

Africa Connected

ISSUE 2: TRENDS IN FINANCIAL SERVICES

Fintech as the driver for growth in Africa's banking sector

The liberalization of financial services in Africa

Morocco's Crowdfunding Bill

Mauritius: Africa's fintech hub

Green Bonds: Unlocking sustainable investment opportunities in Namibia

Mobile money in Africa: Access, regulations and risks

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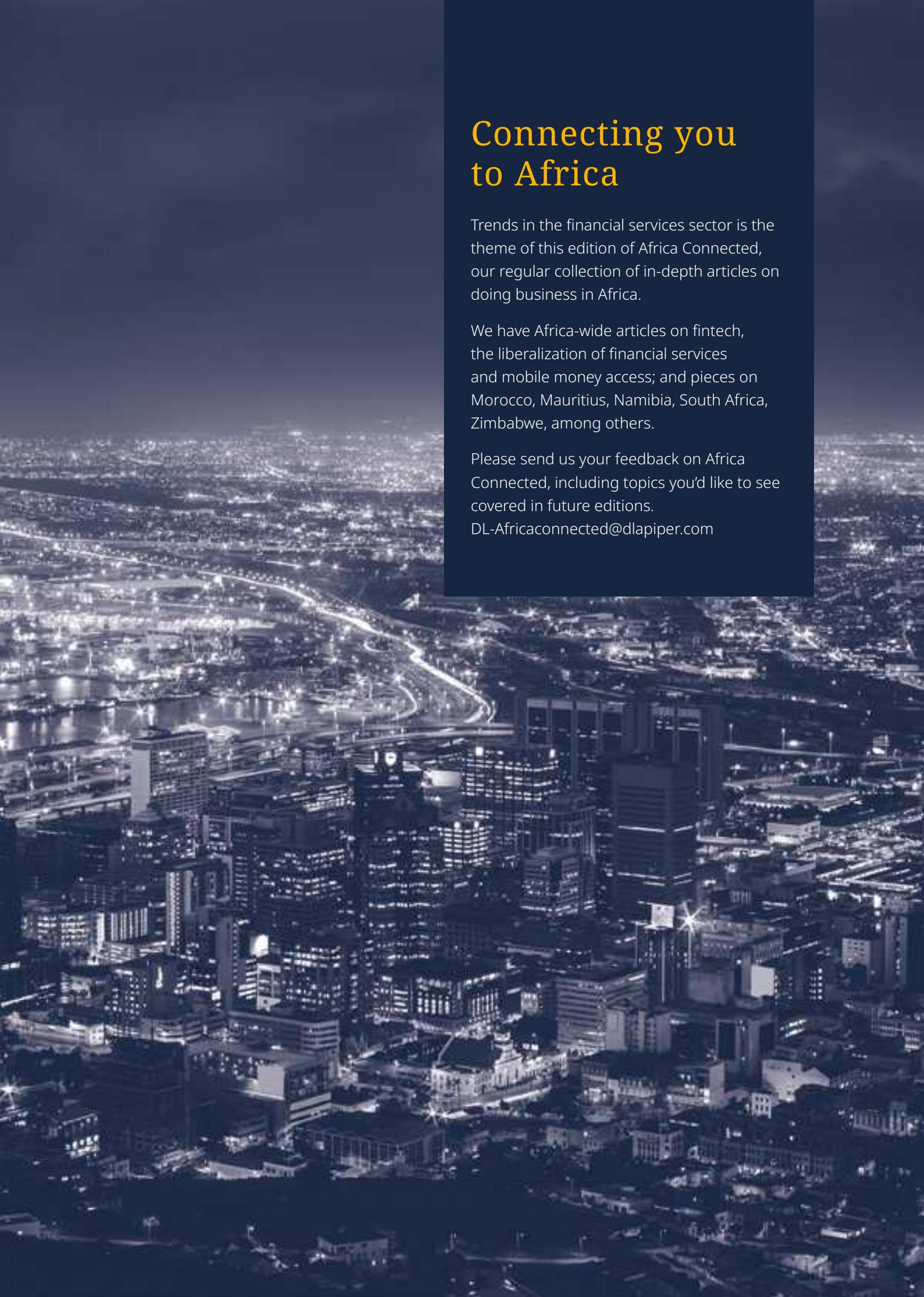
Foreign investment and forex regulation in Ethiopia

Immigration law and practice in the African oil and gas industry



Contents

- 04 **Fintech as the driver for growth in Africa's banking sector**
BY OGECHI ONUOHA, UFUOMA ISIAWWE AND TAIWO PEREGRINO
- 08 **The liberalization of financial services in Africa**
BY MOUHAMED KEBE
- 13 **Morocco's Crowdfunding Bill**
BY FABRICE ARMAND
- 19 **Mauritius: Africa's fintech hub**
BY ARVIN HALKHOREE
- 22 **Green Bonds: Unlocking sustainable investment opportunities in Namibia**
BY MIA KELLERMAN AND RUAN BESTBIER
- 29 **Mobile money in Africa: Access, regulations and risks**
BY RODWYN PETERSON
- 31 **South African data protection law and third-party processors**
BY MONIQUE JEFFERSON AND SAVANNA STEPHENS
- 35 **The inadvertent rise of digital transactions in Zimbabwe**
BY TATENDA TENDAYI
- 39 **Foreign investment and forex regulation in Ethiopia**
BY GETU SHIFERAW
- 41 **Immigration law and practice in the African oil and gas industry**
BY SORAIA ISSUFO



Connecting you to Africa

Trends in the financial services sector is the theme of this edition of Africa Connected, our regular collection of in-depth articles on doing business in Africa.

We have Africa-wide articles on fintech, the liberalization of financial services and mobile money access; and pieces on Morocco, Mauritius, Namibia, South Africa, Zimbabwe, among others.

Please send us your feedback on Africa Connected, including topics you'd like to see covered in future editions.

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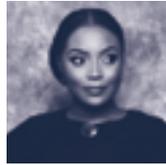
Fintech as the driver for growth in Africa's banking sector



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According to the 2017 Global Findex Database,¹ about 1.7 billion adults remain unbanked, and nearly half of those live in just seven developing economies, of which Nigeria is one.² In 2014, it was reported that Sub-Saharan Africa, with about 350 million unbanked adults, accounts for 17% of the global unbanked population.³

Most people and small businesses in Africa are financially excluded, as they do not fully participate in formal financial systems. Many transact exclusively in cash and do not have access to credit beyond their personal networks and informal lenders. Those with basic financial accounts often lack access to a broad range of financial products. As a result, there is a potential loss of deposits or savings for individuals and loss of investible funds for businesses.

A heavy reliance on cash creates significant costs for financial institutions, and reduces the

number of customers that they can effectively and profitably serve. It also makes it difficult for financial service providers to gather the necessary information required to assess the creditworthiness of potential borrowers, thereby creating room for fraud. Further, reliance on cash reduces government tax revenue and creates a leaky pipeline for expenditure.⁴

Access to financial services is a widely acknowledged tool for promoting credit creation and enhancing capital accumulation, and thereby increasing the levels of investment and economic activity. Fintech offers a transformational solution for Africa's banking sector. The unique environment for financial services in the continent presents a fertile ground for innovative fintech players to capitalize on the opportunities to disrupt or leapfrog established business models, in order to make financial services more affordable, accessible and profitable.

Fintech: Benefits and Opportunities

Research⁵ has shown that the shift from cash payments to digital payments will not only increase the number of people who own and use bank accounts, but also improve efficiency by increasing the speed of payments and reducing the cost of disbursing and receiving them. Fintech can be used to enhance the security of payments and increase transparency, and thus reduce associated crime and corruption. The Bank Verification Number was implemented by the Central Bank of Nigeria to increase security and protect bank customers from illegal transactions.

By providing access to a diverse range of financial products and services such as credit facilities for individuals and businesses, fintech can boost aggregate expenditure, thereby improving gross domestic product (GDP) levels. Provision of financial services through the

¹ World Bank Group, The Global Findex Database 2017, pages 35-36.

² Ibid., page 37: More than 60 million Nigerians are without bank accounts.

³ Asli Demirguc-Kunt, Leora Klapper, Dorothe Singer and Peter Van Oudheusden, The Global Findex Database 2014: Measuring Financial Inclusion Around the World, World Bank, 2015.

⁴ See Kenneth S. Rogoff, The Curse of Cash, Princeton University Press, 2016.

⁵ Better Than Cash Alliance, Responsible Digital Payments Guidelines, 2016; Asli Demirguc-Kunt, Leora Klapper and Dorothe Singer, Financial Inclusion and Inclusive Growth: A Review of Recent Empirical Evidence, World Bank, 2017.

use of technology also benefits the government by providing a platform to facilitate an increase in aggregate expenditure, which subsequently generates higher tax revenue from an increase in the volume of financial transactions.⁶

Additionally, financial innovation through technology can have long-term positive effects for banking performance. A recent study⁷ examining the impact on bank performance of the adoption of SWIFT, a network-based technological infrastructure and set of standards for worldwide interbank telecommunication, showed that it has large effects on long-term profitability, and a significant improvement on banking performance.

Digital trends in Africa's banking sector

The widespread use of mobile phones and the internet have given rise to a new generation of financial services in Africa. The younger element of the population has rapidly adopted the use of mobile financial wallets, with partnerships between telecommunications companies and banks set to encourage and increase the use of mobile payments. Relatively simple, text-based mobile phones have powered the spread of mobile money accounts, and smartphone technology is increasingly being used to make transactions through financial institution accounts.

The Kenyan fintech sector has been dubbed one of the fastest growing on the continent, with technology increasingly defining the day-to-day running of businesses in the country. Kenya has adopted digital platform banking models whereby service providers create an ecosystem of diverse and multiple industry players in their core business, opening new growth paths. For instance, KCB Bank empowers its customers by connecting them to credible home investors and giving them the opportunity to own homes at a lesser cost.

Similarly, Equity Bank Kenya has launched Equitel, a user-friendly platform that lets customers manage their money and communicate with more freedom, choice and control. Equitel's Eazzy Loan allows users to acquire loans through their mobile phones, monitor their loan

balance and make repayments through the same channel. The main advantage of this platform is that the loan is deposited directly to customers' mobile phones, and they are not required to visit the physical branch or subject themselves to any form of physical assessment.

Nigeria as a case study

Nigeria's banking ecosystem has moved to retail banking and the use of e-banking channels, which has led to improvements in financial inclusion. According to the 2017 annual report of the Central Bank of Nigeria (CBN),⁸ the total value of electronic payment transactions recorded in 2017 rose by 32.5% to NGN83.1 trillion, from NGN62.7 trillion in 2016. Nigerian banks are starting to adopt more dynamic operating approaches, and introducing financial products that are in sync with the emerging digital trends. For instance, Zenith Bank launched Scan to Pay, an app that can be used by both customers and non-customers to make online and in-store payments in seconds through quick response (QR) code scanning on any internet-enabled phone. Banks and telecommunications companies have also introduced unstructured supplementary service data (USSD) codes, by which normal banking transactions can be carried out on mobile phones.

Nigeria Inter-Bank Settlement System (NIBSS) is jointly owned by all licensed banks in Nigeria, including the central bank. NIBSS operates as a shared service infrastructure for handling inter-bank payments, in order to remove potential bottlenecks. It also operates the Nigeria Automated Clearing System, which facilitates the electronic clearing of cheques and other paper-based instruments, electronic funds transfer, automated direct credits and automated direct debits. Further, NIBSS has launched the mCash payment system to facilitate low-value retail payments and grow e-payments by providing accessible electronic channels to a wider range of users, and extending e-payment benefits to payers and merchants at the bottom of the pyramid, where cash payments have been predominant. Another trend fast becoming a reality in Africa is the use of AI. To increase levels of customer acquisition and retention, AI can be used in delivering intelligence about customer behaviors and preferences that will

6 J. Manyika, S. Lund, M. Singer, O. White, C. Berry, *Digital Finance For All: Powering Inclusive Growth in Emerging Economies*, McKinsey Global Institute, 2016.

