose email repository was hacked and hackers demanded a ransom in return.[874] In both incidents, people's ID numbers, physical and email addresses landed in the wrong hands and this could deter individuals from sharing their information. Thus, *POPIA* may need to be amended to improve personal privacy in order to give poor financial consumers confidence to adopt financial products like mobile money. Assurance of consumer privacy could drive the uptake of innovative financial products such as mobile money. Ultimately,

869 Section 5 of *POPIA*.
870 Section 9 of *POPIA*.
871 Sections 20 and 21 of *POPIA*.
872 Section 69 of *POPIA*.
873 Da Vega A, Vorster R, Li F, Clarke N and Furnell ST "Comparing the Protection and Use of Online Personal Information in South Africa and the United Kingdom in line with Data Protection Requirements" 2019 *Information and Computer Security* 399, 400; see related comments by Packin 2021 *Utah Law Review* 1326; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 14.
874 Da Vega *et al* 2019 *Information and Computer Security* 400; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 14; Packin 2021 *Utah Law Review* 1326.

this could promote financial inclusion for the poor in South Africa during the raging COVID-19 pandemic.

6.8 Concluding Remarks

Although several attempts to launch mobile money initiatives have failed to ignite in South Africa, there is renewed hope that MTN's MoMo could be a success.[875] The COVID-19 pandemic provides vital lessons on the importance of innovative financial products such as mobile money during crisis times.[876] In this regard, South Africa could leverage innovation to drive financial inclusion for the poor who have been economically marginalized for a long time. Some of the highlighted causes of the past failures of mobile money in South Africa include a rigid regulatory framework that seems to be biased towards banks and other traditional financial institutions.[877] It has been argued that bank charges are too high for the poor and only a privileged few can afford them in South Africa.[878] As a result, most poor financial consumers in South Africa cannot afford to maintain bank accounts. Consequently, the poor resort to informal means of accessing finance such as stokvels and unregulated private credit providers.[879] The rigid enforcement of CDD/KYC measures requires a rethink if the financial inclusion of the poor is to be realized in South Africa. Policymakers in South Africa may need to amend and streamline the AML/CTF provisions of the *FICA* and *RICA* to align them with the socio-economic realities in South Africa.[880] This could reduce the duplication of processes and enhance financial inclusion for the poor in line with the National Development Plan's 2030 vision.[881] Innovative products such as the AFR technology could also be explored in South Africa to minimise the movement of people and reduce documentary requirements.

Other factors adversely affecting the financial inclusion of the poor are linked to poor privacy protection where consumers' personal information is compromised through

875 See paragraph 6.3.3 of this chapter.
876 See paragraph 6.4 of this chapter.
877 See paragraph 6.2 of this chapter.
878 See paragraph 6.2 of this chapter.
879 See paragraph 6.2 of this chapter.
880 See paragraph 6.6.1 of this chapter.
881 See paragraph 6.6.1 of this chapter.

cyber-attacks.[882] Data protection is one of the pillars of sound financial systems. Although efforts have been made to promote consumer protection, most of the initiatives are at embryonic stages and may need to be quickened up.[883] Above all, South Africa does not have an express and robust statute that specifically deals with mobile money regulation and the promotion of financial inclusion for the poor.[884] Policymakers may need to consider enacting a statute that expressly regulates innovative financial products and promote the financial inclusion of the poor in South Africa.

882 See paragraph 6.7 of this chapter.
883 See paragraph 6.7.1 of this chapter.
884 See paragraph 6.5 of this chapter.

CHAPTER SEVEN

THE REGULATION AND USE OF MOBILE MONEY TO PROMOTE THE FINANCIAL INCLUSION OF THE POOR IN THE UNITED KINGDOM

7.1 Introduction

The coronavirus disease (COVID-19) and the related lockdowns severely disrupted the accessibility of financial services, especially by the poor due to restrictions on movement of persons in many countries including the United Kingdom (UK).[885] The lockdowns halted business activities and caused loss of income and retrenchments which left the poor in the UK in a more precarious situation than before.[886] Among other interventions, UK policymakers enacted the *Corporate Insolvency and Governance Act*[887] on an emergency basis to regulate relief and rescue measures for companies that found themselves in financial woes due to the COVID-19 pandemic. The swift action by the UK policymakers is commendable because they timeously enacted a statute to minimise the ravages of COVID-19 on the economy. The UK also employed the Prudential Regulatory Authority (PRA) and the Financial Conduct

885 Chiu I, Kokkinis A and Miglionico A "Relief and Rescue: Suspensions and Elasticity in Financial Regulation, and Lessons from the UK's Management of the COVID-19 Pandemic Crisis" 2021 *Washington University Journal of Law & Policy* 63, 64; see related comments by Alexander K "Financial Inclusion and Banking Regulation: The Role of Proportionality" 2021 *Law and Contemporary Problems* 129, 131; Nakouwo NS and Akplehey FN "Covid-19 and Mobile Money Agents in Ghana" 2020 *African Journal of Emerging Issues* 75; 76; Otache I "The Effects of the Covid-19 Pandemic on Nigeria's Economy and Possible Coping Strategies" 2020 *Asian Journal of Social Sciences and Management Studies* 173, 174-175; Olivia S, Gibson J and Nasrudin R "Indonesia in the Time of Covid-19" 2020 *Bulletin of Indonesian Economic Studies* 143, 165-166.

886 See related comments by Chiu, Kokkinis and Miglionico 2021 *Washington University Journal of Law & Policy* 65; Buheji M, Da Costa CK, Beka G, Mavric B, De Souza YL, Da Costa SS, Hanafi M and Yein TC "The Extent of Covid-19 Pandemic Socio-Economic Impact on Global Poverty. A Global Integrative Multidisciplinary Review" 2020 *American Journal of Economics* 213, 215; Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 76; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 175.

887 *Corporate Insolvency and Governance Act* (CIGA) 2020, c 12, section 7; Keddle P and Preston L "The Corporate Insolvency and Governance Act 2020: Permanent Reforms and Temporary Protections" 2020 *Insolvency and Restructuring International* 39, 41-42; Chiu, Kokkinis and Miglionico 2021 *Washington University Journal of Law & Policy* 65.

Authority (FCA) to assist the poor to access financial services during COVID-19.[888] Retail outlets in the UK discouraged the use of cash in favour of digital payments and other innovative financial technology (fintech) products to reduce the spread of COVID-19.[889] While the poor in most developing economies rely on mobile money to access financial services during the COVID-19-induced lockdowns, many of their counterparts in the UK do not have access to mobile money.[890] This owes to the fact that the use of mobile money in the UK is more of an extension of banking services than a primary access point to financial services for the poor.[891] The UK has one of the best developed financial sectors in the world and the majority of the population is banked. However, it has to be noted that mobile money is not the same as mobile banking.[892] The latter allows financial consumers to access their bank accounts

888 Chiu, Kokkinis and Miglionico 2021 *Washington University Journal of Law & Policy* 65; see related comments by Lewis S and Lindley D *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* (Asian Development Bank Institute Tokyo 2015) 9; see related comments by Zetzsche DA, Buckley RP, Barberis JN and Arner DW "Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation" 2017 *Fordham Journal of Corporate & Financial Law* 31, 57.

889 Lupo-Pasini F "Financial Inclusion and the 'War for Cash'" 2021 *Law and Contemporary Problems* 17, 28; see related comments by Alexander 2021 *Law and Contemporary Problems* 131; Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 21; De R, Pandey N and Pal A "Impact of Digital Surge During Covid-19 Pandemic: A Viewpoint on Research and Practice" 2020 *International Journal of Information Management* 1, 3; Kasradze T "Challenges Facing Financial Inclusion Due to the Covid-19 Pandemic" 2020 *European Journal of Marketing and Economics* 63, 70.

890 Kim J "Ubiquitous Money and Walking Banks: Environment, Technology and Competition in Mobile Banking" 2008 *Richmond Journal of Global Law & Business* 37, 97; see related comments by Alexander 2021 *Law and Contemporary Problems* 131; Zetzsche DA, Buckley RP, Barberis JN and Arner DW "Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation" 2017 *Fordham Journal of Corporate & Financial Law* 31, 49. The post 2008 financial crisis resulted in developed countries seeking a stringent financial regulatory regime where non-financial stakeholders could not be readily accepted.

891 Goldby M "Reporting of Suspicious Activity by Mobile Money Service Providers in Accordance with International Standards: How Does it Impact on Financial Inclusion" 2013 *Washington Journal of Law, Technology & Arts* 401, 405; see related comments by Porteous D *The Enabling Environment for Mobile Banking in Africa* (Bankable Frontier Associates Boston 2006) 15; Bångens L and Söderberg B *Mobile Banking–Financial Services for the Unbanked?* (Spinder Sweden 2008) 14; Ndlovu I and Ndlovu M "Mobile Banking the Future to Rural Financial Inclusion: Case Study of Zimbabwe" 2013 *Interational Organisation of Scientific Research Journal of Humanities and Social Science* 70, 70-71.

892 See related comments on paragraph 3.3.2 of Chapter Three of this thesis.

through their phones.[893] Moreover, the UK has an efficient banking infrastructure hence the use of mobile money could be limited.[894] While there has been a rapid development in fintech products in the UK, a considerable number of the poor who cannot afford or qualify to get these services remain financially excluded.[895] As a result, some of the poor persons still prefer to use cash in the UK even at a time when public health concerns in light of the COVID-19 pandemic have caused reduced cash usage in transactions.[896] Given this brief background, this chapter seeks to explore the use and regulation of mobile money to promote the financial inclusion for the poor in the UK.

7.2 Overview of the Regulation of Mobile Money to Promote Financial Inclusion During the COVID-19 Pandemic

The COVID-19 pandemic has highlighted the need for a policy debate on financial inclusion for the poor after the UK's economy suffered one of its greatest setbacks since the 2008 financial crisis.[897] The UK economy shrunk considerably as the

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893 Ahmad AH, Green C and Jiang F "Mobile Money, Financial Inclusion and Development: A Review with Reference to African Experience" 2020 *Journal of Economic Surveys* 753, 755; see related comments by Goldby 2013 *Washington Journal of Law, Technology & Arts* 405; Porteous *The Enabling Environment for Mobile Banking in Africa* 15; Ndlovu and Ndlovu 2013 *IOSR Journal of Humanities and Social Science* 70-71; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 14.

894 Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 3; see related comments Van Loo R "Making Innovation More Competitive: The Case of Fintech" 2018 *University of California and Los Angeles Law Review* 232, 248; Kernan A "Sustaining the Growth of Mobile Money Services in Developing Nations: Lessons from Overregulation in the United States" 2018 *Vanderbilt Journal of Transnational Law* 1109, 1113.

895 Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 3; see related comments by Goldby 2013 *Washington Journal of Law, Technology & Arts* 405; Deloitte 2021 Growth through Financial Inclusion: A Roadmap for UK Banks page number unknownhttps://www2.deloitte.com /content/dam/Deloitte/uk/Documents/financial -services /deloitte-uk-growth-through-financial-inclus ion-a-roadmap-for-uk-banks.pdf accessed 23 April 2021.

896 Lupo-Pasini 2021 *Law and Contemporary Problems* 28; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; De, Pandey and Pal 2020 *International Journal of Information Management* 3; Kasradze 2020 *European Journal of Marketing and Economics* 70.

897 Deloitte 2021 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf; see related comments by Nakouwo NS and Akplehey FN "Covid-19 and Mobile Money Agents in Ghana" 2020 *African Journal of Emerging Issues* 75; 78; Otache I "The Effects of the Covid-19 Pandemic on the Nigeria's Economy and Possible Coping Strategies" 2020 *Asian Journal of Social Sciences and Management Studies* 173, 174-175; Buheji *et al* 2020 *American Journal of Economics* 213, 215.

pandemic halted many economic activities as authorities restricted movement of persons in order to combat the spread of coronavirus.[898] Owing to this, the number of poor persons who were left in need of formal financial services increased in the UK since the raging COVID-19 pandemic started.[899] It appears that the COVID-19 pandemic came at a time when the UK's financial system was saddled with growing debt and a waning public trust in financial institutions whose products failed to meet consumer needs.[900] Deloitte projects that in future, financial consumers in the UK could increasingly require tailored financial products that suit their particular needs to adapt to changes in the financial sector.[901] Mobile money can offer the poor who, for a long time depended on unreliable and inefficient financial services in the UK.[902] Using mobile money, the poor in the UK can store and transfer money on mobile phones averting risks associated with handling cash such as possible coronavirus transmission, robbery, fraud, corruption, accidental fires and inflation.[903] Some retail shops in the UK are promoting contactless payments due to fear of spreading the

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898 Deloitte 2021 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/delo itte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf; see related comments by Buheji *et al* 2020 *American Journal of Economics* 215; Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 78; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 175.

899 See related comments by Olivia, Gibson and Nasrudin 2020 *Bulletin of Indonesian Economic Studies* 165-166; Kasradze 2020 *European Journal of Marketing and Economics* 69; Deloitte 2021https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf.

900 See related comments by Deloitte 2021 https://www2.deloitte.com/content /dam/Deloitte/uk/Docu ments/financial services/ deloitte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf Olivia, Gibson and Nasrudin 2020 *Bulletin of Indonesian Economic Studies* 165-166; Kasradze 2020 *European Journal of Marketing and Economics* 64; Buheji *et al* 2020 *American Journal of Economics* 216.

901 Deloitte 2021 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/delo itte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf; see related comments by Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76; Forgor AT and Julie KA "Financial Innovative Development in Sub-Saharan Africa: The Role of Payment Systems" 2019 *Advances in Social Science, Education and Humanities Research* 192, 194-195.

902 Kernan 2018 *Vanderbilt Journal of Transnational Law* 1116; see related comments by Lumsden E "The Future is Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business & Finance* 1, 7; Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 437; Pazarbasioglu C, Mora AG, Uttamchandani M, Natarajan H, Feyen E and Saal M *Digital Financial Services* (World Bank Group Washington DC 2020) 2.

903 Kernan 2018 *Vanderbilt Journal of Transnational Law* 1116; see related comments by Lupo–Pasini 2021 *Law and Contemporary Problems* 28; Lumsden 2018 *Stanford Journal of Law, Business & Finance* 7; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437.

COVID-19 pandemic through notes and coins.[904] To reduce physical contact in line with COVID-19 protocols, the UK adopted biometric authentication methods such as fingerprints or artificial face recognition (AFR) technology to authenticate the identity of financial consumers, including the poor, without compromising their safety.[905] The researcher avers that the biometric and AFR technologies can also assist in the remote enforcement of anti-money laundering and counter-terrorist financing (AML/CTF) measures in the UK.

At this point, it is important to explore the state of financial exclusion in the UK. It is estimated that there are more than 2 million poor households in the UK.[906] The poor in the UK include ethnic minorities, migrants, people with disabilities, pensioners and some single parents.[907] Furthermore, one in every four individuals in the UK does not have savings or access to affordable short-term credit which forces the poor to rely on informal credit providers.[908] About 12 million people in the UK can be said to be functionally poor because they cannot afford to meet the daily necessities and they not have savings to sustain them in the event of emergencies.[909]

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904 See related comments on paragraph 1.4 of Chapter One of this thesis.

905 HM Treasury 2020 *Payments Landscape Review: Call for Evidence* www.gov.uk/official-documents 15 accessed on 24 April 2021; see related comments by Zens J "Face IT: Only Congress can Preserve Privacy from the Pervasive Use of Facial Recognition Technology by Police" 2021 *San Diego Law Review* 143, 153; McClellan E "Facial Recognition Technology: Balancing the Benefits and Concerns" 2019 *Journal of Business & Technology Law* 363, 372; Wright E "The Future of Facial Recognition is not Fully Known: Developing Privacy and Security Regulatory Mechanisms for Facial Recognition in the Retail Sector" 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 611, 621-623.

906 See related comments by Datta K "Risky Migrants? Low-Paid Migrant Workers Coping with Financial Exclusion in London" 2009 *European Urban and Regional Studies* 331, 331-332; Deloitte 2021 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-growt h-through-financial-inclusion-a-roadmap-for-uk-banks.pdf.

907 De Koker L "Money Laundering Control and Suppression of Financing of Terrorism: Some Thoughts on the Impact of the Customer Due Diligence Measures on Financial Exclusion" 2006 *Journal of Financial Crime* 26, 39; see related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 6.

908 Datta 2009 *European Urban and Regional Studies* 332; see related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 7-8.

909 Deloitte 2021 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/delo itte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf; see related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 6.

Despite the preference for cash by many poor consumers since the outbreak of COVID-19 pandemic as alluded to earlier, there has been a steady decline in the use of cash and a rise in the use of digital payments in the UK for more than a decade now.[910] Between 2008 and 2018, the cash volume reduced from 60 percent to 28 percent with projections anticipating a further decline to nine percent in 2028.[911] This reduction in the use of cash presents a threat to the poor who do not have bank accounts or other formal ways of accessing financial services in the UK. Nonetheless, the use of mobile money in the UK is still too insignificant to assist the poor access affordable digital financial services in the UK.[912] As a result, financial exclusion remains a challenge for many poor persons in the UK particularly those who do not have the necessary documents for opening accounts at financial institutions.[913] The majority of poor persons end up paying more for goods and services such as credit that usually cost less to those who are banked in the UK.[914] Thus, the poor are often trapped in a continuous debt cycle where they become easily targets of informal credit providers in the UK.

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910 Lupo–Pasini 2021 *Law and Contemporary Problems* 18; see related comments by Chitimira H and Ncube M "Legislative and Other Selected Challenges Affecting Financial Inclusion of the Poor and Low Income Earners in South Africa" 2020 *Journal of African Law* 337, 351; Nyanhete 2017 *European Journal of Sustainable Development* 257; Mugarura N "The Use of Mobile Phones in Changing the Banking Regulatory Landscape in Africa" 2019 *African Journal of International and Comparative Law* 308, 312.

911 Lupo–Pasini 2021 *Law and Contemporary Problems* 18; see related comments by Chitimira and Ncube 2020 *Journal of African Law* 351; Nyanhete 2017 *European Journal of Sustainable Development* 257; Mugarura 2019 *African Journal of International and Comparative Law* 312.

912 HM Treasury 2015 *Designation of Payment Systems: Response to the Consultation* 12 www.gov.uk /official-documents accessed on 20 April 2021; see related comments by Chitimira H and Magau PT "A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa" 2021 *Potchefstroom Electronic Law Journal* 1, 3; 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, 173; Chitimira and Ncube 2020 *Journal of African Law* 352.

913 See related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 3; Deloitte 2021 https://www2.Deloitte .com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-growth-throughfinancial-inclusion-a-roadmap-for-uk-banks.pdf.

914 Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 3; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; see related comments by Chitimira and Ncube 2020 *Journal of African Law* 352; Deloitte 2021 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf.

7.3 The Financial Inclusion Policy Forum and the Regulation of Mobile Money to Promote Financial Inclusion in the UK

The UK has made financial inclusion for all persons within her borders, including the poor, a priority.[915] In 2018, the UK government convened the Financial Inclusion Policy (FIP) forum which brought together government, captains of industry, charities, consumer groups and financial regulators to provide leadership and promote collaboration in tackling financial exclusion for the poor in the UK.[916] Among other interventions, the FIP seeks to reduce the cost of credit and borrowing for poor families in the UK.[917] In this regard, the UK government works closely with the FCA to address the challenges associated with high-cost credit and other factors driving financial exclusion in the UK.[918] Besides promoting financial inclusion for the poor, the UK government also seeks to promote financial literacy among the poor in order to equip them to manage their money, pensions and debts.[919] Moreover, UK policymakers have made financial education part of the school curriculum in order to develop financial literacy for children from the age of five.[920]

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915 De Koker 2006 *Journal of Financial Crime* 39; see related comments by Datta 2009 *European Urban and Regional Studies* 332; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 11; HM Treasury 2019 *Financial Inclusion Report* 2018-19 www.gov.uk/official-documents 2 accessed on 24 April 2021.

916 HM Treasury 2019 www.gov.uk/official-documents 2; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; Gibson E, Lupo-Pasini F and Buckley RP "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" 2015 *Singapore Journal of Legal Studies* 26, 27; Klein M and Mayer C *Mobile Banking and Financial Inclusion: The Regulatory Lessons* (The World Bank 2011) 4; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 16-17.

917 HM Treasury 2019 www.gov.uk/official-documents 2; see related comments by Lamb D "A Specter is Haunting the Financial Industry – The Specter of the Global Financial Crisis: A Comment on the Imminent Expansion of Consumer Financial Protection in the United States, the United Kingdom and the European Union" 2011 *Journal of the National Association of Administrative Law Judiciary* 213, 226-227; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 13-14.

918 HM Treasury 2019 www.gov.uk/official-documents 2; see related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 13-14; Lamb 2011 *Journal of the National Association of Administrative Law Judiciary* 249-250.

919 HM Treasury 2019 www.gov.uk/official-documents 4; see related comments by Lamb 2011 *Journal of the National Association of Administrative Law Judiciary* 249-250; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 17-18.

920 Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 18-19; see related comments by Lamb 2011 *Journal of the National Association of Administrative Law Judiciary* 250.

7.4 The UK AML/CTF Measures and the Regulation of Mobile Money to Promote Financial Inclusion During COVID-19

The UK's AML/CTF standards have stringent customer identification and verification (CIV) requirements that most poor people cannot satisfy.[921] Generally, an individual is required to provide proof of identities such as a passport or driving licence and proof of residential address.[922] In this regard, the UK has a rigid customer due diligence (CDD) regime that might hinder the poor from accessing innovative financial products like mobile money.[923] As a result, many poor persons who cannot satisfy the CIV requirements cannot participate in the formal financial sector in the UK.[924] To that end, a rigid application of the AML/CTF measures in the UK could perpetuate the financial exclusion of the poor who may not have all the required documents such as migrant workers. In most cases, the poor in the UK depend on cash that comes with related risks such as theft, money laundering, robberies and accidental losses.[925] The use of cash has become a public health challenge since the outbreak of the raging COVID-19 pandemic in many countries across the globe, including the UK.[926] Consequently, the poor persons who rely on cash for transactions in the UK could be more susceptible to contracting the coronavirus as

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921 De Koker L "Identifying and Managing Low Money Laundering Risk: Perspectives on FAFT's Risk-Based Guidance" 2009 *Journal of Financial Crime* 334, 335-336; see related comments by De Koker 2006 *Journal of Financial Crime* 39; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 76 .

922 De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 286; see related comments by De Koker 2006 *Journal of Financial Crime* 39; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 76**.**

923 Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 66; see related comments Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; Lumsden 2018 *Stanford Journal of Law, Business & Finance* 31.

924 Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 758; see related comments by Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions" 2020 *Journal of Comparative Law in Africa* 42, 48-49; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 172; Lumsden 2018 *Stanford Journal of Law, Business & Finance* 30-31.

925 Chitimira H and Ncube M "Legislative and Other Selected Challenges Affecting Financial Inclusion of the Poor and Low Income Earners in South Africa" 2020 *Journal of African Law* 337, 351; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 35; Nyanhete A "The Role of International Mobile Remittances in Promoting Financial Inclusion and Development" 2017 *European Journal of Sustainable Development* 256, 257; Mugarura 2019 *African Journal of International and Comparative Law* 312.

926 See paragraph 1.4 of Chapter One of this thesis.

compared to those who use electronic or mobile money.[927] Besides the COVID-19 related health and/or hygienic concerns, cash poses significant challenges to the enforcement of AML/CTF measures in the UK.[928] Generally, cash transactions are untraceable which makes it very difficult for authorities to detect money laundering and related financial crimes in the UK.[929] In addition, the rigid application of AML/CTF measures in the UK could fall short of the Financial Action Task Force (FATF)'s risk-based approach.[930] FATF's risk-based approach encourages financial regulators to apply AML/CTF measures in proportion to risks individuals pose to the integrity of financial markets.[931] In this regard, low-value mobile money accounts which may not pose significant impact in financial markets are generally not be subjected to the same AML/CTF measures as compared to high-value accounts.[932] Thus, policymakers in the UK should avoid using a one-size-fits-all approach to the enforcement of AML/CTF measures as this may be costly and time consuming especially on low-value accounts owned by the poor. Moreover, the risk-based approach could provide UK financial authorities with guidance on how best they can allocate their resources in order to enforce AML/CTF measures in a manner that

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927 See related comments by De, Pandey and Pal 2020 *International Journal of Information Management* 3; Mann "Driver for Contactless Payments" 176; Kasradze 2020 *European Journal of Marketing and Economics* 70; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22.

928 De Koker 2006 *Journal of Financial Crime* 27; see related comments by Chitimira and Ncube 2020 *Journal of African Law* 352; Robb G 2015 *Why Mobile Money has Flopped in South Africa* page number unknown http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ accessed 20 April 2021.

929 De Koker 2014 *Journal of Money Laundering Control* 292; see related comments by De Koker 2006 *Journal of Financial Crime* 27; Chitimira and Ncube 2020 *Journal of African Law* 352; Robb 2015 http://www.techcentral.co.za/why-mobile-money-has-flopped-in-sa/58282/ page number unknown.

930 Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: The Banking Sector* (FATF Paris 2014) 6-7; see related comments by De Koker L "Aligning Anti-Money Laundering, Combating of Financing of Terror and Financial Inclusion: Questions to Consider when FATF Standards are Clarified" 2011 *Journal of Financial Crime* 361; 370-371; De Koker 2009 *Journal of Financial Crime* 335-336; De Koker 2014 *Journal of Money Laundering Control* 290; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 480.

931 FATF 2014 *Guidance for a Risk-Based Approach: The Banking Sector* 7; see related comments by De Koker 2014 *Journal of Money Laundering Control* 290; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 480; De Koker 2011 *Journal of Financial Crime* 370-371.

932 FATF 2014 *Guidance for a Risk-Based Approach: The Banking Sector* 7-8; see related comments by De Koker 2014 *Journal of Money Laundering Control* 290; De Koker 2011 *Journal of Financial Crime* 363-364.

promotes financial inclusion for the poor.[933] Enabling the poor to join formal financial services can assist to increase transparency while it reduces the risks of financial exclusion, money laundering and other financial crimes in the UK.[934]

7.5 The Regulation and Use of Mobile Money to Promote Financial Inclusion in the UK During COVID-19

Since 2013, the UK adopted the "twin peaks" model of financial regulation.[935] The two peaks are the Prudential Regulatory Authority (PRA) and the Financial Conduct Authority (FCA). The PRA is responsible for the safety and soundness of the UK financial system while the FCA seeks to ensure that financial service providers operate within the confines of the law and that consumer protection is safeguarded in the UK.[936] In this regard, the FCA has three statutory obligations namely; to protect financial customers, to enhance the integrity of financial markets and to promote competition in the interest of UK financial consumers.[937] To fulfil its competition objective, the FCA sometimes works jointly with the Competition and Markets Authority (CMA) to conduct market studies.[938] In addition, the FCA's subsidiary, the Payment Systems Regulator (PSR), regulates payment systems in the

933 FATF 2014 *Guidance for a Risk-Based Approach: The Banking Sector* 8; see related comments by De Koker 2011 *Journal of Financial Crime* 372; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 480-481.

934 Financial Action Task Force (FATF) *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* (FATF Paris 2011) 15-16; see related comments by Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 757-758; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 481.

935 Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 9; see related comments by Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 171; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 27; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 5.

936 See related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 27; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 9-10; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 5.

937 Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 10; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 27-28; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 5.

938 Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 10; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 27-28; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 5.

UK.[939] The FCA also controls the Money Advice Service (MAS) which has a statutory obligation to enhance financial consumers' ability to manage their financial affairs.[940] Above all, the FCA has the Financial Ombudsman Service which has a binding alternative dispute resolution procedure and the Financial Services Compensation Scheme which provides a redress mechanism on financial matters in the UK.[941] However, the UK does not have an express statute enacted to regulate the use of mobile money to promote financial inclusion for the poor.[942] In this regard, there is no distinct regulatory body that supervises mobile money services or the promotion of financial inclusion for the poor in the UK. In spite of this, there are several relevant statutes that can be used to regulate fintech products like mobile money in the UK that this thesis explores. These include the *Financial Services Act*,[943] the *Banking Reform Act*[944] and the *Proceeds of Crime Act*[945] which are discussed below.

7.5.1 The Banking Reform Act and the Regulation and Use of Mobile Money to Promote Financial Inclusion in the UK

Payment systems in the UK are formally regulated through the *Banking Reform Act.*[946] The *Banking Reform Act* was enacted as part of the reforms the UK government undertook to improve the regulation of the payment systems and the banking sector in relation to fintech developments. Prior to this legislative reform, it appears that the new fintech-driven participants that sought to join the UK payment

939 See related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 10; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 27-28.

940 See related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 27-28; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 10.

941 See related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 10; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 27-28.

942 See related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 27-28; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 10.

943 *Financial Services Act* [Chapter 21] of 2012 (c 21) (*FSA*) as amended, see section 1A.

944 *Financial Services* (*Banking Reform*) *Act* of 2013 (c 33)(*Banking Reform Act*), sections 40-48.

945 *Proceeds of Crime Act* 2002 (*POCA*) (c 29), section 330(2)-(4).

946 Sections 40-48 of the *Banking Reform Act*.

systems encountered legislative barriers.[947] The second possible challenge was that the payment systems in the UK did not provide incentives for innovation beyond what traditional banks offered.[948] Thus, given the monopoly of banks in the payments system, the growth of innovations that could provide access to the poor in the UK was stifled. The legislative reforms were also necessitated by the UK government's concern for poor financial consumers' low participation in the payments system.[949]

Furthermore, the UK has a well-established banking sector with a reputable payment, clearing and settlement system that could do without additional service providers such as mobile money service providers.[950] Without legislative support, non-banking institutions that may want to participate in the payments space could find it costly to set up an alternative system in the UK.[951] In addition, alternative payment systems may need to gain public trust that they operate in a manner that upholds financial integrity and financial stability, are free from abuse and are subject to adequate AML/CTF controls.[952] Thus, the dominance of banks in the UK's

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947 HM Treasury 2015 www.gov.uk/official-documents 3; see related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 17-18; Lamb 2011 *Journal of the National Association of Administrative Law Judiciary* 249-250.

948 HM Treasury 2015 www.gov.uk/official-documents 3; see related comments by Lamb 2011 *Journal of the National Association of Administrative Law Judiciary* 249-250; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 17-18.

949 HM Treasury 2015 www.gov.uk/official-documents 3; see related comments by Lamb 2011 *Journal of the National Association of Administrative Law Judiciary* 249-250; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 17-18.

950 Chiu IHY "A New Era in Fintech Payment Innovations? A Perspective from the Institutions and Regulation of Payment Systems" 2017 *Law, Innovation and Technology* 190, 216; Hoernig S and Bourreau M *Interoperability of Mobile Money: International Experience and Recommendations for Mozambique* (International Growth Centre 2017) 1-2; see related comments by Mazer R and Rowan P "Competition in Mobile Financial Services: Lessons from Kenya and Tanzania" 2016 *The African Journal of Information and* Communication 39, 46.

