MOBILE MONEY TRANSFER AND PAYMENT SYSTEMS IN UGANDA, THE LEGAL AND PRACTICAL CHALLENGES: A CASE STUDY OF MOBILE MONEY TRANSACTIONS THROUGH TELE-COMMUNICATION SERVICE PROVIDERS.

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DECLARATION

I, **ATUHAIRWE NICHOLAS** do hereby declare and certify that this research entitled, ***"Mobile money transfer and payment system, the legal and practicable challenges:, a case study on mobile money transaction through telecommunication service providers"*** is entirely my original work both in substance and in style, save for parts thereof founded on any pre-existing works duly acknowledged and the same has never been presented to any other institution of learning for any form of academic reward or otherwise.

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APPROVAL

I, ***Joseph Kyazze***, the undersigned do hereby certify that this research has been duly supervised by myself and approved for submission to the School of Law as part of the requirements for the award of the Degree of Bachelor of Laws.

Supervisor: **Mr. Joseph Kyazze**

Signature: ....

Date: 4th July 2013

DEDICATION

This research paper is dedicated to the Almighty God who has enabled me reach these heights. May his mighty name be glorified. Further, I also dedicate this research paper to my lovely mum Dr. Prisca Kabayoro and my sibling Irene T. Victoria.

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My sincere gratitude primarily goes to the almighty GOD who has given me providence, strength and courage to undertake the research despite bottlenecks i encountered.

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ACRONYMS

AML/CF	Anti money loudening/ Combating Financial Terrorism.
ARPU	Average Revenue per User.
ATM	Automated Teller Machine.
BOU	Bank of Uganda.
CBK	Central Bank of Kenya
CCK	Communications Commission of Kenya.
CDD	Consumer due diligence.
CEO	Chief Executive Officer.
ESAAMLG	East and Southern Africa Anti-money Laundering Group
EU	European Union.
FATF	Financial Action Task Force.
I .T	Information Technology.
IMEI	International Mobile Equipment Identity.
KCB	Kenya Commercial Bank.
Ksh	Kenyan Shilling.
KYC	Know your Customer.
MDGS	Millennium Development Goals.
MMS	Mobile Money Service
MNOs	Mobile Network Operators.
M-Payment	Mobile Money payment.
M-pesa	Mobile Pesa.
M-Sente	Mobile Sente.

MTN	Mobile Telephone Network.
M-Transfer	Mobile Money Transfer.
NITA	National Information Technology Authority.
Push	Ugandan Shillings.
SIM	Subscriber Identity Module.
SMS	Short Messaging Service.
SMS	Short Message.
UBA	United Bank of Africa.
UCC	Uganda Communications Commission.
UNCITRAL	United Nations Commissions on Internal Trade Law.
UNICT	United Nations Information and Communication Technology.
US	United States of America.
UTL	Uganda Telecommunication limited.
UTUL	Uganda Telecommunication Limited.

LIST OF CASES

(i) Woods V Martin Bank Limited (1959) 1QB 55, 69-70 (justice salmon)

(ii) United Dominion Trust Ltd V Kirk Wood. (1966) 2 QB 431.

(iii) Esso Petroleum Co. Ltd V Uganda Commercial Bank (1992) 14

LIST OF STATUTES.

Anti-Money Laundering Bill 2007.

Bank of Uganda Cap 51.

Bill of exchange Act Cap 68.

Financial Institutions Act 2004.

South African Reserve Bank Act No. 90 of 1989

National Payment System Act No. 78 of 1998

Banks Act; Act No. 78 of 1998.

Exchange Control Regulations Act No. 38 of 2001.

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CHAPTER ONE

1.1 Introduction

The premise of this research is focusing on the emergence of mobile money payments in Uganda, in relation to the legal and regulatory framework, and how it has impacted on mobile money transactions compared to the traditional modes of banking and money transfers. Mobile money transactions have been on the increase, as the system is cost effective especially with the simplified technology and accessibility to even remote areas which lack ordinary banking or money transfer facilities.

However, the adoption of the system without proper legal, regulatory and policy framework creates many challenges worth consideration. The system is no doubt credible and more practical in a country without accessible financial facilities, but is equally laden with a number of challenges. The benefits of mobile communication are particularly profound in developing countries. The paper's paramount focus is on mobile money transactions and the ineffective legal and regulatory environment in Uganda, which calls for immediate attention. The proliferation in the mobile money transaction in Uganda calls for the need to regulate such transactions.

This mode of transaction is exhibited by various telecommunication houses that have come aboard adopted mobile money transactions as opposed to or as an alternative to the traditional mode of banking. However, even in the presence of 23 banks, mobile money transfer system has been greatly embraced faster that even the ordinary financial transactions. Estimates show that about 11% or about 3.5 million people in Uganda have bank accounts. This means that about 85% of the population lacks an avenue through which to carry out transitions like sending, receiving and keeping money.[1] In view of the fact that mobile payment and transfer is a novel invention in Uganda, there is hardly any legal mechanism in place to regulate it, thus placing the unsuspecting members of public are at risk of falling victim of fraudsters, which is the essence of this research study.

1.2 Statement of the Problem

Mobile money transactions are a new form of money transfer and medium of effecting payments in Uganda. It is operated through the telecommunication system and therefore constitutes departure from the ordinary banking industry. Whereas the ordinary banking system is quite well regulated under the Financial Institutions Act 2004, the Bill Of Exchange Act Cap 68, and Bank of Uganda Act Cap 52[2], there is no specific legal and regulatory framework governing mobile money transactions in Uganda.

Mobile money service providers are mainly telecommunication houses regulated by the Uganda Communication Commission[3] and do not necessarily fall under the regulation and supervision of Bank of Uganda. The dual nature of their service to the provision of telecommunication services and mobile money transfer through their telecommunication system creates a legal and regulatory dilemma in view of the fact that mobile money transactions are not the subject of any specific Act of Parliament or other law.

Regulatory problems are already apparent with the rampant levels of fraud committed through the system[4]. The problem worth investigation, and which forms the crux of the question is whether the existing legal and regulatory framework that governs ordinary

[1] Mobile commerce transforms business, New vision, Kampala 19th February 2013.
[2] Laws of Uganda.
[3] Uganda communications commission is herein referred to as UCC.
[4] Abid were, MTN Uganda loses Over USD 3 million, New vision, Kampala, May 24th 2013.

financial transactions is capable of being effectively adopted and used to facilitate and regulate mobile money transactions and to ensure the protection of the users and beneficiaries as well other stakeholders in the system.

1.3 Objectives of the Study

1.3.1 Main Objective:

The research paper is premised on the analysis of the efficacy of the existing legal and regulatory framework in the regulation of mobile money transactions, and the challenges and likely consequences of the ineffective regulation on the beneficiaries, users and other stakeholders in these transactions.

1.4 Specific Objectives

(i) To analyze the evolution of mobile money transactions, the legal and regulatory framework in Uganda and the attendant technological, legal and practical challenges.

(ii) To consider and evaluate the future of mobile money transactions in Uganda, in view of the challenges attendant to it and for purposes of proposing viable avenues of effective regulation of mobile money transactions.

(iii) To consider a comparative analysis between mobile money transactions and the traditional forms of banking, identifying the merits and demerits of each, and how the two may effectively co-exist.

(iv) To propose viable recommendations for modifications in the regulatory and legal framework to facilitate effective mobile money transactions.

1.5 Scope of the Study

The research paper takes into consideration the extent to which there is a conflict between the current banking legal framework and mobile money transactions, particularly in Kampala, Uganda. Further, the research focuses on the current challenges to incorporate mobile money transactions as a legally accepted form of financial transaction, and the transformation from the traditional form of banking to the electronically generated transactions. The research paper envisages a comparative analysis of the legal and regulatory framework with other legal systems/ jurisdictions, in relation to mobile money transactions and how it has been incorporated in those countries in terms of legal regulation.

The relevant period of consideration is from early 2000 to date, reason being that mobile money transactions have evolved in Uganda during the said period, especially the year 2009[5] with the inception of mobile money by MTN[6] telecommunication service provider championed by Charles Mbire the chairperson of MTN Uganda. In terms of geographical scope, the research was concentrated in Kampala Uganda, the capital city where mobile money transactions are more prevalent and which in any case is more proximate. Nevertheless, the findings are very relevant and can be used as samples for other parts of the country.

1.5 Hypothesis

(i) The absence of an ineffective legal and regulatory frame work impacts on the effective regulation of mobile transactions in Uganda.

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[5] MOBILEMONEY: Changing the way business is done, 15 March 2012.
[6] Mobile telephone network is herein referred to as MTN.

(ii) The wide and unregulated adoption of mobile money transactions and transfer services is the likely cause of fraud, erroneous transfer of money and fraudulent transactions likely to affect the unsuspecting stakeholders in the system.

(iii) The adoption of mobile money transactions is laden with a number of technological, legal and regulatory challenges worth urgent consideration in Uganda.

(iv) The proliferation of mobile money transactions in Uganda, without a corresponding policy framework calls for avenues for the protection of the users of the system and other stakeholders.

1.7 Significance of the Study

The research study considers the regulatory framework of mobile money transactions and its attendant legal, regulatory and practical challenges. It focuses on the rather dual regulatory or supervisory mechanism through the Bank of Uganda and the Uganda Communication Commission, with quite varying and distinct mandates in the financial and telecommunications sector.

The research is mainly well founded and premised on the proliferation of mobile money transfer transactions and centers adopted by now almost all telecommunication companies. Surprisingly the rapid increase in mobile money transactions ordinarily calls for modification of the currently legal and regulatory framework, to cater for the protection of the users and beneficiaries of the system and to guard against fraud and illegal transactions that may be effected using the system. Already, there has been a multiplicity of reports of numerous regulatory problems such as fraud committed using the systems, erroneous transfers of money, among others, yet there is no specific legislation or Act of Parliament that's regulating the mobile money transactions. The problem worth investigation, and which forms the crux of the question is whether the existing legal and regulatory framework is capable of being effectively adopted and used to facilitate and regulate mobile banking /financial services and to ensure the protection of the users and beneficiaries as well other stakeholders in the system. The beneficiaries of the research include the policy makers, the regulator, the consumers of the products of the system and the entire public, entitled to quality service provision.

1.8 Methodology

The research paper shall be premised on the Max Webber approach method or mixed road; that is both the quantitative method and qualitative method which are be used conjunctively where necessary. Basically, under the qualitative method, the research shall be dependent on published documents, secondary data newspapers[7], text books[8] and reports from the internet[9] and libraries and various resource centers.

Further, in regard to the quantitative method, the research shall hinge on unstructured interviews to public relation officers, users and beneficiaries. Pursuant to geographical limitations and financial constraints, the research shall be limited to Kampala.