7 Susan V. Scott, John Van Reenen, Markos Zachariadis, "The long-term effect of digital innovation on bank performance: An empirical study of SWIFT adoption in financial services," *Research Policy*, volume 46, issue 5, 2017, pages 984-1004

8 Draft Central Bank of Nigeria Annual Report 2017

help in the development of personalized responses, insights and product types. AI will affect the way banks conduct financial due diligence, especially with respect to fraud detection, risk management and credit allocation. The Union Bank of Nigeria announced, in 2018, the deployment of robotic process automation (RPA) technology in its operations. This uses software tools developed to simplify and improve the efficiency of business process delivery.

Regulatory developments in Nigeria

In a bid to promote mobile money payments in Nigeria, the CBN, in August 2011, granted licenses to 14 mobile money payment providers. The CBN has demonstrated an aggressive approach toward promoting fintech in Nigeria, and introduced several regulations and guidelines in this regard.⁹

The Nigerian Communication Commission (NCC) plays an important role in the promotion of fintech. Payment services involving telecommunications infrastructure are regulated under the NCC Licence Framework for Value Added Service (VAS). Under this framework, mobile payment service providers must obtain a five-year renewable license from the NCC under the category of VAS of a commercial nature. The NCC License Framework mobile payment service providers must obtain a five-year renewable license from the NCC under the category of VAS of a commercial nature. The NCC License Framework imposes certain requirements on VAS licensees, including:

- advertising restrictions;
- prohibition of spam, unwanted messages and hidden charges;
- storage obligations; and
- provision of flexibility to consumers for opting in and out of their services.

Investment opportunities in Nigeria

As fintech startups continue to underpin consumers' daily transactions, they have attracted a high caliber of global and local investors. In 2018, it was estimated that investors pumped USD73.7 million into Nigerian startups, with fintechs receiving about 75% of these investments. Similarly, in 2017, an estimated

USD800 million was injected into the African economy through investments in fintech companies.

The top areas for investors looking to participate in the sector include payment services/solutions, investment, savings and credit provision platforms, the first being the lead area for investors. Notable fintech service providers in Nigeria includes Flutterwave, PiggybankNG, Paystack, WalletNG, Cellulant, Crowdy Funds, and I-Invest. Traditional financial institutions also provide these services through their mobile banking apps.

Challenges and Recommendations

Provision of fintech solutions comes with challenges. A major one is the lack of technological infrastructure in Africa – for example, unreliable mobile networks. Another is the lack of trust from stakeholders in both Africa's financial institutions and the products that they offer.

The McKinsey Global Institute¹⁰ has identified three building blocks required for powering inclusive growth of fintech in emerging economies. These are a widespread digital infrastructure; a dynamic financial services market; and digital finance products that meet the needs of individuals and businesses in ways that are superior to the informal tools available to them currently.

Physical infrastructure (such as reliable electricity and mobile networks) and financial infrastructure (that includes both an adequate payments system and a physical network to deliver payments to all corners of an economy) are key to promoting fintech. Once the digital infrastructure is in place, it needs to be supported by an enabling business environment which requires putting in place consumer protection rules to safeguard fraud and abuse. Jurisdictions like Kenya and Nigeria have enacted consumer protection laws to protect consumer rights, but it is paramount that these laws are effectively implemented. The environment must also have a competitive market structure and financial markets that are open to foreign investments. Further, the digital financial products being offered must have a true advantage over the existing alternatives in terms of cost and utility.

⁹ Regulation for Bill Payments in Nigeria 2018; Regulation for Direct Debit Scheme in Nigeria 2018

Guidelines on International Mobile Money Remittance Service in Nigeria 2015; Regulatory Framework for the Use of Unstructured Supplementary Service Data for Financial Services in Nigeria 2018, covering the use of short codes for financial transactions, which has revolutionized payment methods in Nigeria; and Guidelines on Operations of Electronic Payment Channels in Nigeria 2016.

¹⁰ J. Manyika et al (n 6), pages 12-14



The liberalization of financial services in Africa



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How the free trade of services envisioned in the African Continental Free Trade Area Agreement can promote financial development and stability in Africa.

Introduction

Africa is on the brink of enacting the African Continental Free Trade Area Agreement (the AfCFTA or the Agreement), a massive free-trade agreement that, if enacted, will liberalize trade and services across the continent. This Agreement has the potential to set in place long-lasting, sustainable economic growth in Africa. The free trade of services envisioned under the AfCFTA is expected to create new industries and opportunities for investment, placing the continent in a more favorable position in the global market. This in turn can create tremendous opportunities for Africa's financial services sector, which will be expected to take a lead role in assuring the successful implementation of the Agreement.

After first providing a brief summary of the AfCFTA, this article then takes a closer look at how the Agreement is focused on liberalizing services across the continent and how that can benefit Africa's economy. The article then delves into the lead role the financial services sector will have in implementing the Agreement

and what it stands to gain with liberalization. Finally, it looks at the hurdles to successful implementation that exist and details what role key actors can play in assuring that the AfCFTA does not fall short of its promises, as many regional agreements on the continent have done in the past.

Understanding the AfCFTA

If enacted, the AfCFTA would constitute the largest free-trade area in the world. As it currently stands, this Agreement is only four countries short of the necessary 22 countries that need to ratify the AfCFTA for it to be enacted.¹ So far, 49 of Africa's 54 countries have signed the AfCFTA, indicating its widespread popularity and the existing hope that it will bring greater prosperity to a continent that has historically lagged behind the rest of the world. There is growing hope that this agreement will soon enter into force, with four more countries, South Africa, Senegal, Sierra Leone, and the Democratic Republic of Congo ratifying the agreement during the African Union summit in February 2019, bringing the number of ratifications to 18.²

Economic integration of this scale would create a single market of more than one billion people, with a gross domestic product of more than USD3 trillion, breaking down existing barriers to the movement of goods, services, people, capital and ideas across the continent.

¹ <https://www.un.org/africarenewal/web-features/africa's-free-trade-agreement-hinges-commitment-and-implementation>

² <https://www.devex.com/news/what-will-egypt-focus-on-as-african-union-chair-94290>

The United Nations Economic Commission for Africa has estimated that the AfCFTA is “expected to boost consumer spending to about USD1.4 trillion in 2020 and increase intra-African trade by as much as USD35 billion per year, or 52 percent above the baseline by 2022.”³ In fact, Africa has already seen the benefits of uniting on a smaller scale, in regional economic unions. The AfCFTA seeks to combine the strengths of those unions and to build on them to create an even stronger and, of course, larger union. This acknowledges that what West Africa has to contribute is different from what East Africa brings and those are both different than what Central Africa can add. The hope is that by combining these regional economic unions, Africa has the prospect, perhaps for the first time in history, of becoming self-sustainable.

Political and economic leaders across the continent believe that African nations have much to gain from combining their collective strengths and in sharing best practices without limitations. Enhanced trade between countries is expected to create a greater incentive for the development of infrastructure, introducing more robust industry than currently exists. By allowing the free movement of people, there is an expectation that a larger percentage of the collective population of Africa can be brought into the formal sector. At the same time, the Agreement is expected to result in the growth of industries with higher productivity and more skill intensive work, which will in turn provide higher pay at all levels and greater opportunity for the growing educated portion

of the population.⁴ These impacts are expected to be felt in even the smallest of African nations, who have the greatest potential to benefit from the economies of scale naturally created by the Agreement. At the same time, countries with already robust manufacturing industries are expected to achieve rapid growth from the AfCFTA.⁵

Free trade of services under the AfCFTA

One of the key aspects of the AfCFTA is the free trade of services. The expanded market that will be created by the Agreement is expected to stimulate trade in services, resulting in financial stabilization and the promotion of cross-border investments. Not only is there expected to be an influx in exported services, but also industries that rely heavily on services, such as the manufacturing and agricultural sectors, are expected to grow. Unlike trade liberalization, which is expected to be driven directly by African governments, the liberalization of services is likely to be led by the private sector, specifically financial institutions, who will play a significant role in influencing policies and implementation. While growth resulting from the AfCFTA is likely to attract more substantial foreign direct investment, the long-term sustainability of economic growth will be reliant on local, African-based companies taking the lead.

By allowing the free trade of services across the continent, Africa’s ability to invest in and build the infrastructure necessary to achieve sustainable economic development can become

a reality. The free movement of trade and services to be introduced by the AfCFTA is expected to stimulate industrial development and create a more diverse business landscape. Creating a single market will allow African countries to be in a better position to negotiate prices and production levels, which in turn will better position the continent as a viable economic partner on the world stage.⁶ As a result, businesses operating in the continent will also begin to have a greater platform with which to launch into the global market.

The free trade of services envisioned under the AfCFTA will be bolstered by the free movement of people that will be permitted under the Agreement. Businesses and governments will have the ability to tap into talent from different parts of the continent in a way never before feasible. At the same time, individuals will have a greater opportunity to seek employment and education opportunities outside of their home country, which has the potential to create a much more skilled workforce. Growing industry, coupled with growing talent, sets the stage for a more sophisticated business climate, the potential for rapid infrastructure development and, in turn, more substantial returns on investment. All of this will be within reach for Africa should the AfCFTA be enacted and then implemented and supported by African governments.

³ <https://www.uneca.org/stories/continental-free-trade-area-deal-set-boost-intra-african-trade-says-ambassador-quartey>

⁴ See <http://theconversation.com/why-africas-free-trade-area-offers-so-much-promise-93827>

⁵ https://www.washingtonpost.com/news/monkey-cage/wp/2018/03/29/the-countdown-to-the-african-continental-free-trade-area-starts-now/?noredirect=on&utm_term=.c53af00e4f21

⁶ <https://oecd-development-matters.org/2018/10/22/how-can-the-new-african-free-trade-agreement-unlock-africas-potential/>

AfCFTA and financial services

The success of AfCFTA will rely heavily on Africa's financial services industry's ability to serve as the brain of the liberalization process. As indicated by the World Trade Organization (WTO), International Monetary Fund (IMF) and other international economic organizations, the financial services sector should take a lead role in providing the major tools necessary to implement robust trade agreements. As stated by the WTO, these include "facilitating transactions (exchange of goods and services) in the economy; mobilizing savings (for which the outlets would otherwise be much more limited); allocating capital funds (notably to finance productive investment); monitoring managers (so that the funds allocated will be spent as envisaged); and transforming risk (reducing it through aggregation and enabling it to be carried by those more willing to bear it)."⁷ Following the enactment of AfCFTA, Africa's financial sector will need to demonstrate that it has the capacity to provide tools which have historically been available within a limited geographic scope or regionally.

The opening of new markets and easing of cross-border transactions envisioned under the AfCFTA are expected to increase capital funds and promote both foreign direct investment and intra-continental investment within Africa. Financial institutions will need to lead the way in developing new technologies and methods to adapt to the diversified economies expected to result from the Agreement. They will also be relied on to assure changes are quickly and efficiently executed. The AfCFTA will, overall, create a more favorable environment for investors and Africa's financial services sector will be expected to make the necessary reforms to capitalize on this and turn it in to actual growth and development.

Africa's financial services sector will be relied on to provide the credit and support necessary for certain industries to move forward. This is particularly true of the infrastructure and manufacturing sectors, which will be at the center of Africa's development goals following the AfCFTA's enactment. To be successful in achieving sustainable

growth, Africa must improve its infrastructure and invest in the development of new technologies. To compete on the global stage, African businesses will need financial support to modernize Africa's industries. Without the financial services sector playing its part, the potential economic advances envisioned under the AfCFTA will fall short.

In exchange for serving as the leader of Africa's trade reform, the financial services sector will likely see tremendous growth itself. A significantly larger pool of industries and businesses to lend to will create a great opportunity for the financial sector to reap the benefits of the AfCFTA. Financial services providers will be able to explore cross-border opportunities with ease and will not be inhibited by complicated and contrasting regulations from individual countries. Foreign investors will likely seize on the reduced restrictions and complications that arise from managing a web of different systems and, as a result, foreign direct investment is expected to flourish. The financial services sector will benefit directly from this influx, as capital increases and businesses become better positioned to invest and secure loans.