951 Chiu 2017 *Law, Innovation and Technology* 216; see related comments by Hoernig and Bourreau *Interoperability of Mobile Money: International Experience and Recommendations for Mozambique* 2; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 46; Anderson and Reynolds 2015 *Evans School Policy Analysis and Research University of Washington* 20-21.

952 Chiu 2017 *Law, Innovation and Technology* 216; see related comments by Hoernig and Bourreau *Interoperability of Mobile Money: International Experience and Recommendations for Mozambique* 2; Mazer and Rowan 2016 *The African Journal of Information and Communication* 46.

payments system limited the use of innovative technologies like mobile money and curtailed the poor's access to sound and affordable payment systems.[953]

The *Banking Reform Act* established the Payments Systems Regulator (PSR), a statutory body to oversee and supervise payment systems in the UK.[954] The PSR is a designee of the UK treasury which works in conjunction with the FCA, the PRA and the Bank of England in regulating the payments sector in the UK.[955] All payment systems participants such as operators and infrastructure providers operating in the UK fall within the regulatory scope of the PSR.[956] Furthermore, the *Banking Reform Act* defines a payment system as a system that is operated by one or more persons to enable persons to transfer funds.[957] The definition extends a payment system to include a system that is designed to facilitate the transfer of money using another payment system.[958] In other words, the extended definition includes the possibility that a third-party system can piggyback on a core payment system that is designated and regulated as a payment system separately. It is submitted that the *Banking Reform Act* seeks to preserve the integrity and stability of the payment systems in the UK. Nonetheless, there are exceptions to systems that may be considered as payment systems. The payment system excludes arrangements for the physical movement of cash, a system that does not provide for money to be transferred by payers, or to recipients within the UK, a securities settlement system operated in terms of section 785 of the *Companies Act*[959] and a system whose primary function is not to enable persons to transfer money.[960] The last exception could be a pointer on why mobile money services may not be popular in the UK.[961] Thus, telecommunication companies such as Vodafone, O2 and others may not be

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953 Chiu 2017 *Law, Innovation and Technology* 216; see related comments by Hoernig and Bourreau *Interoperability of Mobile Money: International Experience and Recommendations for Mozambique* 2; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 46.

954 Section 40 of the *Banking Reform Act.*

955 Section 40 (4) of the *Banking Reform Act*; HM Treasury 2015 www.gov.uk/official-documents 5.

956 Section 40 of the *Banking Reform Act*; HM Treasury 2015 www.gov.uk/official-documents 5.

957 Section 41(1) of the *Banking Reform Act.*

958 Section 41(1) of the *Banking Reform Act.*

959 *Companies Act* [Chapter 46] of 2006 (*Companies Act*), section 785.

960 Section 41 of the *Banking Reform Act.*

961 Section 41(2) of the *Banking Reform Act.*

recognised for purposes of the *Banking Reform Act* since their primary purpose is telecommunications, not funds transfer. In this regard, the *Banking Reform Act* may need to be amended to allow entities whose primary functions are not money transfer to participate in UK's payment system.

Notably, the Bank of England is not regarded as a participant in any payment system in the UK.[962] The *Banking Reform Act* gives the treasury power to designate a payment system if it is satisfied that possible disruptions to such system's operation may have serious consequences for those who use or are likely to use the system's services.[963] Before making a determination to designate a payment system, the treasury takes into consideration the overall volume of transactions the system processes, the nature of the transactions and whether other payment systems could handle the same.[964] In this regard, it appears that a payment system ought to be in existence and serving consumers before it can be designated in the UK. For mobile money services, this appears to be a challenge as they currently exist only in miniature within the UK financial markets. UK's payment system remains largely pro-banks but other fintech innovations appear to be making steady inroads as discussed above.

7.5.2 Reporting Suspicious Activities in the Regulation and Use of Mobile Money to Promote Financial Inclusion in the UK

Financial institutions, including mobile money service providers, should monitor and report suspicious activities on their platforms to combat money laundering and terrorist financing.[965] Recommendation 20 of the FATF provides that if a financial institution suspects or reasonably suspects that funds are proceeds of crime or related to terrorist financing, it is required by law to promptly report such suspicion

962 Section 42(8) of the *Banking Reform Act.*

963 Section 43 of the *Banking Reform Act*; HM Treasury 2015 www.gov.uk/official-documents 6.

964 Section 44 of the *Banking Reform Act.*

965 Financial Action Task Force (FATF) *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (FATF, Paris 2012-2019) 6; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125.

to the financial intelligence unit (FIU).[966] The UK has the Suspicious Activity Reporting (SAR) mechanism designed to detect financial crimes such as money laundering and terrorist financing.[967] The SAR initiative is an example of how developed economies respond to FATF Recommendations. According to Goldby, the FATF's Recommendation 20 requires that each SAR system should be premised on legal provisions that prescribe criminal or administrative sanctions for financial institutions that fail to report suspicious activities.[968] In this regard, the researcher explores how the SAR initiative is implemented in the UK.

7.5.2.1 The Suspicious Activity Reporting and the regulation of mobile money to promote financial inclusion in the UK

The SAR initiative appears to have far-reaching implications on financial regulators, financial institutions and consumers in the UK. Goldby argues that the stringent requirements to report suspicious activities and the prescribed harsh penalties could result in large volumes of SARs that may not be useful for regulators.[969] In other words, financial institutions may report for the sake of compliance, wasting resources and time that regulators could invest in combating financial crimes. When the SAR mechanism was first implemented, financial institutions would report manually and this created a serious backlog and delays in regulators working on the

966 FATF *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 19; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125.

967 Goldby 2013 *Washington Journal of Law, Technology & Arts* 408; see related comments by FATF *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 6; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4.

968 Goldby 2013 *Washington Journal of Law, Technology & Arts* 408; see related comments by FATF *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 6; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4.

969 Goldby 2013 *Washington Journal of Law, Technology & Arts* 409-410; see related comments by FATF 2019 *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 6; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4.

reports.[970] However, the system was later reformed and financial institutions could submit their SARs electronically while regulators had access to the database. Despite this, there were still challenges in that regulators and law enforcement agencies had to prioritise their resources to cases that appeared more serious.[971] The net effect was that SARs on money laundering transactions that appeared petty crimes could not be considered and this became a costly exercise on reporting financial institutions.[972] Moreover, the SAR database was accessible in a manner that appeared to violate the confidentiality of personal information, thus placing the privacy of consumers at risk.[973]

Furthermore, the SAR mechanism is capital intensive. Financial institutions ought to file reports in line with reporting standards which require investment in setting up automated equipment to detect suspicious activities and train or hire specialised personnel to do this.[974] Ultimately, financial institutions would pass on the costs of setting up the SARs system to consumers, making financial services expensive and inaccessible to the poor.[975] Owing to this, only the rich could afford financial services while the poor are left outside the formal financial sector. To that end, the SAR

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970 Goldby 2013 *Washington Journal of Law, Technology & Arts* 410; see related comments by FATF *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 6; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125.

971 Goldby 2013 *Washington Journal of Law, Technology & Arts* 410; see related comments by FATF *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 6; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4.

972 Goldby 2013 *Washington Journal of Law, Technology & Arts* 410; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; FATF *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 6; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125.

973 Goldby 2013 *Washington Journal of Law, Technology & Arts* 410; see related comments by FATF *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 6; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125.

974 Goldby 2013 *Washington Journal of Law, Technology & Arts* 411; see related comments by FATF *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 6; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4.

975 Goldby 2013 *Washington Journal of Law, Technology & Arts* 411; see related comments by FATF 2019 *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 6; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1125; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4.

mechanism might hinder the development and use of fintech products like mobile money to promote financial inclusion for the poor in the UK.

7.5.3 POCA and the Regulation of Mobile Money to Promote Financial Inclusion for the Poor in the UK

There are about three money laundering offences a person can commit in the UK. The first one is when an individual conceals, disguises, converts, transfers or removes from the jurisdiction property that is, or represents, the proceeds of crime which such individual knows or suspects that it represents the proceeds of crime.[976] The second offence arises when a person enters into or becomes involved in an arrangement that he knows or suspects will facilitate another person to acquire, retain, use or control property that the person knows or suspects is criminal property.[977] The third offence is committed when a person acquires, uses or possesses property that he knows or suspects represents proceeds of crime.[978] Upon conviction for any of the offences, a person can be commuted to a prison term for 14 years or a fine or both such sentence and fine. The above provisions apply to all financial institutions including mobile money service providers in the UK.

Financial institutions in the UK commit a criminal offence if they fail to report suspicious transactions that happen under their watch.[979] This provision suggests that financial institutions, including mobile money providers, should report suspicious transactions they may detect during the course of their business operations.[980] It is peremptory that if a person knows, suspects or reasonably suspects that another person should be engaged in money laundering, he/she should disclose by filing a SAR report as soon as it is reasonably practical to do so.[981] Thus a person may be charged with negligent liability if he/she fails or unduly delays reporting suspicious activities.[982] Goldby further argues that criminal liability arises in circumstances

976 Section 327 of the *POCA.*
977 Section 328 of the *POCA.*
978 Section 329 of the *POCA.*
979 *Proceeds of Crime Act* 2002 c 29 (*POCA*), section 330(2)-(4).
980 Section 330(3) of *POCA*.
981 See section 330(2) and (4) of the *POCA*.
982 Section 330(2) of the *POCA*.

where a person ought to have known or suspected that another person was laundering money, as there are reasonable grounds to do so, but failed to report.[983] This provision implies an objective test for liability. However, the obligation arises only if the person can identify the whereabouts of the person or laundered money or the person must believe or reasonably be expected to believe the disclosure may assist in identifying the person or the laundered money.[984] Additionally, financial institutions that fail to report an offence may be liable for a secondary money laundering crime. This happens in situations where a financial institution processes a transaction for a customer despite suspicions of money laundering.[985] To avoid such liability, a financial institution ought to obtain consent from the relevant authorities.[986] In other words, a financial institution should file a consent SAR. Failure to get the prescribed consent attracts hefty penalties if it is proven that such failure amounts to a primary money laundering crime.[987]

7.6 Consumer Protection and the Regulation and Use of Mobile Money to Promote Financial Inclusion in the UK during COVID-19

Financial consumer protection is one of the key factors to consider in the realisation of financial inclusion for the poor in the digital era, especially during the ongoing COVID-19 pandemic.[988] Financial consumer protection refers to sound legal measures that promote the rights of financial consumers and provide adequate redress mechanisms when disputes arise.[989] In this regard, financial consumers ought to make informed choices and be protected from unscrupulous actions that

983 Section 330(2) of the *POCA*; Goldby 2013 *Washington Journal of Law, Technology & Arts* 409.
984 Section 330(2) of the *POCA*; Goldby 2013 Washington Journal of Law, Technology & Arts 409.
985 Section 328 of the *POCA.*
986 Section 335 of the *POCA.*
987 Section 334 of the *POCA.*
988 Remolina N, Gurrea-Martinez A, Loh YAC and Hardoon DR "Regulatory Approaches to Consumer Protection in the Financial Sector and Beyond: Toward a Smart Disclosure Regime?" *Centre for AI & Data Governance* (2020) 6-7; see related comments by Ben-Ishai S "Consumer Bankruptcy in the Wake of COVID-19: The Calm Before the Storm" 2021 *Osgoode Hall Law Journal* 637, 657-658; Johnson B "Consumer Protection and Financial Inclusion" 2019 *Cato Journal* 489, 492-493; Lumpkin S "Consumer Protection and Financial Innovation: A Few Basic Propositions" 2010 *OECD Journal of Financial Market Trends* 1, 2.
989 Johnson 2019 *Cato Journal* 492-493; see related comments by Ben-Ishai 2021 *Osgoode Hall Law Journal* 658; Remolina *et al Centre for AI & Data Governance* (2020) 7; Lumpkin 2010 *OECD Journal of Financial Market Trends* 2.

may deny them true value and optimum benefits of financial products such as credit, deposits or savings, insurance, remittances and transfers.[990] It is generally agreed that consumer data privacy has become an important legal consideration following the Facebook-Cambridge Analytica scandal where the private information of millions of individual Facebook users was harvested without their consent.[991] Alber argues that consumer privacy protection should be considered as a response to a market failure which in turn could require appropriate and robust regulation to mitigate its reoccurrence.[992] It remains debatable how the poor can control their personal information in the hands of powerful financial institutions which seem to hold the keys to financial inclusion. Chou argues that it is better to prioritise financial inclusion for the poor since there is more to be gained in having access to financial services and that with access, it would be easier to deal with data privacy risks.[993] The researcher submits that personal information for financial consumers, including the poor in the UK, should be handled in a manner that does not expose the poor to unsolicited products and other risks.

7.6.1 The FSA and the Regulation and Use of Mobile Money to Promote Financial Inclusion in UK

The *Financial Services Act*[994] established the FCA, a statutory body responsible for promoting fair and honest financial markets for individuals, businesses and the UK economy through protecting consumers, financial markets and promoting

990 See related comments by Consultative Group to Assist the Poor (CGAP) *Financial Inclusion, Stability, Integrity and Protection: Observations and Lessons for the I-SIP Approach from the Philippines* 2017 (Washington, DC, World Bank) 1; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 14.

991 Chou A "What's in the Black Box: Balancing Financial Inclusion and Privacy in Digital Consumer Lending" 2020 *Duke Law Journal* 1183, 1187; see related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 14; Blechman JC "Mobile Credit in Kenya and Tanzania: Emerging Regulatory Challenges in Consumer Protection, Credit Reporting and use of Customer Transactional Data" 2016 *The African Journal of Information and Communication* 61, 64.

992 See related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 14; Blechman 2016 *The African Journal of Information and Communication* 64.

993 Chou 2020 *Duke Law Journal* 1202; see related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 14; Blechman 2016 *The African Journal of Information and Communication* 64.

994 *Financial Services Act* [Chapter 21] of 2012 (*FSA*), see part 1A, sections 1A-C.

competition.[995] The objective to protect consumers is uppermost on the FCA's mandate as it seeks to set out an appropriate environment for consumers' rights to be respected in the UK.[996] Furthermore, the FCA has a duty to examine whether the degrees of risk involved in different kinds of investments or other transactions are fit and appropriate for consumers in the UK.[997] As part of its duties, the FCA considers the sophistication of each consumer looking at the levels of experience and expertise in the UK financial markets.[998]

Moreover, it is incumbent on the FCA to assess consumer needs to assist in the provision of timely information and advice that is accurate and fit for purpose.[999] The cited provisions could make a huge difference for the poor who are often exploited due to lack of exposure and appropriate guidance. It is a legal requirement that all registered financial services in the UK should accord necessary care and attention commensurate with the degree of investment or transactions they are involved in.[1000] In other words, financial service providers may need to assess the capacity of customers before providing irrelevant financial products. It is submitted that this measure could mitigate practices such as irresponsible lending that often overburden poor consumers with debt. The FCA also provides that financial literacy services be rendered to poor consumers in the UK as a way of empowering them to make appropriate financial choices.[1001] It appears that the FCA has a broad scope to exercise its functions on all traditional and emerging financial institutions such as mobile money providers. In this regard, it can be argued that the FCA caters for the protection of poor consumers who may be using new financial channels that include mobile money.

The *Financial Service Act* also seeks to promote financial markets integrity in the UK.[1002] In this regard, the *FSA* seeks to promote the soundness, stability and

995 Section 1B(3) of the *FSA*.
996 Section 1C(1) of the *FSA.*
997 Section 1C(2)(a) of the *FSA.*
998 Section 1C(2)(b) of the *FSA.*
999 Section 1C(2)(c) of the *FSA.*
1000 Section 1C(2)(e) of the *FSA.*
1001 Section 1C(2)(g) of the *FSA.*
1002 Section 1D(1) of the *FSA.*

resilience of the UK financial markets[1003] by providing regulatory guidelines to ensure that the UK financial sector is not used to perpetrate financial crimes.[1004] Furthermore, the *FSA* assists financial regulators to guard against market abuse that often compromises the orderly operation of financial markets through opaque price formation and other guises.[1005] Financial integrity could assist the UK financial markets to combat financial crimes such as money laundering, terrorist financing and fraud.[1006] While mobile money services are significantly broadening the provision and accessibility of financial services to previously excluded persons, there are regulatory concerns given their susceptibility to exploitation for the above-mentioned financial crimes.[1007] Financial regulators may have concerns that mobile money could be susceptible to the risks of money laundering and terrorism financing, activities that compromise financial integrity and financial stability.[1008] There is also apparent apprehension that the speed at which fintech-driven transactions could be too fast to be effectively supervised.[1009] However, the researcher submits that regulators could make use of artificial intelligence (AI) to assist in monitoring mobile money transactions.

1003 Section 1D(2)(a) of the *FSA.*

1004 Section 1D(2)(b) of the *FSA.*

1005 Section 1D(2)(c)-(e) of the *FSA*.

1006 De Koker L "The 2012 Revised FAFT Recommendations Assessing and Mitigating Mobile Money Integrity Risks within the New Standards Framework" 2013 *Washington Journal of Law, Technology and Arts* 165, 166-167; Winn 2013 *Washington Journal of Law, Technology and* Arts 200; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1112.

1007 Kersop M and Du Toit S "Anti-Money Laundering Regulations and the Effective Use of Mobile Money in South Africa Part 1" 2015 *Potchefstroom Electronic Law Journal* 1603, 1607; Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 156; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1112.

1008 Winn 2013 *Washington Journal of Law, Technology and Arts* 200; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1112; also see Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 156.

1009 Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology and Arts* 290; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1607-1608.

7.7 Overall Analysis on the Regulation and Use of Mobile Money to Promote Financial Inclusion in the UK

It remains unclear though as to why mobile money has not made a big impact in the UK's financial markets.[1010] However, in the current globalised financial markets, banks in the UK tend to compete for wealthier clients while neglecting or offering irrelevant and costly financial services such as credit to the poor.[1011] Poor persons are usually considered unprofitable by the banks in the UK due to their limited financial resources. Consequently, the poor in the UK struggle to receive income, make payments or access credit in the UK.[1012] Unlike in developing economies such as Zimbabwe where mobile money is easily available, the poor in the UK who do not have bank accounts cannot access formal financial services using their mobile phones.[1013] However, there is some considerable use of mobile money by the Kenyan and Zimbabwean migrant communities in the UK can process cross-border mobile remittances directly to mobile money accounts in their home countries.[1014] A sender in the UK can go to a remittance-transfer retail outlet to deposit the money

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1010 Walker G "Financial Technology Law-A New Beginning and a New Future" 2017 *The International Lawyer* 137, 142; see related comments by Winn JK and De Koker L "Introduction to Mobile Money in Developing Countries: Financial Inclusion and Integrity Conference Special Issue" 2013 *Washington Journal of Law, Technology & Arts* 155, 156; Kernan 2018 *Vanderbilt Journal of Transnational Law* 126-127.

1011 Koku PS "Financial Exclusion of the Poor: A Literature Review" 2015 *International Journal of Bank Marketing* 654, 656; see related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 6-7; Handoo J "Financial Inclusion in India: Integration of Technology, Policy and Market at Bottom of the Pyramid" 2010 *Policy and Market at Bottom of the Pyramid* 1, 4; Okaro CS "Financial Inclusion and Nigerian Economy (1990 – 2015)" 2016 *Journal of Policy and Development Studies* 50, 51-52.

1012 See related comments by Koku 2015 *International Journal of Bank Marketing* 656; Lupo–Pasini 2021 *Law and Contemporary Problems* 17, 18; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 6.

1013 See related comments by Van Loo 2018 *University of California and Los Angeles Law Review* 247-248; Kernan 2018 *Vanderbilt Journal of Transnational Law* 1114; Goldby 2013 *Washington Journal of Law, Technology & Arts* 403; Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 155; 156.

1014 Chatain PL, Zerzan A, Noor W, Dannaoui N and De Koker L *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* (The World Bank Washington DC 2011) 161; see related comments by Ndung'u NS *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (African Economic Research Consortium Nairobi 2021) 55; Nyanhete A "The Role of International Mobile Remittances in Promoting Financial Inclusion and Development" 2017 *European Journal of Sustainable Development* 256, 258.

which is instantly transmitted to a recipient in Kenya.[1015] Zimbabwean migrants are also able to remit money from the UK using the Ecocash Diaspora Service.[1016] The Ecocash Diaspora Service is a branch of Zimbabwe's Ecocash mobile money platform that is designed for Zimbabwean citizens living and working outside the country to send money to their families.[1017] These mobile money remittance services work in partnership with established money transfer organisations such as Western Union, Moneygram and WorldRemit.[1018] Thus, despite its limited use, mobile money contributes to the financial inclusion of the poor in the UK and the remittances recipients in countries like Kenya and Zimbabwe.[1019] Importantly, there is need for an enabling regulatory environment that can improve the use of mobile money in order to promote financial inclusion for the poor in the UK.[1020]

Walker argues that mobile money is one of the four types of innovative payment technology the Bank of England pays close attention to.[1021] The UK is one of the leading proponents for an inclusive technology-driven economy which was central to the establishment of the European Union's digital economy.[1022] The UK government

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1015 Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 11; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya* 55; Nyanhete 2017 *European Journal of Sustainable Development* 258.

1016 Nyanhete 2017 *European Journal of Sustainable Development* 258; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes* 11; Ndung'u *A Digital Financial Services Revolution in Kenya* 54-55

1017 Mutsonziwa K and Maposa OK "Mobile Money – A Catalyst for Financial Inclusion in Developing Economies: A Case Study of Zimbabwe using FinScope Survey Data" 2016 *International Journal of Financial Management* 45, 47.

1018 Nyanhete 2017 *European Journal of Sustainable Development* 258; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya* 54-55; Chatain *et al Protecting Mobile Money against Financial Crimes* 11.

1019 Nyanhete 2017 *European Journal of Sustainable Development* 264; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya* 54-55; Chatain *et al Protecting Mobile Money against Financial Crimes* 11.

1020 See related comments by Nyanhete 2017 *European Journal of Sustainable Development* 264; Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 54-55; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 11.

1021 Walker 2017 *The International Lawyer* 147-148; see related comments by Packin NG "Regtech, Compliance and Technology Judgement Rule" 2018 *Chicago-Kent Law Review* 193, 205; Van Loo 2018 *University of California and Los Angeles Law Review* 232, 259.

1022 Walker 2017 *The International Lawyer* 149; see related comments by Packin 2018 *Chicago-Kent Law Review* 205; Van Loo 2018 *University of California and Los Angeles Law Review* 259; Omarova ST "Dealing with Disruption: Emerging Approaches to Fintech Regulation" 2020 *Washington University Journal of Law & Policy* 25, 37.

developed a blueprint for technology in 2010 before launching Project Innovate in 2014.[1023] The Project Innovate conceived the Digital Economy Strategy 2015-2018[1024] which sought to promote innovation in all aspects of the economy.[1025] As a result, fintech companies, banks and other financial institutions in the UK have been adopting innovative products to enhance their product offerings and improve their customers' financial experiences.[1026] In this regard, the UK is widely considered as a leading fintech centre with arguably the best talent, capital, policy and demand for fintech products across the world.[1027] Furthermore, the UK has probably one of the most supportive fintech regulatory regime underpinned by the FCA's Innovative Hub and the Innovate UK project.[1028] Packin argues that the FCA provides an opportunity for fintech service providers to test their innovative products and services in what are commonly called regulatory sandboxes before such products could be released to the market.[1029] The researcher submits that regulatory sandboxes provide regulators with a chance to study fintech products in order to design suitable regulatory frameworks before such products are released to the market. According to Packin, the FCA was also instrumental in the implementation of Project Innovate

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1023 Zetzsche DA, Buckley RP, Barberis JN and Arner DW "Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation" 2017 *Fordham Journal of Corporate & Financial Law* 31, 57; see related comments by Walker 2017 *The International Lawyer* 149; Packin 2018 *Chicago-Kent Law Review* 205.

1024 The Digital Economy Strategy 2015-2018 was a four-year R120m project to support UK businesses to innovate and be ready for the digital economy.

1025 Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 57; see related comments by Walker 2017 *The International Lawyer* 149; Packin 2018 *Chicago-Kent Law Review* 205; Omarova 2020 *Washington Journal of Law & Policy* 37-38.

1026 Walker 2017 *The International Lawyer* 142; see related comments by Packin 2018 *Chicago-Kent Law Review* 205; Kim 2008 *Richmond Journal of Global Law & Business* 96-97; Omarova 2020 *Washington Journal of Law & Policy* 37-38; Zetzsche et al 2017 *Fordham Journal of Corporate & Financial Law* 57.

1027 Walker 2017 *The International Lawyer* 1152; see related comments by Packin 2018 *Chicago-Kent Law Review* 205; Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 57; Omarova 2020 *Washington Journal of Law & Policy* 37-38.

1028 Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 57; see related comments by Walker 2017 *The International Lawyer* 152; Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 9-10; Packin 2018 *Chicago-Kent Law Review* 205.

1029 Packin 2018 *Chicago-Kent Law Review* 205; see related comments by Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 64; Omarova 2020 *Washington Journal of Law & Policy* 37-38.

which sought to incorporate fintech in the UK's financial sector.[1030] Despite all this, there are many poor financial consumers who are excluded from the formal financial sector in the UK due to, *inter alia*, inability to afford these services.[1031]

7.8 Concluding Remarks

The UK remains a leading jurisdiction in the adoption of fintech products and robust regulation of financial markets.[1032] There are several fintech initiatives that continue to emerge within the UK's payment systems through the Innovate UK project.[1033] However, mobile money has not been a huge aspect of the UK financial system owing possibly to MNOs' reluctance to establish a payment system to rival the existing one.[1034] Nonetheless, this does not mean that mobile money initiatives have not been undertaken in the UK. Some of the schemes were discontinued due to low levels of use. As discussed above, some migrant communities use mobile money to remit funds from the UK to their countries of origin. A good example is the Zimbabwean and Kenyan communities in the UK.[1035] Generally, the UK population is largely banked and the uptake of fintech products such as mobile money remains low. Nonetheless, there is a considerable number of poor persons who struggle to access useful and convenient financial services in the UK. The COVID-19 pandemic seems to have exacerbated the plight of the poor who find themselves worse off due to the ongoing restrictions and disruptions of normal life.[1036] In terms of regulation, UK applies a strict AML/CTF regime which can possibly hinder financial inclusion for the poor.[1037] Nonetheless, the payment systems in the UK set a good example on the promotion of the use of fintech products to expand the financial services

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1030 Packin 2018 *Chicago-Kent Law Review* 205; see related comments by Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 57; Omarova 2020 *Washington Journal of Law & Policy* 37-38.

1031 Walker 2017 *The International Lawyer* 151; see related comments by Lewis and Lindley *Financial Inclusion, Financial Education and Financial Regulation in the United Kingdom* 3.

1032 See paragraph 7.1 of this chapter.

1033 See paragraph 7.7 of this chapter.

1034 See paragraph 7.7 of this chapter.

1035 See paragraph 7.7 of this chapter.

1036 See paragraph 7.2 of this chapter.

1037 See paragraph 7.4 of this chapter.

market.[1038] Consumer protection is another positive aspect on the UK's financial regulatory framework where the rights of the poor are adequately provided for.[1039] In conclusion, the UK has robust and effective regulatory mechanisms that can be adopted by developing nations to promote financial inclusion for the poor.

[1038] See paragraph 7.5.1 of this chapter.
[1039] See Paragraphs 7.6 and 7.6.1 of this chapter.

CHAPTER EIGHT

REGIONAL AND INTERNATIONAL BEST PRACTICES, THEORIES AND POLICY DEBATES ON THE REGULATION AND USE OF MOBILE MONEY TO PROMOTE FINANCIAL INCLUSION FOR THE POOR

8.1 Introduction

This chapter discusses regional and international best practices, theories and current policy debates on the regulation and use of mobile money to promote financial inclusion for the poor. The best practices set the standards that Zimbabwe's mobile money regulatory framework should follow. Theories explain the adoption and regulatory responses to the advent of mobile money while policy debates can influence the developing of future policies in Zimbabwe.

8.2 Regional Best Practices on the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor

The Southern Africa Development Community (SADC) region does not have best practices for the regulation and use of mobile money to promote financial inclusion for the poor. Despite extensive use of mobile money in the region, there are considerable disparities in the regulation of mobile money in SADC owing to poor policy coordination among member states.[1040] As a result, there is no binding definition of mobile money and a clear position on whether mobile money is a deposit taking service or a payment system among SADC countries.[1041] However,

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[1040] Finmark Trust (FMT) *SADC Mobile Money Guidelines* (Finmark Trust Johannesburg 2019) 3; see related comments by Tuba MD "The Regulation of Electronic Money Institutions in the SADC Region: Some Lessons from the EU" 2014 *Potchefstroom Electronic Law Journal* 2268, 2279; Fanta AB, Mutsonziwa K, Goosen R, Emanuel M and Kettles N *The Role of Mobile Money in Financial Inclusion in the SADC Region: Evidence Using FinScope Surveys* (Finmark Trust Johannesburg 2016) 2; Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 38.

[1041] Finmark Trust 2019 *SADC Mobile Money Guidelines* 3; see related comments by Tuba 2014 *Potchefstroom Electronic Law Journal* 2279; Fanta *et al* 2016 *The Role of Mobile Money in Financial Inclusion in the SADC Region: Evidence Using FinScope Surveys* 2-3; Myerson D "The Next Global Disruptive Innovation: Can Mobile Money make the Journey Upmarkets to Disrupt the Financial Services Industry?" 2019 *Northwestern Journal of International Law & Business* 309, 321.

what is available is the SADC Mobile Money Guidelines (SADC guidelines),[1042] a set of recommendations on the envisaged mobile money legal and regulatory framework for all the 15 member countries.[1043] In this regard, the guidelines are a preliminary step towards the development of mobile money best practices for the SADC region.[1044] The researcher argues that the outbreak of the coronavirus disease (COVID-19 pandemic) has highlighted the importance of mobile money especially to the poor and this could push SADC policymakers to expedite the development of mobile money regional best practices.[1045] The researcher discusses some of the SADC guidelines' principles in the following sections.

8.2.1 The SADC Guidelines on the Role of Central Bank and the Regulation and Use of Mobile Money to Promote Financial Inclusion

The SADC guidelines provide that central banks within the region should be the primary regulatory authorities that license the use of mobile money to promote financial inclusion.[1046] In this regard, the central banks of SADC member countries can issue licenses, letters of no objection, amend and/or vary and/or reinstate a service license and in appropriate circumstances, terminate a mobile money service provider's license.[1047] The licencing requirements include company registration, product and business plan, risk management, information and communications

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1042 The Southern African Development Community (SADC) Mobile Money Guidelines were drafted in 2016 after the regional body's Committee of Central Bank Governors (CCBG) assessed national payment systems of each of the 15 SADC countries.