1.9 Literature Review

The research papers literature is classified into three types of studies: that which explains the adoption of mobile money transaction; that which assess the systems "impact on

[7] New Vision Uganda, Daily Monitor Uganda, and daily Nation Kenya.
[8] Ndiwalana, A. and O. Popov (2008). Mobile Payments: A Comparison between Philippine and Ugandan Contexts. IST-Africa 2008. P. Cunningham and M. Cunningham. Namibia, IIMC. Orange Uganda. (2010). "Gyekiri." Prepaid Services Retrieved September 27th, 2010, from
[9] United Nations Conference on Trade and Development

people and on economies; and a relative few that try to understand the use of such systems in social, economic, and cultural contexts. Variants of this tracheotomy, which distinguishes adoption studies from impact studies and from "use" studies, have been documented before[10] and are reflections of the disciplines that take an interest in communication technologies. **Donner** [11] applied the tracheotomy in a review of the research literature on mobile money transaction in the developing world.

Studies of the impact of mobile money transactions systems in the developing world are also scarce because the systems are so new. **Ali Ndawalana,** a Uganda researcher suggests the best impact assessment to date in which impact is operationalized using an *'access frontier,'* which divides those who have the wherewithal, a monthly income from a formal source to open the most basic of conventional bank accounts.[12] Those below the frontier who use m-transfer/m-payments systems do so as an alternative or addition to other choices. Those from above the frontier have done so by necessity.

Wilson Sonko,[13] a Ugandan researcher in the department of research, Bank of Uganda asserts that is pertinent to note that recent advances in handset functionality, chip and mobile network technologies, and upgrades to point-of-sale infrastructure have dramatically improved the environment for mobile money solutions, bringing together different industry groups, such as banks operators. Many countries have not yet developed regulations to govern the transaction of electronic money. However, the cross-industry

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[10] (Fischer, 1992; Markus & Robey, 1988; Orlikowski & Iacono, 2001; Sein & Harindranath, 2004)
[11].Donner, J. (2008). Research approaches to mobile use in the developing world.
[12] Ndiwalana, A. and O. Popov (2008). Mobile Payments: A Comparison between Philippine and Ugandan Contexts. IST-Africa 2008. P. Cunningham and M. Cunningham. Namibia, IIMC.
Orange Uganda. (2010). "Gyekiri." Prepaid Services Retrieved September 27th, 2010, from
[13]George Wilson Sonko, The Role of mobile money Services in exchanging financial inclusion in Uganda,2010.

nature of mobile money prompts regulators, in both the telecom and financial sectors, to confront important questions and develop a new generation of financial regulation. This leads to the emergence of new regulatory concepts of e-money and payment[14]as herein discussed in the research paper.

The research paper investigates the extent to which the expansion of mobile money transaction is likely to lead to the expansion of access to appropriate financial services in developing countries, especially Africa. In particular, it seeks to answer two main statements:

- The models of mobile money transaction are emerging globally, and especially in Africa, and are they likely to be accelerate access.
- What happens spontaneously or is enablement required for this to happen, if so, what forms of enablement.

In order to answer these statements, the research paper investigates emerging models and trajectories of development in mobile money transactions through interviews with emerging African providers and the use of secondary material. It assesses the policy and regulatory elements of an enabling environment for this sector based in part on the analysis of circumstances in Uganda.

M- Payments are financial transactions undertaken using mobile devices, such as a mobile phone M- transfer/ m- payments but involve access by mobile device to the broader range of banking service such as account, based savings or transactions products offered by

[14] Ernest & young analysis ," mobile money an over view of global telecommunication operators"

banks. M- Payments and m- transfers are themselves subsets of the broad domains of e-payments and e- transfers respectively.

It is argued that the field of mobile money transactions is not only new and fast evolving but also sits at the overlap of several regulatory domains, those of banking, telecommunication houses and payment system supervisors, and anti – money laundering agencies. The overlap substantially raises the risk of coordination failure, where legislation or regulatory approaches are inconsistent or contradictory. In such environments, it is likely that mobile money transaction may simply be an added channel for already banked customers. A comprehensive vision for market development between policy makers, regulators and industry players can help to define obstacles and calibrate proportionate responses to risk at appropriate times.[15]

The **UN ICT Task Force**[16] has defined mobile money transaction as "investment, innovation and entrepreneurship" which will build the private sector. However, the policy makers and regulators in the financial sector, usually seek an enabling environment, with certain key outcomes such as financial stability, economic efficient, access to financial services, financial integrity and consumer protection.

According to the **Committee on Payment and Settlement Systems** (CPSS|) survey (2004),[17] a regular survey of e-money and internet and mobile money transactions scans development in this sector, it was reported that payments using the internet and mobile

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[15] George Wilson Sonko, The Role of mobile money Services in exchanging financial inclusion in Uganda,2010

[16] UN ICT Task Force is now defunct but due to be replaced by a Global Alliance for ICT Policy and Development. See http://wwwunicetaskfroce.orgaccessed on 9th March, 2013.

[17] CPSS (2004) available via http://www.bias.org accessed on 6th March, 2013

phones have advanced rapidly in recent years, compared to the usage of e- money which has lagged, at least in e- purse form.

However, certain regulatory and policy issues emerge from such new technologies due to lack of solid precedents. In regards to mobile money transactions, each issues is complex in its own right, and is often associated with a different regulatory domain for instance bank supervisor, payment regulator, telecom regulator, competition regulator, anti – money laundering authority may be involved in crafting policy and regulations which affect this sector. The complex overlap of issues creates the very real risk of coordination failure across regulators. This failure may be one of the biggest impediments to the growth of mobile money transaction, at least of the transformational sort. However, even without the additional complexity introduced by mobile money transaction, many of these issues require coordinated attention anyway in order to expand access. It is nevertheless possible that mobile money transactions may be useful because the prospect of leapfrogging may help to galvanize the energy required among policy makers for the necessary coordination to happen.

It is for this reason that a well-balanced enabling environment must be established, if it is intended that mobile money transaction be taken to the next level. Before developing the requirements in this area, it is worth acknowledging that there are other aspects of the broader environment which may have a significant impact on whether mobile money transfer/payment can or will take off in a particular country.

The **Mobey Forum,**[18] based in Europe and consisting largely of major European banking groups and hardware providers like Nokia, came up with certain principles for a successful enabling environment for instance, mobile money transactions require that clients have access to mobile phones, and in counties where network coverage and usage is growing strongly, they are more likely to develop widespread mobile money applications. The potential for rapid growth may be highest in countries where levels of usage have already reached critical mass, and where increasing inter network competition and lack effective mobile money transaction, competition in m-payments creates both the push and the pull factors to consider additional product offerings.

Secondly, mobile money transactions clearly benefits from having a wider pool of informed, literate potential customers. Greater literacy may speed adoption and may reduce the risks of abuse. However, greater literacy is also correlated with other factors which may inhibit take up, there are more financially literate informed customers in developed countries, but these customers also have more existing options, and less reason to change, than customers in poorer countries with few or no alternatives. However, due to the virginity of mobile money transactions, there exists the unfortunate lack of extensive literal materials and texts, thus a higher reliance on internet articles and blogs has been used in regards to research.

1.10 Ssynopsis.

The research paper is to consist of five chapters of which;

Chapter one of the dissertation contains, general introduction, statement of the problem, objectives of the study, scope, hypothesis and significances of the study, methodology, literature review and chapterisation.

[18] Mobey Forum White Paper http://www.mobey.forum.org.accessed on 9th October 2009.

Chapter two, elaborates on the enabling environment of both mobile money transactions, and the telecommunication environment and key terms used in the research paper.

Chapter three spells out the legal, Regulatory and policy mechanisms of mobile money transactions in Uganda focusing on various Acts of parliament, policies and other regulations.

Chapter four envisages a comprehensive analysis of the legal and regulatory framework, in relation to developing countries such as South Africa and Kenya in relation to Uganda.

Chapter five entails a conclusion of the research study and recommendations, which should be adopted by government and relevant stake holder in the mobile money environment for example Bank of Uganda, communications commission and telecommunication houses.

CHAPTER TWO

The Nature of Mobile Money Transactions and the Enabling Environment in Uganda.

2.1 Definitions of Key Terms

Common law, defines a bank as an institution that actually carries on banking business, not an institution which has the reputation of doing so or of being a bank.[19] **Section 3** ***Financial Institutions Act*** **2004,** defines a Bank as any company licensed to carry out financial institutions business as its principal business, as specified in the second schedule to that Act and includes all branches and offices of that company in Uganda.[20] In this context, though many banks carry out financial businesses, they don't deal in mobile money transactions as it is for Telecommunication houses, unless they partner with telecommunication houses, for example UBA[21]and Centenary Bank patterned with MTN to issue mobile money, as well as payment of bills such as water bills, electricity bills.

2.2 Case Law Definition of a Bank.

Three cardinal principals have been laid down by the courts in construing the common law definition. In the first place, the meaning of banking business can change from time from time to time. In ***Wood v Martin Bank Limited,***[22] the issue was whether the giving of advice on financial matters constituted banking business. Holding that it did, salmon J observed

[19] Mark Hap good QC pargets, law of banking twelfth Edition, Butterworth.
[20] Financial Institutions Act
[21] UBA is herein after referred to as united Bank of Africa.
[22] (1959) 1QB 55, 69-70 (justice salmon)

"……. the limits of a banker's licenses cannot be held lay down as a matter of law. The nature of such case be a matter of fact and accordingly cannot be treated as if it was a matter of pure law……."

The bank offering financial advice meant that the Bank had taken up duty of care as a financial advisor, but that alone cannot constitute mobile money services providers into banks as Mobile Network Operators do not offer financial services to consumers in monetary matters.

In the aforementioned case, his lordship relied *interalia* on the fact that in that case, the bank has held itself out as being in position to advise its customers on the investments. The second principle laid down by the courts is that…

"A bank regarded as engaged in banking "business in one place is not necessarily so considered elsewhere, the distinction is explainable on the basis of the difference in the structure of banking in the countries concerned."

The Banks are considered to be Banks depending on the jurisdiction on what would be termed as a bank, in relation to Mobile Network Operators they all deal in Money by virtue of mobile phones and the naming would also differ depending on the country for example in Kenya the referred to as M-pesa.

The third principle in relation to a number of cases, stresses the importance of an institution reputation. If it is widely considered being a bank, the courts will be inclined to adopt this view, to treat the firm as engaged in banking business as considered in ***United Dominion Trust Ltd v Kirk Wood.***[23]

A customer as defined in the case of ***Woods v Martins Bank, Ltd***[24] in that case a bank received instructions from a plaintiff to collect money, pay part to the company retain to order the balance of proceeds" in an action brought by him against the bank to recover the money lost in the investment involved, the question rose as to whether the defendants bank's customer at the time at which advice was given was a custom company, **Salmon j**..

> *".....decided that the relationship between the banker and customer had come in to existence when the branch manager agreed to accept the plaintiff instructions to open an account in his name the defendant had failed to observe the duty of care, which it owed to the plaintiff under the contract of a banker customer established between the parties."*

In banking therefore, a customer is a party that instructs the bank on a certain transactions, and the bank has to comply. However, under mobile money transactions, customers or consumers similarly instruct banks on payment of money through mobile money telephonic messages.