Recent activity by Pan-African Banks (PABs) demonstrates that the African financial sector is likely ready to rise to the occasion. While financial institutions in Sub-Saharan Africa remain, in most cases, small and underdeveloped, there has been expanded growth of PABs over the past decade, which has correlated with growing business opportunities on the continent. Growing PABs are, according to the IMF "fostering financial development and economic integration, stimulating competition and efficiency, introducing product innovation and modern management and information systems, and bringing higher skills and expertise to host countries."⁸ Banks such as Ecobank, the largest PAB, with a presence in over 30 African countries, are quickly buying up smaller local banks, which allows them to expand their scope and more easily facilitate cross-border transactions in a broader number of countries.⁹ As stated by Montfort Mlachila, the then IMF Senior Resident Representative to South Africa in 2017, "[t]he growth of PABs has undoubtedly contributed to financial sector development.

7 https://www.wto.org/english/tratop_e/serv_e/finance_e/finance_e.htm

See also https://www.wto.org/english/tratop_e/serv_e/10-anfin_e.htm

See also <https://www.imf.org/external/np/pp/eng/2010/090310.pdf>

8 <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2016/12/31/Pan-African-Banks-Opportunities-and-Challenges-for-Cross-Border-Oversight-42781>

9 <http://www.bcplp.org/sites/default/files/2017-10/Regional%20Financial%20Integration%20-%20Montfort%20Mlachila.pdf>



It has promoted competition for deposits and loans. The clientele has also expanded beyond large domestic and multinational entities to reach underserved segments of the market, including SMEs.¹⁰ For the AfCFTA to be truly successful, the efforts of many key actors in the financial sector to expand their clientele and offer greater opportunity for financing will need to continue. The PABs should serve as a model for other stakeholders in the field.

Remaining hurdles

Success of the AfCFTA is not guaranteed. Smaller regional bodies on the continent have consistently fallen short of expectations and have failed to deliver on their promises to promote economic development. A strong example of this is the Economic Community of West African States (ECOWAS). This regional body comprised of 15 West African member states was one of the earliest established regional bodies on the continent. ECOWAS has some of the most progressive regional protocols of any African regional body and it did have some early successes in serving as a model of good governance and democracy.¹¹ In recent decades, however, a growing number of

countries within the region have fallen to authoritarian regimes or now face growing concerns of terrorist activity, social unrest or political rebellions. Nigeria, for example, now faces a growing internal conflict and uprising of terrorist groups such as Boko Haram. The Ebola crises in 2014 shed light on many of the institutional and infrastructural weaknesses of the region. At the same time, ECOWAS continues to lack the resources necessary to promote real stability within the region and to address the, in some cases expanding, poverty crippling a number of its member countries.¹² Moreover, linguistic differences between ECOWAS' Francophone and Anglophone countries has made true integration

¹⁰ Ibid.

¹¹ <https://library.fes.de/pdf-files/iez/07936.pdf>

¹² Ibid.

more difficult. While it does have a few success stories, ECOWAS has largely fallen short of expectations. If it is to be successful, AfCFTA will have to overcome many of the hurdles that have impacted regional bodies such as ECOWAS.

First and foremost, to succeed in delivering on the AfCFTA, African governments will need to provide tangible support for the liberalization of trade and services. However, there is some doubt as to the capacity of many governments to provide the level of support required. Due to the novelty of the changes proposed under the Agreement, there will be a steep learning curve. Governments must make a commitment to being involved in the learning process and to make adjustments along the way, based on real-time feedback and results. In making this commitment, governments must engage private businesses and incorporate their approaches and perspectives into the implementation of the AfCFTA. Policymakers should rely on the knowhow of the private sector to put in place regulation that supports innovation and sets Africa up for success in the long term, and not only in the short term.

Emphasis will need to be placed on human capital by training individuals to be valuable assets

to the formal sector. This should include both government and business policies that encourage technical, skill-specific training, which will provide individuals with the skills they need to quickly and successfully enter the workforce and provide the support required for sophisticated businesses to thrive.¹³ Governments should also focus on putting in place policies that allow citizens to pursue opportunities abroad, both for employment and education. Local universities can be engaged to assist in bringing in new talent and casting a larger net when looking for students.

Local businesses will also need to play an active role in the development of the implementing framework for the Agreement. Sound technical capacity is an essential element for successful implementation. Businesses will have to insert themselves into the process, providing technical support to governments.¹⁴ The financial sector will need to ensure that the proper steps are being taken at the proper time in the implementation of AfCFTA. Resources should be provided incrementally and strategically so as to promote development, without overwhelming the existing systems. Consideration should be given to balancing the varying economies that will combine under

the Agreement, in order for the continent to reach its full potential and for smaller countries to not be left behind or for more developed countries to be held back. Strategic planning on the part of both governments and businesses will be essential.

Conclusion

The AfCFTA has the potential to profoundly change the shape of Africa's economy. The opportunities under the Agreement are plentiful. If properly implemented and supported, the free trade of goods and, particularly, services envisioned in the AfCFTA could result in real, sustainable growth for the continent. The time is now for Africa's financial services sector to begin taking a lead role in planning for the Agreement's enactment and setting the stage for successful implementation. This sector has the potential to benefit from its efforts to ensure that the Agreement is fully and completely supported upon enactment. It must support both governments and private businesses in laying the framework for long-term growth. Africa is on the cusp of significant development, but it will need a real nudge to reach its full potential.

¹³ See <https://oecd-development-matters.org/2018/10/22/how-can-the-new-african-free-trade-agreement-unlock-africas-potential/>

¹⁴ See <https://www.un.org/africarenewal/web-features/africa's-free-trade-agreement-hinges-commitment-and-implementation>

Morocco's Crowdfunding Bill



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Crowdfunding is a generic term referring to the raising of funds from a large number of individuals or entities to finance a project, through an online platform. The main purpose of this model is to support entrepreneurship, the digital and cultural economy, and social and humanitarian projects.

Three actors are typically involved in crowdfunding initiatives:

- project initiators who require funds
- contributors/funders
- platform operators

In Morocco, crowdfunding has undergone a significant evolution: according to statistics shared by the Smala & Co platform for 2010 to 2014, more than 70 projects were financed through crowdfunding with a total amount exceeding MAD2.2 million.¹

Crowdfunding provides access to many opportunities and has many advantages, including portfolio diversification, the ability to raise financing without capital transfer and the possibility of investing in the real economy, particularly in SMEs.

However, in the absence of clear regulations, there is significant uncertainty with this method of

financing, and each crowdfunding model has its own legal consequences. Indeed, depending on the financing methods used, the crowdfunding platform or the project initiator may be subject to banking or stock exchange regulations (when it comes to the provision of investment services), to regulations relating to banking operations, or to regulations governing public offerings.

In March 2018, the Treasury and External Finance Department submitted to the General Secretariat of the Moroccan Government *Secrétariat Général du Gouvernement* Bill n°15-18 governing crowdfunding activities for consultation.

¹ <http://www.smalaandco.com/>: Smala & Co, initially a crowdfunding platform under French law, is migrating to a new area of activity: Morocco.

The Bill sets out five major objectives:

- mobilization of new sources of financing for the benefit of very small entities and SMEs
- the active participation of the Moroccan diaspora in the country's development projects
- supporting civil society in financing projects with a high social impact and human development
- unleashing the creative and cultural potential of young people
- strengthening the attractiveness and influence of the country's financial center

This article outlines the contributions of this Bill in the form of concrete questions. Topics include:

- crowdfunding management in Morocco
- the terms and conditions of a crowdfunding implementation
- the different types of crowdfunding
- the control of this form of financing

How will crowdfunding be managed in Morocco?

Under the Bill, crowdfunding is defined as a fundraising operation via an electronic collaborative funding platform, managed by a collaborative funding company (article 1 of the Bill), and a third option relating to Islamic finance is also suggested.

The scheme for the electronic collaborative funding platform (*plateforme électronique de financement collaborative*, or PFC) is the electronic platform through which project initiators and contributors are connected to each other to carry out crowdfunding operations (article 2). PFCs are classified into categories according to the nature of the crowdfunding operations they carry out: loan, investment or donation platforms (article 3).

The Bill lays down conditions for the implementation of a scheme provided for the collaborative funding company *société de financement collaborative*, or SFC. The SFC must respect some obligations and prohibitions.

Implementation of the SFC

The creation of an SFC must meet various criteria described by the Bill (article 15), including:

- having as main activity the management of a PFC; and
- having a minimum share capital of MAD300,000 fully paid up at the time of its incorporation.

To meet the needs of the PFC, the SFC must enter into a service contract with a credit institution duly authorized by Bank Al Maghrib (article 8). More precisely, a special account for each project submitted must be made available to the authorized credit institution (article 41).

The SFC is also required to join the association of crowdfunding companies (*association des sociétés de financements collaboratifs*) (article 68).

Obligations relating to the purpose of the SFC

The purpose of the SFC is to manage PFCs (articles 2 and 7). All PFCs are created at the initiative of an SFC, which draws up the draft PFC management regulations and its technical architecture (article 3). It can create or manage PFCs of different categories (article 14). However, the same project cannot be proposed on several PFCs at the same time.

As manager of the PFC, the SFC performs all acts necessary for the execution of its mission, including:

- distribution of project presentation notes on the PFC
- ensuring that funds collected from contributors are handed over to project initiators thanks to account holders
- preparation and presentation of crowdfunding contracts for the signature of the parties
- management of accounts along with the appropriate institution holding the accounts
- management of the project initiator's funds and its transfer to the contributors
- completion of all formalities necessary to achieve the purpose of the PFC (article 24)

Amounts collected as part of a crowdfunding transaction may not be subject to insolvency proceedings (article 27).

Obligations relating to the information of the contributor

The SFC has obligations prior to the provision of funds by the contributors prior to the launch of the crowdfunding operation; prior to the conclusion of the financing contract; and after the financing operation.

Obligations prior to the provision of funds

The SFC must establish simple procedures for the registration and withdrawal of any contributor and for the submission of projects for funding through the PFC. Overall, the terms and conditions for managing crowdfunding operations must be clearly defined and accessible (article 30).

Before any contributor registration on the PFC, the SFC must check (article 31):

- the identity of the contributor
- the completeness and conformity of the legal documentation relating to contributors
- the contributor's knowledge of how the crowdfunding category works
- the contributor's knowledge of the risks related to crowdfunding and the risks specific to the category of financing in question

- the contributor's knowledge of the PFC management regulations and the specific conditions for financing the project in question.

Obligations prior to the launch of the crowdfunding operation (article 32)

Prior to the launch of the crowdfunding operation, the SFC must do the following:

- ensure the completeness and conformity of the project presentation note with the provisions of this Bill and the PFC regulations
- verify the identity of the project initiator and the company's managers
- ensure the completeness and conformity of the legal documentation relating to the project initiator
- ensure that the project initiator is aware of how the crowdfunding category concerned operates, the risks associated with it, and the resulting commitments
- ensure that the project initiator is aware of the PFC's management regulations and the specific conditions relating to suggested crowdfunding operation
- ensure the debt capacity of the project initiator

Obligations prior to the conclusion of the crowdfunding contract (article 33)

Prior to the conclusion of any crowdfunding contract, the SFC must check:

- in the case of corporate contributors, the legal documentation authorizing the investment
- the acknowledgement and acceptance by the contributors of the project presentation note
- contributors' knowledge of the financial conditions specific to the crowdfunding operation in question
- the knowledge and acceptance of the provisions governing the withdrawal of the contributor

Obligations subsequent to the crowdfunding operation (article 34)

The SFC must:

- provide the public, in a clear and understandable manner, with all information relating to the functioning of the PFC
- inform the public in a clear and understandable way, of the operating modalities of each category of crowdfunding, the related risks, the resulting commitments for the contributor and the project initiator
- ensure that crowdfunding transactions comply with the provisions of this Bill and the Management Regulations
- inform the public in a clear and understandable manner of the characteristics of each project presented and the financial conditions specific to the crowdfunding operation

The SFC shall also disclose on the PFC its corporate name, the address of its business, the references of its authorization and the name and address of the account-holding institution (article 35). It must prepare an annual report for each managed PFC (article 36) which must be made available, on the PFC website, for public inspection no later than three months after the end of the financial year (article 37).

Furthermore, the SFC must provide contributors, for each funded project, with a periodic situation to monitor the status of the project and the contribution concerned (article 38).

Finally, the SFC must communicate to Bank Al Maghrib, at its request, any information relating to its crowdfunding activities (article 39).