1043 See related comments by Tuba 2014 *Potchefstroom Electronic Law Journal* 2280-2281; Finmark Trust 2019 *SADC Mobile Money Guidelines* 3; Fanta *et al* 2016 *The Role of Mobile Money in Financial Inclusion in the SADC Region: Evidence Using FinScope Surveys* 2-3.

1044 See related comments by Tuba 2014 *Potchefstroom Electronic Law Journal* 2280-2281; Finmark Trust 2019 *SADC Mobile Money Guidelines* 3; Fanta *et al* 2016 *The Role of Mobile Money in Financial Inclusion in the SADC Region: Evidence Using FinScope Surveys* 3.

1045 See paragraph 1.4 of Chapter One of this thesis.

1046 Guidelines 6-8 of the *SADC Mobile Money Guidelines*; see related comments by Makulilo AB "Privacy in Mobile Money: Central Banks in Africa and their Regulatory Limits" 2015 *International Journal of Law and Information Technology* 372, 379; Mehrotra A and Yetman J "Financial Inclusion – Issues for Central Banks" 2015 *BIS Quarterly Review* 83, 88.

1047 Guideline 6 of the *SADC Mobile Money Guidelines*; see related comments by Kemp K and Buckley RP "Resolution Powers over E-Money Providers" 2017 *University of New South Wales Law Journal* 1539, 1551-1552; Pazarbasioglu *et al* 2020 *Digital Financial Services* 12; Goncalves DER "Financial Inclusion in Peru: Lessons from Kenya's Regulatory Approach to E-Money" 2013 *University of Miami International and Comparative Law Review* 31, 35; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386; Makulilo 2015 *International Journal of Law and Information Technology* 379.

technologies (ICTs) capabilities, the mobile network operator's (MNO) network capabilities and agent distribution network.[1048] The researcher argues that this principle requires central banks in SADC member states to assume a leading role in regulating mobile money. For the purposes of this research, Zimbabwe and South Africa are SADC member states and the role of their respective central banks will be evaluated against this guideline. Accordingly, the Reserve Bank of Zimbabwe (RBZ) does not have express and/or exclusive powers to licence MNOs in Zimbabwe.[1049] The RBZ has not issues letters of no objection to support the roll-out of mobile money in Zimbabwe and it has not been seen to be supportive of mobile money's potential to drive financial inclusion for the poor in Zimbabwe.[1050] Similarly, there is no law in South Africa that gives the South African Reserve Bank (SARB) exclusive authority to licence and regulate mobile money. The SARB regulates mobile money using provisions in the *South African Reserve Bank* (*SARB*) *Act*[1051] and the *National Payment Systems Act* (*NPSA*)[1052] which are remotely related to mobile money.[1053] Therefore, the researcher argues that SADC guidelines 6-8 have not been fully implemented to support the regulation and use of mobile money in order to promote financial inclusion for the poor in Zimbabwe and South Africa.

8.2.2 The SADC Guideline on Protection of Consumer Funds and the Regulation and Use of Mobile Money to Promote Financial Inclusion

Guideline 9 recommends that MNOs should safeguard mobile money consumer funds by separating such funds from the money generally available for MNOs other

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1048 Guidelines 7 and 8 of the *SADC Mobile Money Guidelines*; see related comments by Kemp and Buckley 2017 *University of New South Wales Law Journal* 1552; Gibson E, Lupo-Pasini F and Buckley RP "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" 2015 *Singapore Journal of Legal Studies* 26, 33-34.

1049 See paragraph 4.2.5 of Chapter Four of this thesis.

1050 See related comments on paragraph 4.2.5.of Chapter Four of this thesis.

1051 *South African Reserve Bank Act* 90 of 1989 as amended (*SARB Act*), sections 3-38.

1052 *National Payment Systems Act* 78 of 1998 as amended (*NPSA*), section 2.

1053 See related comments in paragraphs 6.5.1 and 6.5.2 of Chapter Six of this thesis.

operations in order to combat possible misuse.[1054] This guideline also seeks to protect mobile money consumer funds against third party claims in the event of the MNO providing the mobile money service becoming insolvent.[1055] In this regard, the SADC guidelines encourage that mobile money consumer funds be kept in trust accounts at prudential regulated banks such as a commercial bank.[1056] In addition, the money kept in the trust account should at all times balance with the mobile money value in circulation.[1057] The researcher argues that Guideline 9 recommends that there should be adequate oversight to ensure that MNOs do not issue mobile money that is not backed by a corresponding balance in the bank. In Zimbabwe, the law requires MNOs to open trust accounts at commercial banks where they deposit mobile money funds in line with Guideline 9.[1058] However, there is no express provision compelling MNOs in South Africa to open trust accounts to deposit mobile money funds. The safekeeping of consumer funds gives confidence to the poor to trust mobile money and encourages its use in order to promote financial inclusion in the SADC region.

1054 Guideline 9 of the *SADC Mobile Money Guidelines*; see related comments by Kemp and Buckley 2017 *University of New South Wales Law Journal* 1546; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 484; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11.

1055 Guideline 9 of the *SADC Mobile Money Guidelines*; see related comments by Kemp and Buckley 2017 *University of New South Wales Law Journal* 1546; Greenacre 2018 *Regulating Mobile Money: A Functional Approach* 8; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 485; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Greenacre and Buckley 2014 *Singapore Journal of Legal Studies* 64-65.

1056 Guideline 9 of the *SADC Mobile Money Guidelines*; Kemp and Buckley 2017 *University of New South Wales Law Journal* 1546; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

1057 Guideline 9 of the *SADC Mobile Money Guidelines*; see related comments by Kemp and Buckley 2017 *University of New South Wales Law Journal* 1546; Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

1058 *Banking* (*Money Transmission, Mobile Banking and Mobile Money Interoperability*) *Regulations*, 2020 (*Banking Regulations 2020*), see section 4(3)(4); see related comments on paragraph 3.3.6 of Chapter Three of this thesis.

8.2.3 The SADC Guidelines on AML/CTF Standards and the Regulation and Use of Mobile Money to Promote Financial Inclusion

Guideline 10 recommends that mobile money service providers should comply with anti-money laundering and counter-terrorist financing (AML/CTF) measures in order to combat financial crimes in the SADC region.[1059] The researcher submits that MNOs that provide mobile money services should comply with AML/CTF measures in order to mitigate money laundering, terrorist financing, fraud and other financial crimes in the SADC region. However, the AML/CTF measures should be applied in proportion to the identified risks.[1060] In this regard, applying the same AML/CTF measures used on banks to mobile money may be costly to mobile money service providers and might also curtail the poor from using formal financial services in the SADC region.[1061] Some poor people do not have documents required for AML/CTF measures and they may resort to use informal and unregulated financial channels. To mitigate this, regulators should assess the risks each mobile money consumer poses and apply appropriate AML/CTF measures. It appears that in Zimbabwe, there has been considerable implementation of this SADC Guideline owing to the number of poor persons who have managed to open mobile money accounts.[1062] Equally, in South Africa, the registration process for mobile money services is less cumbersome compared to the opening of a bank account.[1063] As a result, a considerable number of persons have managed to register for mobile money services in Zimbabwe and South Africa. However, there is no express statute that specifically provides for the

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[1059] Guideline 10 of the *SADC Mobile Money Guidelines*; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 66; Langhan S and Smith K *The Legal and Regulatory Framework for Payments in 14 SADC Member States Master Report* (Finmark Trust Johannesburg 2014) 46; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

[1060] See related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 396-397; see related comments by Alexandre C and Eisenhart LC "Mobile Money as an Engine of Financial Inclusion and Lynchpin of Financial Integrity" 2013 *Washington Journal of Law, Technology & Arts* 285, 300; Bångens L and Söderberg B *Mobile Banking–Financial Services for the Unbanked?* (The Swedish Program for ICT in Developing Regions, SPIDER, 2008) 35.

[1061] See related comments by Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 299; see related comments by Kernan 2018 *Vanderbilt Journal of Transnational Law* 1112; Bångens and Söderberg 2008 *Mobile Banking–Financial Services for the Unbanked?* 30-31.

[1062] See paragraph 3.3.5 of Chapter Three of this thesis.

[1063] See related comments on paragraph 6.2.3 of Chapter Six of this thesis.

enforcement of AML/CTF in the mobile money sector in both Zimbabwe and South Africa.

8.2.4 SADC Guidelines on Mobile Money Agents and the Regulation and Use of Mobile Money to Promote Financial Inclusion

The SADC guidelines provide that MNOs can enter into contractual agreements with agents that assist in providing mobile money services to consumers in the SADC region.[1064] In this regard, MNOs become liable for the actions of their agents in complying with legal and regulatory requirements in each SADC jurisdiction.[1065] Central banks should set the procedures that MNOs should follow in contracting agents.[1066] Some of the procedures to consider include the geographical spread of agents, the type of agents appointed, provisions on liquidity management, proposed technology to be used by agents, agent training, and AML/CTF measures agents need to comply with in the SADC region.[1067] Agents assist in promoting financial inclusion for the poor by bringing financial services close to the people thereby reducing travelling expenses for the poor in the SADC region. However, mobile money agents were banned in Zimbabwe in 2020 on grounds that they engaged in illicit activities such money laundering and illegal trade in foreign currency.[1068] Unlike in Zimbabwe, mobile money agents are still active in South Africa. Overall, the

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[1064] Guideline 13 of the *SADC Mobile Money Guidelines*; see related comments by Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 33; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 96; Maurer B, Nelms TC and Rea SC "'Bridges to Cash' Channeling Agency in Mobile Money" 2013 *The Journal of the Royal Anthropological Institute* 52, 62-63.

[1065] Guideline 13 of the *SADC Mobile Money Guidelines*; see related comments by see related comments by Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 33; Chatain *et al* 2011 *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 96; Maurer, Nelms and Rea 2013 *The Journal of the Royal Anthropological Institute* 62-63.

[1066] Guideline 13 of the *SADC Mobile Money Guidelines*; see related comments by Lal R and Sachdev I "Mobile Money Services – Design and Development for Financial Inclusion" 2015 *Harvard Business School Working Paper* 1, 9; Gibson, Lupo-Pasini and Buckley 2017 *University of New South Wales Law Research Series* 2; Donovan 2012 *Information and Communications for Development* 68.

[1067] Guideline 13 of the *SADC Mobile Money Guidelines*; see related comments by Lal and Sachdev 2015 *Harvard Business School Working Paper* 9-10; Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 77; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 96.

[1068] See paragraph 4.2.3 of Chapter Four of this thesis.

researcher argues that mobile money agents should be duly remunerated in order to mitigate chances of them engaging in criminal activities to augment their earnings.

8.2.5 SADC Guidelines on Financial Consumer Protection and Financial Education and the Regulation of Mobile Money to Promote Financial Inclusion

Consumer protection is one of the I-SIP objectives and it seeks to promote the right of mobile money consumers in the SADC region to make informed decisions on financial services.[1069] Statistics from SADC member states show that mobile money is widely used by the poor to access financial services.[1070] Nonetheless, it is necessary to develop consistently enforced consumer protection and consumer education programmes in the language(s), which the poor in the SADC region can easily understand.[1071] Above all, MNOs should provide educational material to their mobile money customers outlining the services offered and other relevant information that assists the poor to manage their mobile money accounts in the SADC region.[1072] However, there is no express statute developed to promote consumer protection and financial education for the poor in the mobile money sector in both Zimbabwe[1073]

[1069] Guideline 16 of the *SADC Mobile Money Guidelines*; see related comments by Tomilova and Valenzuela 2018 *Financial Inclusion + Stability, Integrity, and Protection* (*I-SIP*) 3; Fanta *et al* 2016 *The Role of Mobile Money in Financial Inclusion in the SADC Region: Evidence Using FinScope Surveys* 13; Di Castri and Plaitakis 2018 *Centre for Financial Inclusion Working Paper* 6; Lumpkin S "Consumer Protection and Financial Innovation: A Few Basic Propositions" 2010 *OECD Journal of Financial Market Trends* 1, 2; Alber 2019 *Social Sciences Research Network Electronic Journal* 10.

[1070] Guideline 16 of the *SADC Mobile Money Guidelines*; see related comments by Pazarbasioglu *et al* 2020 *Digital Financial Services* (World Bank Group Washington DC 2020) 1; GSMA 2019 *The Impact of Mobile Money on Monetary and Financial Stability in Sub-Saharan Africa* 3; Fanta *et al* 2016 *The Role of Mobile Money in Financial Inclusion in the SADC Region: Evidence Using FinScope Surveys* 3; Demirgüç-Kunt *et al The Global Findex Database 2017: Measuring Financial Inclusion and the Fintech Revolution* 25.

[1071] Guideline 16 of the *SADC Mobile Money Guidelines*; see related comments by Finmark Trust 2019 SADC Mobile Money Guidelines 29; Chitimira H and Magau PT "A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa" 2021 *Potchefstroom Electronic Law Journal* 1, 9; Fanta *et al* 2016 *The Role of Mobile Money in Financial Inclusion in the SADC Region: Evidence Using FinScope Surveys* 13; Machasio IN *Covid- 19 and Digital Financial Inclusion in Africa: How to Leverage Digital Technologies During the Pandemic* (Africa Knowledge in Time Policy Brief World Bank 2020) 5.

[1072] Guideline 16 of the *SADC Mobile Money Guidelines*; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 9; Machasio *Covid-19 and Digital Financial Inclusion in Africa: How to Leverage Digital Technologies During the Pandemic* 5; Fanta *et al* 2016 *The Role of Mobile Money in Financial Inclusion in the SADC Region: Evidence Using FinScope Surveys* 13.

[1073] See paragraph 3.5.1 of Chapter Three of this thesis.

and South Africa.[1074] To this end, the researcher argues for policymakers in the mentioned countries to consider amending the relevant consumer protection laws to enhance consumer education and financial literacy for the poor in Zimbabwe and South Africa.

8.3 International Best Practices on the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor

8.3.1 An Overview on the Mobile Money Business Models

The list of mobile money business models discussed below is not exhaustive but is comprehensive enough to give a picture of the models adopted in Zimbabwe, Kenya, South Africa and the United Kingdom (UK).

8.3.1.1 The MNO-led business model

The MNO-led business model consists of a telecommunications company providing mobile money services independent of banks and other financial institutions.[1075] Put differently, an MNO owns and operates a mobile money platform. The mobile money customer uses a subscriber identity module (SIM) card to open a mobile wallet separate from the one the individual uses for the normal mobile network account.[1076] One of the flaws of the MNO-led model is that there is little room to exploit increasing technological innovations to provide services apart from funds transfers and airtime top-ups.[1077] It has become standard practice that an MNO enters into partnership with a bank to enhance the safety of funds within the mobile money

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[1074] See paragraph 6.5.6 of Chapter Six of this thesis.

[1075] See related comments by the Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* (FATF Paris 2013) 8; Kersop M and Du Toit SF "Anti-money Laundering Regulations and the Effective Use of Mobile Money in South Africa – Part 1" 2015 *Potchefstroom Electronic Law Journal* 1603, 1615; Osafo-Kwaako P, Singer M, White O and Zouaoui Y "Mobile Money in Emerging Markets: The Business Case for Financial Inclusion" *McKinsey Global Institute* (2018) 13.

[1076] FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8; see related comments by Osafo-Kwaako *et al McKinsey Global Institute* (2018) 13; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1615.

[1077] See related comments by FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8-9; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1615; Osafo-Kwaako *et al McKinsey Global Institute* (2018) 13.

value chain globally.[1078] The researcher argues that an MNO may not adequately provide mobile money alone but requires partnerships with other stakeholders such as banks and mobile money agents. This model is not used in Zimbabwe, Kenya, South Africa and the UK.

8.3.1.2 The bank-led business model

The bank-led business model is also known as the bank-centric model. As the name suggests, the bank spearheads the provision of mobile money services while MNOs merely play a supporting role.[1079] Under this model, mobile money consumers become account holders of the bank that provides the service.[1080] However, the bank providing mobile money services may have to design a new product that is not linked to a bank account to cater for the needs of the poor who cannot afford banking costs.[1081] Thus, a bank can provide mobile money services that are not an extension of its services to bank account holders. The role of the MNO under this model is to provide mobile technology that facilitates transactional messages.[1082] The researcher submits that this model has existed in South Africa and the UK where the banking sector is well developed but its contribution to financial inclusion for the poor has not been very successful.[1083]

[1078] Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 67; see related comments by FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8-9; Osafo-Kwaako *et al McKinsey Global Institute* (2018) 13; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1615.

[1079] FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 7; see related comments by International Finance Corporation (IFC) *IFC Mobile Money Study 2011: Summary Report* (International Finance Corporation Washington DC 2011) 73; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1615.

[1080] FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8; see related comments by IFC *IFC Mobile Money Study 2011: Summary Report* 73; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1615-1616.

[1081] FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8; see related comments by IFC *IFC Mobile Money Study 2011: Summary Report* 73; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1616.

[1082] FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8; see related comments by IFC *IFC Mobile Money Study 2011: Summary Report* 73; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1616.

[1083] See related comments on paragraph 6.2 of Chapter Six of this thesis and paragraph 7.1 of Chapter Seven of this thesis.

8.3.1.3 The collaboration or hybrid business model

This business model brings together an MNO, a financial institution and mobile money agents to deliver mobile money to the people.[1084] Sometimes it is confusing as to which entity or role-player is the actual provider of mobile money under the hybrid model. However, MNOs are usually at the forefront of this model. MNOs provide mobile money services, manage customer relationships, hold customers' funds and they are the entities against which customers have a claim to their funds.[1085] In this regard, the hybrid model is sometimes called the MNO-centric model. Mobile money agents work on behalf of MNOs to assist in making services available to the poor in their communities.[1086] Mobile money agents recruit and register clients, take deposits and assist persons to do cash-in or cash-out transactions.[1087] The bank functions as a deposit holder responsible for the safekeeping of mobile money consumers' funds.[1088] In this regard, the bank acts as the custodian of mobile money consumer funds in line with prudential requirements.[1089] The hybrid model is found in Zimbabwe and Kenya and it has been

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1084 IFC *IFC Mobile Money Study 2011: Summary Report* (International Finance Corporation Washington DC 2011) 74-75; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 67; FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8.

1085 Jenkins B *Developing Mobile Money Ecosystems* (IFC and the Harvard Kennedy School Washington DC 2008) 10; see related comments by IFC *IFC Mobile Money Study 2011: Summary Report* (International Finance Corporation Washington DC 2011) 74; the FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8; Beth J *Developing Mobile Money Ecosystems* (IFC and the Harvard Kennedy School Washington DC 2008) 10; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1619.

1086 IFC *IFC Mobile Money Study 2011: Summary Report* (International Finance Corporation Washington DC 2011) 74; see related comments by the FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8; Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1616.

1087 IFC *IFC Mobile Money Study 2011: Summary Report* (International Finance Corporation Washington DC 2011) 75; see related comments by the FATF 2013 *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services* 8.

1088 Shirono K, Das B, Fan Y, Chhabra E and Carcel-Villanova H "Is Mobile Money Part of Money? Understanding the Trends and Measurement" *International Monetary Fund Working Paper* (1 July 2021) 15; see related comments by Lal R and Sachdev I "Mobile Money Services – Design and Development for Financial Inclusion" *Harvard Business School Working Paper* (July 2015) 5; Chatain *et al* 2011 *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 67.

1089 Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 5; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 67; Jenkins *Developing Mobile Money Ecosystems* 11.

successful in contributing to the financial inclusion of the poor in the mentioned countries.[1090]

8.3.2 Regulatory Approaches and the Use of Mobile Money to Promote Financial Inclusion

There are three broad approaches that regulators in many developing countries, including Zimbabwe, adopted in response to the introduction of mobile money. These approaches are the "wait-and-see", the "test-and-learn" and the innovation facilitators models. Some countries could have used one or a combination of the approaches. The three regulatory approaches and their implications on financial inclusion for the poor are discussed below.

8.3.2.1 The "wait and see" approach

The "wait and see" approach refers to a regulatory method whereby the regulator is basically an observer.[1091] This approach allows innovation such as mobile money services to roll out while regulators monitor the developments from a distance, intervening when and where necessary.[1092] Although a "do nothing" response appears to be part of this approach, regulation is gradually introduced as regulators acquire more knowledge about the innovation.[1093] The "wait and see" approach is usually adopted where there is legal ambiguity on whether an innovation falls under the responsibility of a particular regulator.[1094] In some instances, the "wait-and-see"

1090 See paragraph 5.1 of Chapter Five of this thesis.

1091 World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* (World Bank Group Washington DC 2020) 10; see related comments by Pazarbasioglu C, Mora AG, Uttamchandani M, Natarajan H, Feyen E and Saal M *Digital Financial Services* (World Bank Washington DC 2020) 12; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 34.

1092 Pazarbasioglu *et al Digital Financial Services* 12; see related comments by the World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 10; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 34.

1093 World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 10; see related comments by Pazarbasioglu *et al Digital Financial Services* 12; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 34.

1094 World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 10; see related comments by Pazarbasioglu *et al Digital Financial Services* 12; Greenacre J "Regulating Mobile Money: A Functional Approach" *Pathways for Prosperity Commission Background Paper Series* (September 2018) 4.

approach has provided regulatory forbearance to allow new innovations space and time to develop unhindered by possible disproportionate regulatory requirements.[1095] As a result, in jurisdictions where it has been used, the 'wait and see' approach facilitated the rapid growth in innovation and financial inclusion.

8.3.2.2 The "test and learn" approach

The "test and learn" approach refers to a cautiously permissive regulatory method where regulators apply relevant rules on a flexible case-by-case basis.[1096] This approach involves the setting up of a customised regulatory framework that allows an innovation to operate usually with a "no objection" letter from the regulator.[1097] The "test-and-learn" approach does not disregard existing regulatory frameworks but it provides a partial exemption for new market entrants to experiment before imposing stringent rules.[1098] The "test-and-learn" approach is credited for successfully promoting the financial inclusion for the poor in jurisdictions such as Zimbabwe and Kenya.[1099] This approach has allowed mobile money a chance to roll-out unencumbered with regulatory demands in Zimbabwe and Kenya.[1100] Greenacre opines that flexible regulation incentivises MNOs to exercise reasonable care which

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1095 World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 10; see related comments by Pazarbasioglu *et al Digital Financial Services* 12; Greenacre *Pathways for Prosperity Commission Background Paper Series* (September 2018) 4.

1096 Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 14; see related comments by World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 11; Pazarbasioglu *et al Digital Financial Services* 12.

1097 Pazarbasioglu *et al Digital Financial Services* 12; World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 11; Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 14.

1098 World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 11; see related comments by Pazarbasioglu *et al Digital Financial Services* 12; Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 14.

1099 Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 17; Pazarbasioglu *et al Digital Financial Services* 12; see related comments by Goncalves DER "Financial Inclusion in Peru: Lessons from Kenya's Regulatory Approach to E-Money" 2013 *University of Miami International and Comparative Law Review* 31; 33; Greenacre *Regulating Mobile Money: A Funtional Approah* 4.

1100 Lal and Sachdev *Harvard Business School Working Paper* (July 2015)17; see related comments by Greenacre *Regulating Mobile Money: A Funtional Approah* 9; Goncalves 2013 *University of Miami International and Comparative Law Review* 33; Tuba MM "The Regulation of Electronic Money Institutions in the SADC Region: Some Lessons from the EU" 2014 *Potchefstroom Electronic Law Journal* 2268; 2275.

mitigates risks that could jeopardise their profits.[1101] In this regard, mobile money services become affordable, allowing the poor to access financial services.[1102] The "test-and-learn" approach also grants central banks the opportunity to study technology-driven financial products before premature regulation.[1103] Premature regulation could restrict new market entrants, limit competition and lower the quality of financial products available to consumers.[1104] However, the adoption of the "test-and-learn" approach could jeopardise the integrity of financial markets. For instance, the "test-and-learn" approach seems to unduly shield new fintech entrants against potential competition from other financial markets players like banks.[1105]

8.3.2.3 The innovation facilitators' approach

Other policy-makers adopt the innovation facilitators approach in response to increasing fintech developments.[1106] The innovation facilitators approach is similar to the "test-and-learn" approach except that the former is regulator driven.[1107] In other words, in the innovation facilitators approach, the regulator sets the standards to be followed rather than react and adapt to evolving technology. Therefore, MNOs may need to consult with regulators beforehand to try and influence the development of

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1101 Greenacre *Regulating Mobile Money: A functional Approach* 9; see related comments by Lumsden E "The Future is Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business and Finance* 1, 28.

1102 Goncalves 2013 *University of Miami International and Comparative Law Review* 33; see related comments by Greenacre *Regulating Mobile Money: A functional Approach* 9; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 28.

1103 Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 14; see related comments by Tuba 2014 *Potchefstroom Electronic Law Journal* 2275; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 28; Goncalves 2013 *University of Miami International and Comparative Law Review* 33.

1104 Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 14; see related comments by Di Castri S and Plaitakis A "Getting Financial Inclusion Policies Right in the Digital Era: Focus on Competition and Innovation as Policy Objectives" 2018 *Social Sciences Research Network Electronic Journal* 1, 11; Tuba 2014 *Potchefstroom Electronic Law Journal* 2276.

1105 Pazarbasioglu *et al Digital Financial Services* 12; see related comments by World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 11.

1106 World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 14; see related comments by Pazarbasioglu *et al Digital Financial Services* 12; Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 15-16.

1107 World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 14; see related comments by Pazarbasioglu *et al Digital Financial Services* 12.

regulations that are conducive for their mobile money products.[1108] The major disadvantage of the innovation facilitator approach is that it is capital and/or resource-intensive and it tends to make access to financial services costly and cumbersome.[1109] Moreover, this approach is still developing and its impact on promoting the financial inclusion for the poor has not been fully explored.

8.3.3 Selected International Best Practices on the Regulation and Use of Mobile Money to Promote Financial Inclusion

8.3.3.1 Coordination of all relevant regulators

The mobile money sector in Zimbabwe and other countries has overlapping domains such as finance, telecommunications, payments and competition.[1110] The domains are distinct in nature, competence and have separate regulatory mechanisms.[1111] However, all the relevant domains need to cooperate and coordinate in order for the mobile money sector to have a consistent and coordinated policy approach.[1112] The cooperation and coordination of different domains also ensures the smooth

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[1108] Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 16; see related comments by Pazarbasioglu *et al Digital Financial Services* 12; World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 14-15.

[1109] World Bank *How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond* 14-15; see related comments by Pazarbasioglu *et al Digital Financial Services* 12; Lal and Sachdev *Harvard Business School Working Paper* (July 2015) 16.

[1110] Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1618; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 460; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Alexandre C and Eisenhart L "Mobile Money as an Engine of Financial Inclusion and Lynchpin of Financial Integrity" 2013 *Washington Journal of Law, Technology & Arts* 285, 287.

[1111] Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 460; see related comments by Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1618; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 287; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4.

[1112] See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 460; Ahmad HA, Green C and Jiang F "Mobile Money, Financial Inclusion and Development: A Review with Reference to African Experience" 2020 *Journal of Economic Surveys* 753, 757-758; Tagoe NA "Who Regulates the Mobile Money Operations of Telco's? The Need for an Effective and Robust Legislative and Regulatory Framework in Ghana" 2016 *Journal of Business & Financial Affairs* 1, 1-2.

implementation of mobile money legislative and regulatory mechanisms.[1113] Thus, it is submitted that a country like Zimbabwe should have a well-established strategy that promotes cooperation among the different regulatory domains. The RBZ can coordinate other agencies such as the telecommunications regulator, the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) and consumer protection regulators.

8.3.3.2 Applying the risk-based approach to the regulation of mobile money

The risk-based approach refers to a regulatory mechanism where regulators apply and/or enforce AML/CTF measures in proportion to the identified risks.[1114] Put differently, regulators should assess and comprehend money laundering and terrorist financing risks before taking action to effectively mitigate the identified risks.[1115] The risk-based approach departs from the 'one-size-fits-all' AML/CTF approach but advocates for enhanced CDD measures where higher risks are identified and simplified CDD where risks are lower.[1116] The risk-based approach seeks to have more people, including the poor, using formal financial services to enhance financial inclusion and better enforcement of AML/CTF policies.[1117] Thus, the risk-based approach could dispense with unnecessary compliance requirements that could hinder financial inclusion for the poor and discourage the use of unregulated

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[1113] Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 460; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 758; Tagoe 2016 *Journal of Business & Financial Affairs* 2.

[1114] Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: The Banking Sector* (FATF Paris 2014) 6; see related comments by De Koker 2009 *Journal of Financial Crime* 336-337; De Koker 2014 *Journal of Money Laundering Control* 282; FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18.

[1115] De Koker 2014 *Journal of Money Laundering Control* 282; see related comments by FATF 2019 *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 9; FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18; De Koker 2009 *Journal of Money Laundering Crime* 337.

[1116] FATF 2014 *Guidance for a Risk-Based Approach: The Banking Sector* 6; see related comments by De Koker 2014 *Journal of Money Laundering Control* 282; FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18; De Koker 2009 *Journal of Financial Crime* 337.

[1117] FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; De Koker 2014 *Journal of Money Laundering Control* 282-283; Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: The Banking Sector* (FATF Paris 2014) 6.

informal financial services in Zimbabwe.[1118] In this regard, the FATF recommends that countries like Zimbabwe should adopt the risk-based approach in the regulation of fintech products like mobile money.[1119] Furthermore, there could be circumstances that warrant simplified CDD measures or a complete exemption for low risk financial consumers.[1120] Low risk financial consumers could be individuals who transact in capped small value amounts.[1121] The researcher submits that the COVID-19 pandemic is a case in point where the poor could be exempted from CDD requirements for opening mobile money accounts in order to receive social assistance pay-outs. Importantly, the implementation of AML/CTF measures should not be overly burdensome for market players like MNOs and consumers, especially the poor.[1122] Once the AML/CTF measures place undue compliance requirements on MNOs and consumers, then that may adversely affect the use of formal financial services and compound financial exclusion for the poor.[1123] In this regard, the documents required for mobile money CDD purposes should not be unnecessarily extensive lest consumers opt to use the easily accessible but unregulated informal

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1118 FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18; De Koker 2014 *Journal of Money Laundering Control* 283; Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: The Banking Sector* (FATF Paris 2014) 6-7; De Koker 2009 *Journal of Financial Crime* 336-337.

1119 De Koker 2014 *Journal of Money Laundering Control* 282; FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18; Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: The Banking Sector* (FATF Paris 2014) 6-7; De Koker 2009 *Journal of Financial Crime* 336-337.

1120 De Koker 2014 *Journal of Money Laundering Control* 283; see related comments by FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 19; De Koker 2011 *Journal of Financial Crime* 376; De Koker 2009 *Journal of Financial Crime* 341-342.

1121 De Koker 2009 *Journal of Money Laundering Control* 343-344: see related comments by De Koker 2014 *Journal of Money Laundering Control* 283; FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 19; De Koker 2011 *Journal of Money Laundering Crime* 376.