Additionally, the supreme court of Uganda has held in the case of **Esso Petroleum Co. Ltd v Uganda Commercial Bank**[25] that a relationship of a banker and customer are contractual, the court said that the respondent was in breach of its duty

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[23] (1966) 2 QB 431.
[24] Supra.
[25] (1992) 14

emanating from the contractual relationship. Similarly Mobile money Operator has a contractual relationship with its consumer.

Telecommunication.

Section 2 of **Uganda Communications Act 2013,** defines Telecommunication to mean the emission or transmission or reception through the agency of electricity or electromagnetism of any sounds, signals, signs, writing, images or intelligence of any nature by wire, radio, optical and other electromagnetic systems whether or not such signs, signals, writing, images, sound or intelligence have been subjected to rearrangement, computation or other process by any means in the course of their transmission, emission or reception[26].

Mobile Money.

"Mobile money" varies a cross the industry as it covers a wide scope of overlapping applications. **Lassaad** and **jian,** define mobile money as a term describing the services that allow electronic money transactions over a mobile phone.[27] It is also referred to as mobile financial services, mobile wallet and mobile payment. In this paper, we define mobile money as broader term that includes, all types of monetary transactions executed via mobile phones. A wide range of mobile money applications have developed throughout the years. Some major categories include:[28]

Mobile money payments: Customers issue instructions from their mobile phones that initiate a payment to a third party. The instructions can be to their bank, to a merchant or

[26] Section 2 of the Uganda communications commission, 2013.
[27]Lassaad Lachaal and Jian ZhangMobile Money Services, "Regulation and Creating an Enabling Environment in Africa," Volume 3, Issue 2, December 2012.
[28] Ernest & young analysis ," mobile money an over view of global telecommunication operators."

to a Payment Service Provider for the payment of a specified amount to a specified beneficiary on the customer's behalf. Where a mobile money transaction relationship is in place this will include m-payment. Where a m-payment relationship is in place this does not imply that a banking relationship is part thereof, only that electronic access is available to a value store (e.g. bank account) owned by the customer and that that customer can issue payment instructions relating to the value store for execution[29].

A **SIM card** is a removable micro-card that contains a subscriber identity module, which securely stores the electronic codes used to verify subscribers' identities on mobile phones and computers.

E-float is when accepting deposits of cash from customers a mobile money provider, issues commodity known as "e-float," measured in the same units as the national currency and held in a registered account under a user's name. When a person sends/receives money through an agent, the agent has to have e-float (money on the agent's account) available to transfer the recipient's account. Otherwise, the agent cannot help with the transaction.

2.3 Telecommunications Environment in Uganda.

There are five Mobile Network Operators (MNOs) in Uganda, MTN Uganda, Orange Uganda, Uganda Telecom (UTL), and Warid Telecom that has since merged with Airtel (former Zain Uganda). As of 2010, there were 9.9 million mobile phone subscribers across all five MNOs, and the subscriber base has been steadily increasing[30]further, ***Mazen***

[29] Bankable frontier frontier associates LLC, www.bankable frontier.com 24th march 2008 accessed on 17th 03 2013 6:03pm.
[30]Uganda Government (2010). Status of the Communications Market, March 2010. Uganda Communications Commission (UCC). Kampala, Uganda.

Mroue the incoming CEO of MTN Uganda in an article in the New vision[31] stated that 14 years ago when the first mobile call was made, the number of mobile phone has increased to over 14 million of which 8 million are MTN subscribers and 3.7million are registered with mobile money meaning that 14 million people in Uganda have asses to mobile money by default.

It is worth noting, that network traffic is dominated by voice, although SMS (text) and mobile internet usage grew notably in 2011 thanks to promotions, **Levi Nyekundi,**[32] the Airtel Uganda marketing director last year cited the order of priority in mobile usage. He said making calls is now the fifth most used function on the mobile phone after Facebook, games, music and the web, a true illustration of power convergence but there still exists immense opportunity with millions of people in rural areas yet to make their first calls and harness all other all other capabilities of mobile like mobile money transaction, free new services such as, missed call alerts, cheaper bandwidth via undersea cables, and increasing 3G-network coverage.[33] MTN was the first to launch m-money services in 2009 and remains, by far, the market leader.

It is argued by **Ndiwalana,** a Ugandan researcher that Mobile money users do not need a bank account to use mobile money transaction services.[34] The mobile money transactions offerings of the four providers have many similarities. They all allow registered users to load money into their virtual accounts (cash-in), make transfers to other users both registered or not, buy airtime and withdraw money, cash-out. While m-money registration

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[31] Gilbert kidimu,"Mobile Banking In Hassle-Free", New Vision, Kampala 19 February 2013.
[32] Ibid 34
[33] Ibid
[34] Ndiwalana, A. et al. (2010) "Mobile Money Use in Uganda: A Preliminary." Working paper.

is free, all transactions have a predetermined fee, Some MNOs[35] such as MTN automatically deduct charges from the user's account while others such as, Airtel have a set of recommended charges, but allow agents to set them based on market demand[36].

In the context of mobile money transactions, the transaction fee can be calculated differently for registered and non-registered users of m-money. For example, in 2011 a registered sender of M-Sente was charged 700 UGX ($0.28) to send between 1 and 2 million UGX, while a registered receiver paid between 0 and 17,000 UGX ($6.87), depending on the size of the transfer. A non-registered client was charged between 0 and 35,000 UGX ($14.14) to send the same amounts, while the recipient was not charged.

In practice however, there is a ceiling transaction rate for both agents and customers. MTN mobile money ceiling transaction rate is ush5 million a day for customer and have to transact only ush4 million and agents can only transact ush10milllion a day while an M-Sente user is allowed to send2 million UGX ($805.72).[37] Depending on the MNO, a registered user has access to other m-money functions such as check balancing, receiving m-money account balance mini-statements and making PIN changes.

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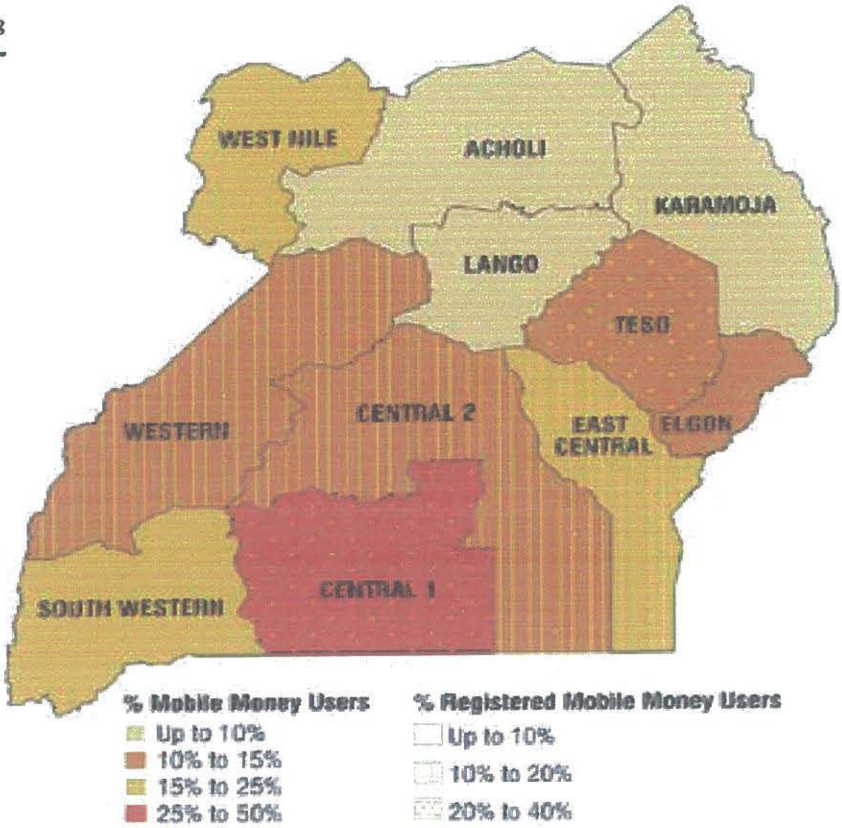
[35] MNOs are herein referred to as mobile network operators.
[36] www.imtfi.uci.edu/.../5%20Yawe%20and%20Nassali.ppt accessed on 31/03/13.
[37] http://www.sunrise.ug/component/content/article/40-business/478-mobilemoney-Taps-into-ugandas-un-banked.html assessed on 31/03/13.

2.4 Percent of Ugandan Households with M-money Users and Registered users by sub region[38]



The Central region, which includes sub regions Central 1, home to the capital, Kampala, and Central 2, shows the highest proportion of households with registered m-money users. The Northern region Karamoja, Acholi, and Lango has the lowest proportion at 6 percent of the region's households, which is not surprising given the continuous civil unrest, which has delayed the development of mobile communication in this region.[39]

[38] The Financial Inclusion Tracker Surveys Project, October 2012
[39] http://www.bbc.co.uk/news/world-africa-14107906 accessed on 31/03/13.

2.5 The Uganda Mobile Phone Market

While 62 percent of Ugandans remain financially excluded,[40] many of them (8.2 million) are part of the large proportion (27.3 percent) of the 30 million Ugandans that own cellular phones[41] With a banking services penetration of 16 percent, and cellular phone ownership of 27.3 percent, it appears that far more people in Uganda have gained access to mobile phones than to banking services. In addition to ownership, mobile phones have become trusted and accepted by a large section of society as a means of exchanging information verbally as well as short messages .**Wakama,**[42] looks at acceptance of the mobile phone as a trusted communication tool coupled with the wide coverage of 8.2 million people out of a potential base of 14.0 million people, as well as advances in technology opens up immense possibilities for Uganda in areas of education, finance, and medicine amongst others.

The mobile phone market in Uganda has a number of operators namely, MTN, Uganda Telecom, Zain, Warid, Orange as well as HITS Telecom that was licensed in 2007 but is yet to start operations. The first three companies share the biggest proportion of the market. The competition in the market is intense.

[40] Muyinda, P.B., Lubega, J.T., Lynch, K. and Van der Weide, T. 2010a. Mobile Learning Objects Deployment and Utilisation in Developing Countries.
[41] Mulira, H. 2009. Address by the Minister of ICT to the delegation of member countries of the Common Market for East and Southern Africa (COMESA) electronic government framework conference. Cited in the New Vision, Thursday 29, January 200
[42] Wakama, A. 2007. Uganda: Room for Growth still exists in mobile phone sector, says survey report. http://www.itnewsafrica.com/?p=346 Accessed February 12, 2010.

Suffice to note that intense competition has forced the operators to become highly innovative through designing appropriate sales promotion campaigns, unique services, and products. Among these unique services is the mobile money service currently run by three telecommunication companies in collaboration with licensed financial institutions. These include MTN mobile money, Zap money transfer, and M-Sente by MTN Uganda, Airtel Uganda, and Uganda Telecom, respectively.

