


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.
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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.
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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.
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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
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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.
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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 is 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 counter balance competing policy requirements;
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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 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
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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.
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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
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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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