1122 Financial Action Task Force (FATF) *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* (FATF Paris 2011) 14-15; see related comments by De Koker 2011 *Journal of Financial Crime* 376; De Koker 2009 *Journal of Money Laundering Crime* 346.

1123 De Koker 2009 *Journal of Money Laundering Control* 346; see related comments by FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 14-15; Chitimira and Munedzi 2020 *Journal of Comparative Law in Africa* 56; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 16.

financial services.[1124] Thus, failure to adopt the proportionate approach could result in over-regulation which may push the poor to resort to seemingly convenient informal money transfer services.[1125] Some informal financial services do not charge interest but they are usually outside the ambit of formal regulatory parameters and this presents a weak link for AML/CTF purposes in countries such as Zimbabwe.[1126] Examples include when the poor and unbanked persons use bus drivers, relatives and friends to send money to their families. Therefore, regulators should strike an appropriate balance to apply AML/CTF measures in order for the poor to use formal financial services.[1127]

8.4 Theories on the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor

8.4.1 The Gatekeeper Theory

The advent of mobile money allowed MNOs to provide financial services in Zimbabwe.[1128] The increasing intersection of finance and technology requires filters or gatekeepers to ensure that new players adhere to anti-money laundering and counter-terrorist financing (AML/CTF) principles and other guidelines without obstructing innovation.[1129] Thus, the gatekeeper theory supposes the existence of a metaphorical gate where the gatekeepers verify or certify services of financial

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1124 FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 15; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; Greenacre L "What Regulatory Problems Arise when Fintech Lending Expands into Fledgling Credit Markets?" 2020 *Washington University Journal of law & Policy* 229, 234-235.

1125 FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 15; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; Greenacre 2020 *Washington University Journal of law & Policy* 335.

1126 FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 15-16; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4; Greenacre 2020 *Washington University Journal of law & Policy* 335.

1127 FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 16; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 4.

1128 Bångens L and Söderberg B *Mobile Banking–Financial Services for the Unbanked?* (The Swedish Program for ICT in Developing Regions, SPIDER, 2008) 19; see related comments by Alampay E "Mobile Banking, Mobile Money and Telecommunication Regulations" 2010 *Social Sciences Research Network Electronic Journal* 1, 9.

1129 See related comments by Tuch AF "Multiple Gatekeepers" 2010 *Virginia Law Review* 1583, 1584; Bångens and Söderberg 2008 *Mobile Banking–Financial Services for the Unbanked?* 21.

service providers and may admit or dismiss prospective participants.[1130] At law, gatekeeping is a liability theory that places legal responsibility on regulating institutions for wrongs committed by entities they are supposed to regulate.[1131] The mobile money value chain involves, *inter alia*, MNOs, banks, mobile money agents and consumers.[1132] The involvement of multiple stakeholders in the provision of mobile comes with a myriad of legal and financial hurdles in Zimbabwe.[1133] Consequently, these multiple stakeholders require multiple distinct gatekeepers to form an interlocking web of protection against possible fraud, anti-competitive behaviour and other actions that may harm the mobile money sector.[1134] In this regard, the gatekeepers could include the RBZ, POTRAZ, competition regulators and/or consumer protection regulators. Rather than the traditional narrow AML/CTF principles and fraud deterrence strategy, this research proposes a philosophical shift where gatekeepers balance the promotion of financial inclusion for the unbanked and preserving financial markets integrity.[1135] The researcher submits that the gatekeepers should promote innovation and financial inclusion of the poor and unbanked while safeguarding financial markets integrity. Thus, this research is premised on the proposition that all gatekeepers should cooperate in order to deter

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1130 Cunningham LA "Beyond Liability: Rewarding Effective Gatekeepers" 2007 *Minnesota Law Review* 323, 328; see related comments by Kostant PC "Breeding better Watchdogs: Multidisciplinary Partnerships in Corporate Legal Practice" 2000 *Minnesota Law Review* 1213, 1247.

1131 Kernan A "Sustaining the Growth of Mobile Money Services in Developing Nations: Lessons from Overregulation in the United States" 2018 *Vanderbilt Journal of Transnational Law* 1109, 1112; Cunningham 2007 *Minnesota Law Review* 328-329; Kostant 2000 *Minnesota Law Review* 1248.

1132 Almeida GM "M-Payments in Brazil: Notes on How a Country's Background May Determine Timing and Design of a Regulatory Model" 2013 *Washington Journal of Law, Technology & Arts* 347, 351-352; see related comments by Alexandre C and Eisenhart LC "Mobile Money as an Engine of Financial Inclusion and Lynchpin of Financial Integrity" 2013 *Washington Journal of Law, Technology & Arts* 285, 287.

1133 Tuch 2020 *Virginia Law Review* 1584-1585; see related comments Klein M and Mayer C "Mobile Banking and Financial Inclusion" *World Bank Policy Research Working Paper* (May 2011) 3.

1134 Tuch 2020 *Virginia Law Review* 1585; see related comments by Klein and Mayer *World Bank Policy Research Working Paper* (May 2011) 4; Almeida 2013 *Washington Journal of Law, Technology & Arts* 352.

1135 Cunningham 2007 *Minnesota Law Review* 324.

wrongdoing by mobile money service providers while allowing financial innovation to thrive in Zimbabwe.[1136]

8.4.2 The Technology Acceptance Model or Theory

The technology acceptance model (TAM) is one of the most robust and influential theoretical models that explain the influence of innovative financial products on consumer behaviour.[1137] The model assumes that technology users are rational beings who use information in a systematic manner to decide whether or not to adopt the technology.[1138] There are three major factors that determine the acceptance, adoption and use of technology by financial consumers. These factors are perceived usefulness and ease of use of the technology and users' attitude towards the technology.[1139] Nyangilo, Sakwa and Namusonge[1140] opine that technology users compare the perceived benefits of an innovation over other alternatives. A financial product that is more efficient than other alternatives will be

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1136 See related comments by Cunningham 2007 *Minnesota Law Review* 324; Klein and Mayer *World Bank Policy Research Working Paper* (May 2011) 23.

1137 Chitungo SK and Munongo S "Extending the Technology Acceptance Model to Mobile Banking Adoption in Rural Zimbabwe" 2013 *Journal of Business Administration and Education* 51, 54; see related comments by Nyangilo VO, Sakwa MM and Namusonge GS "Efficiency of Mobile Led Financial Services and its Effect on Financial Inclusion in Kenya" 2017 *International Journal of Business Management and Finance* 554, 557; Priantinah D, Aisyah MN and Nurim Y "The Analysis of Technology Acceptance Model (TAM) for Personal Finance Management on Mobile Application Technology" 2019 *Advances in Economics, Business and Management Research* 262, 263.

1138 Chitungo and Munongo 2013 *Journal of Business Administration and Education* 54; see related comments by Nyangilo, Sakwa and Namusonge 2017 *International Journal of Business Management and Finance* 557; Priantinah, Aisyah and Nurim 2019 *Advances in Economics, Business and Management Research* 264.

1139 Priantinah, Aisyah and Nurim 2019 *Advances in Economics, Business and Management Research* 264; see related comments by Nyangilo, Sakwa and Namusonge 2017 *International Journal of Business Management and Finance* 557; Chinakidzwa M, Mbengo P and Nyatsambo M "Mobile Money Usage in Rural Areas in Zimbabwe – Case of Mudzi District" 2015 *International Journal of Scientific & Engineering Research* 128, 129; Chitungo and Munongo 2013 *Journal of Business Administration and Education* 55.

1140 Nyangilo, Sakwa and Namusonge 2017 *International Journal of Business Management and Finance* 557; see related comments by Sepasgovar FME, Ramzani U, Ebrahimzadeh S, Sargolzae S and Sepasgovar S "Technology Acceptance in E-Governance: A Case of a Finance Organisation" 2020 *Journal of Risk and Financial Management* 138; 142; Chitungo and Munongo 2013 *Journal of Business Administration and Education* 55.

readily accepted by financial consumers.[1141] In other words, consumers tend to adopt an innovation when they perceive it to be more useful than what they previously used.[1142] In line with the TAM, consumers decide to adopt and use innovative technology based on the perceived usefulness and simplicity of the product.[1143] In this regard, "perceived usefulness" refers to the extent to which financial consumers believe the use of mobile money would improve their welfare while "perceived simplicity" is the extent to which a financial consumer could easily use mobile money.[1144] Chitongo and Munongo posit that mobile money service providers can leverage on high mobile network penetration and cellular phone adoption to enhance the acceptance of new financial products among the poor in Zimbabwe.[1145] Thus, the researcher argues that the TAM helps explain the exponential adoption and use of mobile money services by the poor in Zimbabwe.

8.5 Current Policy Debates on the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor

8.5.1 Mobile Money and Diaspora Remittances

The diaspora remittances are topical in the discourse on the regulation and use of mobile money in in Zimbabwe. The diaspora remittances refer to funds sent by Zimbabwean nationals, who emigrated to work outside the country, to support their

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[1141] Sepasgovar, Ramzani, Ebrahimzadeh, Sargolzae and Sepasgovar 2020 *Journal of Risk and Financial Management* 142; see related comments by Chitungo and Munongo 2013 *Journal of Business Administration and Education* 55; Nyangilo, Sakwa and Namusonge 2017 *International Journal of Business Management and Finance* 557.

[1142] Sepasgovar, Ramzani, Ebrahimzadeh, Sargolzae and Sepasgovar 2020 *Journal of Risk and Financial Management* 142; Chitungo and Munongo 2013 *Journal of Business Administration and Education* 69; Nyangilo, Sakwa and Namusonge 2017 *International Journal of Business Management and Finance* 557.

[1143] Gbongli K, Xu Y and Amedjonekou KM "Extended Technology Acceptance Model Acceptance and Sustainability: A Multi-Analytical Structural Equation Modelling and Neural Network Approach" 2020 *Sustainability* 3639, 3643; see related comments by Nyangilo, Sakwa and Namusonge 2017 *International Journal of Business Management and Finance* 557; Chitungo and Munongo 2013 *Journal of Business Administration and Education* 55.

[1144] Gbongli, Xu and Amedjonekou 2020 *Sustainability* 3644; see related comments by Nyangilo, Sakwa and Namusonge 2017 *International Journal of Business Management and Finance* 558; Chitungo and Munongo 2013 *Journal of Business Administration and Education* 55.

[1145] Chitungo and Munongo 2013 *Journal of Business Administration and Education* 73; see related comments by Nyangilo, Sakwa and Namusonge 2017 *International Journal of Business Management and Finance* 558.

families or for investment back home.[1146] Before the advent of mobile money remittances were channelled through facilities like Western Union and MoneyGram at huge cost to both senders and recipients as the latter had to travel to towns and cities to access the money.[1147] Others, especially those residents in countries within the Southern Africa Development Community (SADC) regions, used unsafe informal remittance channels to cut costs. Cross-border bus and truck drivers were used to courier remittances.[1148] Besides charging exorbitant fees for up to 20 percent of the amount sent, these cross-border transport operators were not always reliable.[1149] Thus, MNOs' forays into the financial services sector made it possible for individuals to perform monetary transactions, including diaspora remittances, at any time of the day and from any location in the world.[1150] Ecocash offers international money remittance services in partnership with World Remit that allow funds to be transmitted in real time from one country to the other at a rate cheaper than traditional channels.[1151] Cooperation among policymakers could harness the digital technology potential to bring those in the diaspora, who may be financially excluded in their resident countries, and recipients at home into the formal financial

[1146] Ndlovu and Ndlovu 2013 *IOSR Journal of Humanities and Social Science* 71; see related comments by Mutsonziwa K and Maposa OK "Mobile Money – A Catalyst for Financial Inclusion in Developing Economies: A Case Study of Zimbabwe using FinScope Survey Data" 2016 *International Journal of Financial Management* 45; 47; Arthur EK, Musau SM and Wanjohi FM "Diaspora Remittances and Financial Inclusion in Kenya" 2020 *European Journal of Business and Management Research* 1, 2.

[1147] Munyoro *et al* 2017 *International Journal of Research in Business Management* 7; see related comments by Mutsonziwa and Maposa 2016 *International Journal of Financial Management* 47; Ndlovu and Ndlovu 2013 *International Organisation of Scientific Research Journal of Humanities and Social Science* 71; Donovan 2012 *Information and Communications for Development* 68.

[1148] Ndlovu and Ndlovu 2013 *Internationa Organisation of Scientific Research Journal of Humanities and Social Science* 71; see related comments by Donovan 2012 *Information and Communications for Development* 69; Arthur, Musau and Wanjohi 2020 *European Journal of Business and Management Research* 2-3.

[1149] Ndlovu and Ndlovu 2013 *International Organisation for Scientific Research Journal of Humanities and Social Science* 71; Donovan 2012 *Information and Communications for Development* 69; Arthur, Musau and Wanjohi 2020 *European Journal of Business and Management Research* 2-3.

[1150] Chibango 2014 *The International Journal of Humanities and Social Studies* 62; Mutsonziwa and Maposa 2016 *International Journal of Financial Management* 47; Arthur, Musau and Wanjohi 2020 *European Journal of Business and Management Research* 2.

[1151] Munyoro *et al* 2017 *International Journal of Research in Business Management* 7; see related comments by Mutsonziwa and Maposa 2016 *International Journal of Financial Management* 47; Arthur, Musau and Wanjohi 2020 *European Journal of Business and Management Research* 2.

system.[1152] However, there has not been supportive regulatory inter-linkages and payment systems infrastructure at least within the SADC region to augment mobile money in this regard. While regulators may be wary of money laundering and other illicit cross-border financial flows, the researcher submits that a supervised trial using mobile money could curb some of these challenges.

8.5.2 Relaxation of AML/CTF Measures During COVID-19

Although the relaxation of some KYC and CDD requirements for mobile money users during the COVID-19 pandemic could promote the financial inclusion of the poor, it may also inadvertently increase fraud and other financial crimes in countries like Zimbabwe.[1153] It is possible that developing countries such as Zimbabwe might have prioritised the allocation of resources towards mitigating the ravages of the COVID-19 pandemic at the expense of implementing AML/CTF measures on mobile money.[1154] Consequently, many individuals could have registered for mobile money services remotely without providing adequate identity documents for verification which fall short of AML/CTF standards.[1155] Therefore, there is a need for the government of Zimbabwe and its policymakers to adopt suitable innovative regulatory measures to sufficiently address the AML/CTF concerns.[1156] For example, KYC and CDD measures may be relaxed or simplified only where money laundering

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[1152] Mutsonziwa and Maposa 2016 *International Journal of Financial Management* 47; see related comments by Donovan 2012 *Information and Communications for Development* 69; Arthur, Musau and Wanjohi 2020 *European Journal of Business and Management Research* 2.

[1153] FATF 2020 *Covid-19-related Money Laundering and Terrorist Financing – Risks and Policy Responses* 6-7; see related comments by Crisanto and Prenio 2020 www.bis.org 1; Chatain PL, Zerzan A, Noor W, Dannaoui N and De Koker L *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* (The World Bank Washington DC 2011) 1.

[1154] Gutiérrez-Romero R and Ahmed M "Covid-19 Response needs to Broaden Financial Inclusion to Curb the Rise in Poverty" 2021 *World Development* 1, 2; see related comments by FATF 2020 *Covid-19-related Money Laundering and Terrorist Financing – Risks and Policy Responses* 11.

[1155] Jenik, Kerse and De Koker https://www.cgap.org/research/covid-19-briefing/rapid-account-opening-pandemic accessed on 20 August 2020; see related comments by FATF 2020 *Covid-19-related Money Laundering and Terrorist Financing – Risks and Policy Responses* 14; Chibango 2014 *The International Journal of Humanities & Social Sciences* 65.

[1156] Jenik, Kerse and De Koker 2020 https://www.cgap.org/research/covid-19-briefing/rapid-account-opening-pandemic accessed on 20 August 2020; see related comments by FATF 2020 *Covid-19-related Money Laundering and Terrorist Financing – Risks and Policy Responses* 14; by Lyman T, De Koker L, Meier CM and Kerse M "Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion" *Consultative Group to Assist the Poor Working Paper* (August 2019) 3.

and terrorist financing risks are minimal.[1157] During peak periods of the COVID-19 pandemic, financial regulators were forced to work from home and could have applied the risk-based approach to monitor financial flows for money laundering, terrorist financing and other risks.[1158] The researcher further argues that there could be a need for regulators to employ artificial intelligence (AI) systems to monitor financial transactions for AML/CTF compliance. AI refers to the ability of machines to emulate human cognition and do things normally done by people.[1159] However, Zimbabwe may not have the necessary technical infrastructure and competence to verify the personal details of individuals or the ability to conduct electronic KYC (e-KYC). Therefore, the researcher submits that criminals could have taken advantage of the regulatory loopholes that could lead to a possible increase in money laundering, terrorist financing and mobile money fraud. Thus, there need for policymakers to consider how best to integrate AI and machine learning into the mobile money sector in order to improve the application of AML/CTF measures.

8.5.3 Mobile Money as an Avenue to a Cashless or Digital Economy

It appears that Zimbabwe does not have a clearly defined national digital currency strategy. However, the growing adoption of mobile money presents a huge opportunity for Zimbabwe's to achieve a cashless society especially in light of the COVID-19 pandemic.[1160] For the purposes of this research, a cashless or digital economy refers to an economy in which financial consumers use electronic money

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1157 FATF 2020 *Covid-19-related Money Laundering and Terrorist Financing – Risks and Policy Responses* 14; see related comments by Jenik, Kerse and De Koker 2020 https://www.cgap.org/research/covid-19-briefing/rapid-account-opening-pandemic accessed on 20 August 2020; Bazarbash *et al* 202https://www.researchgate.net/publication/349822641 5.

1158 Jenik, Kerse and De Koker 2020 https://www.cgap.org/research/covid-19-briefing/rapid-account-opening-pandemic accessed on 20 August 2020; see related comments by FATF 2020 *Covid-19-related Money Laundering and Terrorist Financing – Risks and Policy Responses* 12.

1159 Ryll L, Barton ME, Zhang BZ, McWaters RJ, Schizas E, Hao R, Bear K, Preziuso M, Seger E, Wardrop R and Rau PR "Transforming Paradigms: A Global AI in Financial Services Survey" 2020 *Social Sciences Research Network Electronic Journal* 1, 1; see related comments by Chitimira H and Magau PT "A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa" 2021 *Potchefstroom Electronic Law Journal* 1, 15.

1160 See related comments by Lu L "Decoding Alipay: Mobile Payments, a Cashless Society and Regulatory Challenges" 2018 *Butterworths Journal of International Banking and Financial Law* 40, 41; Opare EA "The Advantages and Disadvantages of Mobile Money on the Profitability of the Ghanaian Banking Industry" 2018 *Texila International Journal of Management* 1, 6.

such as mobile money in transactions instead of physical banknotes and coins.[1161] Since the outbreak of the COVID-19 pandemic, mobile money has allowed individuals to transact safely, cheaply and conveniently in line with health protocols that encouraged minimal physical contact. Cashless payments are considerably hygienic, safe, fast, convenient and cheap as compared to handling or dealing in cash.[1162] While cash used to be the preferred mode of payment, fears that the coronavirus could survive on notes and coins surfaces and get transmitted during transactions caused a shift towards electronic payments.[1163] According to Mann, it is difficult to justify policies that foster the use of cash in the wake of the virus since cash transactions have become unsafe for purchasers, cashiers and the population at large.[1164] In reaction to the COVID-19 virus threat, many retail outlets in Zimbabwe decline cash payments in preference of contactless electronic money to combat the spread of the COVID-19 virus.[1165] In addition, mobile money provides a convenient payment channel for salaries and social assistance funds to minimise gatherings (queuing) or travelling during the COVID-19 pandemic in Zimbabwe.[1166] The COVID-19 pandemic restrictions adversely affected the poor and unbanked

[1161] See related comments by Arvidsson N *Building a Cashless Society: The Swedish Route to the Future of Cash Payments* (Springer Nature Switzerland 2019) 64-65; Tee HH and Ong HB "Cashless Payment and Economic Growth" 2016 *Financial Innovation* 1, 2-3; Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41.

[1162] Arvidsson 2019 *Building a Cashless Society: The Swedish Route to the Future of Cash Payments* 65; see related comments by Tee and Ong 2016 *Financial Innovation* 2; Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41; Opare 2018 *Texila International Journal of Management* 4.

[1163] Mann RJ "Driver for Contactless Payments" in K Pistor (ed) *Law in the Time of Covid-19* (Columbia Law School 2020) 177; see related comments by Chitimira and Torerai (2021) *Potchefstroom Electronic Law Journal* 21; Kasradze T "Challenges Facing Financial Inclusion due to the Covid-19 Pandemic" 2020 *European Journal of Marketing and Economics* 63, 70.

[1164] Mann "Driver for Contactless Payments" 176; see related comments by Kasradze 2020 *European Journal of Marketing and Economics* 70; Chitimira and Torerai (2021) *Potchefstroom Electronic Law Journal* 21-22.

[1165] Mann "Driver for Contactless Payments" 177-178; see related comments by Chitimira and Torerai (2021) *Potchefstroom Electronic Law Journal* 21; Machasio 2020 *Africa Knowledge in Time Policy Brief* 1.

[1166] Jenik, Kerse and De Koker https://www.cgap.org/research/covid-19-briefing/rapid-account-opening-pandemic accessed on 20 August 2020; Mann "Driver for Contactless Payments" 176.

persons more than their wealthier counterparts who could easily access digital banking services.[1167]

The researcher submits that mobile money has kept payment systems going during the protracted cash shortages in Zimbabwe since 2011. Many retail outlets such as supermarkets and hardware shops, transport service providers, mealie-meal grinders, municipalities, garages, street vendors and schools accept mobile money as a payment system in Zimbabwe.[1168] In this regard, targeted financial inclusion policies can be developed factoring in the contribution of mobile money to the broader macroeconomic environment in Zimbabwe. As more people continue to use mobile money, there is an increase in value circulation which promotes the financial inclusion of the poor and drives economic growth.[1169] The convenient use of electronic money such as mobile money is not limited to the poor, unbanked and low-income earners but can benefit all persons, including those who are banked.[1170] When effectively regulated and supervised, mobile money could be an avenue to reduce the reliance on cash which could eventually lead to a cashless society.[1171] Thus, as other countries are making strides to launch digital currencies,[1172] Zimbabwe can leverage on mobile money to start its own digital currency.

1167 Brenton and Chemutai *World Bank Group* (2020) 2-3; see related notes by Mann "Driver for Contactless Payments" 177.

1168 See related comments by Srouji J "Digital Payments, the Cashless Economy and Financial Inclusion in the United Arab Emirates: Why is Everyone Still Transacting in Cash?" 2020 *Journal of Risk and Financial Management* 1, 4; Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41; Opare 2018 *Texila International Journal of Management* 4.

1169 Opare 2018 *Texila International Journal of Management* 4; see related comments by Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41; Ngoma G "Financial Inclusion and its Determinants in Zimbabwe" 2019 *International Journal for Innovative Research in Multidisciplinary Field* 78, 78.

1170 Opare 2018 *Texila International Journal of Management* 4; see related comments by Srouji 2020 *Journal of Risk and Financial Management* 3; Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41.

1171 See related comments by Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41-42; Opare 2018 *Texila International Journal of Management* 6; Alexandre C and Eisenhart L "Mobile Money as an Engine of Financial Inclusion and Lynchpin of Financial Integrity" 2013 *Washington Journal of Law, Technology & Arts* 285, 288-289.

1172 See related comments by Srouji 2020 *Journal of Risk and Financial Management* 3; Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41; Lowry 2016 *Federal Communications Law Journal* 358; Tee and Ong 2016 *Financial Innovation* 2.

8.5.4 The I-SIP Strategy and the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor

The use of mobile money to promote financial inclusion requires Zimbabwe to develop a suitable regulatory framework to safeguard financial markets integrity. In this regard, international standards setting bodies have proposed an approach that balances financial inclusion and three other related objectives: financial stability, financial integrity and consumer protection.[1173] Financial inclusion advocacy organisations such as the Consultative Group to Assist the Poor (CGAP) and the Global Partnership for Financial Inclusion (GPFI) developed what has come to be known as the 'Inclusion – Stability, Integrity and Protection' (I-SIP) strategy.[1174] The I-SIP strategy is a concerted effort by global stakeholders to promote the financial inclusion of the poor while preserving the integrity of financial markets.[1175] The G20 leaders endorsed financial inclusion as a pillar of the global development agenda in 2010 and created the GPFI as a financial inclusion implementing vehicle.[1176] It is not clear whether Zimbabwe has fully adopted the I-SIP strategy. However, Zimbabwe is one of the countries that is realigning its regulatory frameworks to foster the financial inclusion of the poor in line with the I-SIP objectives.[1177] The I-SIP strategy basically shows the inter-connectedness of financial inclusion to financial stability, financial integrity and consumer protection.[1178] It is submitted that the four components in the I-SIP strategy are distinct but mutually reinforcing. In this regard, financial inclusion may not exist in isolation but needs to interlink with the other

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[1173] See related comments by; Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41; Lowry 2016 *Federal Communications Law Journal* 358; Tee and Ong 2016 *Financial Innovation* 2.

[1174] Consultative Group to Assist the Poor (CGAP) *Financial Inclusion, Stability, Integrity and Protection: Observations and Lessons for the I-SIP Approach from the Philippines* (World Bank Washington DC 2017) 1.

[1175] CGAP 2017 *Financial Inclusion, Stability, Integrity and Protection: Observations and Lessons for the I-SIP Approach from the Philippines* 1.

[1176] See related comments by Tomilova O and Valenzuela M *Financial Inclusion + Stability, Integrity, and Protection (I-SIP): Policy Making for an Inclusive Financial System: A Toolkit for Financial Sector Policy Makers* (CGAP Washington DC 2018) 2.

[1177] See related comments by Tomilova and Valanzuela 2018 *Financial Inclusion + Stability, Integrity, and Protection (I-SIP)* 2.

[1178] Tomilova and Valenzuela 2018 *Financial Inclusion + Stability, Integrity, and Protection (I-SIP)* 4; see related comments by Cull R, Demirjuc-Kunt A and Lyman T "Financial Inclusion and Stability: What Does Research Show?" *Consultative Group to Assist the Poor* (2012) 1-2.

three objectives of the I-SIP strategy in a mutually supportive manner. Isolating financial inclusion from the other objectives of the I-SIP strategy could adversely affect the stability and integrity of financial markets and jeopardise consumer protection.[1179]

The use of mobile money has broadened financial access to the poor and it can promote financial markets integrity in a well-defined and regulated environment.[1180] The Basel Committee for Banking Supervision (BCBS) suggests that while financial inclusion can foster the safety, soundness and integrity of financial sectors, regulatory loopholes threaten consumer and data protection.[1181] To address this concern, the Alliance for Financial Inclusion (AFI) proposed that policymakers can serve financial markets better by paying heed to the trade-offs and synergies between the I-SIP objectives and develop policies accordingly.[1182] In this regard, the combined strengths of I-SIP objectives can guide Zimbabwe's national policymakers in coming up with suitable decisions. The ultimate goal of the I-SIP strategy should be the promotion of financial inclusion of the poor while maintaining the stability and integrity of financial markets.

Nonetheless, the researcher submits that the potential weakness of the I-SIP strategy is its top-down approach. The I-SIP strategy's top-down approach appears

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1179 Cull, Demirjuc-Kunt and Lyman *Consultative Group to Assist the Poor* (2012) 1; see related comments by Tomilova and Valenzuela 2018 *Financial Inclusion + Stability, Integrity, and Protection (I-SIP)* 5.

1180 Lawack VA "Mobile Money, Financial Inclusion and Financial Integrity: The South African Case" 2013 *Washington Journal of Law, Technology & Arts* 317, 324; see related comments by CGAP 2017 *Financial Inclusion, Stability, Integrity and Protection: Observations and Lessons for the I-SIP Approach from the Philippines* 3; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 287.

1181 Basel Committee on Banking Supervision (BCBS) "Guidance on the Application of the Core Principles for Effective Banking Supervision to the Regulation and Supervision of Institutions relevant to Financial Inclusion" 2015 *Bank of International Settlements* 2-3 www.bis.org accessed on 29 April 2021; see related comments by Remolina N, Gurrea-Martinez A, Loh YA-C and Hardoon DR "Regulatory Approaches to Consumer Protection in the Financial Sector and Beyond: Toward a Smart Disclosure Regime?" *Centre for AI and Data Governance* (2020) 1, 4-5; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology & Arts* 296.

1182 Hannig A *Financial Stability and Financial inclusion: Who Sets the "Standards"?* 2017 https://www.afiglobal.org/director_reflections/financial-stability-and-financial-inclusion-who-sets-the-standards/ accessed on 26 April 2021; see related comments by; Tomilova and Valanzuela 2018 *Financial Inclusion + Stability, Integrity, and Protection (I-SIP)* 4-5; CGAP *Financial Inclusion, Stability, Integrity and Protection: Observations and Lessons for the I-SIP Approach from the Philippines* (2017) 3.

to be more theoretical than practical because it is hardly informed by the experience in African countries like Zimbabwe where mobile money is driving financial inclusion of the poor. Thus, there may be a need for a bottom-up approach where voices from the likes of Zimbabwe and Kenya inform the global financial community on the experiences of using innovation to promote the financial inclusion of the poor. In this regard, the I-SIP objectives form part of the ongoing policy debates on mobile money in Zimbabwe and internationally.

8.6 Concluding Remarks

The use of mobile money has significantly contributed to financial inclusion for the poor and a reconfiguration of financial markets across the world. In this regard, policymakers at regional and international levels have developed best practices that can assist in providing guidance on the regulation and use of mobile money to promote financial inclusion for the poor.[1183] The SADC Mobile Money Guidelines discussed above are similar to best standards developed by international standard-setting bodies such as the Financial Action Task Force (FATF). Aspects such the role of the central banks, consumer protection, AML/CTF and financial education are pertinent to the success of mobile money in promoting financial inclusion for the poor.[1184]

The ongoing COVID-19 pandemic challenges policymakers in Zimbabwe to develop robust policies which regulate mobile money in a manner that promotes financial inclusion for the poor.[1185] The regional, continental and international best practices discussed in this chapter provide useful insights on how best mobile money can enhance the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe. The standards set a benchmark for assessing the suitability and adequacy of mobile money regulatory frameworks to promote financial inclusion. The discussion has demonstrated that there are no sufficient standard-

[1183] See paragraph 8.2 of this chapter.
[1184] See related comments on paragraphs 8.2.1-8.2.5 of this chapter.
[1185] See paragraph 8.2 of this chapter.

setting mechanisms for mobile money at the SADC and international levels.[1186] In this regard, it appears that international standards appear more useful in providing guidance on the regulation of mobile money in Zimbabwe. Organisations such as the FATF and the BIS have been central in the standard-setting exercise at international level.[1187] The FATF and BIS guidelines can assist policymakers to develop regulatory frameworks that can effectively supervise the use of mobile money to promote financial inclusion for the poor in Zimbabwe. In light of the discussion above, the mobile money regulatory framework in Zimbabwe should enable innovation and balance the application of AML/CTF to risks posed in order to promote financial inclusion for the poor.[1188]

As discussed above, several theories can be used to explain the adoption, use and regulation of mobile money services in Zimbabwe's financial markets. No single theory fully explains mobile money operations owing to the fact that this is a dynamic innovation.[1189] For instance, when mobile money was launched in 2011 in Zimbabwe, it was merely for money transfers. However, over time, mobile money now includes payments, savings, credit and insurance services. This evolving technology requires normative theories that can assist in explaining mobile money development in order for policymakers to develop suitable and robust regulatory frameworks that promote financial inclusion for the poor while safeguarding financial markets integrity.