2.5 The Enabling Environment of Mobile Money.

Enabling environment is defined, as a set of conditions which promote a suitable trajectory market development in such a way as to promote social desirable out comes. These conditions are formed by larger by macro-political and economic forces, as well as sector specific policy and laws. However, this report focuses on the latter category as being with the power of policy makers and regulators to control and influence.

The social desirable outcomes of creating an enabling environment towards the Millennium Development Goals (MDGs), the United Nations Information And communication Technology (UN ICT) task force defines them as "investment innovation and entrepreneurship," which build the private sector,[43] more specifically policy makers and regulators in the financial sector usually seek the following out comes;

Financial stability, that the safety and soundness of the banking and payment system is not compromised.

Economic efficiency, the efficiency of the financial system as payment mechanism and intermediation system is maximized and in turn, contribute towards overall economic growth.

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[43] UN ICT Task Force is now defunct but due to be replaced by a Global Alliance For ICT Policy and Development via http://www.unicittaskforce.org accessed on 31/03/13.

Access to financial services, that broader access to appropriate, affordable financial services is promoted.

Consumer protection: The consumer, especially vulnerable consumers, is adequately protected against abuse or loss. Therefore it consists of the laws and organizations to ensure as well as fair trade completion and the free flow of truthful information and services in the market place. Mobile money transaction offers the prospect of increasing efficiency of the payment system, and potentially, expanding financial services. However, the objectives may be in tension with existing approaches which target other objectives, such as financial integrity or consumer protection, while market enablement is often understood as the process of simply identifying and removing regulatory and legal barriers to growth, in fact, it requires the management of these complex trade- offs overtime.

2.6 Openness and Certainty at An Early Stage.

In the early stages of the new market, two dimensions in particular affect the market development trajectory.[44]Openness, the policy, legal and regulatory environment allow the entry of new providers and approaches. If not, there is little room for innovation to come to market. Certainty does the policy, legal and regulatory environment provide sufficient certainty that there will not be arbitrary changes in feature which may prejudice the prospects of entrants, if not entrants will be discouraged from incurring the cost and risk of entry.

Ideally, therefore, an enabling environment is sufficiently open and sufficiently certain, but in reality, there will be trade- offs between these two dimensions. It is often the case of

[44] The New Micropayments threshold, CPSS (2004} available via http://www.bis.org accessed on 31/03/13

new markets that one or other dimensions is neglected for example countries with few laws or regulations and with limited regulatory capacity may be open to new developments but, if there is a high level of uncertainty, for example as a result of possibility of arbitrary action in vague areas of the law, there still may be little market development. Later in this research we will attempt to apply these concepts to mobile money transaction by asking what constitutes sufficient openness and certainty for it to develop from the early stage.

2.7 Additive and Transformational Approaches in Banking.

Mobile money transactions hold out the respect of increasing access to appropriate formal financial services by those who presently lack it. It could also make money transaction convenient, possibly even cheaper, for those already have financial services. The two approaches are not necessarily exclusive greater convenience for existing clients could also lead more accessible products for current non clients but neither are they necessary linked.

Additive approaches, which primarily target existing banked customers, and which offer the mobile channel as an additional channel alongside or part of the others such as internet.

Transformational approaches, which intentionally reach out to the markets beyond the existing banked groups, through a product of offering which meets the known needs of the unbanked groups.

Under traditional bank accounts, people without accounts are the majority in developing countries, are in fact are in fact a heterogeneous group, including people who may have adequate incomes but from an informal source, as well as poor, rural dwellers. As a result of on going research in the field of microfinance, we now have a better sense of elements required for a basic financial services to meet the needs of unbanked people, and in that sense to be transformational. A resent micro Save briefing note[45] list the elements of transaction banking which constitute a suitable value proposition for poor customers.

A safe place to keep money, the ability to cash in and cash out at convenient locations since cash is still pervasive at a reasonable fee and the ability to transfer money, both to make payments and remit money to friends and relatives. In a nut shell the research paper describes that mobile money transaction will enable widespread access to financial services. For this to happen, mobile offerings must be in some measure transformational.

It has defined this concept, against the background of the main element of dynamic enabling environment. The next and subsequent chapters describes the emerging models of mobile money transaction and go on to identify the basic elements of openness and certainty in the environment which may be required for these models to take root and grow in developing countries today.

[45] Wright et al 2006

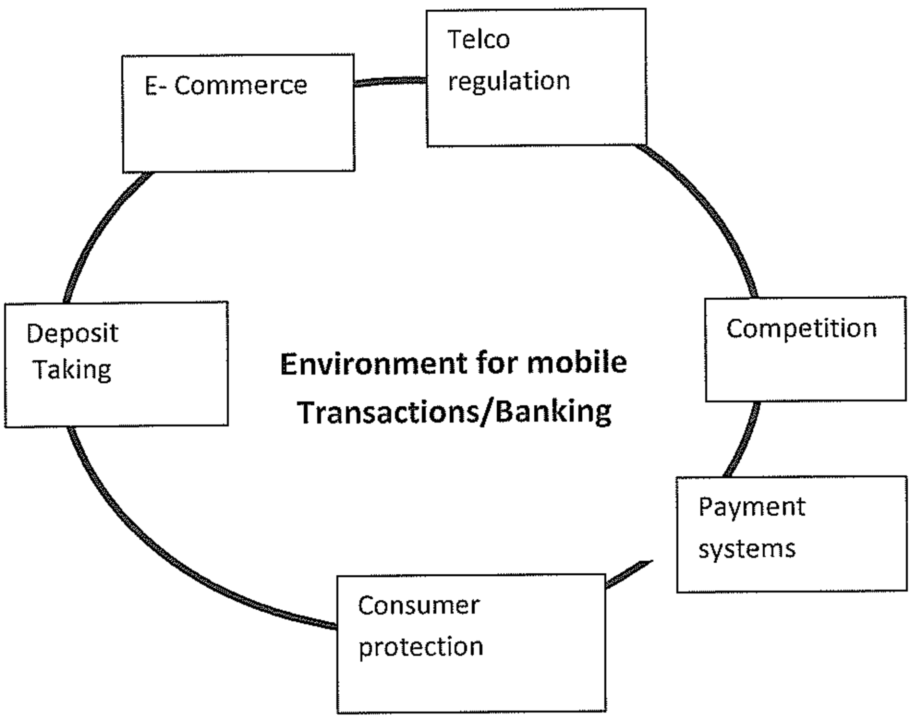
CHAPTER THREE

The Legal Regulatory and Policy Framework Relating to Mobile Money Transactions in Uganda

3.1 Introduction

As Figure 2 hereunder graphically depicts, mobile money transaction sits at the intersection of a number of important policy issues. Each issue is complex in its own right, and is often associated with a different regulatory domain, as many as five regulators, supervisor, payment regulator, telecommunication regulator, and competition regulator, may be involved in crafting policy and regulations which affect this sector. The complex overlap of issues creates the very real risk of coordination failure across regulators. This failure may be one of the biggest impediments to the, growth of mobile money transaction, at least of the transformational sort.

Figure 2: Overlapping domains[46]



[46] Source: The Enabling Environmental of Mobile Banking in Africa by Porteous D. available via www.bankablefrontier.comaccessed on 10th May 2013

3.2 The Regulatory Frame work of mobile money transactions in Uganda.

3.2.1 Uganda Ccommunication Commission.

Mobile money transactions in Uganda are governed by Bank of Uganda and Uganda communications commission, The Uganda Communications Act[47] (UCA) establishes the Uganda Communications Commissions (UCC) after repealing the Uganda Communications Commissions Act of 1997 to carry on functions related to communication services and operations in Uganda, it receives and investigates complaints, by taking necessary responsive actions.[48] The Uganda Communication Commission (UCC) is a statutory body charged with the regulation of telecoms and internet service providers (ISPs) in the country, and its policy goals focus on expanding telecommunications infrastructure and services.

In its role, the body has taken steps to avail information about its regulatory process on its website[49] and through publications and press releases such however the perception is that accessible, complete and understandable information is not available, and UCC is not directly independent from the executive arm of government. The Uganda Communications Act[50] spells out the functions of the Uganda communication Commission among which to regulate rates and charges for communication services, with a view to protecting consumers from exclusive tariffs and to prevent unfair competitive environment,[51] to receive, investigate and arbitrate complaints relating to communication services and take necessary action[52]

[47]Uganda communications Act 2013 commenced on 18th January, 2013.
[48]http://www.ictregulationtoolkit.org/en/publication.1431.html
[49] http://www.ucc.co.ug accessed June 14, 2013.
[50] Section 5 of the Uganda communications Act 2013
[51] Section 5 (1) (e) of Uganda communications Act 2013.
[52] Section 5 (1) (j) of Uganda communications Act 2013.

3.2.2 Bank of Uganda

The Bank of Uganda is established by the Bank of Uganda Act Cap 51 which provides pursuant to ***Section 4***, the functions of the bank shall be to formulate and implement monetary policy directed to economic objectives of achieving and maintaining economic stability. However, though much the bank of Uganda is silent on the regulation of mobile money transactions, **section 51** and **section 52**[53] respectively empower the board of BOU with the approval of the minister, and the minister in consultation with the board, make by-laws not inconsistent with the Act, falling within the scope of its function.

In January 2013, Bank of Uganda and the Uganda Communications Commissions stated that it was to set new rules that will govern the mobile money trade.

> *"We shall develop and operationalize self-regulating mechanisms, quality assurance standards and performance and performance monitoring systems for mobile money transactions in Uganda," said deputy director commercial banking.*[54]

That statement was made, after a public outcry on the rising mischiefs that were affecting mobile money transactions among which was fraud.

MNOs typically started their mobile money platforms following a simple letter of "no objection" from the central bank. Although MNOs are not licensed banks and thus do not fall under the direct authority of central banks, they are required to partner with an established bank.[55] To comply with financial services regulation the MNOs have partnered with banks. MTN is working with Stanbic Bank, UTL with DFCU and Zain with Standard

[53] Bank of Uganda Act Cap 52
[54] Gilbert Kidimu, "mobile money rules to improve services", new vision 19th February 2013.
[55] United Nations Conference on Trade and Development (UNCTAD), A comprehensive study of Existing Customs and Regulations, 2012

Chartered Bank. There is a reported partnership between Warid and Crane Bank, although no mobile money offering has been launched to date (Uganda Government 2009)[56].

The partner bank's activities are already regulated under existing legislation.[57] The bank holds the actual cash deposits against which mobile money is issued. Thus, this arrangement extends existing financial regulation to mobile money by proxy. However, the current regulations do not grant the central banks an explicit mandate over non-bank, or financial institutions that deal in e-money. The bank partners are liable to the central Bank for these records and perform periodic audits at the MNO to ensure compliance.[58] **Junior kwebiha,**[59] commented that Central banks in the United Republic of Tanzania and Uganda have adopted the approaches which now require, that MNOs maintain bank accounts distinct from those of the MNO's other operations[60].