In addition to these obligations, SFC is subject to the payment of an annual fee for each PFC it manages to Bank Al Maghrib or the Moroccan Financial Markets Authority. The methods of calculation will be determined by further regulation (article 67).

The SFC and the credit institution are individually or jointly and severally liable (article 40).

Prohibitions

The SFC may not undertake any activity or incur any obligations, financing or management costs other than those necessary to achieve the purpose of the PFC and expressly provided for in this Bill and the PFC Management Regulations (article 23).

The SFC may not use canvassing to mobilize funding through the PFC and may not use the funds collected for a project for purposes other than those for which they are intended (article 25).

It may not participate in crowdfunding operations as a contributor or project initiator, nor be a shareholder, directly or indirectly, in the company that carries out the project presented via the PFCs it manages (article 26).

Participatory collaborative funding platforms (*plateformes de financement collaboratif participatif, or PFCP*)

This is a crowdfunding method that complies with Sharia law (article 2).

In order to be able to constitute a PFCP, an assent must be sought from the Superior Council of Ulemas *Conseil Supérieur des Oulémas* on the draft management regulations of the PFCP. Bank Al Maghrib or AMMC, depending on the crowdfunding activities, must submit to the Board a file containing a description of the PFCP's planned activity and the draft of its management regulations.

What are the terms and conditions for implementing collaborative project funding?

Explicit rules relating to the geographical location of the projects and its contributors, the amount investments, the duration of the project, and the form taken by the financing are set out by the Bill.

Geographical location of contributors and projects

Projects financed by PFCs can be located either in Morocco, in free zones³ or in a foreign country and denominated in foreign currency.

²Further details about operating procedures are defined in articles 57 to 63 of the bill.

³ Free zones in Morocco: Tanger, Nador, Tanger Méditerranée, Kenitra, Laâyoune, Dakhla, Nador Betoya, Nouaceur, Tanger Automotive City, Oujda, Fès Ras el Ma et Technopolis à Salé.

Contributions may come from resident or non-resident contributors, in compliance with exchange regulations (article 4).

Investment thresholds

The text limits the amount of funds paid for each collaboration or project financed through crowdfunding to MAD5 million (global change) (article 45).

The total contributions of an individual for each project may not exceed an amount set by regulation, up to a maximum of MAD250,000.

The aggregate contributions of an individual, at the end of a calendar year, to crowdfunding operations may not exceed an amount set by regulation, up to a maximum of MAD500,000 (article 46).

Business angels are not governed by the above-mentioned thresholds.

Duration of the project

The duration of the crowdfunding operation may not exceed the duration which will be determined by further regulation. If the amount of contributions requested for the project is reached before the end of the financing operation, the SFC suspends the contributions (article 44).

Form of financing

Any crowdfunding operation must be carried out under the terms of crowdfunding contracts entered into between the project initiator and the contributor, which must comply with the clauses of a template which is set by Bank Al Maghrib (article 47).

What are the different types of crowdfunding?

The text provides for three financing formats, namely:

- the loan with or without interest
- the direct donation
- the investment with acquisition of shares in the company by the lender

Crowdfunding operations in the investment category

This type of financing is carried out in the form of an equity investment, direct or indirect, in a capital company (article 52).

Before the initiation on PFC, the SFC must ensure the completion of the preliminary feasibility study of the proposed financing operation and the valuation of the planned project (article 53).



Crowdfunding operations in the loan category

This type of financing is provided in the form of a loan, remunerated or free of charge, granted by the contributors to the project holder, the terms and conditions of which will be determined by Bank Al Maghrib (article 54).

When a loan granted, as part of a crowdfunding transaction, is remunerated, the interest rate may not exceed a maximum rate set by Bank Al Maghrib (article 55).

Crowdfunding operations in the donation category

This type of financing is provided in the form of a cash donation to a project holder.

If the donation exceeds MAD500,000 it must be authorized in advance by the relevant authority (article 56).

Who controls the operations?

Bank Al Maghrib will be responsible for supervising interpersonal loans and donation financing. Bank Al Maghrib must ensure that the companies under its supervision comply with all applicable laws. It may therefore carry out controls and ask for any document it requires (article 64).

The Moroccan Capital Market Authority (AMMC) will be responsible for supervising capital investment activities (article 9). The AMMC must also ensure that the companies under its supervision comply with all applicable laws. It will be able, in the same way as Bank Al Maghrib,

to carry out controls and ask for any document it requires (article 65).

In order to respond to requests from the AMMC and Bank Al Maghrib, the SFC must appoint an auditor, responsible for controlling and monitoring the accounts of the SFC's crowdfunding activities. The auditor is appointed for a period of three consecutive financial years from among the accountants registered in the table of the Order of Accountants (article 66).

Before carrying out its activity, the SFC must submit an application for approval to Bank Al Maghrib or the AMMC in exchange for a receipt; a copy of the application must also be sent to the administration (article 10).

The approval file will contain information relating to the human, technical and financial resources used by the SFC to carry out its activity, as well as the draft PFC management regulations (article 11). However, the approval may be withdrawn by the administration in the following cases:

- as requested by the SFC
- when the SFC has not started its main activity, after 24 months from the date of its approval
- when the SFC has no longer carried out its PFC management activity for a period longer than 24 months following the last crowdfunding operation
- when it no longer meets the conditions mentioned in section ii, I of the present article
- when the SFC is subject to insolvency or liquidation proceedings
- as a sanction

Any withdrawal of approval shall be notified in the same way as when it was granted. Any withdrawal must be justified. In the event of withdrawal, it is the responsibility of the competent authority to ensure that the SFC has taken all necessary measures to safeguard the interests of contributors and project initiators (article 17).

Withdrawal of accreditation shall result in the removal of the SFC from the list of crowdfunding companies and the closure of the PFCs it manages and the transfer of their activities to one or more SFCs designated by the competent authorities (article 18).

Conclusion

This Bill therefore clearly defines a legal framework for crowdfunding quite close to the existing framework in Europe (for example, in France). Its implementation will create a trustworthy environment necessary for the development of this method of financing in Morocco. Its expansion will significantly benefit the development of the local economy, particularly very small entities and SMEs.

Mauritius: Africa's fintech hub



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Mauritius, the tropical island of 2040 square kilometers with a population of 1.3 million, has for over a quarter of a century been the preferred route for foreign direct investment (FDI) flows to Africa. The Mauritius International Financial Centre (IFC) offers an ideal environment for corporates to operate their businesses within a hybrid legal and conducive regulatory framework, besides other advantages such as political and economic stability, a pool of qualified bilingual or multilingual professionals, and a good network of double tax avoidance agreements (DTAAs) and investment promotion and protection agreements (IPPAs).

In his 2011 article [“The Mauritius miracle, or how to make a big success of a small economy,”](#) the Nobel laureate in economics Joseph Stiglitz wrote that Mauritius “has spent the last decades successfully building a diverse economy, a democratic political system and a strong social safety net.”

The Mauritius IFC has forged a reputation as a safe, trusted and competitive financial center, which has enabled it to position itself as the preferred jurisdiction for FDI flows to the continent, since the country can service both Francophone and Anglophone Africa. It has been at the forefront

of driving quality investments into Africa, and undoubtedly remains the investment hub and the stepping stone of choice for investors moving into Africa. With 21 DTAAAs and 23 IPPAs already in place with African states, Mauritius offers investors a robust, transparent, reliable and conducive environment for doing business. Mauritius ranks first in Africa and twentieth worldwide for ease of doing business by the World Bank. As a member of regional economic blocs such as the Southern African Development Community and Common Market for Eastern and Southern Africa, and a member of the African Union, Mauritius plays an active role in enhancing and fostering diplomatic and economic cooperation between African countries.

It is the government's strategy to promote Mauritius as a reliable and effective trade and investment platform for the continent. To this end, economic collaboration with African states is being reinforced to leverage the geostrategic position of Mauritius to drive investment into the continent. Several initiatives are already in place, including the development of special economic zones in a number of African countries to create a conducive environment for local operators to tap into business opportunities there and develop business corridors for neighboring countries. The 2018-19 national budget outlines the need to consolidate a diplomatic footprint in Africa with the realization of the Africa Strategy, which aims to expand the economic horizons of Mauritius and bring it to a higher level of regional cooperation. In fact, embracing fintech and making Mauritius a hub for Africa is one of the government's national priorities for 2019.

In its recent publication *The World in 2019*, the *Economist* magazine suggests the population of Africa will double to 2.5 billion by 2050. According to the World Bank's *Global Findex Database 2017: Measuring Financial Inclusion and the Fintech Revolution*, around 1.7 billion adults remain unbanked globally. In Africa, only a third of the continent has access to some sort of financial service. To cure this financial exclusion, the spread of mobile telephony and mobile internet services has brought the unbanked into the spotlight and created a market which is becoming increasingly attractive to tap into. According to the GSM Association, Sub-Saharan Africa is projected to have 535 million cellphone subscribers by 2020. Kenya's MPesa is the prime example of how mobile telephony can open up access

to financial services. Spinoffs, replicas and imitators of MPesa are widespread across Africa.

Financial services can help drive development. Financial inclusion, especially from the use of digital financial services, including mobile money services, payment cards and other financial technologies, is necessary for development and the benefits of such inclusion are wide-ranging. In both rich and poor countries, fintech is already seen as the dominant force behind the big advances recorded in recent years. The dynamic nature of emerging markets creates challenges that have never confronted the developed world, but at the same time they also open up opportunities for innovation and growth. Fintech can help solve unique African problems across sectors in creative ways.

Fintech is, in fact, a facilitator of economic growth in Africa; it will lower barriers to entry for customers, reduce the cost of transactions, and improve the quality of financial services, thereby helping to reduce financial exclusion. Instead of being a bad banking risk, the poor are now a unique business opportunity to tap into. Although at the bottom of the pyramid, they generate new data (mobile phone ownership and internet access), which if used intelligently, easily compensates for a lack of credit history and gives the unbanked unprecedented access to finance, thus helping towards achieving the universal financial inclusion that the World Bank is seeking. The harvested data will open access to nano loans, and this will establish the data trail required to assist in bigger loans later. This is a perfect example of true democratization of financial services. In fact, the world's poor previously

needed the stability and security that banks traditionally offered, but increasingly they are given the choice to use the creative and innovative, tailor-made solutions that fintech can offer. Digital and mobile payments will become the new transactional battleground as banks and fintech companies battle their way to own their customers.

Africa's reputation for innovation as the global leader in mobile money is a key driver behind the continent's burgeoning fintech investment scene. In fact, fintech in Africa has the greatest potential to positively influence the lives of its population and make a marked difference. The IFC is keeping pace with this changing African landscape. Mauritius is positioning itself as the fintech hub for Africa. The fintech – and innovation-driven Financial Services Regulatory Committee was set up in February 2018 under the chairmanship of Lord Meghnad Desai. This Committee is committed to making Mauritius a regional hub in the field of fintech, and to this end it has pursued discussions to build an open and transparent regulatory regime for fintech in Mauritius. In the words of Lord Desai, "With fintech triggering a major transformation of the financial services sector, Mauritius finds itself in a unique position to leverage on its expertise, as well as its good repute in the financial services sector, to attract fintech entrepreneurs and position itself as the fintech and technology hub for Asia and Africa and to spearhead the development of artificial intelligence in the region."

Consequently, in September 2018, Mauritius recognized digital assets, including cryptocurrencies, as an asset class for investment by sophisticated and expert investors. The Financial Services Commission



(FSC), the integrated regulator for non-banking financial services and global business sectors, which is highly supportive of fintech-related initiatives, came up with a consultation paper in November 2018 that sought feedback from the stakeholders on the proposed regulatory framework for the licensing of digital assets custodian services. This regulatory framework, which will be effective as from March 1, 2019, positions the IFC as the first jurisdiction to offer a regulated landscape for the custody of digital assets. Commenting on this revolutionary regulatory framework, the Mauritius prime minister said, "In revolutionizing the global fintech ecosystem through this regulatory framework for the custody of digital assets, my government reiterates its commitment to accelerating the country's move to an age of digitally enabled economic growth." The establishment of the Mauritius Africa FinTech Hub, in December 2018, with a clear vision of changing the outlook for the whole continent by acting as a catalyst in the regulatory environment and the pan-African fintech ecosystem, is a clear sign of the growth potential of fintech in Africa.