The researcher also discussed the I-SIP strategy in order to demonstrate the inter-linkage of financial inclusion with financial stability, financial integrity and consumer protection.[1190] In this regard, financial inclusion of the poor can only become a success if it is done with the other three objectives; stability, integrity and protection. In the case of Zimbabwe, it appears that while attempts have been made to promote financial stability, integrity and consumer protection, the measures seem

[1186] See analysis in paragraphs 8.2 and 8.3.3 of this chapter.
[1187] See paragraph 8.5.4 of this chapter.
[1188] See the analysis on paragraph 8.5.4 of this chapter.
[1189] See paragraphs 8.4.1 and 8.4.2 of this chapter.
[1190] See paragraph 8.5.4 of this chapter.

outdated and may need a policy rethink.[1191] The I-SIP strategy sets out the internationally developed standards which can guide countries such as Zimbabwe to adopt fintech regulatory approaches that promote financial inclusion for the poor.[1192]

Above all, the ongoing COVID-19 pandemic has highlighted the importance of mobile money innovation during crises.[1193] Mobile money provides safe cashless or electronic money in transactions that can reduce the spread of the coronavirus through the exchange of cash.[1194] Therefore, mobile money can be a way to reduce the spread of the virus. In this regard, policy-makers may need to propose that contactless payments be preferred to cash for they are safer and desirable as a legacy of the COVID-19 pandemic.[1195]

[1191] See paragraph 8.5.4 of this chapter.
[1192] See paragraph 8.5.4 of this chapter.
[1193] See paragraph 8.5.3 of this chapter.
[1194] See paragraph 8.5.3 of this chapter.
[1195] See paragraph 8.5.3 of this chapter.

CHAPTER NINE

OVERALL COMPARATIVE ANALYSIS

9.1 Introduction

This chapter provides a comparative analysis of the regulation and use of mobile money services to promote financial inclusion for the poor in Zimbabwe, South Africa, Kenya and the United Kingdom (UK). In other words, the chapter comparatively explores how the mobile money regulatory frameworks in Zimbabwe, South Africa, Kenya and the UK promote financial inclusion for the poor. This is done to examine whether the statutory frameworks in the four jurisdictions are effective in promoting financial inclusion for the poor and possibly countering the adverse effects of the coronavirus disease (COVID-19 pandemic). Ultimately, the comparative analysis seeks to provide measures that Zimbabwe can adopt to enhance the regulation and use of mobile money in order to promote financial inclusion for the poor.

9.2 Overall Analysis on the Definitions of Key Terms

9.2.1 Mobile money

The term mobile money is not expressly defined in Zimbabwe's *National Payments Systems Act*[1196] in Zimbabwe. The *NPS Act* is the primary legislation for payment systems in Zimbabwe.[1197] Nonetheless, the *NPS Act* provides for the recognition, operation, regulation of payment systems, including electronic payments.[1198] Mobile money is attributable to electronic money owing to the manner it is transmitted which makes it eligible for recognition as a payment system in Zimbabwe.[1199] Although the *NPS Act* regulates mobile money in Zimbabwe currently,[1200] it should be amended in order to expressly define and clearly provide for mobile money

[1196] *National Payment Systems Act* [Chapter 24:23] 21 of 2001 as amended (*NPS Act*), see section 2.
[1197] See paragraph 3.3.1 of Chapter Three of this thesis.
[1198] Section 2 of the *NPS Act*.
[1199] Section 3 of the *NPS Act*.
[1200] Section 3 of the *NPS Act*.

provisions. Likewise, Kenya's *National Payments Systems Act*[1201] does not clearly define mobile money. Reference to mobile money is made as an inference to participants in the payment systems sector in Kenya.[1202] Similarly, in South Africa, there is no express reference to mobile money as a financial product but its services can be regulated using provisions of the *National Payment Systems Act*.[1203] In the UK, payment systems are regulated under the *Banking Reform Act*[1204] which does not have a specific provision for mobile money services. It is noteworthy that Zimbabwe, Kenya, South Africa and the UK have national payment systems statutes but none of them expressly defines mobile money. In this regard, policymakers in Zimbabwe should carefully amend the *NPS Act* in order to define and insert provisions that specifically regulate mobile money. Alternatively, policymakers in Zimbabwe should enact a new statute which expressly regulates financial technology (fintech) products such as mobile money.

The *Banking Act*[1205] is another statute that is used to regulate mobile money in Zimbabwe.[1206] Interestingly, the *Banking Act* defines mobile banking but does not define mobile money.[1207] In this regard, mobile banking is defined as an arrangement that allows a customer of a licenced mobile network operator (MNO) to access financial services through a mobile phone.[1208] This definition has some striking resemblance to that of mobile money.[1209] The researcher argues that although mobile banking and mobile money may appear the same, the two are

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1201 *National Payments Systems Act* 39 of 2011 (*Payments Systems Act*), see preamble.
1202 See section 2 of the *Payments Systems Act*.
1203 *National Payment Systems Act* 78 of 1998 as amended (*NPSA*), section 1.
1204 *Financial Services* (*Banking Reform*) *Act* of 2013 (*Banking Reform Act*), see section 40-48.
1205 *Banking Act* [Chapter 24:20] 9 of 1999 as amended (*Banking Act*), sections 2, 3, 4, 6 and others.
1206 See paragraph 3.3.2 of Chapter Three of this thesis.
1207 Section 2(m) of the *Banking Act*.
1208 Section 2(m)(b)(c) of the *Banking Act*.
1209 See paragraph 1.1 of Chapter One of this thesis: see related comments by Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 2-3; Pazarbasioglu C, Mora AG, Uttamchandani M, Natarajan H, Feyen E and Saal M *Digital Financial Services* (World Bank Group Washington DC 2020) 2; Lumsden E "The Future is Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business & Finance* 1, 7; Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 437; Chatain PL, Zerzan A, Noor W, Dannaoui N and De Koker L *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* (The World Bank Washington DC 2011) 2.

different and they should be treated as such. To help explain the difference between the two terms, Porteous argues that mobile money can either have an additive effect or a transformative effect on the financial consumer.[1210] Mobile money has an additive effect when it is used as an extension of banking services to allow the consumer access to a bank account through the mobile phone.[1211] In light of Porteous's additive effect characterisation, the researcher argues that mobile banking connotes the accessibility of banking services through the mobile phone as opposed to having the same meaning as mobile money.[1212] The distinctive aspect of mobile money is that it provides financial access to consumers without the need for such consumers having bank accounts at a financial institution.[1213] On the other hand, mobile money has a transformative effect when a financial consumer uses it as the primary and probably only avenue to access financial services.[1214] Thus, relevant statutes in Zimbabwe, Kenya, South Africa and the UK do not clearly distinguish the terms mobile money and mobile banking. It is possible that mobile money is still relatively new and it may not have developed distinct language that sets it apart. In this regard, the researcher submits that the terms mobile money and mobile banking are not synonyms and should not be confused one for the other. Therefore, policymakers in Zimbabwe should carefully amend the *Banking Act* to expressly define mobile money. Ideally, the *Banking Act* should define mobile

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1210 Porteous D *The Enabling Environment for Mobile Banking in Africa* (Bankable Frontier Associates Boston 2006) 15; see related comments by Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific & Engineering Research* 129; Bångens L and Söderberg B *Mobile Banking–Financial Services for the Unbanked?* (Spinder Sweden 2008) 14; Ndlovu I and Ndlovu M "Mobile Banking the Future to Rural Financial Inclusion: Case Study of Zimbabwe" 2013 *IOSR Journal of Humanities and Social Science* 70, 70-71.

1211 Porteous *The Enabling Environment for Mobile Banking in Africa* 15; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2-3; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 14; Chinakidzwa M, Mbengo P and Nyatsambo M "Mobile Money Usage in Rural Areas in Zimbabwe – Case of Mudzi District" 2015 *International Journal of Scientific & Engineering Research* 128, 129; Ndlovu and Ndlovu 2013 *International Organisation of Scientific Researh Journal of Humanities and Social Science* 70-71.

1212 Ahmad AH, Green C and Jiang F "Mobile Money, Financial Inclusion and Development: A Review with Reference to African Experience" 2020 *Journal of Economic Surveys* 753, 755.

1213 See related comments by Ahmad, Green and Jiang 2020 *Journal of Economic Surveys* 755.

1214 Porteous *The Enabling Environment for Mobile Banking in Africa* 15; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2-3; Ndlovu and Ndlovu 2013 *International Organisation for Scientific Research Journal of Humanities and Social Science* 70-71; Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific & Engineering Research* 129; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 14.

money as the delivery by mobile network operators (MNOs) of financial services that are accessible to financial consumers through the mobile phones without the requirement of bank accounts.[1215]

9.2.2 Financial inclusion

No statute expressly defines financial inclusion in Zimbabwe. Nonetheless, the Ministry of Finance and Economic Development together with the Reserve Bank of Zimbabwe (RBZ) developed the National Financial Inclusion Strategy (NFIS) 2016-2020 as a guiding tool to financial inclusion in Zimbabwe.[1216] The NFIS defines financial inclusion as the effective use, by all persons, of a wide range of quality, affordable and accessible financial services that are provided in a fair and transparent manner through formally regulated entities.[1217] This definition gives credence to this research's main question on whether there is robust regulation that allows for the legal use of mobile money to promote financial inclusion for the poor in Zimbabwe.[1218] The NFIS is a policy instrument that can assist the policymakers in Zimbabwe with guidance in enacting legislative provisions that promote financial inclusion for the poor. The achievement of financial inclusion has become more apparent for developing countries such as Zimbabwe owing to the need for affordable and accessible financial services to the poor since the COVID-19 pandemic started.[1219] While lockdown measures disrupted the ability of many people to work and earn income, mobile money allowed the poor to receive social

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1215 See related comments in paragraph 1.1 of Chapter One of this thesis.

1216 See paragraph 2.3.1 of Chapter Two of this thesis.

1217 Reserve Bank of Zimbabwe (RBZ) *National Financial Inclusion Strategy 2016-2020* 10 http://rbz.co.zw/assets/zimbabwe-national-financial-inclusion-strategy-2016---2020.pdf accessed on 20 July 2020; see related comments by Mukoka S and Chipanga TP "Financial Inclusion and GDP per-capita Nexus: Evidence from Zimbabwe" 2020 *International Journal of Innovative Science and Research Technology* 1723, 1723; Mhlanga D, Dunga SH and Moloi T "Financial Inclusion and Poverty Alleviation Among Smallholder Farmers in Zimbabwe" 2020, *Eurasian Journal of Economics and Finance* 168, 169-171.

1218 See paragrapgh 1.2 of Chapter One of this thesis.

1219 See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; Machasio IN *Covid-19 and Digital Financial Inclusion in Africa: How to Leverage Digital Technologies during the Pandemic* (Africa Knowledge in Time Policy Brief World Bank 2020) 1; De R, Pandey N and Pal A "Impact of Digital Surge during Covid-19 Pandemic: A Viewpoint on Research and Practice" 2020 *International Journal of Information Management* 1, 3.

assistance and transact safely using their mobile phones in Zimbabwe.[1220] In South Africa, there are various programmes that promote financial inclusion but no specific statute defines and/or comprehensively deals with the regulation of financial inclusion.[1221] Similarly, financial inclusion is not clearly defined in relevant statutes in Kenya and the UK. Despite the Group of 20 (G20), a coalition of the twenty richest countries in the world, putting financial inclusion as a global goal in 2010, Zimbabwe, South Africa, Kenya and the UK do not have statutes that expressly regulate financial inclusion.[1222]

9.2.3 The Poor

No statute expressly defines the "poor" in Zimbabwe. The researcher argues that the "poor" is a relative term that does not have a universally agreed definition. However, for the purposes of this research, the "poor" refers to individuals who live below the poverty datum line and may need social assistance to live in dignity.[1223] Although the *Banking Act* does not define the "poor", it defines the poverty datum line as the estimated minimum income a family of four needs to secure basic necessities of life.[1224] In this regard, there is no specific statute that promotes financial inclusion for the poor in Zimbabwe. Similarly, Kenya, South Africa and the UK do not have

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[1220] Gutiérrez-Romero R and Ahamed M "Covid-19 Response needs to Broaden Financial Inclusion to Curb the Rise in Poverty" 2021 *World Development* 1, 1; see related comments by Nakouwo SN and Akplehey FN "Covid-19 and Mobile Money Agents in Ghana" 2020 *African Journal of Emerging Issues* 75, 76; Kasradze T "Challenges Facing Financial Inclusion Due to the Covid-19 Pandemic" 2020 *European Journal of Marketing and Economics* 63, 71; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 22.

[1221] Chitimira H and Magau PT "A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa" 2021 *Potchefstroom Electronic Law Journal* 1, 4.

[1222] See related comments by Tomilova O and Valenzuela M *Financial Inclusion + Stability, Integrity, and Protection (I-SIP): Policy Making for an Inclusive Financial System: A Toolkit for Financial Sector Policy Makers* (CGAP Washington DC 2018) 2; Di Castri S and Plaitakis A *Getting Financial Inclusion Policies right in the Digital Era: Focus on Competition and Innovation as Policy Objective* (Centre for Financial Inclusion 2018) 7.

[1223] See related comments by Mhlanga, Dunga and Moloi 2020 *Eurasian Journal of Economics and Finance* 169-170; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Chitimira H and Ncube M "Legislative and Other Selected Challenges Affecting Financial Inclusion for the Poor and Low Income Earners in South Africa" 2020 *Journal of African Law* 337, 338; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3.

[1224] Section 2(m) of the *Banking Act*; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Chitimira and Ncube 2020 *Journal of African Law* 338; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3.

statutes that define the poor in light of financial inclusion. To this end, it is necessary for policymakers in Zimbabwe, Kenya, South Africa and the UK to carefully amend the current statutes to expressly define poor financial consumers. The COVID-19 pandemic has highlighted the importance of providing useful and adequate financial services to the poor in Zimbabwe, South Africa, Kenya and the UK.[1225] Therefore, it is important that statutes clearly define who the "poor" are in order to reach out to them in an informed manner.

9.3 Overall Analysis on the Regulatory Approach to the Use of Mobile Money

9.3.1 The Mobile Money Regulatory Approach in Zimbabwe

Although it is clear what regulatory approach Zimbabwe used at the advent of mobile money in 2011, it is apparent, that one of the "wait and see"[1226] and the "test and learn"[1227] or a combination of the two was used to regulate the use of mobile money. In this regard, irrespective of the regulatory approach used, the fact is that there was no express statute to regulate the use of mobile money in Zimbabwe. As a result, many countries, including Zimbabwe, used various approaches where regulators allowed mobile money to run before regulating.[1228]

[1225] See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76; Kasradze 2020 *European Journal of Marketing and Economics* 69; Buheji M, Da Costa CK, Beka G, Mavric B, De Souza YL, Da Costa SS, Hanafi M and Yein TC "The Extent of Covid-19 Pandemic Socio-Economic Impact on Global Poverty. A Global Integrative Multidisciplinary Review" 2020 *American Journal of Economics* 213, 216; Olivia S, Gibson J and Nasrudin R "Indonesia in the Time of Covid-19" 2020 *Bulletin of Indonesian Economic Studies* 143, 165-166.

[1226] See related comments in paragraph 4.3.1 of Chapter Four of this thesis.

[1227] See paragraph 4.3.2 of Chapter Four of this thesis.

[1228] See Pazarbasioglu *et al Digital Financial Services* 12; see related comments by Greenacre J *Regulating Mobile Money: A Functional Approach* (Pathways for Prosperity Commission Oxford 2018) 4; Goncalves DER "Financial Inclusion in Peru: Lessons from Kenya's Regulatory Approach to E-Money" 2013 *University of Miami International and Comparative Law Review* 31, 35; Buku MW and Meredith MW "Safaricom and M-Pesa in Kenya: Financial Inclusion and Financial Integrity" 2013 *Washington Journal of Law, Technology & Arts* 375, 386.

Legislative provisions were gradually introduced where and when necessary as discussed below.[1229]

9.3.1.1 Amendment to the *Banking Act*

In 2015, the legislature in Zimbabwe amended the *Banking Act* to expand the definition of "financial institution" but the list excludes mobile network operators (MNOs).[1230] However, the amendment includes the definition of "mobile banking" which is an arrangement that allows customers of MNOs or any other operator of a wireless system to access financial services.[1231] Besides this definition, there are no further provisions in the Act to expand on this amendment. As discussed earlier, the researcher submits that "mobile banking" is not the same as mobile money and the two cannot be used interchangeably.[1232] Besides the expansions on definitions in the *Banking Act*, other provisions are more relevant to banking transactions than mobile money.[1233] In this regard, the amendments to the *Banking Act* are not sufficient to adequately regulate the use of mobile money in order to promote financial inclusion for the poor in Zimbabwe.

9.3.1.2 The *Banking Regulations 2020*

The *Banking Regulations 2020*[1234] came into effect in 2020 through a statutory instrument in response to the growing usage of mobile money in Zimbabwe. The *Banking Regulations 2020* provide for, *inter alia*, the licensing of mobile money providers in Zimbabwe.[1235] The licensing of MNOs providing mobile money is a

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1229 See related comments by Pazarbasioglu *et al 2020 Digital Financial Services* 12; see related comments by Greenacre 2018 *Regulating Mobile Money: A Functional Approach* 4; Goncalves 2013 *University of Miami International and Comparative Law Review* 35; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386.

1230 Section 2 of the *Banking Act*; see related comments in paragraph 3.3.2 of Chapter Three of this thesis.

1231 Section 2(m) of the *Banking Act*; see related comments in paragraph 3.3.2 of Chapter Three of this thesis.

1232 See paragraph 9.2.1 of this chapter.

1233 See section 28E of the *Banking Act*.

1234 *Banking* (*Money Transmission, Mobile Banking and Mobile Money Interoperability*) *Regulations*, 2020 (*Banking Regulations 2020*), see section 2; see related comments on paragraph 3.3.4 of Chapter Three of this thesis.

1235 See section 3 of the *Banking Regulations 2020*.

measure to register non-bank financial services providers in order to regulate them and safeguard consumer funds under the control of these institutions in Zimbabwe. Accordingly, all MNOs that provide mobile money in Zimbabwe should be part of the national payment systems and be connected to the national payment switch that brings MNOs and banks together.[1236] Additionally, it is mandatory for MNOs providing mobile money in Zimbabwe to open trust bank accounts used exclusively for mobile money services.[1237] Opening trust bank accounts separates the MNOs' other funds from those of mobile money consumers in order to combat abuse of consumer funds. Furthermore, MNOs in Zimbabwe should ensure that funds transacted in the mobile money value chain have a corresponding correct bank balance.[1238] Maintaining a balance in the funds transmitted and the money in the bank assists in combating illicit activities where unscrupulous mobile money providers could generate fictitious money which could compromise financial markets in Zimbabwe. Nonetheless, the *Banking Regulations 2020* mention but do not define mobile money and this requires policymakers to reconsider this shortcoming.[1239] Moreover, like the *Banking Act*, the *Banking Regulations 2020* uses the term "mobile banking" instead of mobile money.[1240] As argued earlier, there should be an amendment to the *Banking Act* in order to provide legal recognition of mobile money so as to adequately provide for its use in Zimbabwe.[1241]

9.3.2 The Mobile Money Regulatory Approach in Kenya

Unlike in Zimbabwe, Kenyan financial authorities adopted the 'test-and-learn' approach where the M-Pesa was allowed to roll-out services before it was regulated.[1242] The 'test-and-learn' approach allowed the Central Bank of Kenya (CBK) to monitor the MNOs' mobile money activities at a distance and only intervened

1236 Section 4(1)(2) of the *Banking Regulations 2020*.
1237 Section 4(3) of the *Banking Regulations 2020*.
1238 Section 4(4) of the *Banking Regulations 2020*.
1239 Section 2 of the *Banking Regulations 2020*; see related comments on paragraph 9.2.1 of this chapter.
1240 Section 2 of the *Banking Regulations 2020*; see related comments on paragraph 3.3.4 of Chapter Three of this thesis.
1241 See paragraph 3.3.4 of Chapter Three of this thesis.
1242 See paragraph 5.3.1 of Chapter Five of this thesis.

where and when necessary.[1243] In this regard, mobile money services in Kenya had time to be established without regulatory restrictions.[1244] Policymakers in Kenya gradually introduced regulations through amendments to existing legislation and enactments of new statutes.[1245] In Kenya, the CBK allowed Safaricom to roll out mobile money services in a controlled environment under its close supervision.[1246] The CBK worked closely with Safaricom before the launch of M-Pesa in 2007 and it issued the 'letter of no-objection' allowing Safaricom's M-Pesa mobile money platform to operate without regulatory pressure.[1247] The letter of no-objection certified that M-Pesa was not a bank and that it was not a threat to Kenya's financial stability.[1248]

9.3.2.1 The *National Payment Systems Act* in Kenya

The legislature enacted the *National Payment Systems Act*[1249] in 2011, four years after mobile money started working in Kenya. In this regard, the *Payment Systems Act* covers MNOs as participants in Kenya's payment systems.[1250] In terms of the *Payment Systems Act*, the CBK supervises all financial service providers, including MNOs such as Safaricom, to maintain safety and certainty within Kenya's financial markets.[1251] The CBK has powers to designate and revoke and/or vary such

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1243 See paragraph 5.3.1 of Chapter Five of this thesis.

1244 See related comments by Pazarbasioglu *et al Digital Financial Services* 12; see related comments by Greenacre 2018 *Regulating Mobile Money: A Functional Approach* 4; Goncalves 2013 *University of Miami International and Comparative Law Review* 35; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386.

1245 See sections 4C and 28A of the *Banking Act*.

1246 Pazarbasioglu *et al Digital Financial Services* 12; see related comments by Goncalves 2013 *University of Miami International and Comparative Law Review* 33; Ndung'u NS *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (African Economic Research Consortium Nairobi 2021) 14-15; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386.

1247 See related comments by Goncalves 2013 *University of Miami International and Comparative Law Review* 33; Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 14-15; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386; Pazarbasioglu *et al Digital Financial Services* 12.

1248 See related comments by Goncalves 2013 *University of Miami International and Comparative Law Review* 33; Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 14-15; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 386; Pazarbasioglu *et al Digital Financial Services* 12.

1249 *National Payments Systems Act* 39 of 2011 (*Payment Systems Act*), see preamble.

1250 Section 2 of the *Payment Systems Act*.

1251 Section 3 of the *Payment Systems Act*.

designation to combat systemic risk, protect the public interest and maintain the stability of Kenya's payment systems.[1252] Put differently, Kenya's central bank has the legal authority to approve or revoke the participation of role-players within the payment systems in Kenya. Therefore, the conduct of service providers in Kenya's payment systems is subject to the approval or disapproval of the CBK.[1253] Although the *Payment Systems Act* does not clearly define mobile money, it was enacted partly in response to the growing use and importance of mobile money in Kenya.

9.3.3 The Mobile Money Regulatory Approach in South Africa

In South Africa, there have been several attempts to launch mobile money services yet it remains unclear on the approach the South African Reserve Bank (SARB) could take on MNO-issued mobile money services.[1254] In 2020, the MTN Mobile Money (MoMo) platform was launched and several similar initiatives could be in the pipeline.[1255] However, there is no specific law enacted to regulate mobile money so far in South Africa.[1256] In addition, there is no regulatory sandbox to test innovative fintech products such as mobile money before they can be rolled out to the general public in South Africa.[1257] In this regard, South Africa does not follow the innovation facilitators' approach. Therefore, the operation of the MTN MoMo without specific regulation points to the 'wait and see' and/or the 'test-and-learn' approach to the regulation of mobile money in South Africa.

1252 Section 3(1)(a)-(c) of the *Payment Systems Act*.
1253 Sections 3-8 of the *Payment Systems Act*.
1254 See paragraph 6.2 of Chapter Six of this thesis.
1255 See paragraph 6.2 of Chapter Six of this thesis.
1256 See paragraph 6.2 of Chapter Six of this thesis.
1257 Sumroy R, Kingsley B, Donovan N and Hakki S *United Kingdom: Fintech Laws and Regulations 2021* https://iclg.com/practice-areas/fintech-laws-and-regulations/united-kingdom accessed on 15 October 2021. A regulatory sandbox is a mechanism where innovative financial products or services are tested in a controlled environment for aspects such as regulatory compliance before such products and/or services are made available to consumption by the general public.

9.3.4 The Mobile Money Regulatory Approach in the UK

In the UK, mobile money has not had the impact it has in Africa probably due to well established and efficient banking services.[1258] Consequently, many people in the UK, including the poor, are more familiar with mobile banking as opposed to mobile money.[1259] Therefore, there is no express statute that regulates mobile money in the UK.

9.3.5 Conclusion on the Regulatory Approaches Adopted for Mobile Money Regulation and Use in Zimbabwe

In light of the discussion above, the researcher submits that Zimbabwe did not have a distinct regulatory approach to the development of mobile money. It is further argued that a combination of the 'wait and see' and the 'test and learn' approaches could have been used. There have been efforts to develop a suitable regulatory framework through amendments to the *Banking Act*[1260] and the gazetting of *Banking Regulations 2020*.[1261] However, these efforts have not resulted in a robust mobile money regulatory framework that can sufficiently promote financial inclusion for the poor in Zimbabwe.

9.4 Overall Analysis of the Possible Influence of the COVID-19 Pandemic on the Regulation and Use of Mobile Money

There is no specific statute enacted to regulate the use of mobile money in Zimbabwe since the outbreak of the COVID-19 pandemic in Zimbabwe. The COVID-19 pandemic requires policymakers in countries such as Zimbabwe to develop policies that can broaden financial inclusion to curb rising poverty among the

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1258 See related comments by Porteous *The Enabling Environment for Mobile Banking in Africa* 15; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2-3; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* 14; Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific & Engineering Research* 129.

1259 See paragraph 9.2.1 of this chapter

1260 See paragraph 9.3.1.1 of this chapter.

1261 See paragraph 9.3.1.2 of this chapter.

poor.[1262] Such policies should include mobile money as one of the pillars that support financial inclusion for the poor. This owes to the fact that mobile money stabilised Zimbabwe's payment systems at a time the COVID-19 pandemic exerted considerable stress on the economy due to restrictions and lockdown imposed to curb the rise in infections.[1263] Mobile money platforms such as Ecocash, Onemoney and Telecash have significantly reduced the travelling costs for the poor staying in rural areas of Zimbabwe by bringing financial services closer to them.[1264] In 2020, Zimbabwe had 7.5 million financial consumers with active mobile money accounts.[1265]

Similarly, there is no express statute enacted to regulate the use of mobile money in Kenya during the ongoing COVID-19 pandemic. Notwithstanding this, mobile money has become the dominant method of transferring funds between individuals thereby enabling millions of people to be financially included in Kenya.[1266] The most recent

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[1262] See related comments by Ahamed M and Gutiérrez-Romero R "Covid-19 Response Needs to Broaden Financial Inclusion to Curb the Rise in Poverty" 2020 *Centre for Globalisation Research* 1, 2; Katsidzira L, Gwaunza L and Hakim JG "The Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Epidemic in Zimbabwe: *Qou Vadis*?" 2020 *Clinical Infectious Diseases* 2180, 2182; Kasradze 2020 *European Journal of Marketing and Economics* 71, Nakouwo and Akplehey 2020 *African Journal of Emerging Issue* 76.

[1263] Zetzsche DA, Birdthistle WA, Arner DW and Buckley RP "Digital Finance Platforms: Towards a New Regulatory Paradigm" 2020 *University of Pennsylvania Journal of Business Law* 273, 277.

[1264] Mazambani L, Rushwaya TJ and Mutambara E "Financial Inclusion: Disrupted Liquidity and Redundancy of Mobile Money Agents in Zimbabwe" 2018 *Investment Management and Financial Innovations* 131, 135; see related comments by Chinakidzwa, Mbengo and Nyatsambo 2015 *International Journal of Scientific and Engineering Research* 128; Sulieman DM and Salleh F "Anti-Money Laundering Risk Posed By Mobile Money Services in Sub-Saharan Africa" 2020 *Journal of Critical Reviews* 568, 568-569; Goldby M "Reporting of Suspicious Activity by Mobile Money service Providers in Accordance with International Standards: How does it Impact on Financial Inclusion?" 2013 *Washington Journal of Law, Technology & Arts* 401, 403-404.

[1265] Potraz https://t3n9sm.c2.acecdn.net/wp-content/uploads/2020/12/Abridged-SectorPerformance-report-3rd-Q-2020.pdf.

[1266] Pazarbasioglu *et al* 2020 *World Bank Group* 22; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437-438; see related comments by Kobor ES "The Role of Anti-Money Laundering Law in Mobile Money Systems in Developing Countries" 2013 *Washington Journal of Law, Technology & Arts* 303, 308; Nyagilo VO, Sakwa MM and Namusonge GS "Efficiency of Mobile Led Financial Services and its Effect on Financial Inclusion in Kenya" 2017 *International Journal of Business Management & Finance* 554, 560-561; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 27.

figures show that there are 31.8 million mobile money users in Kenya.[1267] Likewise, in South Africa, there is no statute enacted to regulate the use of mobile money in response to the outbreak of the COVID-19 pandemic. However, the recently launched MTN's MoMo platform is making steady progress attracting over a million registered users in the first five months since its launch in 2020.[1268] MTN MoMo users can now withdraw funds from Nedbanks' automated teller machines (ATMs) across South Africa.[1269] They can also access the same service at retail outlets such as Pick n Pay, Shoprite, Checkers, OK Foods and Usave.[1270] While mobile money is making inroads across South Africa, policymakers are yet to provide a suitable regulatory framework that can assist to promote financial inclusion for the poor.