Prior to the launch of Mobile money, MTN sought authorization from the Bank of Uganda (BOU) to undertake the money transfer service. In evaluating the proposal, the BOU considered the request on the basis of safety, reliability and efficiency of the service. I.e. addition, precautionary measures were put in place to ensure that the services did not infringe with the banking service regulatory framework, in Uganda which is still in the pipe line.[61] BOU has fixed a celling UShs.5 million on Mobile money virtual accounts per day and a transaction, limit of Ushs4million from virtual accounts, as for agents the utmost money on their virtual accounts is Ush10 million in order to mitigate against settlement

[56]Ndiwalana, A. and O. Popov (2008). Mobile Payments: A Comparison between Philippine and Ugandan Contexts. IST-Africa 2008. P. Cunningham and M. Cunningham. Namibia, IIMC. Orange Uganda. (2010). "Gyekiri." Prepaid Services Retrieved September 27th, 2010, from

[57] Financial institution's Act 2004

[58]Interview with George Sije, Bank of Tanzania

[59] National Sales Manager Public Access and Mobile Money, MTN Uganda.

[60] Interview with George Sije, The United Republic of Tanzania
and Junior Kwebiiha, Uganda

[61] Ibid at 41.

risk.[62] This has exemplified the role of Bank of Uganda in the in the continued processs of regulating mobile money platforms in Uganda.

3.2.3The Uganda ICT Consumer Protection Association (UNICPA)

Some individuals decided to come together with an idea of bringing together grieving ICT consumers. These individuals have now set up Uganda ICT Consumer Protection Association. The association recognizes the existing institutions and channels of dealing with consumer caserns and will work collaboratively with these institutions with the aim of improving these ICT services. The body is like the Uganda communications commission and the Uganda National Bureau of Standards which seem to be overwhelmed by their wide mandates, limited budgets and inadequate human resources.

The association provides complimentary activities and services to the already existing channels and institutions for addressing ICT goods and services. This is done though, Advocacy for better, revised new consumer laws as well as holding consumer consideration of ICT consumers in Uganda. The advocacy is based on consumers experience and emergent issues that rises as the association carries out its aims.

3.2.4The Ministry of Information and Communication Technology (ICT)

Over the years the Government has embarked on initiatives to improve connectivity and national ICT policy was finalized in 2010 to facilitate the proliferation of ICT across the country. One of the policy guiding principles is to "ensure access to IT services to men and women in both rural and urban areas".[63]

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[62] MTN service charges for mobile money charges, http://www.mtn.ug, accessed on 15 June 15, 2013.

[63] Ministry of Information and Technology, "Information Technology Policy for Uganda," Republic of Uganda, February 2010, ict.go.ug.

Since 2007, Uganda's ICT ministry has been developing the National Data transmission backbone, infrastructure, which aims at ensuring the availability of high bandwidth data connection in all major towns at responsible prices.[64] The project now under the provision of the National Information Technology Authority (NITA_U), involves the installation of over 1,500km of fiber optic cable and related equipment, including switches, optical transmission, data communication, fixed network, and video equipment, as well as computers and servers.[65]

The ICT sector is divide into three levels: policy, regulatory and operational the policy and regulatory levels are overseen by UCC and UNITA-U, while the operational level is comprised of Telecommunications, postal, information Technology and broadcasting operators, Uganda's policy and regulatory environment was established through the telecommunication Sector policy framework of 1996 and Uganda Communications Act of 1997, the ministry of Information and Communication Technology was set up in in June 2006 with mandate of providing strategic and technical leadership, overall coordination, support and advocacy on all matters of policy, laws, regulations, and strategy for the ICT sector,[66]of which mobile money services are inclusive.

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[64] Ministry of Information and Technology , "National Data Transmission Backbone and e-Government infrastructure project, "Republic of Uganda accessed June 14th, 2013,www.ict.go.ug

[65] "NBI/EGI project," National Information Technology Authority-Uganda, accessed on June 14th, 2013 ,http://www.nita.go.ug/index.php/projects/nbiegi-project

[66] Ministry of Information and Technology, "About MOICT," Republic of Uganda, , 2013,www.ict.go.ug

3.3 The legal Frame Work of Mobile Money Transactions in Uganda.

3.3.1 Electronic Signatures in the Efficiency Building of Mobile Money Transactions in Uganda

Mobile money transactions in Uganda are subject to the Electronic Signature Act 2011[67] which requires an accepted use of electronic signatures, such as a private key which is used to create private a digital signature. Mobile network operators refer to private key as personal identification number (PIN) but also including biometric identifiers, to authorize transactions. Mobile money transactions use, a five character digit which is only known to the mobile money consumer and it cuts across all the telecommunication houses that offer mobile money transactions.

The PIN and an identification document form the basis for authentication during cash-out. Because the SIM card and PIN are all that is required for other transactions there is no protection when a consumer loses his/her mobile phone to fraudsters able to figure out their PIN. Mobile Network Operators (MNOs) across the country provide advice and hotlines for consumers to report a stolen mobile phone, encouraging them to report such incidents as soon as possible so that all mobile money transactions are blocked. Mobile phones have a unique International Mobile Equipment Identity (IMEI) number that could be used as part of the authentication process, but it is of limited value in the case of a stolen or lost phones. The mobile money environment is susceptible to different types of frauds and security threats. Fraud cases were recently reported in Uganda.[68]

[67] The Uganda Gazette No. 19 volume CIV dated 18th March, 2011.
[68] http://www.monitor.co.ug/news accessed on 16th June, 2013.

PIN[69] numbers are already in widespread use in developing countries for example, as a security feature on mobile money transactions. Many developing countries have yet to adopt legislation enabling e-commerce. It is unlikely that individuals will accept the risk of accepting or making larger mobile money payments, or build new business cases on the receipt of e- payments, if their validity may be challenged. Establishing the legal validity of e-signatures is therefore a need for the mobile money transactions to thrive.

3.3.2 Anti-Money Laundering Bill

In late 2009, the Anti-Money Laundering Bill (AMLB) was sent to Uganda's Parliament for consideration. The Bill is the first of its kind for the country, and if it is passed, it will put the strength of Uganda's AML legislation in line with that of its East African counterparts, such as Kenya, Tanzania and Rwanda.

Uganda is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). In a strategy report published in April of 2010, the ESAAMLG outlines Uganda's AML and Counter Terrorist Financing (CTF) strategic objectives as the following:

- To introduce and implement comprehensive AML/CFT legislation.
- To implement effective enforcement structures and resources.
- To effectively regulate the financial sector.
- To promote effective international cooperation.
- To maintain effective strategic management controls.
- To engage stakeholders.

[69] PIN are herein referred to as Personal Identification Number

Uganda also intends to implement a Financial Intelligence Authority (FIA) with the enactment of comprehensive AML legislation; it expressly increases the extra territorial jurisdiction of Ugandan Courts Over offences connected to money laundering. It enables the extradition to Uganda of fugitives for trial in Ugandan Courts even where the offence is committed outside Uganda and for the confiscation of property in Uganda connected to a crime committed against the laws of another state.[70]

MTN Uganda, the largest operator in the east African country, has previously denied the charges of money laundering, saying they were initiated by a former employee sacked on allegations of theft.

Chief Executive Officer **Sifiso Dabengwa** and 12 officials, including the chairman and CEO of MTN's Ugandan unit, must appear in court on December 12, where they will also face charges of tax evasion, conspiracy to make false customs declarations and conspiracy to evade taxes, according to a November 7 summons issued by the Buganda Road Court.

Telecommunication giant MTN Uganda has confirmed media reports that the company has lost over 3M (USD) through fraud by employees perpetuated over the mobile money platform. According to the company, the loss arose from MTN Uganda balances on income generated from mobile money not customer funds.

However, reports indicate that the losses could be as much as 8M USD. The fraud was allegedly perpetrated by employees of the telecom company, some of whom have been sacked and criminal investigations are at an advanced stage with charges expected to be

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[70] http://www.chamberuganda.com, accessed on 14th June, 2013.

brought soon. The telecom responded by conducting an intern inquiry and firing those who been implicated. Among those sacked is **Richard Mwami,** MTN head of public access and mobile money.

3.3.3 Financial Institutions Act 2004

The **Financial Institutions Act 2004**[71] was enacted to regulate, control and discipline financial institutions in Uganda[72] among the tasks include to licensing financial institutions,[73] fixing capital requirement to start up banking business which is about two hundred thousand currency points.[74] However though this is the case the mobile money transactions are not regulated under this Act as they don't fall under the requirements of a financial institutions whose paramount role is to regulate financial institutions that deal with Banking services only.

Focusing on policy and regulations that facilitate innovation is important[75] taking into account actual needs, usage and varying contexts can only help improve mobile money adoption. In addition, this can highlight new opportunities for Mobile Network Operators (MNOs) and other innovators to help the poor by transforming mobile money transactions beyond basic money transfers. It is towards this goal that the mobile money users shall be protected from the unsuspecting members of public who intend to defraud them and hence a better mobile money enabling environment.

[71] Commenced on 26th March, 2004.
[72] Preamble of the Financial Institutions Act 2004.
[73] Section 4 Financial Institutions Act 2004.
[74] Section 26 financial institutions Act 2004.
[75] Lyman, T. R., M. Pickens, et al. (2008). Regulating Transformational Branchless Banking: Mobile Phones and Other Technology to Increase Access to Finance, CGAP.

In a nut shell, the legal and regulatory environment in Uganda is characterized by ineffectiveness of legislations and regulations and hardly has provisions that provide for the regulation of mobile money transactions and the regulatory frame work is weak as it is faced with challenges.

CHAPTER FOUR

Comparative Analysis of the Legal, Regulatory and Policy Framework in Uganda with the Identified Developed and Developing Countries Financial Regulatory Approaches.

4.1 Introduction

The policy and regulatory issues listed above are many and complex. In developed countries, financial regulators have generally acknowledged mobile money transactions that are at an early stage, and that the answers to all these are not yet fully known. However, they have generally been reluctant to stifle innovation because the potential benefits, in greater efficiency at least, exceed the new risks.

4.2 South Africa's Legal and Regulatory Approaches Compared to Uganda

This section moves to consider the specific issues arising in the legal and policy environment in the pilot country, Uganda in comparison to South Africa and the obstacles reported by providers there. The regulatory stance in South Africa has mostly been with reference to electronic money, a subset of mobile money transaction. The legal and regulatory framework with regards to e-banking would apply to mobile banking. In South Africa the legal framework comprises of the following:

• South African Reserve Bank Act[76];

• National Payment System Act[77];

• Banks Act;[78]

• Exchange Control Regulations (if cross-border)[79];

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[76] Act No. 90 of 1989
[77] Act No. 78 of 1998.
[78] Act No. 78 of 1998.

• Financial Intelligence Centre Act[80]; and Since this paper focuses on mobile payments, the legal and regulatory framework for payment through the use of mobile phone would be restricted to the payment system in comparative analysis with Uganda legal and regulatory system.

In order to understand the environment of mobile money transactions, one aspect of this project involved the collection of information on existing and intended legislation and regulations which impinge on this area. Table 2 below summarizes key aspects from these templates for Uganda and South Africa. Both countries are at an early, pioneering stage of market development, with several models although none yet with critical mass.

