M-PESA: REGULATORY FRAMEWORK
M-PESA

M-pesa is a money transfer service wherein users can use their mobile phones to store and transfer money.
Background 1

- Developed in 2005 but launched in 2007 after the regulators had conducted the required due diligence.
- The due diligence involved:
  - Procuring a legal opinion to the effect that Safaricom was not engaged in banking business;
  - Ascertaining the system’s security mechanisms and
  - Providing for minimum standards.
Background 2

- CBK, CCK and Ministry of Finance then assessed all associated risks before commissioning the project.

- The CBK put in measures to ensure that minimum standards were met.
Current Framework

- Loose regulatory structure which facilitated the development and success of the system
- The provider, Safaricom, was given the leeway to craft a unique model that met the needs of the Kenyan market
Current Framework

- Safaricom operates under a special licence from CBK, whose conditions are more relaxed compared to those of banks and other financial institutions.

- Concerns that this is a huge gamble which would have a catastrophic effects in the event of the system’s collapse.
Applicable Legislation

- The Central Bank of Kenya Act as amended in 2003 gives CBK broad oversight mandate over payment systems, but does not provide for operational modalities.
- CBK’s agency guidelines issued in 2011
- Kenya Information and Communications Act
- Consumer Protection Law
- Capital Markets Authority Act
Proposed Legislation

- In 2011, the National Payment Systems Bill was introduced in parliament to regulate mobile transfers but the same wasn’t enacted by Parliament.

- There is need to re-table the aforementioned bill for parliamentary approval.
Regulatory Challenges - 1

- The process is led by non-bank organisations, outside the scope of financial regulation.
- Being a new concept, the regulators have very limited precedence to draw upon.
- The mobile platforms cut across various sectors and none of the regulators are conversant with all the operational aspects.
- M-Pesa is a unique innovation that is rapidly evolving.
- Laws must be flexible in order to accommodate new changes and not confine development of new products.
- Insufficient expertise to craft the necessary legislation and lack of global best practices;
- The need to counterbalance competing policy requirements;
Regulatory Challenges - 2

- Identifying the appropriate legislation is a challenge
- The need for a level playing ground for companies in diverse industries
- There is indecision over which institution would be best placed to act as the regulator
- Lack of best practices - what works in one country may not work in another
- Lack of adequate consumer protection mechanisms
- Requisite regulation, such as know your customer guidelines, might limit innovation and restricts the provision of cheap products to the consumer.
Justification for Formal Regulations – 1

- The national economy is a sensitive matter of great public interest

- CBK needs to exercise broader oversight over the stability of payment systems across the economy

- Delaying regulation causes genuine anxiety since the participants are not clear as to their rights and obligations

- Laxity can lead to unnecessary complications when innovations grow into complex systems and become too complicated to regulate
Justification for Formal Regulations – 2

- It is dangerous to operate such a large payment and financial structure outside the regulatory framework

- Need to ensure financial stability of the economy

- Need to preserve public confidence

- Need for enhanced data privacy laws necessary

- Consumer protection

- Need to guard against anticompetitive and monopolistic practices.
Way Forward - 1

- Establish flexible supervision models
- Consider Europe’s approach, in separating the regulation of payment services from the regulation of credit institutions
- Transformational regulation which is country focused
- Regulators need to be adaptable so as to grapple with issues beyond their expertise
- Need for standardized laws which will establish an enabling environment for new innovations and promote the growth of the industry
- Co-operation of the relevant agencies involved in policy/regulatory development and supervisory practices to ensure consistency
WAY FORWARD - 2

- Appropriate and inclusive regulation which increases confidence, levels the playing ground, increase collaboration while protecting the stability and integrity of the financial system

- Instrumental laws which balance policy objectives for financial inclusion, and a secure payment system.
Thank you for your attention

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