According to New World Wealth, the IFC has been the fastest growing financial center in Africa. Fintech will undoubtedly contribute to the Mauritius IFC's further growth by offering value-added activities, in addition to unearthing and tapping into exciting opportunities.

Besides the custodian services license for digital assets, Mauritius has, since 2016, put in place the appropriate regulatory framework for a regulatory sandbox license (RSL) to position the country in the league of selected countries enabling promoters and entrepreneurs to engage in innovative and high-value-added activities relying on the dynamic technological evolution. The RSL, in fact, offers a safe space to test promising projects within set parameters which act as temporary frameworks and that are inspired from proven worldwide best practices. It acts as a time-saving device pending the provision of a fully fledged legislative framework. The RSL has been used to implement projects with significantly promising ripple effects on the economy, the job market, technology and the transfer of knowhow. The Economic Development Board has recently delivered five RSLs to projects that were recommended by the National RSL Committee. An RSL

was granted to a next-generation wealth management platform which combines robo-advisory fund management and blockchain-backed custodian services. The second project operates a lending platform for blockchain-backed loans, which enable holders of digital assets to obtain cash loans using those assets as collateral. The next project is a blockchain-based identity management system which provides tools for identity owners and relying parties, to safely and securely share information while complying with international data protection regulations. Its B2B KYC management dashboard helps relying parties ensure regulatory compliance with international AML/KYC/CDD acts and best practices. Lastly, an RSL was granted to an online equity crowdfunding platform.

The fintech segment is reflective of the technological innovations taking place worldwide and Mauritius is at pace with these latest advancements in this fast-changing ecosystem. This new segment will undoubtedly attract more fintech activities to Mauritius and help develop and expand such activities in Africa, while further consolidating its position as a strategic development partner in and for Africa.

Green Bonds: Unlocking sustainable investment opportunities in Namibia



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Introduction

Climate change is affecting all of us, but it is expected to hit developing countries the hardest.¹ Climate change is, however – aside from its possible devastating effects – increasingly viewed as a gateway to new business opportunities, opening many profitable ways for investors to help protect the planet. One such way is through Green Bonds.²

The world's first Green Bond was issued by the World Bank in 2008. By 2017, total Green Bond issuance grew to a record high of USD155 billion. Green-Bond issuance is forecast to continue setting records, with issuance set to

grow to USD250 billion by the end of 2019, according to the International Finance Corporation (IFC) Green Bond Perspective Report³ (2018). Yet, in the developing world, the market is still emerging.

Namibia is particularly mindful of the effects of climate change, and as such has shown and continues to show its commitment to achieving the Sustainable Development Goals (SDGs) (otherwise known as the Global Goals, a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity) and to do so by 2030. The SDGs have been embedded in Namibia's current fifth National Development Plan (NDP5). The Plan focuses on economic progression, social transformation, environmental sustainability, and good governance, incorporating the SDGs' five pillars of People, Prosperity, Planet, Peace and Partnership.⁴

1 <http://treasury.worldbank.org/en/about/unit/treasury/ibrd/ibrd-green-bonds>.

2 https://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/perspectives/perspectives-i1c2

3 https://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/perspectives/perspectives-i1c2

4 <https://sustainabledevelopment.un.org/memberstates/namibia> and https://www.npc.gov.na/?wpfb_dl=294

Namibia also recognizes that a lack of access to energy remains a critical barrier to poverty alleviation and industrialization efforts. Energy is also a fundamental enabler for economic growth in the country.

The lack of energy sources in Namibia has given rise to a rapid growth in the renewable energy market; however, a lack of funds and affordable debt financing has left the market falling short of its potential. The Namibian financial sector will therefore play a vital role in accelerating the local market's transition to lower-carbon energy and will be an invaluable enabler in the value chain of sustainable projects that reduce the country's dependence on the finite supply of fossil fuels.

Recently, the Sustainable Use of Natural Resources and Energy Finance (SUNREF) initiative,⁵ a green finance label developed by the *Agence Française de Développement* (AFD), made funds available to a local commercial bank, Bank Windhoek Limited (Bank Windhoek),⁶ and two other local banks in Namibia. The SUNREF initiative encouraged Bank Windhoek, as one of the implementing partners of the SUNREF Namibia program, to expand its green lending activities by investigating the viability of raising alternative sources of funding that will be used solely to finance eligible green projects and assets in Namibia.

Understanding that investors are usually not willing to give up return or pay extra for the "green" aspect of sustainable investments, Bank Windhoek's search to raise alternative funds in the local debt market sparked the idea to explore a Green Bond or Climate Bond issuance. At the time, a Green Bond issuance seemed like a viable financing option for future renewable energy and sustainability projects, following its success in the international debt market.

The first Green Bond in the Namibian market

On Wednesday, December 5, 2018, Bank Windhoek announced the successful issuance of Namibia's first Green Bond of NAD66 million on a private placement basis. This was a first for Namibia, and since its issuance, Bank Windhoek has been determined to build up a robust pipeline of eligible projects in order to secure a second issuance, depending on market conditions.

Nature of the Green Bond and Bank Windhoek Green Bond

The Green Bond is similar to an unsecured non-convertible debenture,⁷ a type of debt instrument that is not secured by physical assets or collateral but backed only by the general creditworthiness and the reputation of the issuer. Like other types of bonds, debentures are documented in an indenture.

Since unsecured debentures have no collateral, buyers of these debentures generally rely on the belief that the bond issuer is unlikely to default on the repayment. Debentures are one of the most common forms of long-term loans and are repayable on a fixed date and on which a fixed interest rate is paid. In relation to other types of loans and debt instruments, debentures are advantageous to the issuer in that they carry a lower interest rate and have a future repayment date. For those that invest in debentures, the main benefits are reduced risk of default due to the creditworthiness of the issuer and that non-convertible debentures are usually listed on the stock exchange, meaning they are a liquid type of investment.

All debentures have specific features. For non-convertible debentures, such as the Green Bond, the date of maturity is a significant feature as it dictates when the issuer must pay back the debenture holder/s. Various repayment options are available to the issuer; however, the most common form of repayment is called a "redemption out of capital," in which the issuer company makes a lump sum payment on the date of maturity.

The main difference between a standard debenture and the Green Bond is that the Green Bond's proceeds are exclusively applied to finance or re-finance, in part or in full, new and/or existing eligible green projects.

⁵ Sustainable development and climate change are one of the five sectorial priorities of the French Development Agency (AFD), notably through the private sector strengthening towards a green economy. In articulation with local public policies, AFD has put in place since 2007 a targeted support to develop innovative green investments through environmental credit lines for local financial institutions. This support, called SUNREF (Sustainable Use of Natural Resources and Energy Financing) includes both technical assistance and credit lines (i.e. loans) to local financial institutions for them to finance small and medium size projects of public and private promoters.

⁶ As a member of Capricorn Group, Bank Windhoek is the only 100% locally owned commercial bank in Namibia.

⁷ <https://www.investopedia.com/terms/d/debenture.asp>



Bank Windhoek's Green Bond is listed on the Namibia Stock Exchange (NSX) and complies with the Sustainable Stock Exchanges (SSE) Initiative, a United Nations (UN) Partnership Programme of the UN Conference on Trade and Development (UNCTAD), and the UN Global Compact, which aims to build the capacity of stock exchanges and securities market regulators to promote responsible investment and advance the sustainable practices of companies.

As part of the issuance, Bank Windhoek developed a Green Bond Framework (which is circulated to potential Green Bond buyers) as the core document against which the management of proceeds, eligibility criteria — and ultimately the success of the bond issuance — is benchmarked.

The Bank Windhoek Green Bond is (and it is recommended that any Green Bond issued should be) aligned with the four core components of the International Capital Market Association's (ICMA) Green Bond Principles⁸ (GBP) or the Climate Bonds Taxonomy.

Bank Windhoek also adopted the IFC Definitions and Metrics for Climate Related Activities to assist with the evaluation and selection of potential sustainable projects for its Green Bond program in order

to classify potential sustainable projects as "green."

The eligible projects include those that focus on renewable energy, energy and resource efficiency, green buildings and sustainable waste management, among others. The issuance of Namibia's first Green Bond is testament to Namibia and Bank Windhoek's commitment to bring about positive change in the country and the Southern African region.

Challenges to Green Bond issuance

Even though Green Bonds appear to have a promising future, they have certain drawbacks. The foremost challenge for the Green Bond issuer is to bear the additional cost required to issue a Green Bond and the costs normally associated with listing the bond on the local stock exchange, while also providing returns similar to that of a normal bond. In addition to the usual costs associated with a vanilla bond,⁹ Green Bonds require upfront and ongoing resources that are not recoverable through the proceeds of the Green Bond itself.

Another key challenge for a first-time Green Bond issuer is its commitment to developing an accompanying framework legislation. Green Bond frameworks play a key role in encouraging green

finance through transparency and commitment and they send an important signal to investors in the market. The issuer must therefore continuously update and develop (throughout the lifetime of the bond) Green Bond frameworks and identify a pipeline of eligible green projects that could be financed under the relevant framework, which could be complicated.

According to the Environmental Financing Organization, it is of the utmost importance that local governments make public policy shifts in favor of a greener and more climate-resilient economy. Government involvement is vital to encourage the green finance market through the creation of fiscal policy (i.e. in Namibia, the Harambee Prosperity Plan, CoP23, NDP5, Climate Change Strategy and Action Plan) that makes holding green assets more attractive.

Given that Green Bonds are long-term financing vehicles, the reputational risk to issuers extends for many years across the life of the bond and beyond. However, as an investment instrument for sustainable projects, Green Bonds present an opportunity for sustained and better returns in future.

⁸ The Green Bond Principles (GBP) are voluntary process guidelines that recommend transparency and disclosure and promote integrity in the development of the Green Bond market by clarifying the approach for issuance of a Green Bond. The GBP provide issuers with guidance on the key components involved in launching a credible Green Bond; they aid investors by promoting availability of information necessary to evaluate the environmental impact of their Green Bond investments; and they assist underwriters by moving the market towards expected disclosures that will facilitate transactions. The GBP have four core components:

1. Use of Proceeds
2. Process for Project Evaluation and Selection
3. Management of Proceeds; and
4. Reporting

⁹ A bond with no unusual features, paying a fixed rate of interest and redeemable in full on maturity.

Investment opportunities and advantages of the Green Bond

Green Bonds are not a “magic solution” to the sustainability of financing challenges, but they are pushing financial institutions and market participants in the right direction. Other sources of funding available in the market, such as Development Finance Institutions (DFIs), are relatively expensive and the eligibility criteria and compliance can be very stringent and time consuming. Green Bonds are a win-win solution for both the bond issuer and the investor: they can contribute toward a sustainable future and showcase themselves as a responsible organization/institution/individual. Institutional investors are also using Green Bonds to address environmental, social and governance (ESG) mandates, something that – before Green Bonds – had been a struggle to address with fixed-income tools.

There are major benefits associated with sustainable investments, especially in Namibia, as natural resources are plentiful. Such investments can in turn also create much-needed job opportunities in the country, while retaining domestic investment.

The renewable energy sector in Namibia is growing rapidly. As part of the Namibian government’s vision 2030, the government committed to an energy sector where at least 70% of all electricity generated in Namibia will be derived from sustainable sources. Furthermore, and as part of NDP5, the government aims to

expand its bulk transmission and distribution infrastructure to avoid overreliance on energy imports. This will entail land acquisitions for generation, transmission and distribution projects, construction and upgrading of transmission and distribution lines and associated substations. In so doing, the government is hopeful of achieving its goal of having a sustainable mix of locally generated energy capacity of 755 MW to support household and industry development by 2022.¹⁰

This, coupled with an alternative and exciting method of financing such projects (i.e. through the issuance of Green Bonds), creates a great opportunity for both local and international investors to invest in Namibia’s renewable energy sector.

The issuance of Green Bonds is, however, not limited to financing investments in just the renewable energy sector. Any green project which is aligned with the official Green Bond framework of the issuer and which complies with the technical eligibility criteria set by the Green Bond issuer may qualify for financing from the Green Bond proceeds raised at issuance.