Table 2. Summary of country templates.[81]

Uganda		**South Africa**
1. Are E- signatures recognized by law?	Yes	Yes
2. Are there consumer protection laws/regulations/codes with enforcement?	No-not explicit	Yes for deposit taking (FAIS): note e- banking, Banking industry Codes of Conduct and Ombuds process cover e- banking
3. Is there a competent competition authority?	Yes- however with limited jurisdiction and powers.	Yes
Is there payments system	Note yet still in the	Yes

[79] Act No. 38 of 2001.
[80] Position Paper No. 1of 2000.
[81] Source: http://www.BOU.go.ug/forms of am-banking/m-payments

legislation giving authority to a regulator?	pipe line	
4. Are AML/CFT CDD/KYC requirements prescriptive or risk based? Are they onerous for small accounts	Apply to banks only; allow for risk basis but with no guidance and will likely too onerous for small accounts	Yes-exemption from address verification on small accounts; risk – based approach to; but still considered unclear by some providers
5. Can agents provide cash back /take deposits?	Not prohibited; no specific rules	Not prohibited; no specific rules
6. Are there specific E- money regulations or guidance?	No	Yes- guidance only

In general, South Africa has a well-developed legislative and regulatory environment, which creates relatively high certainty. Areas such as e-commerce, *AML/CFT* and even, consumer protection are fully covered. Mobile money transactions are covered by a recently updated guidance note. While several of the new models considered here have started up in this environment, it is not necessarily conducive for the rapid growth of transformational approaches, as provider's comments in the next section show.

In Uganda, by contrast, much important legislation in areas like mobile money transaction, *AML/CFT* is still in the pipe line at the draft or bill stage[82], the Uganda Communication Commission (UCC) in charge of regulating Mobile Network Operators (MNOs) and Bank of Uganda have already tabled the Anti-money laundering bill 2009 in parliament pending debate. The state of legislative and regulatory uncertainty is therefore relatively higher

[82] Gilbert Kidimu, "mobile money rules to improve services", new vision 19th February 2013.

than South Africa, although uncertainty is reduced somewhat by the fact that there is at least draft legislation and accepted policies in such areas.[83] The national payment system consequently, has not precluded the launch. The lack of specific legislation in various areas has left the Ugandan mobile money environment relatively more open. Uganda now has the opportunity to coordinate and integrate its approach to the money transaction sector within and across all the planned new laws before they are passed, thereby avoiding the confusion of any conflict or ambiguity.

In some countries, high level strategy and policy documents have been developed and released for the development of the National Payment Systems. In 2006, the South Africa Reserve Bank released *Vision 2010,* an updated framework and strategy for the national payment system there. One of the seven main strategic objectives identified is;

> *"Facilitate wider usage by the public and broaden the provision of payment services in the NPS", which is further, clarified in a footnote to include, 'addressing the payment needs of the unbanked community'*.

The document envisages an active role for the Payment System Division of the Central Bank, in monitoring developments nationally, regionally and internationally, as well as facilitating the establishment of an authority which would certify payment system standards. In Uganda, the NPS Framework and Strategy .document was issued in 2004.

The elements of the vision for the NPS include access-related elements: "Easily accessible to both urban and rural consumers and "Basic NPS features understood by all including

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[83] For example, Jacobs (2005:9) describes the consequences of the failure of US money transfer operator Cash Point Network Services with hundreds of retail locations in New York "Ultimately, the company owed millions of dollars in unpaid bills to utility companies.... Some consumers were forced to repay bills they had already paid"

the rural populace. These objectives provide openings regulators to consider transformational offerings more favorably than they might otherwise.

While these relative positions are perhaps to be expected of a middle income and a lower income country, neither Uganda nor South Africa is especially representative of Africa in general, the retail banking systems in each are well developed, and the Central Banks well capacitated, relative to many neighboring countries. They were chosen for this project because of the new mobile money transactions models emerging in each. However, the checklist represented in Table 2 could also be applied to other developing countries. It could also be developed further into a rating system which could enable better comparison across more countries and across time of the environment for money transaction.

4.2.1 Provider Obstacles'

The biggest barriers reported by these providers today are not primarily regulatory or legislative. Rather they were customer adoption issues typical for a new product or service, such as:

- How to educate customers in the use of the mobile phone for transactions;
- How to build trust in and awareness of a new financial brand.

These are little different from the general obstacles to m-commerce becoming pervasive ('u- commerce' or ubiquitous commerce)[84]

- Security (which generates user trust, essential in financial mechanisms)
- Simplicity (or user friendliness).

[84] See Schapp and Comelius "U-Commerce: A white Paper" available from http://www.foreshore .net accessed on 12th November

They also include the need for common standards, which allow interoperability and therefore greater utility to clients and greater scale. These barriers are also similar to those reported by respondents (mainly in developed countries) to the 2006 Mobile Payments study undertaken by consultancy **Edgar Dunn**. Merchant adoption, customer adoption, agreement on common mobile platforms and security and fraud issues tied as the most commonly reported barriers.

However, while the environment in the relevant countries was by definition open enough to enable them to start up, the providers in SA in particular also reported significant specific regulatory obstacles to the growth of transformational approaches. These included in particular:

A lack of clarity and consistency over the application of CDD standards to remote account opening procedures, even though the CDD required on low value accounts is already reduced by exemption; for example, it is unclear whether or not a copy of an identity document must be secured from the client in all cases, and if so, in what time period, or whether a biometric identifier such as a voice imprint is adequate[85].

Customer protection laws, designed primarily to cover the inappropriate offering of investment-type products, also extended to the opening of basic transactional bank accounts; as a consequence, a higher level of training, and therefore cost, was required in front line staff

[85] This issue was highlighted as a major obstacle in a recent press article on why take up has been slow at MTN Banking: see http://www.moneyweb.co.za/shares/financial services accessed on 26th April, 2013.

Access to the national payments system: non-bank providers remarked on the difficulty and cost of obtaining access to the South African payments system infrastructure, for' example for ATMs or POS acquiring. Access is in theory open to all banks, but in practice, the major banks which own most of the infrastructure dominate and are wary of models which will 'piggy back' on their existing infrastructure. A 2004 National Treasury task group report on competition in South Africa banking identified that this may constitute a barrier to competitive pricing and innovation; and competition in the payment system is now being further researched.[86]

In addressing these and other regulatory issues, providers generally reported that they had had at least some engagement with financial policy makers and regulators. Engagement was usually related to particular issues rather than market development in general.

In South Africa, there have been some attempts at coordination among providers, a working platform group comprising banks, mobile networks and vendors had convened in the past to consider the most feasible m-commerce model for the country. This group had concluded that the market required a central, trusted infrastructure that housed consumer data away from the actual mobile device and facilitated the authentication, instruction, financial transaction processing and fulfillment of transaction to merchant or retailer

Discussions in both countries supported the conclusion that, a high level roadmap of market development would be useful in promoting certainty and allowing graduated

[86] National Treasury Task Force report (2004) recently released but not on Treasury website www.treasury.gov.za.as at 26th October 2010.

openness. The next section sets out initial principles arising from this project which could be the starting point for discussions about a roadmap.

4.3 The Legal, Regulatory Environment of Mobile Money Transactions in developing Countries (Kenya)

In Kenya, mobile money transactions are hereafter referred to as M-pesa unlike Uganda, where it's called mobile money transaction; Kenya has a regulatory framework of M-pesa, which is distinct from the banking system so that they should not overlap the other. Telecommunication houses involved in M-pesa transactions in Kenya include Safaricom, Vodafone among others.

In Kenya, mobile money transactions, money collected by agents is deposited in a trust account in one of the leading commercial banks in Kenya. This trust account provides the legal protection for the beneficiaries. The money in this trust account is not under the control of Safaricom and cannot be employed for purposes such as lending, investing or in any other manner for the account and at the risk of Safaricom as per **Section 2(1)** of the Banking Act[87].

Legal protection of the money in the trust account is provided for in the trustee deed. Various legal instruments pertaining to this service, including the trustee deed has been presented to the Central Bank and reviewed accordingly. Further to this, funds in the trust account deposited in the designated commercial bank are regulated by the Central Bank of Kenya under the Banking Act.

[87] Cap 488 Laws of Kenya.

In Uganda, similarly to Kenya to comply with financial services regulation the Money Network Operators (MNOs) have partnered with banks, MTN is working with Stanbic Bank, UTL with DFCU and Airtel with Standard Chartered Bank. There is a reported partnership between Warid and Crane Bank, although no mobile money offering has been launched to date (Uganda Government 2009).[88] The partner bank's activities are already regulated under existing legislation. The bank holds the actual cash deposits against which mobile money is issued. Thus, this arrangement extends existing financial regulation to mobile money by proxy.

However, the current regulations do not grant the central banks an explicit mandate over non-bank or financial institutions that deal in mobile money transactions. The bank partners are liable to the central banks for these records, and perform periodic audits at the MNO to ensure compliance.[89] Central bank in the United Republic of Tanzania and Uganda have adopted the approach which now require that MNOs maintain bank accounts distinct from those of the MNO's other operations[90].

To stress on the importance of consumer protection, a number-of critical issues and risks that have been reviewed include, liquidity management, settlement risks, the reliability of the system, the registration of users, system audit trail, anti-money laundering measures and consumer protection issues that could compromise the safety, efficiency, integrity and effectiveness of the , M-Pesa system. These risks have been mitigated through a number of

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[88] Ndiwalana, A. and O. Popov (2008). Mobile Payments: A Comparison between Philippine and Ugandan Contexts. IST-Africa 2008. P. Cunningham and M. Cunningham. Namibia, IIMC. Orange Uganda. (2010). "Gyekiri." Prepaid Services Retrieved September 27th, 2010, from
[89] Interview of George Sije, Bank of Tanzania.
[90] Interview of George Sije, The United Republic of Tanzania and Junior Kwebiiha, Uganda.

measures which both Uganda and Kenya in their respective regulatory framework monitor regularly.

The Central Bank of Uganda and the Uganda Communications Commission has continued to oversee the service in line with its Oversight Policy Framework document, on the payment systems in Uganda which is available at the Bank's website[91]. For instance, whereas the system transacted about Ushs.17 billion in August 2009, the net deposit or residual value per customer that is deposit less withdrawals was Ushs.70000 thus demonstrating that Mobile money has not been regarded as an alternative bank account with sums of money staying in the system[92].

Further, to provide a sound legal basis for payment systems in Kenya, the CBK and the Treasury have been refining several legal and regulatory measures aimed at promoting safety, efficiency and effectiveness of payment systems in Kenya. One such effort is the review of the Central Bank Act in the year 2003 to include **Section 4Al (D)**[93] that mandates the CBK to promote such policies as to best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems.. Currently, the Bank has proposed and formulated the enactment of the National Payment System Bill that will strengthen the above mandate by inter alia expressly providing for the oversight of all Payment systems including money transfer services. This Bill will soon be tabled in Parliament for enactment into Law.

