



Expanding Financial Services to the poor: The Role of ICT Regulatory Challenges

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Banking Regulation in Kenya

The Banking Act, Chapter 488 Laws of Kenya:

„An Act of Parliament to regulate the business of banking and for matters incidental thereto and matters connected therewith“.



Two Key Provisions

“bank” means a company which carries on, or proposes to carry on, banking business in Kenya and includes the Co-operative Bank of Kenya Limited but does not include the Central Bank;



Two Key Provisions Contd/...


“banking business” means:-

- (a) The accepting from members of the public of money on deposits repayable on demand or at the expiry of a fixed period or after notice;
- (b) The accepting from members of the public of money on current account and payment on and acceptance of cheques; and



Two Key Provisions Contd/...

(c) The employing of money held on deposit or on current account, or any part of the money, by lending, investing or in any other manner for the account and at the risk of the person so employing the money;



Internet Payments, e-commerce and e-banking

The Monetary Affairs Committee of the three East African Central Banks (MAC): Recommended that:-

- BIS guidelines for e-banking and cross border activities to be adopted as East Africa regulatory framework for e-banking.
- Payment Systems department should Collaborate with their respective banking supervision department on regulating e-banking.



Regulatory Challenges

- E-Commerce
- AML/CFT
- Banking Regulations w.r.r. AML/CFT
- Payment Systems
- Telecommunications
- Consumer protection



E-Commerce law

- Kenya has no e-commerce law but the government has developed a policy and drafted bills
 - National ICT Policy (Jan. 2006)
 - Kenya Information and Communications Bill 2006



Anti-Money Laundering (AML) & Combating Financing of Terrorism (CFT)

■ CURRENT SITUATION

- Antinarcotics and Psychotropics Substances Act criminalises money-laundering
- Prudential Guideline on Proceeds of Crime and Money Laundering (Prevention) under the Banking Act (only applicable to financial institutions)

■ PROPOSED SITUATION

- Proceeds of Crime and Money Laundering (Prevention) Bill 2006
- Anti Terrorism Bill 2006



Anti-Money Laundering (AML) & Combating Financing of Terrorism (CFT) –Cont.

■ REGULATION FOR BANKS

- ❖ Prudential Guideline on Proceeds of Crime and Money Laundering (Prevention) are issued under the Banking Act
 - Specifies customer identification requirements for banks: when and how, distinguishes between face-to-face and non face-to-face verification (postal and telephone banking, internet and cyber banking)
 - Also covers information requirements for domestic and foreign transactions
 - Does not make any exemptions for low-value accounts



Anti-Money Laundering (AML) & Combating Financing of Terrorism (CFT) –Cont.

■ PROPOSED LEGISLATION

- ❖ Proceeds of Crime and Money Laundering (Prevention) Bill to be administered by Ministry of Finance and Attorney General
 - Financial Reporting Centre to be established
 - Applies to all financial institutions (wider definition than in Banking Act), designated non financial business, and professionals (the latter two to be specified by Minister)
 - Identification requirements for customers to be further specified in regulations under the law



Anti-Money Laundering (AML) & Combating Financing of Terrorism (CFT) –Cont.

■ ISSUES UNDER CURRENT AND PROPOSED LEGAL FRAMEWORK

- Verification requirements under CBK Guidelines do not distinguish according to size of account (but face-to-face vs. non face-to-face)
- Telecommunication companies (telcos) offering their customers e-money accounts (backed by pooled account in commercial bank) will have to comply with reporting and verification requirements under the proposed AML law



E-COMMERCE, MOBILE BANKING, AND MOBILE PAYMENTS

- Current legal framework does not specifically address mobile banking / payments
- Evidence Act is proposed to be amended so that it among other issues defines criteria for digital signatures, secure e-signatures, and admissibility of electronic evidence
- Information and Communications Bill does not specifically provide for mobile banking / payments
- Electronic payments will also be provided for under the proposed Electronic Funds Transfer Bill



Payments System Legislation

■ Current Status

- Central Bank of Kenya Act gives CBK broad mandate for regulation and supervision of the payment system
- Currently licensed payment providers include : banks, building societies, SACCOs, Postbank

■ Proposed Payments Regulations

- National Payment Systems Bill
- Electronic Funds Transfer Bill (both Bills are with the Ministry of Finance for consultations with AG's Office)



Current Structure of Payment System

■ Electronic Payment Systems:

- ATM networks (maintained by large banks)
- KenSwitch (maintained by some small and medium banks)
- PESA point (maintained by private provider linked to one commercial bank)

■ Remittances:

- No special payments regulations so far (proposed under Bills)
- Commercial banks licensed to send/receive domestic/foreign remittances
- Post Office Savings Bank: receive foreign remittances
- Western Union (uses agents) send and receives



Telecommunications

- **Current Telecommunications Regulations**
 - Kenya Communications Act (1998)
 - Kenya Communications Regulations (2001)
 - CCK as telcom regulator
- **Proposed Telecommunications Regulations**
 - Kenya Information and Communications Bill (February 2006)
 - Informations and Communications Regulations (not yet available)



Consumer Protection

■ Current Regulations

- ❖ No specific consumer protection law
- ❖ Other laws addressing consumer protection issues, e.g.:
 - Banking Act: publication of accounts in branches; right of CBK to publish some information and restrictions on sharing others; restrictions on increases in bank charges
 - Statistics Act: provisions on data confidentiality
 - Case law: disclosure of affairs of bank customer only in certain instances

■ Competition Regulation

- ❖ Restrictive Trade Practices, Monopolies and Price Control Act (1990) applies to all sectors of economy
- ❖ Act is under Ministry of Finance
- ❖ The Commissioner, Monopolies and Price Commission (under oversight of Ministry of Finance) can
 - investigate complaints and initiate investigations
 - order the discontinuation of restrictive trade practices



Way Forward

- Need to Fast track enactment of enabling legislation to facilitate payment System Modernization.
- In the Meantime TELKOS should liaise with licensed banking institutions through contractual arrangements/contracts.
- At the global level, BIS may come up with specific guidelines to be used in formulating country specific legislation and regulatory framework.
- Development Partners could participate in capacity building for financial sector regulators especially the respective ministries.

THANK YOU/ ASANTENI