Equally, the UK does not have a statute that supervises the regulation and use of mobile money amidst the ongoing COVID-19 pandemic. Although the UK has a largely banked population, recent statistics show that about 1.2 million poor households do not have access to formal financial services.[1271] It is further estimated that about 12 million UK residents may be classified as poor and financially underserved as they would not be able to pay an unexpected bill of £300 before the COVID-19 crisis and this may have worsened.[1272] The researcher submits that mobile money has assisted in providing the poor with financial access in many developing countries, lessening the adverse effects of lockdowns and other COVID-19 related restrictions.[1273] In this regard, it is argued that mobile money reduced the further

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1267 Communications Authority of Kenya (CAK) 2021 *First Quarter Sector Statistics Report for the Financial Year 2020/2021 (July–September 2020)* https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf accessed on 24 March 2021; Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 38; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437-438; Kobor 2013 *Washington Journal of Law, Technology & Arts* 308.

1268 McLeod "MTN in Big E-commerce Play with Mobile Money" Fintech 29 June 2020 page number unknown.

1269 TechCentral *MTN MoMo Users can now 'Cash Out' at Nedbank ATMs* https://techcentral.co.za/mtn-momo-users-can-now-cash-out-at-nedbank-atms/205100/ accessed on 22 November 2021.

1270 TechCentral https://techcentral.co.za/mtn-momo-users-can-now-cash-out-at-nedbank atms/205100/.

1271 Deloitte 2021 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf.

1272 Deloitte 2021 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-growth-through-financial-inclusion-a-roadmap-for-uk-banks.pdf

1273 See paragraph 2.3 of Chapter Two of this thesis.

marginalisation of the poor and assisted them to cope with the economic pressure of the COVID-19 pandemic in countries such as Zimbabwe and Kenya. Although there is limited use of mobile money in South Africa and the UK, experiences in Zimbabwe and Kenya show that mobile money stabilised payment systems and allowed financial consumers, including the poor, to transact safely since the outbreak of the COVID-19 pandemic.[1274]

9.5 Overall Analysis of the Role of Central Banks in the Regulation of Mobile Money

In Zimbabwe, the RBZ was established by the *RBZ Act* to regulate and supervise financial institutions.[1275] These financial institutions include commercial banks, accepting houses, discount houses or finance houses, building societies and the Post Office Savings Bank (POSB).[1276] There is no express mention or reference to MNOs which provide mobile money services in Zimbabwe in the *RBZ Act*. In this regard, the researcher submits that in its current form, the *RBZ Act* does not recognise or regulate MNOs as financial institutions. Other functions of the RBZ include regulating Zimbabwe's monetary sector, maintaining currency stability and a sound financial services sector.[1277] In addition, the RBZ has the power to print money, accept money from customers, grant loans, buy and sell securities, buy and sell precious metals, buy foreign currency and be the bank of the state.[1278] To this end, it appears plausible to conclude that the *RBZ Act* does not accord the RBZ regulatory and supervisory powers over MNOs, mobile money or the promotion of financial inclusion for poor persons in Zimbabwe. Likewise, in Kenya, the *CBK Act* defines banks and financial institutions but does not expressly mention MNOs or mobile money.[1279] However, some of the functions of the CBK include licensing and supervising authorised financial dealers, formulating and implementing policies that promote the establishment, regulation and supervision of sound payment, clearing and settlement

[1274] See paragraph 2.3 of Chapter Two of this thesis.
[1275] Section 4 of the *RBZ Act*.
[1276] Sections 2 and 3 of the *RBZ Act*.
[1277] See section 6 of the *RBZ Act*.
[1278] Section 7 of the *RBZ Act*.
[1279] *Central Bank of Kenya Act* [Chapter 491] 16 of 1966 as amended (*CBK Act*), section 2

systems in Kenya.[1280] This appears to open room for the regulation of mobile money by the CBK owing to mobile money's prominent role in the payment systems in Kenya. Similarly, in South Africa, although the *SARB Act* may be silent on the regulation of mobile money and the promotion of financial inclusion, it gives the SARB powers to regulate and supervise payment systems.[1281] In the UK, it appears that no legislation expressly regulates mobile money. The researcher argues that the growing utility of mobile money especially since the outbreak of the COVID-19 pandemic requires central banks to provide oversight in this emerging fintech product.

9.6 Overall Analysis of the Possible Effects of the COVID-19 Pandemic on the Regulation of Mobile Money Services

The COVID-19 induced lockdowns could have stretched financial regulators causing lapses in the supervision of financial services including mobile money as most of the employees continue to work from home. There could be a need for the policymakers to designate or assign specific regulators for mobile money services. In Zimbabwe, the *Banking Act* regulates mobile banking services offered by banks or any other wireless service provider such as MNOs.[1282] Furthermore, some of the listed banking activities cited in the *Banking Act* are attributable to mobile money services. These activities include receiving deposits, providing money transmission services and administering means of payment services.[1283] The *Banking Act* may be used to effectively regulate mobile money services in Zimbabwe. However, there is ambiguity in that those institutions regulated by the *Banking Act* may only be recognised for regulatory purposes if they possess a registration certificate.[1284] Although MNOs provide money transmission services, they may not have registration certificates for purposes of the *Banking Act*.[1285] The registration certificate is usually issued by the banking registrar to a banking or financial institution upon

[1280] Section 4A(1)(d) of the *CBK Act*.
[1281] Section 10(1)(c)(i) of the *SARB Act*.
[1282] Section 2(m) of the *Banking Act*.
[1283] Section 7(1)(a), (d) and (f) of the *Banking Act*.
[1284] Section 7(1)(a), (d) and (f) of the *Banking Act*.
[1285] Section 10 of the *Banking Act*.

registration.[1286] Thus, MNOs may not easily be registered as financial institutions hence mobile money technically falls outside the scope of the *Banking Act*. Likewise, Kenya's *Banking Act* does not include MNO among banks or financial institutions that it regulates.[1287] The same can also be said of the banking legislation in South Africa and the UK where mobile money has little appeal. In this regard, it is submitted that relevant banking statutes in the four jurisdictions have very little on mobile money and the promotion of financial inclusion. Consequently, the banking legislation in Zimbabwe, South Africa, Kenya and the UK do not sufficiently regulate mobile money services.

9.7 Overall Analysis on Possible Effects of the COVID-19 Pandemic on the Payment Systems

In Zimbabwe, the *NPS Act* defines financial institutions as banking institutions that are registered and conduct banking activities in terms of the *Banking Act*.[1288] It has been discussed above that MNOs that provide mobile money services are not registered as financial institutions for the purposes of the *Banking Act*.[1289] Nonetheless, the *NPS Act* gives the RBZ powers to regulate and supervise other than non-financial institutions as long as such institutions provide financial services such as cash depositing, money transmission and payment services.[1290] However, the *NPS Act* does not sufficiently regulate mobile money owing to the absence of express provisions on mobile money and financial inclusion for the poor.

Unlike in Zimbabwe, the *National Payment Systems Act*[1291] of Kenya provides for a single regulatory framework for all payment service providers including MNOs. In this regard, the *Payment Systems Act* provides that a payment systems provider can be a company that owns, operates or controls a public switched network for the provision of payment systems or storing or sending payments through an electronic

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1286 See section 8 of the *Banking Act*.
1287 *Banking Act* [Chapter 488] 9 of 1989 (as amended), section 2
1288 Section 2 of the *NPS Act*; also see section 7(1)(a), (d) and (f) of the *Banking Act*.
1289 See section 8 of the *Banking Act*.
1290 Sections 2(b) and 3 of the *NPS Act*.
1291 *National Payments Systems Act* 39 of 2011 (*Payments Systems Act*), see preamble.

system or processing and storing data.[1292] Therefore, MNOs such as Safaricom enjoy the same treatment as traditional financial institutions in the regulation of payment systems in Kenya.

In South Africa, MNOs are not expressly mentioned among the participants in the national payment systems.[1293] Moreover, the *NPSA* does not make any direct or express reference to mobile money as a financial instrument that can be used in the payment, clearing or settlement systems in South Africa.[1294] The UK's payment systems are regulated by the *Financial Services* (*Banking Reform*) *Act*.[1295] However, there could be a challenge for mobile money to penetrate the payment systems sector owing to a well-established banking sector that has reputable clearing and settlement infrastructure.[1296] New participants such as MNOs may find it a disincentive to set up an alternative system to rival the already existing one run by banking institutions because it may be very expensive to do so.[1297] Consequently, it may be difficult for MNOs such as O2 or Vodafone to set up mobile money services and win public trust that they can operate in a manner that upholds financial integrity and stability.[1298] Thus, it appears that Kenya could be an example of required legal certainty for payment systems especially at a time when millions of the poor depend on mobile money to withstand the COVID-19 related economic pressure.

9.8 Overall Analysis of Banking Regulations 2020 and Financial Inclusion for the Poor

The *Banking Regulations 2020*[1299] came into operation in early 2020 at about the same time that Zimbabwe recorded its first case of the COVID-19 pandemic. The

1292 Section 2 of the *Payment Systems Act*.
1293 See section 1 of the *NPSA*.
1294 Section 1 of the *NPSA*.
1295 *Financial Services* (*Banking Reform*) *Act* of 2013 (*Banking Reform Act*), sections 40-48
1296 Chiu IHY "A New Era in Fintech Payment Innovations? A Perspective from the Institutions and Regulation of Payment Systems" 2017 *Law, Innovation and Technology* 190, 216.
1297 Chiu 2017 *Law, Innovation and Technology* 216.
1298 Chiu 2017 *Law, Innovation and Technology* 216.
1299 Section 3 of *Banking* (*Money Transmission, Mobile Banking and Mobile Money Interoperability*) *Regulations*, 2020 (*Banking Regulations 2020*).

Banking Regulations 2020 provides statutory oversight on money transmission, mobile banking and mobile money services in Zimbabwe.[1300] Although the *Banking Regulations 2020* provide definitions for money transmission and mobile banking, they do not define mobile money.[1301] Mobile banking is defined the same way it is defined in the *Banking Act*.[1302] In Zimbabwe, it is not clear whether MNOs providing mobile money services are categorised as money transmission service providers or mobile banking providers.[1303] As argued in the discussion on mobile banking above, the researcher submits that mobile money and mobile banking are not the same and should be treated differently. In this regard, policymakers should carefully amend the current regulatory framework to specifically provide for mobile money. Alternatively, a new statute can be enacted to expressly deal with fintech products like mobile money.

Furthermore, the *Banking Regulations 2020* provide for, *inter alia*, the interoperability between mobile money platforms and between mobile money platforms and banks.[1304] Interoperability refers to the ability to easily transfer funds between or among mobile money platforms and between mobile money accounts and bank accounts.[1305] It appears that the rationale for providing for 'interoperability' was to reduce competition among mobile money service providers and between MNOs and banks.[1306] Furthermore, the *Banking Regulations 2020* require all mobile money platforms such as Ecocash, Onemoney and Telecash to be connected to the national payment switch, ZimSwitch.[1307] Interoperability assists in integrating the payment systems in Zimbabwe to ensure the stability of financial markets.[1308] Interoperability could also improve the exchange of funds by allowing consumers to transact across mobile money platforms and also between mobile money accounts

1300 See section 2 of the *Banking Regulations 2020*.
1301 See section 2 of the *Banking regulations 2020*.
1302 See section 2 of the *Banking Regulations 2020*; section 2(m) of the *Banking Act*.
1303 Sections 2 and 4(3) of the *Banking Regulations 2020*; section 2(m) of the *Banking Act*.
1304 Section 2 of the *Banking Regulations 2020*; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 35.
1305 See section 2 of the *Banking Regulations 2020*.
1306 See section 2 of the *Banking Regulations 2020*.
1307 Section 4(1)(3) of the *Banking Regulations 2020*.
1308 See section 4(2) of the *Banking Regulations 2020*.

and bank accounts using their mobile phones. In this regard, the *Banking Regulations 2020* assist in improving financial inclusion during the COVID-19 pandemic.

Similarly, in Kenya, the *Payment Systems Act*[1309] articulates interoperability as a goal for the mobile money sector to promote cooperation and discourage monopolies. In 2018, the South Africa Reserve Bank (SARB) released a position paper on the *Principles for Financial Market Infrastructures*[1310] which reinforces the central bank's duty to protect and enhance financial stability in an ever dynamic financial sector. In the UK, the *Banking Reform Act*[1311] appears to apply to established financial institutions and has little on fintech products like mobile money. In this regard, policymakers in the UK may need to enact statutes that sufficiently regulate fintech products such as mobile money.

9.9 Overall Analysis on Consumer Protection and Regulation of Mobile Money

The *Banking Regulations 2020* provide that MNOs should open trust accounts at commercial banks. The trust accounts should be solely used to deposit mobile money consumers' funds.[1312] This provision protects mobile money consumer funds against possible misuse by MNOs. In addition, MNOs are required to always maintain a balance between the money in the mobile money value chain and consumer deposits at the bank.[1313] This balance is crucial in regulating the money supply to combat the abuse of the system. Likewise, in Kenya, one of the CBK's preconditions to the launch of M-Pesa was that consumer funds should be deposited in a trust

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1309 *National Payments Systems Act* 39 of 2011 (*Payments Systems Act*), section 8(1)(c); see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 47; Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 44.

1310 South African Reserve Bank (SARB) 2018 *Position paper on the Principles for Financial Market Infrastructures*https://www.resbank.co.za/content/dam/sarb/what-we-do/financial surveillance/generalpublic/Position%20paper%20no%20%2001_2018%20on%20%20the% 20PFMIs.pdf accessed on 5 May 2021.

1311 *Financial Services* (*Banking Reform*) *Act* of 2013 (*Banking Reform Act*), sections 40-48.

1312 Section 4(1)(3) of the *Banking Regulations 2020*.

1313 Section 4(4) of the *Banking Regulations 2020*

account at a commercial bank for safety reasons.[1314] In this regard, M-Pesa did not have access and could not use money held in the trust as a safeguard to shield mobile money users' funds against abuse.[1315] Additionally, M-Pesa was required to maintain a balance of the money in the payment system and the deposit in the trust account.[1316] Separating consumer funds from those of MNOs gives mobile money users confidence that their money is safe. To that end, individuals, including the poor could feel encouraged to use mobile money especially during crisis periods such as the ongoing COVID-19 pandemic. In South Africa and the UK, mobile money is in limited use and legislation in the two countries is more inclined to deposit protection.

9.10 Overall Analysis on the Possible Influence of the COVID-19 Pandemic on AML/CTF Measures

In Zimbabwe, the *Money Laundering and Proceeds of Crime Act (MLPC Act)*[1317] is a key anti-money laundering and counter-terrorist financing (AML/CTF) statute. Among other provisions, the *MLPC Act* provides that every financial institution should identify every customer's identity by means of an identity document at the point of establishing a business relationship.[1318] In this regard, an individual who seeks to open a mobile money account is supposed to produce a document that can sufficiently identify him or her. The *MLPC Act* provides that the RBZ's Financial Intelligence Unity (FIU) should use a risk-based approach in implementing AML/CTF measures for all financial institutions in Zimbabwe, including MNOs.[1319] The *MLPC*

1314 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379; Batista, Simione and Vicente 2012 *International Growth Centre Policy Brief* 7.

1315 Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; see related comments by Batista, Simione and Vicente 2012 *International Growth Centre Policy Brief* 7; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

1316 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

1317 *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] 4 of 2013, as amended (the *MLPC Act*), sections 8 and 9; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 19.

1318 Section 15(1)(a) of the *MLPC Act*.

1319 Section 12A of the *MLPC Act*; see related comments by FATF *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* 7.

Act further provides that financial institutions should have internal mechanisms to implement and assess their internal AML/CTF measures.[1320] In this regard, the *MLPC Act* seems to promote self-regulation in the implementation of AML/CTF measures. However, this could be a major loophole that can lead to non-disclosure of financial crimes such as money laundering, terrorism financing and fraud, especially in the mobile money sector. Thus, Zimbabwe does not seem to have a stringent approach to the implementation of AML/CTF measures.

Similarly, Kenya's M-Pesa largely enforced its internally developed AML/CTF measures.[1321] To open an M-Pesa account, an individual needs to produce an identity document or passport and fill in a registration form.[1322] However, South Africa and the UK have some of the most advanced and stringent AML/CTF measures. For instance, the *Financial Intelligence Centre Act* obligates financial institutions in South Africa, including mobile money service providers, to thoroughly establish and verify the identity of their clients.[1323] Moreover, South Africa also has the *Regulation of Interception of Communications and Provision of Communication-Related Information Act*[1324] which requires holders of active subscriber identity modules (SIM) cards to meet the set registration conditions. In this regard, individuals opening mobile money accounts would be required to produce proof of

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[1320] Section 12B of the *MLPC Act*; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 19.

[1321] See related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 399-400; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 127.

[1322] Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Jack and Suri 2011 *National Bureau of Economic Research* 7; Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11.

[1323] Sections 21, 22 and 22A of the *FICA*; see related comments by Lawack 2013 *Washington Journal of Law, Technology & Arts* 331; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; De Koker 2006 *Journal of Financial Crime* 41-42.

[1324] *Regulation of Interception of Communications and Provision of Communications-Related Information Act* 20 of 2002 (*RICA*), sections 39-40; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 56; Lawack 2013 *Washington Journal of Law, Technology & Arts* 340; De Koker L and Jentzsch N "Financial Inclusion and Financial Integrity: Aligned Incentives?" 2013 *World Development* 267, 271.

identity, proof of residence and sometimes proof of income.[1325] According to De Koker, the UK's AML/CTF standards are very stringent in that customer identification and verification is strictly applied.[1326] A person opening a mobile money account would be required to provide proof of identity such as a passport or driving licence and proof of residential address.[1327] Although South Africa and UK's AML/CTF approaches are robust in combating financial crimes, the requirements may hinder the poor and low-income earners who may not have proof of residence and proof of income from joining the formal financial sector. The stringent application of AML/CTF during the ongoing COVID-19 pandemic could impair the poor's access to financial services.

9.11 Overall Analysis on Cyber-Crime and the Regulation of Mobile Money

Generally, the COVID-19 pandemic has forced individuals to open mobile money accounts through their mobile phones. Supporting documents that used to be submitted in physical form are transmitted electronically. Thus, a lot of individuals' private information is susceptible to hacking and interception. In this regard, policymakers in Zimbabwe have developed the *Cyber Security and Data Protection Bill*.[1328] At the time of writing this research, the *House Bill* had passed the parliamentary processes and awaited presidential assent. This *House Bill* seeks to establish a cyber-security centre to promote and coordinate cyber security and combat cybercrime in Zimbabwe.[1329] The *House Bill* further seeks to establish a data protection authority and provide for the investigation and collection of evidence

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[1325] See related comments by De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *Journal of South African Law* 715, 723; Lawack 2013 *Washington Journal of Law, Technology & Arts* 335; De Koker 2006 *Journal of Financial Crime* 42.

[1326] De Koker L "Identifying and Managing Low Money Laundering Risk: Perspectives on FAFT's Risk-Based Guidance" 2009 *Journal of Financial Crime* 334. 335-336; see related comments by De Koker 2006 *Journal of Financial Crime* 39; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 76.

[1327] De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 286; see related comments by De Koker 2006 *Journal of Financial Crime* 39; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 76.

[1328] *Cyber Security and Data Protection Bill* 18 of 2019 (*House Bill*).

[1329] Clause 6 of the *House Bill*.

related to cybercrime and unauthorized data collection and sharing.[1330] The *House Bill* also seeks to compel those in control of personal data to handle it in strict security, integrity and confidentiality.[1331] The *House Bill* appears very similar to the *Data Protection Act*[1332] of Kenya and the *Data Protection Act*[1333] of the UK. However, where the *House Bill* seeks to establish a data protection authority, in Kenya, there is a data protection commissioner and the UK has a data controller.[1334] In South Africa, the *Protection of Personal Information Act*[1335] was enacted in 2013 to regulate the protection of individuals' privacy. *POPIA* provides that individuals have the right to know when their personal information is collected, how it is stored and if it will be accessed by third parties.[1336] Furthermore, *POPIA* gives a person whose personal information has been collected the right to correct or delete aspects of his or her data and the individual can object to the processing of personal information for marketing purposes.[1337] *POPIA* also establishes the information regulator as the implanting agent of the *Act*.[1338] In this regard, Zimbabwe appears to be following the data protection approaches set in South Africa, Kenya and the UK.

9.12 Overall Analysis on International Best Practices and the Regulation of Mobile Money

9.12.1 Applying the Risk-Based Approach

There should be a balance in promoting financial inclusion for the poor during the ongoing COVID-19 pandemic and the need for robust regulation to combat money laundering, terrorism financing and related financial crimes.[1339] In this regard, mobile

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1330 Clauses 7-8 of the *House Bill*.
1331 Clauses 15-18 of the *House Bill*.
1332 *Data Protection Act* 24 of 2019, see sections 2-9
1333 *Data Protection Act* 2018, see sections 2 and 3.
1334 See section 18 of the *Data Protection Act* of Kenya and sections 34 and 35 of the *Data Protection Act* of the UK.
1335 *Protection of Personal Information Act* 4 of 2013 (*POPIA*), see the preamble and section 2.
1336 Section 5 of *POPIA*.
1337 Section 5 of *POPIA*.
1338 See sections 39-30 of *POPIA*.
1339 See related comments by Alexander K "Financial Inclusion and Banking Regulation: The Role of Proportionality" 2021 *Law and Contemporary Problems* 129, 142-143; Buheji *et al* 2020 *American Journal of Economics* 216; Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 76.

money regulators need to enable the use of fintech products like mobile money while safeguarding financial markets integrity. The Financial Action Task Force (FATF) proposes that mobile money regulators can adopt a risk-based approach according to which the AML/CTF measures are applied in proportionate to the identified risks.[1340] The risk-based approach allows regulators to vary the application of AML/CTF measures for consumers in emergencies like the COVID-19 pandemic.[1341] In this regard, regulators could increase customer due diligence (CDD) monitoring on high-risk individuals and can lower the standard or completely waive CDD requirements on non-risk individuals.[1342] Put differently, the risk-based approach allows regulators to dispense with unnecessary compliance requirements that may hinder financial inclusion for the poor.[1343] The COVID-19 pandemic presents a good example of a situation where the poor could be exempted from CDD requirements for opening mobile money accounts in order to receive social assistance support. Zimbabwe's mobile money regulatory framework appears to lack a clearly defined position on the risk-based approach. On the other hand, Kenya has been a good example of a jurisdiction that has promoted the financial inclusion of the poor while safeguarding financial markets integrity. South Africa and the UK have rigid AML/CTF regulatory approaches and it has been difficult for non-bank issued financial products to thrive in the two jurisdictions.

[1340] See the Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: The Banking Sector* (FATF Paris 2014) 6; De Koker 2009 *Journal of Financial Crime* 336-337; De Koker 2014 *Journal of Money Laundering Control* 282; FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18.

[1341] FATF 2014 *Guidance for a Risk-Based Approach: The Banking Sector* 6; see related comments by De Koker 2014 *Journal of Money Laundering Control* 282; FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18; De Koker 2009 *Journal of Financial Crime* 337.

[1342] De Koker 2014 *Journal of Money Laundering Control* 283; see related comments by FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 19; De Koker 2011 *Journal of Financial Crime* 376; De Koker 2009 *Journal of Financial Crime* 341-342.

[1343] FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18; De Koker 2014 *Journal of Money Laundering Control* 283; Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: The Banking Sector* (FATF Paris 2014) 6-7; De Koker 2009 *Journal of Financial Crime* 336-337.

9.12.2 The Regulation of Mobile Money Agents

Mobile money agents refer to individuals, shops, supermarkets, garages and many other entities outlets that are contracted by MNOs to provide mobile money services in their localities.[1344] Among other duties, agents also recruit and register new mobile money consumers and they help in processing and receiving payments.[1345] However, in Zimbabwe, there is no clear legislative policy regulating the activities of mobile money agents. In 2020, the RBZ prohibited mobile money agents on allegations that some of them had become conduits of illicit activities including the 'creation' of fictitious money.[1346] There were also allegations that mobile money agents illegally traded in foreign currency and that they overcharged consumers.[1347] The banning of mobile money agents in 2020 exposed the weaknesses of AML/CTF self-regulation by MNOs in Zimbabwe and showed that Zimbabwe does not have a robust regulatory framework.[1348] Additionally, banning mobile money agents could have long term financial inclusion implications especially in the wake of the COVID-19 pandemic. Individuals who may want to use mobile money for the first time could face challenges to register. On the other hand, mobile money agents have continued

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[1344] See related comments by Gibson E, Lupo-Pasini F and Buckley R "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" 2017 *University of New South Wales Law Research Series* 1, 2; Munyoro *et al* 2017 *International Journal of Research in Business Management* 4; Chibango C "Mobile Money Revolution: An Opportunity for Financial Inclusion in Africa" 2014 *The International Journal of Humanities and Social Studies* 59, 61.

[1345] Pazarbasioglu *et al* 2020 *Digital Financial Services* 4; see related comments by Mazambani, Rushwaya and Mutambara 2018 *Investment Management and Financial Innovations* 135; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 451.

[1346] See related comments by the Reserve Bank of Zimbabwe (RBZ) *Monetary Policy statement 2020* (RBZ Harare 2020) 18; Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 10.

[1347] *Ecocash Zimbabwe (Pvt) Ltd vs RBZ* (HH 333-20, HC 3007/20) [2020] ZWHC 333 (26 May 2020) para unknown; RBZ 2020 *Monetary Policy 2020* 18; Chitimira and Ncube *Potchefstroom Electronic Law Journal* 10; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 44.

[1348] See related comments by *Ecocash Zimbabwe vs RBZ* 2020 para unknown; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 44; RBZ 2020 *Monetary Policy 2020* 18; Chitimira and Ncube 2021 *Potchefstroom Electronic Law Journal* 10.

to increase in Kenya.[1349] South Africa and the UK do not have established mobile money agent networks currently.

9.13 Concluding Remarks

To a greater extent, policymakers in Kenya view mobile money as a powerful tool to achieve financial inclusion for the poor. In Zimbabwe, the policy position does not seem very clear although there is an acknowledgement of the usefulness of mobile money. However, South Africa and the UK appear to prioritise conventional banking as the way to promote financial inclusion for the poor. However, the COVID-19 pandemic and the related lockdowns have made the use of mobile money one of the highlights of adopting innovative fintech products. Consequently, the regulation of mobile money and the promotion of financial inclusion for the poor has become an important legal debate. Nonetheless, the terms mobile money and financial inclusion are not expressly defined in the relevant statutes in Zimbabwe, South Africa, Kenya and the UK.

While policymakers in Zimbabwe have chosen to use the term mobile banking, the researcher argues that mobile money and mobile banking are two distinct terms that may not be used interchangeably. It appears that in Kenya, mobile money is more of a payment system than a banking platform.[1350] Thus, mobile money may not be regulated in the same way as banks. However, there have not been sufficient policy developments to enact suitable statutes to regulate mobile money in order to promote financial inclusion for the poor in the four comparator jurisdictions of this study. The evolving nature of fintech products like mobile money requires policymakers to be quick and efficient at designing relevant and adequate technology-driven regulatory mechanisms.

[1349] See related comments by the CAK 2021 https://ca.go.ke/wp-content/uploads/2020/12/Sector-Statistics-Report-Q1-2020-2021.pdf 11; Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 39-40.

[1350] See related comments by Ndung'u *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 13; Jack and Suri 2011 *National Bureau of Economic Research* 7; IFC 2011 *IFC Mobile Money Study 2011 Summary Report* 18.

Therefore, it is submitted that Zimbabwe could take the initiative to expressly incorporate mobile money and financial inclusion in its statutory regulatory framework. Zimbabwe could also take some lessons from Kenya, South Africa and the UK on what to do and what to avoid in order to enhance the regulation and use of mobile money to promote financial inclusion for the poor.

CHAPTER TEN

RECOMMENDATIONS AND CONCLUSION

10.1 Introduction

This chapter provides the overall conclusions and recommendations. The chapter will provide conclusions and recommendations on the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe, Kenya, South Africa and the United Kingdom. Accordingly, this will be done by providing general observation regarding the regulation and use of mobile money in the mentioned jurisdictions. In addition, the use of mobile money to promote financial inclusion for the poor in Zimbabwe, Kenya, South Africa and the United Kingdom will be discussed. The chapter will also discuss the overall recommendations from each of the jurisdictions and key recommendations that are proposed in the form of a new regulatory model that can be used to enhance the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe. It is hoped that recommendations in this chapter will assist policymakers and the legislature to develop a robust and suitable regulatory framework for mobile money in Zimbabwe

10.2 General Observations and the Influence of COVID-19 on the Regulation of Mobile Money

It was observed that mobile money provides the poor with access to financial services, thereby cushioning them from soci-economic pressure that came with the COVID-19 pandemic in Zimbabwe.[1351] The rapid development in innovative technologies introduced affordable, convenient and user-friendly financial products such as mobile money, which is changing the world's financial markets by promoting

[1351] See related comments by Buckley, Greenare and Malady 2015 *Washington University Global Studies Law Review* 493.

financial inclusion for the poor in ways never seen before.[1352] Mobile money was introduced in Zimbabwe in 2011 when three mobile network operators (MNOs), Econet Wireless, Net One and Telecel launched Ecocash, Onemoney and Telecash mobile money platforms, respectively. Ecocash, Onemoney and Telecash were modelled after the world's most famous mobile money platform, M-Pesa of Kenya, which started operating in 2007. However, the researcher submits that the regulation of mobile money has not kept pace with the ever-changing innovations Zimbabwe. Consequently, there is no express statute enacted to regulate mobile money in Zimbabwe.[1353] It was observed that various statutes such as the *National Payment Systems Act*,[1354] the *Banking Act*[1355] and the *Banking Regulations 2020*[1356] are used to regulate mobile money in Zimbabwe. The mentioned statutes have considerable weaknesses and are not robust enough to regulate mobile money and promote financial inclusion for the poor in Zimbabwe.[1357] Similarly, there is no specific statutes that regulate mobile money in Kenya,[1358] South Africa[1359] and the United Kingdom.[1360] In this regard, it was observed that mobile money is still a fairly new financial product and policymakers in Zimbabwe, Kenya, South Africa and the United Kingdom should develop statutes that specifically regulate the sector.

1352 Packin NG "Regtech, Compliance and Technological Judgement Rule" 2018 *Chicago-Kent Law Review* 193, 195; see related comments by Forgor AT and Julie KA "Financial Innovative Development in Sub-Saharan Africa: The Role of Payment Systems" 2019 *Advances in Social Science, Education and Humanities Research* 192, 194-195; Nakouwo NS and Akplehey FN "Covid-19 and Mobile Money Agents in Ghana" 2020 *African Journal of Emerging Issues* 75, 78; Otache I "The Effects of the Covid-19 Pandemic on the Nigeria's Economy and Possible Coping Strategies" 2020 *Asian Journal of Social Sciences and Management Studies* 173, 174-175; Buheji M, Da Costa CK, Beka G, Mavric B, De Souza YL, Da Costa SS, Hanafi M and Yein TC "The Extent of Covid-19 Pandemic Socio-Economic Impact on Global Poverty. A Global Integrative Multidisciplinary Review" 2020 *American Journal of Economics* 213, 215.