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[91] www.centralbank.go.ueas visited on15th may 2013.

[92] Ibid

[93] Cap 498 laws of Kenya

It is evident from the forgoing, that has been discussed above that the mobile money legal framework in Kenya is at upper hand compare to Uganda. The central Bank of Kenya, and the Communications Commission of Kenya have the outright authority to enact laws to regulate mobile money system in Kenya for example, the Proceeds of Crime and Anti-Money Laundering Act (enacted 2009)[94] influences AML/CFT issues in the financial section within Kenya. The Kenya Communications (Amendment) Bill 2008 contains basic provisions on electronic transactions and electronic signatures. The Kenyan Competitions Act (2009)[95] has some elements of consumer protection and provides for the creation of an autonomous Competition Authority to replace the Monopolies and Prices Commission

As seen in Uganda, the crafting of the legal framework is still at its initial stages of drafting with an exception of the Anti-money Laundering Bill (AML) that was tabled in 2009 and it approaching to half a decade before it is passed in to law in the staggering mobile money environment. The laws in place like the Electronic Signature Act 2011, Electronic Transaction Act 2011, Financial Institutions Act 2004, and the Bank of Uganda Act Cap 51 are ineffective in the regulation of mobile money transactions in Uganda and are subject to amendments as seen in the Kenyan legal system.

4.4 Consumer Protection of Mobile Money Users

Consumer protection is a traditional concern of policy makers, such as Uganda Communications commission (UCC) which regulates Mobile Network Operators and Bank of Uganda[96] (BOU) which is a financial regulator and creates policies. In developing countries, like Uganda in particular, the enforcement of consumer protection measures is

[94] www.Kenyalaw.org/kenya law/klr
[95] Ibid 81
[96] Section 4 Bank of Uganda Act Cap 51

often ineffective. However, in societies with low financial literacy or large numbers of first time customers, the vulnerability to abuse is higher.

The issue of mobile money transactions goes beyond traditional concerns about abuse of consumers. However, in new markets especially, customer adoption depends on growing trust. The experience of consumers at the hands of a few reckless providers may cause them to distrust all similar offerings in the market. Providers may therefore enjoy positive externalities from creating appropriate levels of consumer protection which help create trust, leading to more rapid adoption.

The starting point is to identify the risks to which consumers are exposed. In m-payments, these typically include fraud, loss as the result of unauthorized transactions, loss of privacy through inadequate data protection and even loss of service. The levels of risks involved vary with the nature of the product offering, and have been analyzed in detail by the Mobile Payment Forum[97]. The security issues involved in customer authentication and authorization through all the stages of wireless transmission have been considered in some depth by the main industry fora. These are complex and fast changing.

The aim of regulation in this context arises from consumer's inability to judge the safety of their funds, and the need to ensure that operators have proper incentives to respect contracts and consumer interests. But instruments of consumer protection can sometimes limit service and product innovations. Standardization can enhance transparency, the capacity for consumers to compare offers and enforce minimum levels of quality, for

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[97] See for example, the publication on the best practice in managing security risks available via http://www.mobilepaymentforum.org/pdf:accessed on 12th may 2013.

example the Uganda Communications Act 2013,[98] regulates rates and charges for communication services with a view to protecting consumers from exclusive tariffs and to prevent unfair competitive environment, further, it has fastened interest rates, restrictions on product cross-subsidization, and pricing policies may be regulated. Operators and regulators together need to review limitations that may cause unnecessary constraints. Incomplete contracting standards can also be a problem for the development of new service models; for example, agents may be required to validate the authenticity of documents or signatures.

The legal status of agents in this context may be ambiguous. Authorization or validation of payments via remote mobile tools may not be recognized by existing laws legal frameworks applicable to mobile money transactions, may be ineffectively defined to allocate rights and obligations clearly between clients and their mobile operators in the event of, operational errors, incidents of theft or fraud or other unforeseen problems. Moreover, poor and remote clients are likely to be at a disadvantage, if they want to identify, communicate and pursue incidents for which their mobile operator may have responsibility. The level at which laws and guidelines may need to be amended to provide a more stable legal framework will inevitably vary according to the specific legal and regulatory structure in anyone jurisdiction.

It should be noted, though, that consumer protection will be a key component of any commercial strategy to build confidence in mobile payments services. This is especially the case where consumers have entrenched reservations about banks in their country. Surveys have suggested that many in developing countries have a strong distrust of banks

[98] Section 5 (1) (e) of Uganda communications Act 2013.

and are likely to be skeptical at first about giving up physical bank notes for electronic based accounts. Regulators and mobile operators alike have an interest in strengthening consumer confidence.

The challenge is particularly important for early innovators. If consumer protection measures are too weak, potential first stage entrants may be dissuaded from investing in the market at all, as changing cons umber habits and perceptions can be very expensive. And as the market develops, it is inevitable that there will be some dishonest entrants, with the result not only that some potential clients will become victims of fraud but that these firms' activities may damage confidence in honest firms. So it is essential that regulators and operators work together on consumer protection.

A promising avenue for developing consumer confidence may be to build on the structure of remittance services. This market provides a natural bridge between different social and economic zones, both of which can be used to promote confidence, enforce standards and educate consumers. For example, if regulators work effectively with each other across borders, recipient countries may be able to enhance local consumer Protection by acting through supervisory structures in sending countries. Migrant workers may also be one of the more effective channels for educating consumers of financial services back home. In both cases, national regulators will need to enhance cooperation with other authorities at different levels of government, local and international.

Since its inception in 2009, MTN has rapidly developed to become one of the most dynamic innovations for delivery of financial services using modern ICT. To appreciate its rapid growth in popularity, it is important to note that the number of registered Ugandans using the MTN service regularly' has grown rapidly to reach close to 8 million MTN subscribers and 3.7million are registered with mobile money meaning that 14 million people in Uganda have asses to mobile money by default last year.[99]

However, the adoption and growth of MTN services has not only continued to draw public attention but has also generated a lot of debate as to the safety and reliability of these kinds of payments and transfer systems and what the government is doing about it. Among the questions in the minds of many Ugandans are, Does the Mobile money services operate and how safe and reliable. Is the consumer adequately protected, and should it be regulated.

It is for this reason that it has become necessary for the Uganda Communications Commission to provide an audit of the Mobile money system in order to clear any doubts in the minds of the public regarding its safety and reliability, and provide information about its effectiveness as well as the soundness of the operating platform for mobile money and other similar services wishing to enter the market.

Prior to the launch of Mobile money, MTN sought authorization from the Bank of Uganda[100] (BOU) to undertake the money transfer service. In evaluating the proposal, the BOU considered the request on the basis of safety, reliability and efficiency of the service. I.e. addition, precautionary measures were put in place to ensure that the services did not infringe upon the banking service regulatory framework in Uganda which is still in the pipe line.[101]

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[99] Gilbert Kidimu, "Mobile Banking In Hassle-Free", New Vision, Kampala 11 may 2013.
[100] Bank of Uganda is herein above referred to as BOU
[101] Ibid 93

4.5 Mobile Money Transactions Effect on the Stability of the Banking System and National Payment System.

The soundness of the banking system and of the national payments system is central to the mandate of most financial regulators. Fears that stability could be undermined often lead to conservative responses to product or service innovations, especially if they come from outside the banking system.

Such conservatism is to be expected, indeed welcomed, when systemic stability is indeed at risk; but not when it leads to innovations being suppressed without regard to real risks: the CPSS includes, among the main objectives of payment system regulation that regulators "address legal and regulatory impediments to market development and innovation"[102]. Proportionality is therefore a key principle of good regulation, although it is often hard to apply in practice, especially in new and fast evolving markets.

The conventional approach to the regulation of payment systems distinguishes between systemically important and non-systemically important systems. Systemically important is defined as "where, if the system were insufficiently protected against risk, disruption within it could trigger or transmit further disruptions amongst participants or systemic disruptions in the financial area more widely.[103]This determination is made based mainly on the size or nature of individual payments or their aggregate value. At least one of the following should be true for a payment system to be systemically important:

- It is the only national payment system.

[102] CPSS (2004) Survey of e-money and internet and mobile payments.www.bis.org accessed on 12th May 2013.
[103] Available from http://www.bis.org/publ/cpss43htmaccessed on 12th May 2013.

- It handles mainly payments of high value.
- It is used for settlement of financial market transactions.[104]

The more precise definition of systemically important is left to each country regulator. According to the general definition, retail payment systems would usually not qualify, although the CPSS also notes that it may be desirable for non-systemically important systems to comply with some or all principles.

In the 'pioneer phase of a new retail payment instrument or system, the case to apply full, or even partial, regulation is likely to be weak. However, as the system grows in coverage, it is likely to reach a system-wide usage threshold (in the sense that many people rely on it), even benefit is still not considered systemic. It would now warrant much closer oversight by regulators, who may require assurances such as that there is adequate backup procedures in place.

In Uganda, for example an informal cartel of local banks was unhappy with the threat posed by mobile money transfer service poses to their business. According to well-placed sources, four big local banks have formed an "ad hoc committee" to try and get mobile money transactions stopped.

Some, but not all, banks were alarmed by the growing popularity of the service. They were doubly fearful of mobile money transactions becoming a "mobile wallet" in the future

[104] CPSS 2003 Section 6.6

which former MTN boss **Themba Khumalo**[105] had said is his dream. The banks were advised to either pattern with the communication houses or join the market.

However, MTN Uganda retaliated by insisting that there was and will not be a risk of a default.

"It's not a pyramid scheme, e money is not with MTN, it is in a trust account managed by Commercial Bank of Africa which MTN cannot touch",

Said, a representative of MTN while in Kenya who preferred not to be quoted.[106] The remarks followed the dangers that would encompass mobile money transactions.

However, the banks insisted that if MTN are providing a financial service, they should come into the sector. If they are providing communication services they should stay in the sector so that we all play in the same field". Even as Bank of Uganda (BOU) goes the extra mile to accommodate the innovative mobile money transfer concept, this has not gone down well with the banking fraternity. While a new law on mobile money transaction is being hatched, players in the banking sector are uneasy with the BOU, which has lately been warming up to mobile phone service providers, eager to give credence to the two mobile money transfer services Airtel money and Warid Money.

The banks say that the change of tune by BOU is seen as encouraging competitors to 'encroach' into their own turf.

"We are open to all proposals. The market is developing and we cannot hold them back. Banks can create platforms for money

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[105]Outgoing CEO of MTN in 2012.
[106] John Njiraini and James Anyanzwa, Daily Nation Published on 30/12/2008.Unmasking the stormbehidn M-Pesa

transfers and we license those frameworks as long as they are sound and safe," says **Emmanuel Mutebile,** *the Governor*[107]

This followed the heated argument of commercial banks that the governor had to address.