Namibia provides numerous opportunities for international investors seeking a foothold and growth on the African continent.¹¹ The country has embarked on a large-scale program of renewing and developing its infrastructure. Investment opportunities in this regard may take the form of public – private partnerships (PPPs) either on a per-project basis or with equity holdings, and certain utilities may be

wholly owned by investors. Current focal areas in this sector include the development of water infrastructure, power generation and transmission infrastructure.

Furthermore, to prepare for climate variability and to mitigate drought, climate change adaptive technologies are required for crop production. Even though agriculture only contributes on average 3.8% to GDP, it remains a strategic sector as it supports over 70% of the Namibian population and employs about a third of the labor force.

Namibia is also a popular travel destination. Investment in sustainable tourism is welcomed, as the tourism industry is an important contributor to the generation of foreign exchange earnings, investments, revenue, employment, rural development, poverty reduction and the growth of the country’s economy.

Laws regulating Green Bonds, foreign investment and renewable energy in Namibia

The Green Bond market is not formally regulated, but its underlying market is (i.e. the issuance of the bonds (debentures) and listing on the local stock exchange). The Green Bond market also relies on compliance by issuers with voluntary international guidelines and standards such as the GBP and the Climate Bond Standards (CBS).

¹⁰ https://www.npc.gov.na/?wpfb_dl=294

¹¹ NDP5 – p 20, 30 and 34-35. See also <http://namibiatradedirectory.com/investment-opportunities/>

The issuance of debentures in Namibia is governed by the Companies Act 28 of 2004, which provides that a company, if so authorized by its memorandum or articles, may create and issue secured or unsecured debentures, provided that the term “debenture” or some other term denoting a debenture is used and qualified by the word “secured” or “unsecured.” In this case, the Green Bond would be qualified as an “unsecured debenture.” Once issued, a debenture certificate is issued to the holder and is prima facie evidence of the title of the person named in that debenture or certificate.

The listing of the Green Bond is in turn governed by the Namibian Stock Exchange’s Control Act 1 of 1985 and its regulations, which is administered by the NSX, as read with the listing requirements issued by the NSX.

Foreign investors should be particularly aware that withholding tax on foreign interest (WHTFI) may be payable on interest payments by a Namibian resident to a non-resident under and in terms of certain financial instruments held by the foreign national.

Foreign investors (i.e. persons not resident in the Common Monetary Area of Namibia, South Africa, Lesotho and Swaziland) should also note that investment in financial instruments such

as the Green Bonds, as well as the provisions of loan funds to Namibian nationals,¹² is regulated by the Namibia Currency and Exchanges Act No. 9 of 1933 and the Exchange Control Regulations. Exchange Control in Namibia falls under the control of the Minister of Finance and the Treasury, who has delegated the administration to the Bank of Namibia, which, in turn, has appointed inter alia commercial banks, including Bank Windhoek, as Authorized Dealers in foreign exchange.

In so far as foreign investors may specifically be interested in investing in the renewable energy market (Namibia is an especially attractive location for the development of renewable energy projects, owing to its high resource potential for solar; its relatively good potential for wind in many areas and low population density) , it is important to also take notice of Namibia’s renewable energy laws/frameworks.

Renewable energy in Namibia is, among others, regulated by (i) the Electricity Act 4 of 2007, which established the Electricity Control Board and provides for its powers and functions; provides for the requirements and conditions for obtaining licenses for the generation, trading, transmission, supply, distribution, importation or export of electricity; and provides for the powers and obligations of licensees and incidental matters; and (ii) the Environmental

Management Act 7 of 2007 (EMA), which has been enacted to promote the sustainable management of the environment and the use of natural resources by establishing principles for decision-making on matters affecting the environment.

It should be reassuring for potential investors to know that Namibia adopted the National Renewable Energy Policy in 2017, which promotes several objectives such as making renewable energy a vehicle for expanded access to affordable electricity in Namibia, confirming the commitment of the government to renewable energy, and boosting investor confidence in the growth of renewable energy in Namibia.

The Namibian power sector is facing various operational and planning challenges due to the rising demand for electricity and the need to become more independent from imports, with projections for electricity demand being expected to rise and by 2035 be more than double its current electricity consumption. Independent Power Producers (IPPs) will constitute the primary vehicle for privately developed, constructed, operated, and owned generation plants that sell electricity to public utilities, end-consumers; and as non-utility generators, have long-term power purchase agreements (PPAs) with off-takers.

¹² Including, local banks, as well as the repatriation of such funds to foreign investors.

IPPs will be the principal targets for green finance, sourced via Green Bonds. This, linked with the guaranteed long term of PPAs at fixed prices, will not only assist in financing new technologies but should also serve as an additional comfort in relation to the repayment of such finance.

Namibia is a stable country with sound policies and a legal system which allows contracts to be enforced and respected. These are critical factors for attracting IPP investments. Namibia's legal framework also specifies market structures, roles and terms for investments based on the Electricity Supply Market Model. The transparent and predictable licensing and tariff framework,

including cost-reflective tariffs, all forms part of the regulatory environment. The aforementioned, coupled with the well-regulated underlying market of the Green Bond, should therefore instill investor confidence.

Conclusion

There is no doubt that Green Bonds can assist in unlocking sustainable investment opportunities in Namibia while spreading the underlying risks associated with an investment of this nature between the investors and the issuer. Green Bonds open the door to advance adoption of innovative new technologies, financing of projects that provide green jobs, and promote economic and climate resiliency. Investors are increasingly demanding socially

responsible investment (SRI) opportunities and have expressed a strong appetite for Green Bonds by repeatedly oversubscribing issuances. Green Bond issuances in emerging markets like Namibia and the rest of Africa are only at the starting point and are expected to attract new and different types of investors. The relative ease of using this fixed income instrument for sustainable investments will aid in providing a potential market for future issuances while accelerating the local market's transition to a lower-carbon and climate-resilient economy.



Mobile money in Africa: Access, regulations and risks



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Introduction

The union between the mobile phone, fast internet connections and Africa's unbanked has seen a boom in mobile banking and mobile money services across the continent. This has helped make the financial services industry more efficient and inclusive. Millions of people now use their mobile phones to do their banking and their numbers are growing daily. Kenya and South Africa have M-Pesa, Zambia has MTN-Money, Airtel Money and Zamtel Money. In Nigeria the door for mobile money operators was pushed open in 2018, and already MTN has announced its intention to provide a mobile money service.

However, the countries where mobile money payments are rising steeply also happen to be hubs for corrupt practices and transnational crime syndicates.¹ They also are reported to have weak law enforcement against financial crime.²

The mobile money system generally sits outside a country's financial reporting system, making it almost impossible for authorities to monitor mobile money transactions. In Kenya, this has seen M-Pesa used to launder

money,³ to bribe corrupt police officers,⁴ and as a payment vehicle in kidnapping and extortion.⁵

This article will show how mobile money in Africa has opened access to the previously unbanked, and look at the role that regulators are playing to mitigate the money laundering risks associated with mobile money.

Mobile money regulations

The success of mobile money lies in the fact that it leverages the ubiquity of mobile phones and the extensive coverage of mobile operators. Often considered a disruptive business model in the style of startups in the sharing economy mobile money in fact equally disrupts and complements traditional banking services.

Most mobile money operators allow users to deposit money into an account stored on their cell phones, to send balances using PIN-secured SMS text messages to other users, including sellers of goods and services, and to redeem deposits for regular money. Users are charged a small fee for sending and withdrawing money using the service. Mobile money services have the opportunity to deepen financial inclusion in developing economies through low transaction costs, increased access in rural/low income areas, and ease of use.

¹ *Transparency International Corruption Perception Index 2018*, accessed at <https://www.transparency.org/cpi2018>

² <https://www.oecd.org/corruption/acn/48916988.pdf>

³ <https://www.standardmedia.co.ke/article/2001231595/criminals-expand-avenues-for-money-laundering-in-kenya-us-report-says>

⁴ <https://www.nation.co.ke/News/-/1056/456426/-/tjohqg/-/index.html>

⁵ <http://www.ghafila.com/papa-shirandulas-nyaguthii-gets-kidnapped-kidnappers-demand-huge-ransom/>

According to the GSM Association the body that represents the interests of mobile operators worldwide, mobile money providers face challenges in launching and scaling the full breadth of mobile financial services in countries with non-enabling regulatory environments.⁶ The GMSA also says that enabling regulatory frameworks accelerate the development of the mobile money sector,⁷ and countries with regulatory frameworks that are not aimed at the mobile money sector show a smaller number of registered and active mobile money accounts, as well as lower agent activity rates than countries with enabling regulation.⁸

In most countries, including Zambia, South Africa and Nigeria, mobile money operators are required to hold a license from the banking regulator to operate a mobile money service, placing them under the supervision of the regulator. In Zambia, for example, the Bank of Zambia first adopted a watch-and-learn approach, but recently introduced the National Payment Systems Directive on Electronic Money Issuance 2015, which covers licensing procedures, minimum capital, use of agents, consumer protection, and KYC requirements. Under the Directive, mobile money operators effectively become a reporting entity for the purposes of anti-money laundering and financial intelligence legislation (for example, the Anti-Money Laundering Act).

Money laundering risks

There are three stages involved in money laundering: placement, layering and integration. Placement involves the movement of cash from its source to a form that is less suspicious to law enforcement. This is followed by the proceeds being placed into circulation through financial institutions and other businesses. Layering involves making it more difficult to detect and uncover money laundering activity, for example by converting the cash into a financial instrument. Integration is the movement of previously laundered money into the economy mainly through the banking system. Often, laundered money goes through a process known as smurfing, where large sums of money are split into smaller amounts that are required for reporting purposes and transactions made up of the smaller amounts are carried out, for example via mobile money transfers.

Several money laundering risk factors exist in the mobile money space, including the absence of credit risk, speed of transactions and (often) the non-face-to-face nature of the business relationship.

However, perhaps because of the ease of use and the uptake of mobile phones in Africa, mobile money systems can be designed to strengthen financial integrity by using controls to mitigate the risk of money laundering.

For example, anonymity is a unique feature of mobile phones and a clear a risk factor. But it can be mitigated by implementing robust identification and verification procedures. In fact, most countries' KYC legislative

requirements already demand that mobile operators take copies of identity documents on mobile service accounts. In doing so, these operators increase transparency and generate useful data on transactions and customers that can be shared with enforcement agencies.

In Zambia, for example, the Zambia Information and Communications Authority issued Statutory Instrument No. 65 of 2011 relating to the Registration of Electronic Communication Apparatus Regulations, which requires the registration of all SIM cards and that any SIM card registration requires an original and valid identity card. In jurisdictions where customer data cannot be reliably verified, it may be appropriate to apply alternative risk mitigation measures, for example, by imposing low value limits in order to qualify as a low-risk product and be allowed to apply simplified identity measures.

Conclusion

Regulators across Africa continue to show a willingness to open the playing field to mobile money operators. In so doing they create a healthy enabling regulatory environment that spurs on the reach of mobile money across the continent, bringing more people into the world of the banked. And with the continuing growth and development of mobile money, regulators and operators must continually evolve in their approach to risk mitigation and anti-money laundering compliance this sector.

⁶ *Mobile Money for the Unbanked*, GSMA discussion paper <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/03/amlfinal35.pdf>

⁷ Ibid.

⁸ <https://www.gsma.com/mobilefordevelopment/mobile-money/policy-and-regulation/>

South African data protection law and third-party processors



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Key takeaways

- Controllers (which are referred to as responsible parties in South Africa) must conclude mandate agreements with processors (which are referred to as operators in South Africa).
- Processors/operators may act only in accordance with the terms of those agreements.
- Controllers/responsible parties are ultimately responsible for compliance with POPIA.
- Processors may be liable under GDPR to pay damages and administrative fines for noncompliance with GDPR. POPIA does not provide for similar fines in respect of operators.

The EU General Data Protection Regulation (GDPR) and South Africa's Protection of Personal Information Act 2013 (POPIA) regulate the protection of data subjects' personal information. Some provisions of

POPIA are already in force, and the rest are expected to come into effect over the course of this year. Though there will be a one-year grace period after the new legislation comes into effect in its entirety, businesses are advised to start complying with the provisions of POPIA as soon as possible.