1353 See paragraph 1.3 of Chapter One of this thesis.

1354 *National Payment Systems Act* [Chapter 24:23] 21 of 2001 (*NPS Act*), sections 2-3.

1355 *Banking Act* [Chapter 24:20] 9 of 1999 as amended (*Banking Act*), sections 2(m), 4C, 7(d), and 28A.

1356 *Banking* (*Money Transmission, Mobile Banking and Mobile Money Interoperability*) *Regulations*, 2020 (*Banking Regulations 2020*), sections 2-3.

1357 See paragraph 1.3 of Chapter One of this thesis.

1358 See paragraph 5.4 of Chapter Five of this thesis.

1359 See paragraph 6.5 of Chapter Six of this thesis.

1360 See paragraph 7.5 of Chapter Seven of this thesis.

Furthermore, it was observed that mobile money combines domains such as finance and telecommunications which have unrelated regulatory frameworks in Zimbabwe.[1361] Consequently, no one domain can adequately regulated mobile money in Zimbabwe. While the financial regulatory framework does not have a specific statute on mobile money in Zimbabwe as aforementioned, the *Postal and Telecommunications Act*[1362] does not have provisions that regulate financial aspects of mobile money. Therefore, there is a legal gap created as a result of the intersection of finance and technology in Zimbabwe.[1363] There are other sub-domains such as cyber-security, consumer protection and competition regulation that add to the legal complexity of stakeholders involved in mobile money. This legal flaw also exists in countries such as Kenya,[1364] South Africa[1365] and the United Kingdom.[1366] It is important that all the mentioned role-players should co-rdinate in order to create regulatory certainty on mobile money in Zimbabwe.

It was noted that mobile money has assisted many poor people to access formal financial services using their mobile phones in Zimbabwe.[1367] The increased access to mobile phones allowed many poor people to use mobile money as a gateway to financial inclusion in Zimbabwe and other countries.[1368] Individuals residing in rural

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1361 See paragraph 1.3 of Chapter One of this thesis.

1362 *Postal and Telecommunications Act* [Chapter 12:05] 4 of 2000 as amended, see sections 34, 60-64.

1363 See paragraph 1.3 of Chapter One of this thesis.

1364 See paragraph 5.5.1 of Chapter Five of this thesis.

1365 See paragraph 6.6 of Chapter Six of this thesis.

1366 See paragraph 7.5 of Chapter Seven of this thesis.

1367 Packin 2018 *Chicago-Kent Law Review* 195; see related comments by Lumsden E "The Future is Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business & Finance* 1, 7; see related comments by Buckley R, Greenacre J and Malady L "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 435, 437; Pazarbasioglu C, Mora AG, Uttamchandani M, Natarajan H, Feyen E and Saal M *Digital Financial Services* (World Bank Group Washington Dc 2020) 2; Chatain PL, Zerzan A, Noor W, Dannaoui N and De Koker L *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* (The World Bank Washington DC 2011) 2.

1368 Greenacre J "What Regulatory Problems Arise when Fintech Lending Expands into Fledgling Credit Markets?" 2020 *Washington University Journal of Law & Policy* 229, 231-232; see related comments by Mutsonziwa K and Maposa OK "Mobile Money – A Catalyst for Financial Inclusion in Developing Economies: A Case Study of Zimbabwe using FinScope Survey Data" 2016 *International Journal of Financial Management* 45, 47; Mbengo P and Phiri MA "Mobile Banking Adoption: A Rural Zimbabwean Marketing Perspective" 2015 *Corporate Ownership and Control* 195, 196.

areas in Zimbabwe can process and receive payments in a fast, affordable and convenient manner using the mobile money innovation.[1369] Mobile money has exponentially grown across Africa filling in the financial access gap created by the absence of banks and other formal financial institutions in rural areas and other poor communities in Zimbabwe.[1370] The outbreak of the coronavirus disease (COVID-19 pandemic) and the subsequent lockdowns contributed to the increased use of mobile money, especially among the poor.[1371] Mobile money enables users to process contactless transactions which minimise the risk of transmitting the coronavirus.[1372] However, the rapid uptake of mobile money services has presented some policy and regulatory challenges in many countries including Zimbabwe.[1373] Developing suitable regulatory frameworks for mobile money has been particularly challenging owing, in part, to the continuous changes in financial technology (fintech) in Zimbabwe and many other countries.[1374]

1369 Packin 2018 *Chicago-Kent Law Review* 195; see related comments by Greenacre 2020 *Washington University Journal of Law & Policy* 231-232; Mutsonziwa and Maposa 2016 *International Journal of Financial Management* 47; Mbengo and Phiri 2015 *Corporate Ownership and Control* 196.

1370 Greenacre 2020 *Washington University Journal of Law & Policy* 232; see related comments by Sakarombe U "Financial Inclusion and Bank Stability in Zimbabwe" 2018 *International Journal of Academic Research in Economics and Management Sciences* 121, 123; Mbengo and Phiri 2015 *Corporate Ownership and Control* 197.

1371 Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 21; see related comments by De R, Pandey N and Pal A "Impact of Digital Surge During Covid-19 Pandemic: A Viewpoint on Research and Practice" 2020 *International Journal of Information Management* 1, 3; Mann RJ "Driver for Contactless Payments" in Pistor K *Law in the Time of COVID-19* (Columbia Law School New York 2020) 177; Kasradze T "Challenges Facing Financial Inclusion Due to the Covid-19 Pandemic" 2020 *European Journal of Marketing and Economics* 63, 70.

1372 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; see related comments by De, Pandey and Pal 2020 *International Journal of Information Management* 3; Mann "Driver for Contactless Payments" 177; Kasradze 2020 *European Journal of Marketing and Economics* 70.

1373 Greenacre 2020 *Washington University Journal of Law & Policy* 233; see related comments by Winn JK and De Koker L "Introduction to Mobile Money in Developing Countries: Financial Inclusion and Integrity Conference Special Issue" 2013 *Washington Journal of Law, Technology & Arts* 155, 156; Arner DW, Barberis J and Buckley RP "Fintech, Regtech and the Reconceptualisation of Financial Regulation" 2016 *Northwestern Journal of International Law and Business* 1, 12-13; Lawack-Davids V "Legal and Regulatory Framework of Mobile Payments in South Africa: A Trade-off" 2012 *South African Mercantile Law Journal* 77, 77-78.

1374 Greenacre 2020 *Washington University Journal of Law & Policy* 233; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 4; Winn and De Koker 2013 *Washington Journal of Law, Technology & Arts* 156; Arner, Barberis and Buckley 2016 *Northwestern Journal of International Law and Business* 12-13.

It was also observed that Zimbabwe often lags behind in the adoption and regulation of fintech products such as mobile money.[1375] In this regard, it is not clear why policymakers in Zimbabwe take long to enact a statute that expressly regulates mobile money. Current statutes such as the *NPS Act*[1376] and the *Banking Act*[1377] do not define and let alone provide adequate provisions to regulate mobile money and its use to promote financial inclusion for poor.[1378] Furthermore, it is submitted that using the term mobile banking interchangeably with mobile money is erroneous.[1379] The researcher inclines with Greenacre's argument that mobile money is a mobile phone-based payment system, not a banking service.[1380] Thus, using the term mobile banking may not assist policymakers to fully tap into mobile money's potential to drive financial inclusion for the poor and/or to comprehensively regulate it. In this regard, policymakers in Zimbabwe may need to carefully consider amending the *Banking Act* and the *Banking Regulations 2020* to clearly define mobile money. Alternatively, policymakers may consider enacting a new statute that specifically and comprehensively regulates innovative fintech products such as mobile money.

Additionally, the enforcement of anti-money laundering and counter-terrorist financing (AML/CTF) measures on mobile money is significantly weak in Zimbabwe owing to poor legislative provisions.[1381] The arbitrary banning of mobile money agents on allegations that they facilitated illicit foreign currency exchanges and

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1375 See paragraph 1.4 of Chapter One of this thesis.

1376 *National Payment Systems Act* [Chapter 24:23] 21 of 2001 as amended (*NPS Act*), see sections 2-3.

1377 *Banking Act* [Chapter 24:20] 9 of 1999 as amended (*Banking Act*), section 2.

1378 See section 2 of the *NPS Act*; section 2 of the *Banking Act*.

1379 Section 2(m) of the *Banking Act*; also see section 2 of *Banking* (*Money Transmission, Mobile Banking and Mobile Money Interoperability*) *Regulations*, 2020 (*Banking Regulations 2020*).

1380 Greenacre 2020 *Washington University Journal of Law & Policy* 232; see related comments by Lumsden 2018 *Stanford Journal of Law, Business & Finance* 7; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437; Pazarbasioglu *et al 2020 Digital Financial Services* 2; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 2.

1381 Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *Potchefstroom Electronic Law Journal* 1, 8-9; see related comments by Dzomira S "Analysis of Bank Failures during Financial Tumult in Africa-Zimbabwe: A historical Review" 2014 *Journal of Governance and Regulation* 75, 78.

externalisation of funds in 2020 highlights Zimbabwe's weak regulatory framework on AML/CTF.[1382] However, the same cannot be said of the UK and South Africa that appear to have robust AML/CTF measures in place. It is also noteworthy that there is more usage of mobile money in developing countries than in developed ones.[1383] In this regard, it could be possible that there are more poor people who use mobile money in Zimbabwe and Kenya than in South Africa and the UK. The possible explanation for this is the uneven development of the banking sectors between poorer and wealthier countries.[1384] Banks are mainly concentrated in urban areas and their services are out of reach for many poor people.[1385] Thus, people in Zimbabwe and Kenya are more likely to use mobile money owing to its accessibility and affordability. In this regard, mobile money has afforded the poor in Zimbabwe opportunities to access formal financial services through their mobile phones.[1386] On the other hand, the poor in South Africa and the UK, where mobile money has limited use, could be completely excluded from formal financial services.[1387]

1382 *Ecocash Zimbabwe (Pvt) Ltd v RBZ* (HH 333-20.HC 3007/20) [2020] ZWHC 333 para unknown; see related comments by Chitimira and Ncube 2021 *Potchefstroom Electronic Law Journal* 10.

1383 See related comments Buku MW and Meredith MW "Safaricom and M-Pesa in Kenya: Financial Inclusion and Financial Integrity" 2013 *Washington Journal of Law, Technology and Arts* 375, 378; Ahmad HA, Green C and Jiang F "Mobile Money, Financial Inclusion and Development: A Review with Reference to African Experience" 2020 *Journal of Economic Surveys* 753, 755.

1384 See related comments by Soutter L, Ferguson K and Neubert M "Digital Payments: Impact Factors and Mass Adoption in Sub-Saharan Africa" 2019 *Technology Innovation Management Review* 41, 42; Chibango C "Mobile Money Revolution: An Opportunity for Financial Inclusion in Africa" 2014 *The International Journal of Humanities & Social Studies* 59, 62.

1385 See related comments by Demirgüç-Kunt A, Klapper L, Singer D, Ansar S and Hess J *Findex Database 2017: Measuring Financial Inclusion and the Fintech Revolution* (World Bank Group Washington DC 2018) 1; Mutsonziwa and Maposa 2016 *International Journal of Financial Management* 47; Chibango 2014 *The International Journal of Humanities & Social Studies* 62.

1386 See related comments by Mbengo P and Phiri MA "Mobile Banking Adoption: A Rural Zimbabwean Marketing Perspective" 2015 *Corporate Ownership and Control* 195, 195-196; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437; Lawack-Davids 2012 *South African Mercantile Law Journal* 77.

1387 See related comments by Lawack VA "Mobile Money, Financial Inclusion and Financial Integrity: The South African Case" 2013 *Washington Journal of Law, Technology & Arts* 317, 322; De Koker L "The Money-Laundering Risk Posed by Low-Risk Financial Products in South Africa: Findings and Guidelines" 2009 *Journal of Money Laundering & Control* 323, 323-334; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 80; 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, 184.

Attempts to provide low-cost bank accounts such as the Mzansi accounts in South Africa have failed to facilitate sustainable financial inclusion for the poor.[1388]

10.3 Conclusions

This thesis concluded that the there is no express statute to regulate the use of mobile money to promote financial for the poor in Zimbabwe. [1389] Consequently, there are flaws, gaps and inconsistencies in the regulation of mobile money in Zimbabwe. In this regard, policymakers should develop a robust mobile money regulatory framework that fosters cooperation among role-players and regulatory authorities in the mobile money sector. There is need for enhanced financial education to teach the poor on the importance of financial inclusion and safe use of fintech products such as mobile money.

In Chapter Two, it was concluded that the absence of a statute that expressly regulates mobile money is an inherent weakness in Zimbabwe where policymakers often lag behind in the adoption of fintech products.[1390] it was further concluded that the National Financial Inclusion Strategy 2016-2020 (NFIS) and the Reserve Bank of Zimbabwe (RBZ)'s Fintech Regulatory Sandbox Guidelines show policy intent on promoting financial inclusion but that often comes too late to be useful in Zimbabwe.[1391] In this regard, policymakers should be quick in studying new fintech products and enact statutes that adequately regulate same.

In Chapter Three, it was concluded that the COVID-19 pandemic increased the use of mobile money in Zimbabwe owing to the relative safety it presents when compared to other payment systems such as cash.[1392] The chapter also reveals that various statutes such as the *National Payment Systems Act*, the *Banking Act*, the *MLPC Act* and the *Banking Regulations 2020* are used to regulate mobile money in

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[1388] See related comments by De Koker 2009 *Journal of Money Laundering & Control* 323-334; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 80; Louis and Chartier 2017 *Journal of Comparative Urban Law and Policy* 184.

[1389] See paragraph 2.1 of this chapter.

[1390] See paragraph 1.3 of Chapter One of this thesis.

[1391] See paragraphs 2.3.1 and 2.3.2 of this chapter.

[1392] See paragraph 3.2 of this chapter.

Zimbabwe.[1393] However, the mentioned statutes do not define mobile money and they do not have specific provisions on mobile money.[1394] Consequently, there are persons who are taking advantage of the legal gaps in the current framework to commit crimes such as money laundering and illicit foreign currency trade using mobile money in Zimbabwe.[1395] Chapter Three also reveals that there should be adequate consumer protection for the poor who rely on mobile money for their financial needs.[1396] In this regard, the promotion of financial inclusion for the poor should go along with consumer protection in Zimbabwe.

In Chapter Four, the thesis discusses role players in mobile money. It was revealed that there are diverse role-players such as the government, police, the National Prosecuting Authority (NPA), courts, RBZ, POTRAZ, the Mobile Network Operators (MNOs) and mobile money agents who all should play a part in promoting the use of mobile money. The government should set the tone and pace on the adoption, use and regulation of fintech products such as mobile money.[1397] It was argued that government should lead in promoting financial literacy for the poor so that they can meaningfully benefit from mobile money.[1398] Chapter four also reveals that the RBZ prohibited operations of mobile money agents alleging that they used mobile money to launder money and trade in foreign currency illegally in Zimbabwe.[1399] The banning of mobile money agents could reduce the number of poor persons who can use mobile money since agents who used to assist in this regard are no longer there. The banning of mobile money agents posed questions on the investigative powers of the police who could not detect the alleged crimes in time and effect arrests. In addition, several court cases related to the alleged crimes have not yet been finalised, more than a year since they were opened. The delay in finalising cases highlights possible incompetence on the part of the NPA and the entire judiciary system in Zimbabwe.

[1393] Paragraph 3.3 of this chapter.
[1394] See paragraph 3.3.2 of this chapter.
[1395] See paragraph 3.3.6 of this chapter.
[1396] See paragraphs 3.5.1 and 3.5.3 of this chapter.
[1397] See paragraph 4.2.1 of this chapter.
[1398] See paragraph 4.2.1 of this chapter.
[1399] See paragraph 4.2.3 of this chapter.

Chapter Five discussed the regulation and use of mobile money to promote financial inclusion for the poor in Kenya.[1400] The chapter reveals that the M-Pesa mobile money platform contributed to the financial inclusion of millions of poor persons in Kenya.[1401] One critical aspect on the success of M-Pesa was the regulatory support it received from the Kenyan government in the early days of its use.[1402] The Kenyan government has largely supported the use of mobile money hence the huge success. Nonetheless, Kenya has not developed a sound mobile money regulatory framework.[1403]

In Chapter Six, the thesis reveals that there were several initiatives to launch mobile money that flopped in South Africa over the years. However, there is hope that mobile money will be a success through the MTN's MoMo platform that was launched in 2020.[1404] The chapter reveals that many mobile money projects failed in South Africa include a rigid financial regulatory framework and a well-established banking system.[1405] However, banking services in South Africa have not improved the financial inclusion for the poor owing to, *inter alia*, exorbitant costs and onerous documentary requirements.[1406] As a result, the poor resort to informal means of accessing finance such as stokvels and other unregulated private credit lenders in South Africa.[1407] Poor enforcement of consumer protection statutes is also one of the factors that deter the poor from using formal financial services in South Africa.[1408]

Chapter Seven reveals that the UK is quick in adopting and regulating fintech products.[1409] However, mobile money has not been a success in the UK owing, in part, to well-established payment systems that makes it expensive for new role-players who may want to start alternative ones. Although mobile money is not extensively used in the UK, some migrant communities use mobile money to remit

[1400] See paragraph 5.1 of this chapter.
[1401] See paragraph 5.1 of this chapter.
[1402] See paragraph 5.3.1 of this chapter.
[1403] See paragraph 5.4 of this chapter.
[1404] See paragraph 6.3.3 of this chapter.
[1405] See paragraph 6.2 of this chapter.
[1406] See paragraph 6.2 of this chapter.
[1407] See paragraph 6.2 of this chapter.
[1408] See paragraph 6.7 of this chapter.
[1409] See paragraph 7.1 of this chapter.

funds from the UK to their countries of origin such as Zimbabwe and Kenya.[1410] Consumer protection is another positive aspect on the UK's financial regulatory framework where the rights of the poor are adequately provided for and enforced through legislation.[1411]

Chapter Eight reveals that there are best practices that can assist in providing guidance on the regulation and use of mobile money to promote financial inclusion for the poor.[1412] The Southern Africa Development Community (SADC) has a set of mobile money guidelines that are similar to best standards developed by international standard-setting bodies such as the Financial Action Task Force (FATF).[1413]

Chapter Eight reveals theories that can assist to explain mobile money operations owing to the fact that this is a dynamic innovation.[1414] The theories can also assist policymakers to develop suitable regulatory frameworks for fintech products such as mobile money. In addition, the chapter reveals that financial inclusion goes along with other objectives such as financial stability, financial integrity and consumer protection (the I-SIP strategy).[1415] In this regard, financial inclusion of the poor can only become a success if it is done with the other three objectives; stability, integrity and protection. Above all, the ongoing COVID-19 pandemic highlighted the importance of mobile money in times of pandemics.[1416] Mobile money provides safe cashless or electronic money in transactions that can reduce the spread of the coronavirus through the exchange of cash.[1417] Policymakers can build on the success of mobile money to drive towards a digital economy where the use of cash is reduced in Zimbabwe.[1418]

[1410] See paragraph 7.7 of this chapter.
[1411] See Paragraphs 7.6 and 7.6.1 of this chapter.
[1412] See paragraph 8.2 of this chapter.
[1413] See related comments on paragraphs 8.2.1-8.2.5 of this chapter.
[1414] See paragraphs 8.4.1 and 8.4.2 of this chapter.
[1415] See paragraph 8.5.4 of this chapter.
[1416] See paragraph 8.5.3 of this chapter.
[1417] See paragraph 8.5.3 of this chapter.
[1418] See paragraph 8.5.3 of this chapter.

10.4 Recommendations

The researcher discusses the various recommendations that can be adopted to enhance the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe. This is done to suggest possible measures that policymakers can adopt in order to enhance the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe. In this regard, the researcher proposes the following recommendations:

10.4.1 The enactment of a Statute that Adequately Regulates Mobile Money in Zimbabwe

It is recommended that:

The legislature should consider enacting a statute that harmonises and enocourages co-ordination among the many domains such as finance, telecommunications and technology and role-players in order to adequately regulate the use of mobile money to promote financial inclusion for the poor in Zimbabwe.

Secondly, the government of Zimbabwe, policymakers and the legislature should consider developing a policy which sets guidelines of factors that should be considered from time to time of the adoption and regulation of new fintech innovations in order to improve the competitiveness and create certainty in financial markets in Zimbabwe.

The third recommendation is that mobile money stakeholders such as the RBZ, POTRAZ, the Consumer Council of Zimbabwe, cyber-security regulators and/or law enforcement authorities in Zimbabwe should co-operatively meet to drive educational and awareness campaigns on the usefulness and inherent dangers in the use of mobile money and the importance of financial inclusion, financial education and consumer protection. These programmes can target the poor in rural areas and/or peri-urban communities, schools and tertiary institutions. Such campaigns should also be publicised in booklets, pamphlets, flyers, social media such as Twitter, Facebook, Telegram, Whatsapp, Instagram and Snapchat, be broadcast on

radio in languages best understood by the poor in order to create awareness on the benefits of mobile money and financial inclusion to the general public in Zimbabwe.

The fourth recommendation is for regulators in Zimbabwe to implement the risk-based approach when enforcing AMC/CTF onmobile mobile money.[1419] The ris-based approach helps to reduce compliance burden on the part of MNOs and mobile money consumers, the poor in this instance. The enforcement of AML/CTF rules has an important bearing on mobile money's potential to promote financial inclusion or the poor in Zimbabwe.

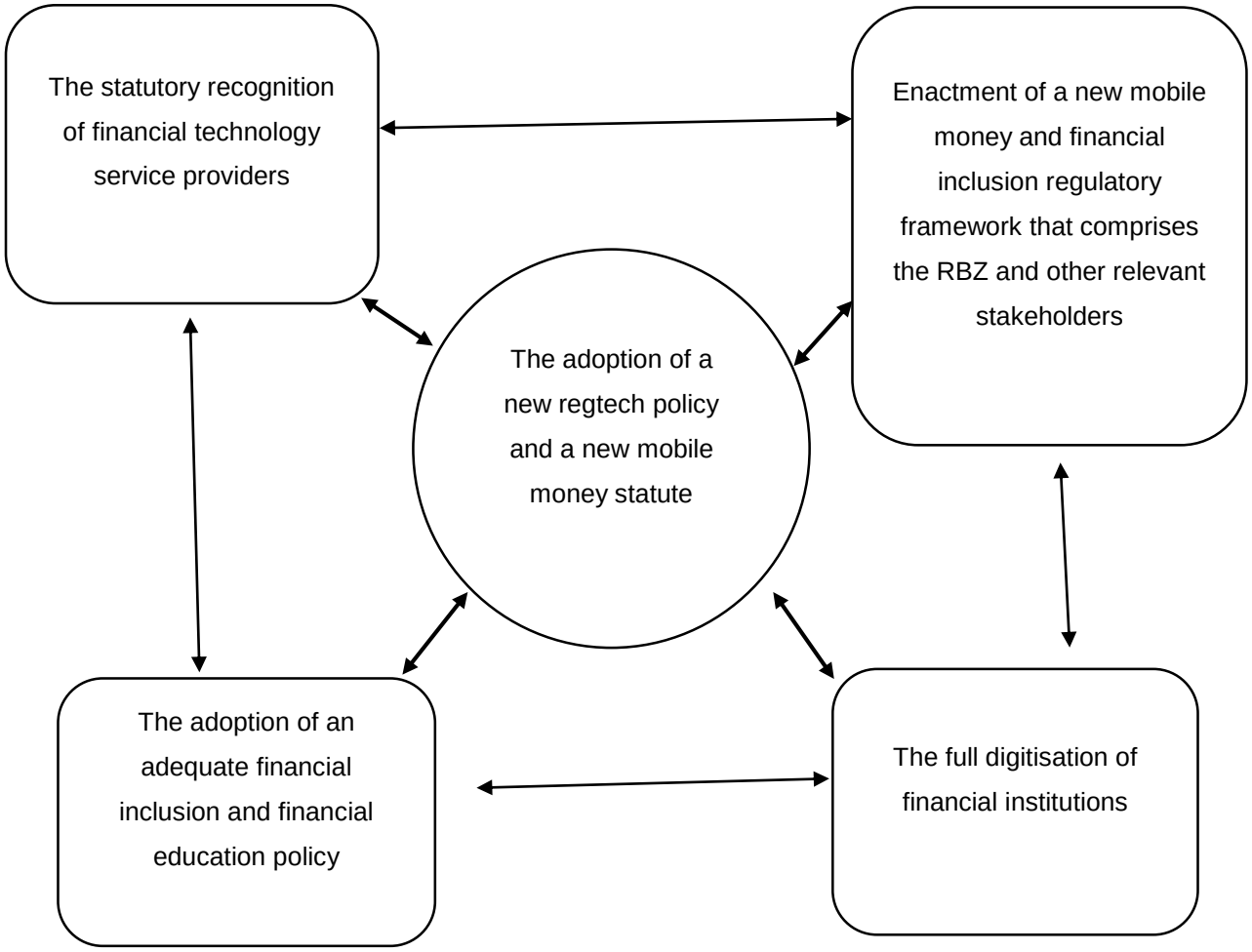
The fifth recommendation is that there should be policy clarity on the operations of mobile money agents in Zimbabwe. Although they have been banned in Zimbabe, as aforementioned, there is no gainsaying the fact that their more is critical for mobile money to reach the poor in Zimbabwe.[1420] In this regard, it should be clear whether MNOs have control over agents or they can be regulated separately in Zimbabwe.

10.4.2 Key Recommendations

As indicated earlier, the researcher presents five key recommendations and/or provisions that policymakers in Zimbabwe should consider in order to enhance the regulation and use of mobile money to promote financial inclusion for the poor in Zimbabwe.[1421] The proposed model is illustrated in figure 3 below and its provisions will be briefly explained. It should be noted that the key recommendations into five categories, namely those that deal with (a) the adoption of a new regulatory technology (regtech) policy and a new mobile money statute, (b) the statutory recognition of financial technology service providers, (c) enactment of a new mobile money and financial inclusion regulatory framework that comprises the RBZ and other relevant stakeholders, (d) full digitisation of financial institutions in Zimbabwe and (e) the adoption of an adequate financial inclusion and financial education policy.

[1419] See Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 494.
[1420] See Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 494.
[1421] See paragraph 10.1 of this chapter.

Figure 3: The proposed mobile money and regulatory technology (regtech) model



Although the outer pillars (b)-(e) in figure 3 above do not come in any particular order, they are mutually interlinked and converge around pillar (a). In this regard, pillar (a) is the central recommendation the researcher proposes. The regulation and use of mobile money to promote financial inclusion for the poor can be enhanced if the legislature in Zimbabwe can adopt a new regtech policy and enact a mobile money statute.[1422] Regtech refers to the application of technology to regulatory matters.[1423] Deploying regtech is likely to lead towards the automation and

[1422] Bagby and Packin 2021 *Michigan Business & Entrepreneurial Law Review* 134; see related comments by Zetzsche et al 2019 *University of New South Wales Law research Series* 10; Packin 2018 *Chicago-Kent Law Review* 206

[1423] Bagby and Packin 2021 *Michigan Business & Entrepreneurial Law Review* 136; see related comments by Packin 2018 *Chicago-Kent Law Review* 206; Zetzsche *et al* 2019 *University of New South Wales Law Research Series* 10.

streamlining of regulatory processes using cost-effective AI systems and ICTs.[1424] Regtech allows regulators to use AI and ICTs to monitor and enforce compliance while the regulated entities such as MNOs, can also use the same technologies to check if they operate within the confines of the law in Zimbabwe.[1425] Due to globalisation, financial markets are interconnected and regtech assists regulators and policymakers in Zimbabwe to keep pace with fintech developments across the world.[1426] A new mobile money statute assists in providing express regulation of the use of mobile money in order to promote financial inclusion for the poor in Zimbabwe.

Pillar (b) in figure 3 above proposes the recognition of financial technology service providers in Zimbabwe. The current statutory framework does not sufficiently recognise MNOs as major role-players within the financial markets in Zimbabwe.[1427] Clear recognition of all role-players in the financial sector assists in bringing regulatory clarity and certainty which is lacking in Zimbabwe currently.

Pillar (c) proposes the enactment of a new mobile money and financial inclusion regulatory framework that comprises the RBZ and other relevant stakeholders in Zimbabwe. Put differently, financial inclusion should be part of the policy in the financial sector in Zimbabwe. This will assist the RBZ and other role-players to design strategies and plans that can be used to promote financial inclusion for the poor.

Pillar (d) recommends the full digitisation of financial institutions in Zimbabwe. This is a call for the financial sector to be technology-driven in order for services to be readily available to the poor through their mobile phones or other electronic devices.

[1424] See related comments by Zetzsche *et al* 2019 *University of New South Wales Law Research Series* 147-48; Bagby and Packin 2021 *Michigan Business & Entrepreneurial Law Review* 144; Packin 2018 *Chicago-Kent Law Review* 206.

[1425] Zetzsche *et al* 2019 *University of New South Wales Law Research Series* 47-48; see related comments by Bagby and Packin 2021 *Michigan Business & Entrepreneurial Law Review* 144; Packin 2018 *Chicago-Kent Law Review* 206.

[1426] See related comments by Bagby and Packin 2021 *Michigan Business & Entrepreneurial Law Review* 176; Packin 2018 *Chicago-Kent Law Review* 206; Zetzsche *et al* 2019 *University of New South Wales Law Research Series* 48.

[1427] See section 2 of the *NPS Act*.

The automation of financial institutions reduces time and travel expenses by the poor who may have to go to distant places to get financial services. This recommendation bodes well for a world that is facing the threats of the raging COVID-19 pandemic.

Lastly, pillar (e) proposes the adoption of an adequate financial inclusion and financial education policy. This is something that should be development and implanted through institutions such as schools and the media in order to create a financially literate population in Zimbabwe.

Below are further recommendations.

10.4.3 Zimbabwean Policymakers Could Consider Adopting and Sufficiently Defining the Term 'Mobile Money'

Despite the considerably high usage of mobile money services in Zimbabwe and Kenya, there is no single statute that expressly defines the term 'mobile money'. Defining terms is crucial because it gives them perspective and assists in designing suitable regulatory policies. In this regard, it appears convenient to use the term 'mobile money' than 'mobile banking'.

The *Banking Act*[1428] in Zimbabwe defines 'mobile banking' as an arrangement that allows a customer of a licenced mobile network operator (MNO) to access financial services through a mobile phone.[1429] Although this definition may have been the best that policymakers could provide at the time, it may not be the most appropriate today. 'Mobile banking' tends to connote banking services that financial consumers can access through their mobile phones. Mobile banking can be regulated using applicable banking laws. The fact that mobile money forms part of financial products

[1428] *Banking Act* [Chapter 24:20] 9 of 1999 as amended (*Banking Act*), section 2(m).
[1429] Section 2(m)(b)(c) of the *Banking Act*.

does not make it a banking service and it may not be regulated as such.[1430] Mobile money is a payment system that requires appropriate regulation in this regard.