BOU maintains it has given commercial banks the option of partnering with these Mobile Network Operators, an offer many are still reluctant to take up. So far, only five commercial banks have entered into partnership agreements with the mobile operators. These include among others Stanbic Bank DFCU Bank, Standard chartered Bank and Crane Bank.[108]

The BOU Act[109] prevents commercial banks from going into micro payments space, where Mobile money and Airtel money feature strongly.

"BOU is yet to open space for banks to compete in this space. But they are free to partner with these service providers",

Godfrey Y Massaja[110] deputy Director of Communication Banking told participants at a banking conference held in Tanzania.

Therefore, banks can join the completion with MNOs till the central reaches a consensus on how mobile money transactions should be regulated.

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[107] By FJ reporters Daily Nation Published on 02/06/2009.Why central Bank Position on Mobile Banking Attracts Wrath

[108]Ndiwalana, A. and O. Popov (2008). Mobile Payments: A Comparison between Philippine and Ugandan Contexts. IST-Africa 2008. P. Cunningham and M. Cunningham. Namibia, IIMC. Orange Uganda. (2010). "Gyekiri." Prepaid Services Retrieved September 27th, 2010, from

[109] section

[110] Ibid 20

Commercial banks have held the notion that mobile money was the creation of Uganda Communication Commission (UCC); a seal of approval by BOU on this money transfer service has brought discomfort in the banking sector. By nature, the local banking industry has been conservative and slow to innovation, to the advantage of cutting edge products offered by mobile phone service providers, especially the mobile money transfer service.

In response to stiff competition offered by Mobile money transfer service, commercial banks are now working round the clock to improve speed of cheque processing, which currently takes a minimum of three days.[111] BOU is also dismissing fears held by commercial banks that amounts moved through mobile money transfers are large and therefore a threat to the velocity of money and could even be impacting inflation trends.

Through the explosive growth of mobile phone services, commercial banks have been lobbying for stricter regulation of telecoms to create a level playing field. On the other hand, telecoms, which are operating until now under the protection of BOU, have been expanding their services and penetration.

According to **Godfrey Y. Massage,**[112] the deputy director of communications banking, telecommunication companies advised communication players to open subscriber systems, which will be used as backup for retaining money in case of shortage and further pointed out that mobile money transactions are simply coming in to fill up voids, which commercial banks have not been able to bridge. ***Mazen Mroue***, the MTN Chief executive has often emphasized that mobile money is keen to form strategic alliances with banks and

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[111] Section 13 Bill of Exchange Act Cap 68
[112] Ibid 20.

other financial institutions to offer services that complement each other to meet consumer needs[113].

The response of banks to mobile money transactions was also a subject of interest. It evidently took a while, to understand what impact the entry of mobile money solutions into the financial services space meant; When at last they did they initially responded somewhat defensively, with calls to the Bank of Uganda to regulate (code for rein 'in) mobile money now however, they've made significant progress and are pro-actively involved in introducing their own mobile money remittance platforms such **as *Hello Money*** by Barc1aysUuganda, or working in tandem with mobile money such as Consolidated Bank which it was reported enables transfers between its accounts and mobile.

4.6 Anti-Money laundering/Combating the Financing of Terrorism (AML/CFT) Regulations Affect Account opening and cash transactions.

AML-CFT standards set by the Financial Action Task Force (FATF)[114] require that adequate Customer Due Diligence (CDD)[115] be undertaken on all new virtual accounts and on single payment cash transactions.[116] This process is part of Know Your Customer (KYC)[117] procedures so that suspicious transactions can be identified. National laws and regulations are required to give effect to these standards, and they typically require:

- Verification of identity of the client, using a government issued identity document; and

[113] Mobile Money Supplement, New Vision, Tuesday, February, 19, 2013.
[114] Financial Action Task force is herein above referred to as FATF
[115] Consumer Due Diligence is herein above referred to as CDD.
[116] FATF Recommendation No. 11 usually liked to CDD standards in the BIS publication CDD for Banks (2001) and special Recommendation VII for remittances.
[117] Know Your Consumer is herein above referred to as KYC.

- Verification of physical address for example, by production of a mini statement or utility bill in name of the customer.[118]

If this procedure is not followed, the mobile money payment agent may be penalized by the relevant authority; or frozen out of international payment systems by other telecom service providers concerned about the risk of being associated with illicit activities.

In many developing countries, clients have no formal address, the Universal Postal Union, Geneva (UPU) reports that in Africa, only 22% of households receive mail at home; and some 10% have no mail service at all.[119] Even if they did, there is often no means of verification. **Isern et al** (2005) have warned of the possible perverse consequences for access to financial services if an inappropriate rules-based approach is followed in developing countries. Therefore, transformational models, which target people less likely to have formal addresses, require flexibility in the application of CDD requirements.

Clearly, a risk-based approach to CDD has the potential to be sufficiently flexible. However, if national regulators give no guidance on what constitutes acceptable risk-based approaches, telecom houses may be left vulnerable to subsequent reprisal, and this may encourage undue conservatism. In countries which strongly favor a risk-based approach such as the United Kingdom, there is a forum such as the Joint Money Laundering Steering Group which establishes guidance for its members on such issues[120]

[118] Note that a proposed anti-crime law in South Africa would similarly require the identity and address of all mobile users to be identified.
[119] UPU 2005, available from http://www.upu.int/statistics/en/development accessed on 12th March 2013.
[120] See Website of the JMLSG at http://www.jmlsg.org.uk accessed on 27th march 2013

CHAPTER FIVE

Conclusions and Recommendations

5.1 Conclusion

Bank of Uganda is generally equipped to address risks present within retail payments systems in Uganda, mobile money presents a new set of regulatory challenges. Mobile money involves players that traditionally have not fallen within the purview of central bank. For example, should MNOs be directly licensed to issue mobile money. How should the agents, who are so critical for mobile money take-off and sometimes perform functions like customer registration for KYC, be regulated. Studies documenting risks across the mobile money chain have started to emerge.

They do recognize the nascent nature, dynamism in the development of new business models as well as the uniqueness of various environments and how all of these could influence emerging mobile money platforms in Uganda. Uganda is a hot bed of mobile money activity. Moreover, Regulators in this region have few other countries to turn to for prior art around the world. This further compounds the challenge of effectively regulating and protecting consumers, without stifling innovation. In this final section, a number of regulatory issues and potential policy actions are discussed.

As noted in an **UNCTAD** report on the state of play of cyber legislation in EAC, "Despite the colossal sums of money involved in mobile money transfers, there is no legal framework governing these transactions. The mobile network operators have no obligation to reporter disclose information on mobile money services to, the Bank of Uganda as the financial regulator or to the Uganda Communications Commission as the telecommunications regulation.

5.2 Recommendations.

5.2.1 Consumer Protection.

Regulators like Bank of Uganda (BOU) and Uganda Communications Commission need to start paying more attention to consumer-related issues and define some standards to which MNOs/partner banks need to adhere so as to ensure higher consumer satisfaction. Potential areas of action include:

Regulators in conjunction with MNOs/partner banks providing mobile money services, should define some service quality metrics (akin to what they have done for voice services) that can be tracked over time to ensure improvements. Performance across these metrics should be periodically disseminated to the public for reasons of transparency and accountability.

(b) MNOs/partner banks should be required to setup dedicated customer support centers and systems. Currently, these are embedded within support systems for other conventional services like voice and these are already deluged with users complaining about issues with these other services.

(c) MNOs and their agents should be required to display their various mobile money services and related charges visibly at each of their locations. Other terms and conditions related to services should also be readily accessible by consumers.

5.2.2 Registration and Transaction Limits.

Registration before being able to use any mobile money services is still a barrier for adoption across EAC, primarily because it has been a retroactive step MNOs had already issued the bulk of their SIMs before they launched mobile money platforms. While the need for KYC is well articulated, the challenge to put together the necessary documentation and dedicate the time to visit an MNO or their agents is still perceived to be a considerable hurdle, especially for those that would just like to experiment with the service. At the agent, a user has to complete a registration form, which can be an intimidating step for poor people.

A user can present a range of documents, as identification for registration across Uganda, a welcome flexibility. But this also points to the need to craft national IDs Across the country. The lack of a nationally accepted form of ID implies that registration is a two-step process. The Completed form and ID Photocopy from the agent's location need to be forwarded to the MNO offices for processing, after which a mobile money account is activated. This delay can add frustration to the registration process.

5.2.3 Inter-operability.

In their infancy, mobile money platforms across Uganda are predominantly used for m-transfers between known parties. In this case, it is reasonable to accept mobile-money platforms restricted to users of a particular MNO because the parties can agree beforehand to operate on a given network belonging to a particular MNO. As mobile money matures towards m-payments and m-financial services, improved interoperability becomes increasingly critical. A small business that wants to adopt mobile money as a means to receive payments may face a dilemma. Should it choose to serve a particular mobile money platform (for example the most dominant in the country) or multiple options.

The first choice might alienate some customers who do not belong to a particular network, while the second is much more costly to afford and manage. Even if the Point of Sale terminal were a basic mobile phone, then the enterprises would need multiple phones and mobile money accounts, fragmenting their cash across different systems. This might make sense for institutional clients like monopoly utility providers or others with a big customer base, but not for a small business. MNOs (especially the dominant players) are resisting moves towards mobile money interoperability as their own platforms are a good way to reduce churn (or the percentage of customers they lose every month) in a competitive environment.

A possible challenge for both the Bank of Uganda and the Uganda Communications Commission is how to nurture and guide the development of an interoperable local mobile money ecosystem that discourages the walled garden mentality without creating barriers to innovation and/ or new entries. A discussion about mobile money interoperability is already underway in Kenya. A Government task force set up by the Prime Minister to look into telecommunications sector issues has recommended that MNOs should work closely together to create a seamless interoperable system in Kenya.

5.2.4 Government Should Reduce on its Taxation Policies on Mobile Money Transactions.

Government in Uganda is the biggest money spender through paying salaries to civil servants as well as pensions. Given the limited reach of financial institutions especially in the rural areas, Government can greatly improve their services by adopting mobile money to disburse such funds on a regular basis. Conversely, Government also receives money from citizens. Adding a mobile money channel can help increase convenience for users to pay taxes and Government fees, resulting in a more efficient revenue collection for the Government. In addition, the ability to reach a large portion of the low-income population through their mobile phones and connect them to the formal economy allows for the delivery of more efficient social policies like emergency payments for disasters, relief efforts for epidemics, health threats, etc.

Even as the Government of Uganda yearns for greater tax revenues, it should continue to refrain from taxing mobile money transactions for now. For example, the Ugandan Government has increased tax on mobile money transactions to 10% in its budget of 2013/2014 financial year.

Imposing taxes on mobile money services could be counterproductive because these would be passed directly on to consumers. The result would be higher prices and reduced transaction volumes. The core group of people that mobile money is lauded for providing a channel to serve the poor could flee since they are more sensitive to price changes. This would increase the risk that mobile money reverts to serving those that already have alternative options in accessing financial services.

The call in this research paper for the enablement of mobile money transaction markets does create an initial case for donor support, for example, capacitating regulators to adopt an enabling approach. However, any such case needs careful exploration and exposition.

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