The key roles under POPIA and GDPR

In South Africa, the definition of a data subject is similar to that in GDPR in that it refers to a natural person who the personal information relates to. This is further extended under POPIA to include juristic persons such as companies or other institutions. The party who decides the purpose and the means of processing a data subject's personal information is the responsible party under POPIA and the controller under GDPR. The role of an operator under POPIA is to process personal information on the

instructions of the responsible party. This is essentially the same concept as a processor under GDPR.

As the law currently stands in South Africa, personal information may be processed with the data subject's content or when it is both necessary for pursuing legitimate interests and reasonable and justifiable to do so. Currently, there is nothing requiring the relationship between the responsible party and the third party to be regulated by a contract, although it is recommended. But this will change after POPIA is in effect, as there will be certain requirements when engaging a third party (i.e. an operator) to process personal information on a responsible party's behalf. Examples of the use of operators are when an employer outsources its payroll to an external provider, or a when a company outsources marketing campaigns targeting customers by using personal information.

The relationship between the data controller/responsible party and the relevant processor/operator is also separately regulated under GDPR and POPIA. This article will explore what the legal requirements are under GDPR and POPIA, and the recommended best practices when making use of operators/processors. Broadly speaking, under both POPIA and GDPR the processor/operator must act under a mandate, and appropriate security safeguards need to be in place to protect personal information. The processor/operator must keep the personal information confidential.

Mandate

The relationship between a controller/responsible party and the processor/operator (e.g. between an employer and a provider of medical insurance to employees) must be stipulated in a written contract or, under GDPR, in terms of any other legal act recognized in law.

An operator under POPIA may process personal information only with the knowledge and authorization of the responsible party, unless otherwise required by law or in the course of the proper performance of its duties. Under GDPR, a processor who acts independently of the data controller and determines the purpose and means of processing data is considered a controller (and where applicable a joint controller under GDPR). There is no equivalent provision in POPIA, but it makes practical sense that an operator would similarly become a responsible party in relation to personal information if it determines the purpose and means of processing such information. We envisage that there would be a concept of joint responsible parties under POPIA, although this is not expressly provided for in the regulation. An operator would also

still have obligations to perform as a responsible party in respect of the personal information that it processes in relation to its own functions (e.g. the personal information of the operator's own employees and customers).

Security safeguards

GDPR specifically requires that the mandate agreement states the details of the data processing and the processor's obligations with regard to ensuring the security and integrity of personal information. Under POPIA, the duty is on the responsible party to ensure – in a written contract with the operator – that the operator establishes and maintains reasonable technical and organizational measures to safeguard the personal information that is processed on the responsible party's behalf. The responsible party will ultimately be liable if the operator does not comply with POPIA. It is sensible for a responsible party to expressly agree in the mandate agreement the nature and extent of the security safeguards that will be implemented and maintained by the operator, and to include a corresponding indemnity for failure to comply with such obligations. It is also advisable for the agreement to provide that the responsible party may – having given reasonable notice – carry out inspections to verify that the responsible party has implemented the agreed security safeguards.

Confidentiality

When processing personal information, data processors are required to ensure that the individuals processing the data are subject to a duty of confidence. Under POPIA, the operator is required to treat personal information as confidential and must not disclose it, except when the law requires it or if the

operator requires disclosure in order to perform its duties. In order to minimize the risk of data breaches and comply with POPIA, a responsible party should make it a condition of the agreement that the operator will limit access to personal information to those individuals who have entered into appropriate confidentiality agreements with the operator, or who are subject to a duty of confidentiality by virtue of their office.

Data breach

In the event of a data breach, POPIA requires an operator to notify the responsible party. The responsible party must then notify the information regulator and the data subject(s) whose information has been unlawfully accessed within a reasonable time after reasonable suspicion that there has been a data breach. POPIA does not provide a prescribed period within which a responsible party must notify the regulator, but it must be as soon as reasonably possible. Under GDPR, a processor is required to notify the controller in the event of a data breach. The controller should then notify the supervisory authority within 72 hours of the data breach if there is a risk to a data subject's rights and freedoms. And the data subject should be informed if such breach is likely to result in a high risk to their rights and freedoms without undue delay. POPIA differs in this respect: the information regulator must be notified of all data breaches, regardless of whether or not there is a high risk to a data subject's rights and freedoms. Further, the data subjects must be notified, regardless of whether or not there is a high risk to a data subject's rights and freedoms, unless the data subject cannot be identified or the notification would impede a criminal investigation.

In the case of POPIA, it is recommended to include in the agreement a prescribed timeframe within which to notify the responsible party of the breach in order to reduce the risk of a further compromise to data subjects' personal information. A set timeframe would also provide the responsible party with sufficient time to notify the information regulator and the data subjects.

Data protection officers

Controllers and processors are required by GDPR to appoint a data protection officer, whose responsibility it is to monitor the processing of personal information if it is carried out by a public body, if it requires regular and large-scale monitoring of data subjects, or if the core component of the processor's activities is processing special categories of data or personal data relating to criminal convictions or offences. In terms of POPIA, each responsible party must appoint an information officer, who will perform similar duties to that of data protection officers under GDPR. Under POPIA, the information officer may sub-delegate his/her responsibilities to deputy information officers. POPIA does not state whether an operator must appoint an information officer, but most operators would be required to appoint an information officer as they would be a responsible party in relation to the personal information of their own employees and clients. It would be advisable, in terms of the agreement, to identify the information officer or deputy information officer of each of the parties to the agreement, who would be the contact person for any issues relating to the lawful processing of the personal information held by the respective parties.

Noncompliance and Penalties

Under GDPR, processors can be liable to pay compensation for any harm suffered as a result of the failure to comply with specific GDPR provisions that relate to processors or where they have acted without a controller's lawful instructions or contrary to those instructions. This is different to POPIA, where any failure to comply with the lawful processing requirements will lie directly with the responsible party, who bears the ultimate liability. As a responsible party is subject to POPIA, it is important to impose some of the obligations that would ordinarily fall on the responsible party on the operator. In addition, the responsible party/controller should obtain indemnities from the operator/processor for compliance with the contractual obligations and data protection laws and to ensure that the operators will be held liable for any risk, harm or loss suffered as a result of the breach of such laws and obligations. This could include requiring the operator to reimburse the responsible party for any penalty that is imposed on it by the information regulator, or any damages claims that may be brought by data subjects as a result of a data breach. Obviously, if an entity is acting in its capacity as an operator, it would want to resist these contractual obligations and only agree to and limit its liability to the obligations strictly imposed on it in law. The mandate agreement will ultimately be a matter of negotiation between the parties.

Cross-border flows of Personal Information

Given that there may be instances of cross-border transfers of personal information by or to a processor or operator on behalf of a responsible party, the agreement should prohibit such a transfer without the controller or responsible party's written consent if the transfer is to a country that does not have adequate data protection laws. The reason for the inclusion of such a clause is so that the responsible party can ensure that there is a lawful justification for transferring the personal information to a country that does not have adequate data protection laws. For example, the responsible party could ensure that consent has been obtained from the data subject or that the recipient in the foreign country has entered into an appropriate data transfer agreement. Under POPIA, the responsible party would need to ensure that prior authorization has been obtained from the information regulator in circumstances where such prior authorization is required, for example, when transferring special personal information to locations that do not have adequate data protection laws.

Other factors to consider

GDPR imposes further obligations on processors, such as requiring the controller's prior consent before engaging subcontractors; assisting data subjects to exercise their rights; assisting controllers with security safeguards, data breaches and data protection assessments; submitting to audits and inspection; and keeping records of processing

Though these may be agreed between responsible parties and operators, they are not mandatory under POPIA, and any operator who undertakes them should be prepared to shoulder the risk they present.

It is important to note that both POPIA and GDPR prohibit the retention of information after the purpose for which it was initially collected or subsequently processed has been achieved, and therefore the agreement should specify what processes should be followed on the conclusion or termination of the contract term. It is advisable to include a requirement to return, delete, destroy or anonymize the personal information at the request of the controller or responsible party or within a specified period of time after termination of the agreement.

Recommendations

In summary, the mandate agreement between the responsible party/controller and the operator/ processor should include the following provisions (which are mandatory under POPIA):

- An undertaking to act only on the written instructions of the responsible party/controller.
- Confidentiality undertakings during the period of data

processing and restriction of access to individuals who are bound by confidentiality undertakings.

- Agreement that reasonable technical and organizational measures will be established and maintained by the operator/ processor and ideally specify the nature of these measures.
- Notification requirements in the event of a data breach.
- Restrictions on the transfer or storage of personal information to countries without adequate data protection laws.

It is also recommended that the mandate agreement includes the following additional provisions, although they are not mandatory under POPIA. They are, however, mandatory under GDPR.

- The type of personal information and categories of personal information subject to processing.
- The nature, purpose and manner of data processing.
- The duration of the processing activities.
- Consent requirements in the event of engaging sub-processors/operators.
- The end-of-contract obligations, for example, agreement that

personal information will be returned, deleted, anonymized or destroyed on request or at the end of the contract, unless otherwise required by law.

- Assisting responsible party/controller in providing data-subject access and allowing data subjects to exercise rights.
- Submission to audits and inspections.
- Indemnities in favor of the responsible party/controller (depending on whether or not acting as a responsible party or operator).

Under GDPR, the processor would also need to maintain a record of processing activities and assist the controller with data protection assessments.

Where the provisions above are not mandatory, we recommend that these clauses be included as best practice. However, this will ultimately remain a commercial decision for each business to make, after ensuring that it is in fact able to comply with all these obligations. Further, the obligations that are agreed would depend on whether you are acting as the responsible party or the operator.

The inadvertent rise of digital transactions in Zimbabwe



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Introduction

This article will trace the history of currency use in Zimbabwe, tracking Zimbabwe's movement from relative monetary stabilization following independence, to its crippling hyperinflation, abandonment of the Zimbabwean dollar, adoption of a multi-currency system and ultimately how the evolution of the currency regime has led to the rise of fintech methods of transacting on the back of a cashless society's desperate need to adapt to debilitating shortages of cash in the economy.

A brief snapshot of currency use in Zimbabwe

Zimbabwe (formerly Rhodesia) adopted the Rhodesian dollar in 1970, following the replacement of the pound sterling as the currency of trade. Upon Zimbabwe attaining independence in 1980, the Rhodesian dollar was replaced, at par, by the Zimbabwe dollar.

At that time, the Zimbabwe dollar was worth approximately USD1.25. Due to multiple factors, between 1998 and 2009, Zimbabwe experienced the second worst ever recorded case of hyperinflation, which resulted in a massive devaluation of the Zimbabwean dollar. While exact statistics of the extent of the hyperinflation cannot be found (the Zimbabwean

government stopped releasing official statistics after July 2008), it has been estimated that inflation, at its peak, rose to as high as 89.7 sextillion percent. In order to curb hyperinflation and its devastating effects on the economy, the government of Zimbabwe (the GoZ) abandoned the Zimbabwean dollar in 2009.

In the same year, the GoZ introduced a multi-currency system, with the result being that in terms of section 44A (2) of the Reserve Bank of Zimbabwe Act [Chapter 22:15] (the RBZ Act), transactions in Zimbabwe would be done in any specified foreign currency which included the US dollar (USD), euro, South African rand, Botswana pula and British pound. Over time, however, the USD became the preferred currency in local transactions and the dominant currency in use.

The rise of digital money

The dominance and strength of the USD and a general lack of confidence in the Zimbabwean banking sector led to a shortage of currency as individuals and companies treated the dollar as a safe haven currency or asset. It became a gauge of value rather than a medium of exchange, leading to the effective non-circulation of the dollar and a liquidity crisis in Zimbabwe. In order to resolve the shortage of USD in the economy, the GoZ introduced a surrogate currency known as bond notes which would trade, locally, at 1:1 with the USD. Additionally, and running parallel to the introduction of bond notes, the GoZ intensified its drive for the adoption of non-cash forms of payment for the exchange of goods and services to reduce the public demand for cash.