Therefore, it is recommended that Zimbabwe, Kenya and South Africa should carefully amend current statutes to incorporate 'mobile money' and sufficiently defining it. Providing appropriate definitions assists in creating regulatory certainty. Policymakers in the mentioned jurisdictions could also enact new statutes that expressly regulate mobile money. There is high usage of mobile money in Zimbabwe and Kenya while there is potential for growth in South Africa. Although UK policymakers may consider this recommendation, mobile money is not a huge factor in their jurisdiction.

10.4.4 Policymakers could Leverage Mobile Money to Introduce a Digital Currency in Zimbabwe

Many countries across the globe are trying out digital currencies in what possibly points to a future cashless society. A cashless economy can be achieved when individuals within a country use electronic money such as mobile money instead of banknotes and coins.[1431] Since the outbreak of the COVID-19 pandemic, cashless payments are considerably hygienic, safe and convenient as compared to cash in Zimbabwe.[1432] Health experts encouraged the use of cashless transactions to mitigate the possible transmission of the COVID-19 virus through the exchange of

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[1430] See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 2-3; Pazarbasioglu *et al* 2020 *Digital Financial Services* 2; Lumsden 2018 *Stanford Journal of Law, Business & Finance* 7; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 2.

[1431] See related comments by Arvidsson N *Building a Cashless Society: The Swedish Route to the Future of Cash Payments* (Springer Nature Switzerland 2019) 64-65; Tee HH and Ong HB "Cashless Payment and Economic Growth" 2016 *Financial Innovation* 1, 2-3; Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41.

[1432] Arvidsson 2019 *Building a Cashless Society: The Swedish Route to the Future of Cash Payments* 65; see related comments by Tee and Ong 2016 *Financial Innovation* 2; Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41; Opare 2018 *Texila International Journal of Management* 4.

cash.[1433] To this end, it may be prudent for policymakers in Zimbabwe to promote transaction methods that are safe for consumers, cashiers and the population at large.[1434] In this regard, mobile money can assist to reduce the dependence on cash and its associated risks such as robberies, theft and cash heists.

Additionally, some employers in Zimbabwe and Kenya disburse employee salaries using mobile money. Governments and welfare organisations in Zimbabwe have also used mobile money to channel social assistance for the poor during the COVID-19 pandemic.[1435] Before the COVID-19 pandemic, most retail shops, transport service providers, municipalities, garages, street vendors and schools accepted mobile money as a payment system in Zimbabwe.[1436] Thus, most poor people have already used mobile money before and it could cost the government very little to transition Zimbabwe to a cashless economy.

Therefore, it is recommended that policymakers in Zimbabwe and Kenya could consider building on the successes of mobile money to move to cashless economies. In South Africa, mobile money is still at a preliminary stage and may require some time before it can be widely used. The same can be said of the UK. A cashless economy could be the greatest legacy of the COVID-19 pandemic and policymakers should seize the moment.

[1433] Mann "Driver for Contactless Payments" 177; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; Kasradze T "Challenges Facing Financial Inclusion due to the Covid-19 Pandemic" 2020 *European Journal of Marketing and Economics* 63, 70.

[1434] Mann "Driver for Contactless Payments" 176; see related comments by Kasradze 2020 *European Journal of Marketing and Economics* 70; Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22.

[1435] Mann "Driver for Contactless Payments" 177-178; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; Machasio IN "Covid-19 and Digital Financial Inclusion in Africa: How to Leverage Digital Technologies during the Pandemic" *World Bank Group* (2020) 1.

[1436] See related comments by Srouji J "Digital Payments, the Cashless Economy and Financial Inclusion in the United Arab Emirates: Why is Everyone Still Transacting in Cash?" 2020 *Journal of Risk and Financial Management* 1, 4; Lu 2018 *Butterworths Journal of International Banking and Financial Law* 41; Opare 2018 *Texila International Journal of Management* 4.

10.4.5 Policymakers should strive for Regulatory Balance to Promote Innovation and Financial Inclusion While Safeguarding Financial Markets Stability

Policymakers in Zimbabwe, South Africa, Kenya and the UK need to adopt financially inclusive policies to enable the poor to participate in the formal economy.[1437] On one hand, financially inclusive policies should support innovation and promote the growth of technologies.[1438] On the other, the policies should be sufficiently clear and adapted to fintech to ensure financial stability and basic security of the sector.[1439] Buckley, Greenacre and Malady opine that financially inclusive policies should be enabling and proportionate in their approach to fintech developments.[1440] The Financial Action Task Force (FATF) provides that policymakers should adopt a risk-based approach to fintech initiatives.[1441] In this regard, the actions of policymakers and regulators may not be unreasonably restrictive or overly burdensome on service providers and consumers.

The Central Bank of Kenya (CBK) provides a good example of regulatory support that enabled the growth of mobile money and promoted financial inclusion for the poor. The CBK excused the M-Pesa mobile money platform from burdensome capital

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[1437] Guild J "Fintech and the Future of Finance" 2017 *Asian Journal of Public Affairs* 1, 10; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 43; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 395-396; Chibango 2014 *The International Journal of Humanities and Social Studies* 65.

[1438] Guild 2017 *Asian Journal of Public Affairs* 10; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 43; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 395-396; Chibango 2014 *The International Journal of Humanities and Social Studies* 65.

[1439] Guild 2017 *Asian Journal of Public Affairs* 10; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 43; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 395-396; Chibango 2014 *The International Journal of Humanities and Social Studies* 65.

[1440] Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 438; see related comments by Zetzsche *et al* 2017 *Fordham Journal of Corporate & Financial Law* 43; Guild 2017 *Asian Journal of Public Affairs* 10; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 395-396; Chibango 2014 *The International Journal of Humanities and Social Studies* 65.

[1441] Financial Action Task Force (FATF) *Guidance for a Risk-Based Approach: The Banking Sector* (FATF Paris 2014) 6; see related comments by De Koker 2009 *Journal of Financial Crime* 336-337; De Koker 2014 *Journal of Money Laundering Control* 282; FATF 2011 *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* 18.

and compliance requirements expected of banks.[1442] This allowed M-Pesa to grow and reach millions of Kenyans without undue regulatory compliance.[1443] Thus, the CBK was clear on its position that M-Pesa was not a bank and should not be regulated as one. In Zimbabwe, there is very little to show active support for mobile money growth by the Reserve Bank of Zimbabwe or any other regulator. Therefore, it is submitted that the growth of mobile money services owes much to the service providers and the socio-economic malaise that made mobile money the best available option. To this end, Zimbabwe has not had a sufficiently clear statute that promotes the growth of mobile money to promote financial inclusion for the poor. It is commendable that in South Africa, financial stability is provided for in its legislative framework.[1444] Although the provision of financial services is mainly reserved for banks in South Africa, MNOs such as MTN seem to be reviving interest in the mobile money sector and this could enhance financial inclusion for the poor. Meanwhile, the UK has one of the world's most advanced financial services sector that supports fintech development. However, mobile money has not been one of the popular fintech initiatives in the UK because of its well-established banking sector.

Therefore, it is recommended that fintech initiatives such as mobile money could be the future of finance and policymakers in Zimbabwe and South Africa should support their growth. Zimbabwe can learn from the example of Kenya which has established itself as a leading mobile money jurisdiction. Kenya did not apply banking laws to M-Pesa and the growth of mobile money and the financial inclusion of the poor has been phenomenal. This probably suggests that mobile money requires a separate regulatory framework.

[1442] Guild 2017 *Asian Journal of Public Affairs* 10; see related comments by Jack W and Suri T "Mobile Money: The Economics of M-Pesa" 2011 *National Bureau of Economic Research* 1, 7; Ndung'u NS *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (African Economic Research Consortium Nairobi 2021) 17; Goncalves DER "Financial Inclusion in Peru: Lessons from Kenya's Regulatory Approach to E-Money" 2013 *University of Miami International and Comparative Law Review* 31, 33.

[1443] Guild 2017 *Asian Journal of Public Affairs* 10; see related comments by Jack and Suri 2011 *National Bureau of Economic Research* 7; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 17; Goncalves 2013 *University of Miami International and Comparative Law Review* 33.

[1444] See *Financial Sector Regulation Act* 9 of 2017 (*FSRA*), section 4.

10.4.6 The Legislature in Zimbabwe should Consider Amending the NPS Act in order to Expressly and Comprehensively Regulate Mobile Money

The *NPS Act* provides that financial institutions that fall under its regulatory ambit are registered banks in terms of the *Banking Act*.[1445] However, MNOs that provide mobile money services in Zimbabwe are not registered financial institutions for the purposes of the *Banking Act*.[1446] MNOs that provide mobile money services are recognised through a discretion accorded to the RBZ to recognise any other institution involved in financial services such as deposits, money transmission and payment services.[1447] The researcher submits that policymakers in Zimbabwe should carefully amend the *NPS Act* to recognise MNOs as key participants in Zimbabwe's payment systems.

Similarly, in Kenya, the *National Payment Systems Act*[1448] does not expressly mention MNOs. However, the *Act* provides that institutions that render payment services through electronic means are recognised as payment service providers.[1449] In South Africa, the *National Payment Systems Act*[1450] does not expressly mention MNOs among the participants in the payment systems sector. Additionally, the *NPSA* does not explicitly refer to mobile money as a financial product in South Africa.[1451] In the UK, the *Financial Services* (*Banking Reform*) *Act*[1452] is silent on MNOs as participants in the payment systems.

In light of the above, it is recommended that policymakers in Zimbabwe should consider amending the *NPS Act* to expressly include MNOs and mobile money. The researcher argues that robust regulation of fintech products such as mobile money requires statutes that keep pace with technology in Zimbabwe. Failure to do this weakens the financial regulatory system.

1445 Section 2 of the *NPS Act*; also see section 7(1)(a), (d) and (f) of the *Banking Act*.
1446 See section 8 of the *Banking Act*.
1447 Sections 2(b) and 3 of the *NPS Act*.
1448 National Payments Systems Act 39 of 2011 (Payments Systems Act), see section 2.
1449 Section 2 of the *Payment Systems Act*.
1450 See section 1 of the *NPSA*.
1451 Section 1 of the *NPSA*.
1452 *Financial Services* (*Banking Reform*) *Act* of 2013 (*Banking Reform Act*), sections 40-48.

10.4.7 The Legislature in Zimbabwe should Amend the Banking Regulations 2020 to Clearly Regulate Mobile Money

The *Banking Regulations 2020*[1453] are probably the most recent statutory instrument in Zimbabwe relevant for this study. Although the title mentions mobile money, the *Banking Regulations 2020* do not define this term.[1454] Rather, the *Banking Regulations 2020* only provide definitions for money transmission and mobile banking.[1455] In this regard, policymakers in Zimbabwe relied on the definition of mobile money which is provided in the *Banking Act*.[1456] As argued before, mobile money and mobile banking are not the same. Mobile banking is an extension of conventional banking services and is subjected to deposit protection whereas mobile money is not. Thus, policymakers might have missed an opportunity to distinguish mobile money and mobile banking in the *Banking Regulations 2020*. Therefore, policymakers in Zimbabwe should consider to carefully amend the *Banking Regulations 2020* to comprehensively define and distinguish mobile money from mobile banking. This could assist in developing a suitable statute that adequately regulates mobile money in Zimbabwe.

10.4.8 Mobile Money Regulators in Zimbabwe Should develop a Proportional Enforcement of Mobile Money Interoperability

The *Banking Regulations 2020* provide that there should be interoperability between mobile money platforms and between mobile money platforms and banks.[1457] Simply put, this means that mobile money platforms such as Ecocash, Onemoney and Telecash can create inter-linkages and share resources where possible.[1458] Interoperability also seeks to establish links between mobile money platforms and bank accounts.[1459] Similarly, in Kenya, the *Payment Systems Act*[1460] provides for

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1453 Section 3 of the *Banking Regulations 2020*.
1454 See section 2 of the *Banking Regulations 2020*.
1455 See section 2 of the *Banking regulations 2020*.
1456 See section 2 of the *Banking Regulations 2020*; section 2(m) of the *Banking Act*.
1457 Section 2 of the *Banking Regulations 2020*; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 35.
1458 See section 2 of the *Banking Regulations 2020*.
1459 See section 2 of the *Banking Regulations 2020*.

interoperability among mobile money platforms. In South Africa and the UK, mobile money interoperability does not seem to be a policy concern currently. The researcher submits that although interoperability could promote cooperation between mobile money service providers and possibly convenience for financial inclusion, it may promote a free-rider mentality. The free-rider mentality refers to service providers who do not invest in their businesses but want to use their rivals' resources. Due to this, mobile money providers such as Ecocash in Zimbabwe and M-Pesa in Kenya have resisted the idea of interoperability.

Owing to the above, policymakers in Zimbabwe should be considerate of the infrastructure and human resources investment MNOs spent in establishing their mobile money businesses. This assessment could inform the implementation of the interoperability requirement. Wholesale enforcement of interoperability could compromise the quality of services and adversely affect financial inclusion for the poor in Zimbabwe.

10.4.9 Policymakers should ensuring Adequate and Effective Regulation and Protection of Mobile Money Consumer Funds in Zimbabwe

Unlike in conventional banking where depositors' funds are subject to deposit protection laws, mobile money providers are not deposit-taking institutions and require special funds protection measures. In Kenya, the CBK demanded that M-Pesa should open a trust account at a commercial bank to deposit all the money from mobile money consumers.[1461] The trust account does not give M-Pesa access to the funds.[1462] Moreover, M-Pesa was required to maintain an equal balance between

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[1460] See section 8(1)(c) of the *Payments Systems Act*; see related comments by Mazer and Rowan 2016 *The African Journal of Information and Communication* 47; Gibson, Lupo-Pasini and Buckley 2015 *Singapore Journal of Legal Studies* 44.

[1461] Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379; Batista, Simione and Vicente 2012 *International Growth Centre Policy Brief* 7.

[1462] Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; see related comments by Batista, Simione and Vicente 2012 *International Growth Centre Policy Brief* 7; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

the trust account and the mobile money (e-float) issued to consumers.[1463] This balance would ensure that M-Pesa services do not adversely distort money supply in Kenya. Similarly, Zimbabwe has copied this Kenyan model. The *Banking Regulations 2020* requires MNOs in Zimbabwe to open trust accounts at commercial banks that are used specifically to hold mobile money consumers' funds.[1464] MNOs are also required to maintain an equal balance between money in the trust account and e-float.[1465] However, there has not been consistent enforcement of the requirement to maintain an equal balance between the money in the trust account and e-float. It has been alleged that some mobile money agents flouted this requirement resulting in a distortion between the e-float and money in the trust account. The RBZ responded by banning all mobile money agents' activities in Zimbabwe.

Therefore, it is recommended that policymakers in Zimbabwe should consistently protect mobile money consumer funds. The regulation of mobile money consumer funds could assist in combating the abuse of such funds by MNOs and it could ensure that mobile money consumers's funds are not subject to third party claims if the service provider becomes insolvent.

10.4.10 Regulators in Zimbabwe should Adopt Artificial Intelligence to Enhance the Enforcement of AML/CTF Measures in Mobile Money in Zimbabwe

The *Money Laundering and Proceeds of Crime Act (MLPC Act)*[1466] requires every financial institution in Zimbabwe to conduct consumer identification and verification (CIV) by means of an identity document at the point of establishing a business relationship with any financial consumer.[1467] Furthermore, the *MLPC Act* provides that financial institutions should implement and assess their internal AML/CTF

1463 Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11; Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 379.

1464 Section 4(1)(3) of the *Banking Regulations 2020*.

1465 Section 4(4) of the *Banking Regulations 2020*.

1466 *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] 4 of 2013, as amended (the *MLPC Act*), sections 8 and 9; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 19.

1467 Section 15(1)(a) of the *MLPC Act*.

measures.[1468] These involve monitoring and reporting suspicious transactions to combat money laundering, terrorism financing, fraud and other financial crimes. Similarly, in Kenya, mobile money providers largely enforce internally developed AML/CTF measures.[1469] Individuals who want to open mobile money accounts in Kenya should produce an identity document or passport.[1470]

However, it appears that South Africa and the UK have some of the most advanced and stringent AML/CTF measures. In this regard, the *Financial Intelligence Centre Act* requires financial consumers in South Africa to produce identity documents, proof of residence and sometimes proof of income.[1471] In addition, the *Regulation of Interception of Communications and Provision of Communication-Related Information Act*[1472] (RICA) demands almost the same requirements to activate new subscriber identity modules (SIM) cards in South Africa. In the UK, a financial consumer should produce an identity document such as a passport or driver's licence and proof of residence before opening a bank account.[1473]

In most cases, the CIV procedures were done physically. However, since the outbreak of the COVID-19 pandemic, it has been difficult to carry out these procedures physically. In this regard, policymakers should consider adopting artificial intelligence (AI) to enhance the enforcement of AML/CTF measures. AI refers to the

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[1468] Section 12B of the *MLPC Act*; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 19.

[1469] See related comments by Buku and Meredith 2013 *Washington Journal of Law, Technology & Arts* 399-400; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 127.

[1470] Mas and Radcliffe 2010 *The Capco Institute Journal of Financial Transformation* 170; see related comments by Jack and Suri 2011 *National Bureau of Economic Research* 7; Ndung'u 2021 *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* 11.

[1471] Sections 21, 22 and 22A of the *FICA*; see related comments by Lawack 2013 *Washington Journal of Law, technology & Arts* 331; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; De Koker 2006 *Journal of Financial Crime* 41-42.

[1472] *Regulation of Interception of Communications and Provision of Communications-Related Information Act* 20 of 2002 (*RICA*), sections 39-40; see related comments by Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 56; Lawack 2013 *Washington Journal of Law, Technology & Arts* 340; De Koker L and Jentzsch N "Financial Inclusion and Financial Integrity: Aligned Incentives?" 2013 *World Development* 267, 271.

[1473] De Koker L "Identifying and Managing Low Money Laundering Risk: Perspectives on FAFT's Risk-Based Guidance" 2009 *Journal of Financial Crime* 334, 335-336; see related comments by De Koker 2006 *Journal of Financial Crime* 39; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 76.

use of computer systems that are programmed to emulate human behaviour through experience and interaction with different situations.[1474] To combat fraud and corruption in CIV procedures, AI could assist through automated facial recognition (AFR) technology or digital identities (e-IDs) that can be used to identify financial consumers.[1475] Additionally, AFR technology and e-IDs can assist in driving electronic know-your-customer (e-KYC) measures that could be cheaper for the poor who may not have proper identity documents.[1476] Using AFR technology could combat financial crimes such as fraud and money laundering in Zimbabwe, South Africa, Kenya and the UK.[1477] Other countries, like China, have used the AFR technology to track people's movements and prevent COVID-19 infected individuals from travelling.[1478]

Therefore, it is recommended that policymakers in Zimbabwe should consider adopting AI systems to improve the application of AML/CTF measures. In this

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[1474] Carman K "The Genie is Out of the Bottle: What do we Wish for the Future of AI?" 2021 *Penn State Journal of Law & International Affairs* 180, 187; see related comments by Fenwick MD, Kaal WA and Vermeulen EPM "Regulation Tomorrow: What Happens when Technology is Faster than the Law?" 2017 *American University Business Law Review* 561, 564-565; Robinson WK "Emerging Technologies Challenging Current Legal Paradigms" 2018 *Minnesota Journal of Law, Science & Technology* 355, 358; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 14-15.

[1475] Zens J "Face IT: Only Congress can Preserve Privacy from the Pervasive Use of Facial Recognition Technology by Police" 2021 *San Diego Law Review* 143, 153; see related comments by McClellan E "Facial Recognition Technology: Balancing the Benefits and Concerns" 2019 *Journal of Business & Technology Law* 363, 372; Wright E "The Future of Facial Recognition is not Fully Known: Developing Privacy and Security Regulatory Mechanisms for Facial Recognition in the Retail Sector" 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 611, 621-623; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15.

[1476] Zetzsche DA, Arner DW, Buckley RP and Weber RH "The Future of Data-Driven Finance and Regtech: Lessons from the EU Big Bang II" 2019 *University of New South Wales Law research Series* 1, 33-34.

[1477] McClellan 2019 *Journal of Business & Technology Law* 373-374; see related comments by Zens 2021 *San Diego Law Review* 153; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; Wright 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 622-623.

[1478] McClellan 2019 *Journal of Business & Technology Law* 373-374; see related comments by Zens 2021 *San Diego Law Review* 153; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 15; Wright 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 622-623.

regard, policymakers can improve the delivery of mobile money services to the poor in a safer, secure and convenient manner.[1479]

10.4.11 Policymakers should Enhance Privacy and Data Protection to Protect Poor Financial Consumers from Commercial Abuse in Zimbabwe

The *Protection of Personal Information Act*[1480] of South Africa provides that individuals have the right to know when their personal information is collected, how it is stored and if it will be accessed by third parties.[1481] Additionally, an individual whose information is under the control of another person has the right to correct or delete aspects of his or her data and can object to the processing of personal information for marketing purposes.[1482] Similarly, in Kenya and the UK, policymakers enacted the *Data Protection Act*[1483] and the *Data Protection Act*[1484] respectively. The mentioned statutes are testimony to the growing importance of personal privacy in the contemporary business world. Policymakers in Zimbabwe have developed the *Cyber Security and Data Protection Bill*.[1485] The *House Bill* seeks to, *inter alia*, establish a cyber-security centre to promote and coordinate cyber security and combat cyber-crime in Zimbabwe.[1486]

Although it is commendable that policymakers appreciate the need for personal data protection in the four comparator jurisdictions, robust enforcement of these statutes remains the missing link. There have been numerous data breaches in South Africa and other jurisdictions where individuals' personal information ended in the hands of hackers and other criminals. In this regard, the researcher recommends that policymakers should consider adopting robust data protection mechanisms to cope with technological developments.

1479 Zens 2021 *San Diego Law Review* 154-155; see related comments by McClellan 2019 *Journal of Business & Technology Law* 375; Wright 2019 *Fordham Intellectual Property, Media and Entertainment Law Journal* 624.

1480 *Protection of Personal Information Act* 4 of 2013 (*POPIA*), see the preamble and section 2.

1481 Section 5 of *POPIA*.

1482 Section 5 of *POPIA*.

1483 *Data Protection Act* 24 of 2019, see sections 2-9

1484 *Data Protection Act* 2018, see sections 2 and 3.

1485 *Cyber Security and Data Protection Bill* 18 of 2019 (*House Bill*).

1486 Clause 6 of the *House Bill*.

10.5 Conclusion

The increasing intersection of finance and technology has opened opportunities for MNOs to provide financial services to the poor in many countries including Zimbabwe.[1487] Mobile money is one of the several digital fintech products available on the financial markets of many developing countries such as Zimbabwe, South Africa and Kenya.[1488] The use of mobile money has allowed millions of poor people to access formal financial services through their mobile phones.[1489] In this regard, mobile money has significantly contributed to the financial inclusion of the poor in Zimbabwe and Kenya.[1490]

The outbreak of the COVID-19 pandemic possibly led to increased importance of mobile money in Zimbabwe. The COVID-19-induced lockdowns that were implemented to combat the spread of the infectious virus affected the poor's ability to earn income and conduct financial transactions.[1491] However, mobile money allowed the poor to receive funds from friends and family cushioning them from the

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[1487] See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; Robb G, Tausha I and Vilakazi T "Competition and Regulation in Zimbabwe's Emerging Mobile Payments Markets" in Klaaren J, Roberts S and Valodia I *Competition Law and Economic Regulation* (Wits University Press 2017) 216; Robb G and Vilakazi T "Mobile Payments Parkets in Kenya, Tanzania and Zimbabwe: A Comparative Study of Competitive Dynamics and Outcomes" 2016 *The African Journal of Information and Communication* 9, 24.

[1488] See related comments by Kersop M and Du Toit SF "Anti-money Laundering Regulations and the Effective Use of Mobile Money in South Africa – Part 1" 2015 *Potchefstroom Electronic Law Journal* 1603, 1604; see related comments by Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 437; Tuba MM "The Regulation of Electronic Money Institutions in the SADC Region: Some Lessons from the EU" 2014 *Potchefstroom Electronic Law Journal* 2268, 2269;

[1489] See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 11; Winn JK "Governance of Global Mobile Money Networks: The Role of Technical Standards" 2013 *Washington Journal of Law, Technology and Arts* 197, 200; Chatain *et al Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* 13-14.

[1490] Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 11; Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 78; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 174-175; Buheji *et al* 2020 *American Journal of Economics* 215.

[1491] Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22; see related comments by Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 78; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 174-175; Buheji *et al* 2020 *American Journal of Economics* 215.

harsh socio-econonic challenges during the COVID-19 pandemic in Zimbabwe.[1492] Government and aid organisations also channelled social assistance payments to the poor in Zimbabwe through mobile money platforms.[1493] Furthermore, mobile money allowed contactless payments which are considered safe owing to health concerns that COVID-19 could survive on cash and be transmitted during transactions.[1494]

However, it can be concluded that Zimbabwe's mobile money regulatory framework is not robust enough to promote financial inclusion.[1495] Despite the considerably significant role that mobile money plays in the payment systems in Zimbabwe, there is no express legislation that regulate and/or define mobile money.[1496] Consequently, an assortment of incoherent statutes is used to supervise mobile money services in Zimbabwe.[1497] In this regard, the mobile money regulatory framework in Zimbabwe is fragmented and weak, thus it cannot effectively regulate mobile money and promote financial inclusion.[1498] The researcher submits that mobile money should be robustly regulated in order to promote financial inclusion for the poor in Zimbabwe. Therefore, government and policymakers should develop a suitable and effectively

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[1492] Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22; see related comments by Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 78; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 174-175; Buheji *et al* 2020 *American Journal of Economics* 215.

[1493] Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21-22; see related comments by Nakouwo and Akplehey 2020 *African Journal of Emerging Issues* 78; Otache 2020 *Asian Journal of Social Sciences and Management Studies* 174-175; Buheji *et al* 2020 *American Journal of Economics* 215.

[1494] See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 21; De, Pandey and Pal 2020 *International Journal of Information Management* 3; Mann "Driver for Contactless Payments" 177; Kasradze 2020 *European Journal of Marketing and Economics* 70.

[1495] See related comments by Danisman GO and Tarazi A "Financial Inclusion and Bank Stability: Evidence from Europe" 2020 *Social Sciences Research Network Electronic Journal* 1, 5; Arner, Barbeis and Buckley 2016 *Northwestern Journal of International Law and Business* 15-16; Kernan 2018 *Vanderbilt Journal of Transnational Law* 112.

[1496] See related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25.

[1497] Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 5; see related comments by Chitimira and Magau 2021 *Potchefstroom Electronic Law Journal* 3; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25.

[1498] Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 22; see related comments by Kersop and Du Toit 2015 *Potchefstroom Electronic Law Journal* 1617; Winn 2013 *Washington Journal of Law, Technology Arts* 201; Buckley, Greenacre and Malady 2015 *Washington University Global Studies Law Review* 442.

enforced regulatory framework that regulates mobile money and promotes financial inclusion for the poor in Zimbabwe.

In conclusion, the mobile money sector in Zimbabwe is still developing and has potential to promote financial inclusion for many poor people. Mobile money has assisted the poor in withstanding the harsh soci-economic effects o the COVID-19 pandemic in Zimbabwe. Nonetheless, the legal use of mobile money requires Zimbabwe to learn rom other jurisdictions on best practices in regulating mobile money and fintech products in general. There is need for policymakers in Zimbabwe to develop a robust mobile money framework that can enhance the identification of risks and improve sector development. The legislature should enact a statute that adequately regulates mobile money and advances financial inclusion for the poor in Zimbabwe. Above all, policymakers should be proactive in order to sufficiently regulate the fast evolving fintech sector and fully harness its potential to contribute to the promotion of financial inclusion for the poor in Zimbabwe.

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List of Abbreviations

AFI	Alliance for Financial Inclusion
ABSA	Amalgamated Banks of South Africa
AML	Anti-Money Laundering
AFR	Artificial Face Recognition
AI	Artificial Intelligence
ATMs	Automated Teller Machines
BIS	Bank for International Settlements
BCBS	Basel Committee for Banking Supervision
B2B	Business-to-Business
B2P	Business to Person
BEM	Book-Entry Money
CABS	Central Africa Building Society
CBK	Central Bank of Kenya
CIV	Client Identification and Verification
CGAP	Consultative Group to Assist the Poor
CTF	Combating of Terrorism Financing
CPMI	Committee on Payments and Market Infrastructures
CCK	Communications Commission of Kenya

CAK	Competition Authority of Kenya
CTF	Counter-Terrorist Financing
COVID-19	Coronavirus disease
CDD	Customer Due Diligence
DPC	Deposit Protection Corporation
ESAP	Economic and Structural Adjustment Programme
ECA	Electronic Communications Act
EFT	Electronic Funds Transfer
eKYC	Electronic Know Your Customer
FNB	First National Bank
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FIP	Financial Inclusion Policy
FIC	Financial Intelligence Centre
FIU	Financial Intelligence Unity
FSCA	Financial Sector Conduct Authority
Fintech	Financial technology
4IR	Fourth Industrial Revolution
GPFI	Global Partnership for Financial Inclusion
GPS	Global Positioning System

G2P	Government-to-Person
G20	Group of 20 (richest countries in the world)
ID	Identity Document/card
ICASA	Independent Communications Authority of South Africa
ICTs	Information and communications technologies
IOSCO	International Organisation of Securities Commissions
KDIC	Kenya Deposit Insurance Corporation
KICA	Kenya Information and Communications Act
KYC	Know Your Customer
MAS	Money Advice Service
MLPC ACT	Money Laundering and Proceeds of Crime Act
MNO	Mobile Network Operator
MoMo	Mobile Money
MTN	Mobile Telephone Network
NCR	National Credit Regulator
NFIS	National Financial Inclusion Strategy
NPSA	National Payment Systems Act
NPSD	National Payments Systems Division
NPA	National Prosecuting Authority

PSR	Payments Systems Regulator
P2P	Peer-to-Peer (person-to-person)
POTRAZ	Postal and Telecommunications Regulatory Authority of Zimbabwe
POSB	Post Office Savings Bank
PA	Prudential Authority
PRA	Prudential Regulatory Authority
Regtech	Regulatory Technology
RBZ	Reserve Bank of Zimbabwe
SMS	Short Message Service
SADC	Southern Africa Development Community
SARB	South African Reserve Bank
SIM	Subscriber Identity Module
SAR	Suspicious Activity Reporting
TAM	Technology Acceptance Model
T-Kash	Telkom Kash
UK	United Kingdom
USA	United States of America
USAID	United States Agency for International Development
USSD	Unstructured Supplementary Service Data

ZW$	Zimbabwean Dollar

List of Figures

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Figure 3: The proposed mobile money and regulatory technology (regtech) model