In a press statement by the Reserve Bank of Zimbabwe (RBZ) on measures to deal with cash shortages while simultaneously stabilizing the economy, issued in 2016 (the RBZ Statement), the RBZ directed, inter alia, that retailers, wholesalers, businesses, local authorities, utilities, schools, universities, colleges, service stations, informal sectors and other service providers install and make use of point of sale (POS) machines. The purpose of this directive was to reduce the demand for cash in the economy. The directive also applied to government departments, local authorities and public entities that provide services to the public on a cash basis. Banks and other payment service providers were also directed, under the

RBZ Statement, to ensure that appropriate electronic payment systems such as card, POS, mobile and internet were made available to all businesses. It was also emphasized that all banks and payment service providers should actively participate in public awareness campaigns to encourage members of the public to adopt cashless means of transacting.

In 2016, Zimbabwe adopted the Zimbabwe National Financial Inclusiveness Strategy (2016-2020) in 2016 (the Inclusiveness Strategy), whose main objectives are to enhance and expand access and usage of financial services. The success of the proposals outlined in the Inclusiveness Strategy depend, to a large extent, on the uptake of cashless transaction methods, as several outlying communities in Zimbabwe have no access to formal banks or ATMs. The adoption of alternative payment methods such as mobile money are, therefore, the cornerstone of the Inclusiveness Strategy.

The rise of fintech in Zimbabwe

Zimbabwe's recent history of hyperinflation and cash shortages, which culminated in the adoption of the USD, and the subsequent government-led drive for a cashless economy and technological advancements, have led to a rise in innovation in the mobile technology and digital financial services sectors in Zimbabwe, namely, the proliferation of various payment products, mobile banking services and digital insurance products which harness non-cash methods

of transacting and utilization. The companies behind these innovations, commonly referred to as financial technology companies (fintechs), have thrived on servicing the Zimbabwean market which, starved for cash, is eager to embrace new ways of transacting and accessing financial services.

According to RBZ's Press Statement on the Availability and Allocation of Foreign Exchange, KYC and CDD Requirements, Use of Plastic Money and Submission of Information by Producers supported by Statutory Instrument 64 of 2016 (the Statement) the success of fintech in Zimbabwe has become so pronounced that over 70 percent of retail payments in Zimbabwe are made through digital payment platforms. In order to keep up with the rapidly changing financial landscape, banks in Zimbabwe have partnered with fintech companies to offer digitalized payment services and solutions.

The largest counter on the Zimbabwe Stock Exchange (the ZSE) is Cassava Smart-Tech Zimbabwe Limited (CSZL), a financial technology solutions company with an opening market capitalization of over USD3 billion. The CSZL listing and opening value are an illustration of the importance and dominance of fintech providers in the Zimbabwean economy. With approximately 30 percent of the Zimbabwean population still excluded from the formal economy and with no access to cash, conventional banks or financial institutions, the opportunities for more fintech innovation are vast.

The GoZ has moved rapidly to recognize the changes brought on by this new financial technology and has come up with policies and legislation to regulate entry and participation in the digital payments sector. The National Payment Systems Act [Chapter 24:23] regulates the operation, regulation and supervision of systems for the clearing of payment instructions between financial institutions and matters connected to the provision of payment services. The RBZ also has a National Payment Systems Unit dedicated to the supervision of payment service providers and guidelines on how these service providers should operate. While there has been a response by the GoZ to the rise in financial technology and digital payment systems, it is still to be determined if these interventions are sufficient.

Weaknesses in the regulatory framework governing fintech Consumer protection and financial literacy

The World Bank Consumer Protection and Financial Literacy Diagnostic Review (the World Bank Review), conducted in 2014, noted gaps in the financial consumer protection framework in Zimbabwe. The deficiencies identified in the World Bank Review include limited capacity and resources in all financial sector regulatory and supervisory authorities to adequately regulate financial services providers and a lack of explicit mandate for consumer protection matters.

Significant gaps on disclosure requirements for financial services providers in Zimbabwe were also noted. Currently, there are limited regulatory requirements in relation to the information that needs to be disclosed to consumers of financial services regarding contractual terms and conditions. Furthermore, a comprehensive Consumer Protection Act is still to be introduced.

The lack of adequate financial consumer protection mechanisms has, according to the World Bank Review, hindered financial inclusion strategies as greater protection is directly proportionate to increased confidence and greater acceptance of new financial technology.

An additional weakness in the financial services regulatory framework is the low level of financial literacy among a large proportion of Zimbabweans. Higher levels of financial literacy compliment a strong financial consumer protection framework as financially literate customers are able to effectively and responsibly interface with providers of these services. Financially literate consumers have the necessary knowledge and understanding to make informed decisions which, in turn, builds confidence in the sector. The inadequate levels of financial literacy are caused, in part, by a lack of meaningful integration of these topics in the education curricula.

Ultimately, until the issues of a robust consumer protection framework and financial literacy are addressed, Zimbabwe will continue to hinder financial inclusion and the wider adoption of financial technology in Zimbabwe as a means of addressing cash shortages in the country. It is imperative that the private sector and the public sector work together to ensure that financial inclusion becomes a fundamental part of Zimbabwe's economic growth strategy in the short to medium term in order to ensure long-term benefits.

Intermediated money transfer tax

In 2018 the GoZ introduced the Intermediated Money Transfer Tax of 2 percent on all electronic transactions within Zimbabwe (the IMTT) in terms of Statutory Instrument 205 of 2018. The aim of the IMTT, ostensibly, is to increase tax collection revenue and tax the informal sector, which concludes most of its transactions electronically, as these transactions previously fell outside the reach of the Zimbabwe Revenue Authority (ZIMRA). The impact of the IMTT is that 2 percent of the value of every electronic payment transaction (with a few exceptions) will be paid as tax to ZIMRA, thereby increasing the cost of transacting digitally.

The IMTT, while designed to increase tax revenue, also acts as a disincentive for the increased adoption of cashless methods of transacting, which has the potential result of further exacerbating the cash shortages in Zimbabwe as people will seek to avoid the IMTT and insist on conducting cash transactions

. There is therefore a need to balance the competing interests of the revenue authority against the prevailing economic environment in Zimbabwe in order to arrive at a middle ground which achieves the dual result of collecting tax revenue, but also encourageings financial inclusion and the use of fintech in Zimbabwe.

Conclusion

The hyperinflationary period ending in 2008 ushered in a new era in financial transactions. Following from the cash shortages which

characterized the post-Zimbabwe dollar era, Zimbabweans were forced to embrace new cashless forms of payment. These non-cash-based transactions led, ultimately, to rapid innovation in the financial technology sector and the emergence of a new generation of financial start-ups.

Notwithstanding the policy of financial inclusiveness and the subsequent rise in fintech providers, the GoZ has generally been slow to come up with the necessary legislative and policy framework to

facilitate the success of a cashless economy. While laws and policies exist for the entry and participation of new players into the digital financial services sector, there is, however, inadequate consumer protection and general financial literacy required for full acceptance of these services. It has been recommended that in order to realize the benefits of the cashless economy, the GoZ must invest more in consumer protection and the financial literacy of its citizens.



Foreign investment and forex regulation in Ethiopia



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Introduction

In Ethiopia, as in most other jurisdictions, one of the major issues for foreign investors is access to foreign exchange (forex). Because of the country's negative trade balance, the availability of forex is highly restricted by laws and strictly regulated by the central bank, the National Bank of Ethiopia (NBE).

It is this forex shortage, among other reasons, that forced the Ethiopian government to adopt an investment policy that favors foreign and domestic export and manufacturing investments, which can generate foreign currency or reduce the foreign currency that the country pays for its imports. This policy can easily be demonstrated by the government's recent construction of a number of industrial parks that focus on manufacturing and exports and the call for investors to carry out investments in the parks. The stated goal of this policy is to make Ethiopia the manufacturing hub of Africa.

This article provides information regarding foreign investment and forex regulation in Ethiopia, which is essential for existing and potential investors in Ethiopia.

Overview of the investment regime

The Investment Proclamation No. 769/2012 (as amended) and the Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulation No. 270/2012 (as amended) (Investment Regulation) are the principal legislations that regulate foreign investment in Ethiopia.

There are four categories in Ethiopian investment law:

- areas of investment reserved exclusively for government;
- areas of investment reserved exclusively for joint investment with government;
- areas of investment reserved for Ethiopian nationals; and
- areas of investment open to foreign investors.

In general, foreign investment is actively encouraged in most sectors of the economy except in areas like banking, insurance, broadcasting services, postal services, import and export and small-scale businesses, among others. These investment areas are reserved for either the government or Ethiopian nationals. The manufacturing sector and

commercial agriculture are open for foreign investment, with different government incentives available. Regarding areas of investment open for foreign investors, there are no local content or indigenization requirements. However, investment in the logistics sector requires a minimum of 51% local ownership.

The investment laws contain a number of guarantees and protections to foreign investors and their investments. They, among others, safeguard investments against unlawful expropriation. They also guarantee investors' rights to remit funds (profits, dividends, proceeds of share transfers, etc.) out of Ethiopia in convertible foreign currency at the prevailing rate of exchange on the date of remittance.

Regarding the permissible investment modalities, both foreign direct investment (FDI) and portfolio investment are recognized by Ethiopian investment law.

Restrictions on investment in the financial services sector

The financial services sector in Ethiopia is generally not open to foreign investors. According to the Investment Regulations and the financial laws, the majority of financial services (banking, insurance, micro-credit and saving services) are exclusively reserved for Ethiopian nationals. In other words, foreign investors cannot fully or partly own businesses that provide these services in Ethiopia. They can, however, engage in capital goods leasing services.

Forex-related regulatory requirements for foreign investors

As stated above, there are various forex-related regulatory requirements for foreign investors (including private

equity investors) in Ethiopia, which are the preconditions for the repatriation of forex from the country. There are exchange controls on injections and withdrawal (repatriation) of capital to and from Ethiopia. Any capital inflow by foreign investors is recognized and registered at the Ethiopian Investment Commission (EIC) at the initial stage of investment, including investments made through a concessionary or a partnership agreement with the government or with an autonomous institution, and similar treatment is accorded to ploughed-back profits. The initial capital investment should be deposited in one of the commercial banks in Ethiopia and only upon presentation of a certificate of deposit can a branch or subsidiary company be registered by the EIC. It is important to comply with this requirement, as subsequent requests for repatriation of profits and dividends and other payments depend in large part on compliance with the requirements of the EIC and the NBE.

Foreign investors are guaranteed to make the following remittances out of Ethiopia in convertible foreign currency at the prevailing exchange rate at the time of remittance:

- profits and dividends accruing from investment;
- principal and interest payments of external loans;
- payments related to technology transfer agreements;
- proceeds from the sale or liquidation of an enterprise;
- proceeds from the transfer of shares or of partial ownership of an enterprise to a domestic investor; and
- compensation paid to an investor under the investment laws.

Expatriates employed in an enterprise may remit, in convertible foreign currency, salaries and other payments accruing from their employment in accordance with the foreign exchange regulations or directives of the country.

Any foreign loan to local Ethiopian companies (including a loan from a foreign shareholder) shall also be subject to the NBE's approval, which requires certain conditions to be met. Payment of interest on foreign loans and the principal loan is allowed only if the NBE approves the foreign loan in the first place. If the NBE has not approved the loans, it will not authorize the repatriation of interest and principal payments on the loans or credit facilities. Where a loan contract is entered into without fulfilling the above requirements, foreign exchange for the repayment of the loan may be denied.

In order to approve a foreign loan, the relevant NBE directive requires that debt-to-equity ratio may not exceed 60:40 of the foreign capital (equity from the shareholders). Similarly, the maximum all-in-cost ceiling (defined as rate of interest, other fees and expenses in foreign currency excluding commitment fee and prepayment fee) for an external loan shall be not be more than six months LIBOR or equivalent in EURIBOR, plus 5%.

Conclusion

Foreign investors need to be aware of forex scarcity and the resultant stringent forex regulations in Ethiopia. Additionally, it is essential for investors to comply with forex regulatory requirements in order to achieve their investment objectives.

Immigration law and practice in the African oil and gas industry



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A global economy requires multinationals to adopt a global business strategy, which invariably involves the need to transfer a firm's most important asset – its people – in a fluid way across national borders. That is why managing the mobilization of expatriate employees in the most efficient way, including handling strategic immigration, labor and tax legal issues, is critical for the oil and gas industry.

Companies must comply with the rules of hiring foreign workers imposed not only by labor laws, but also by other regulations, including immigration and tax legislation. When you need to allocate foreign staff to a project, there are some initial questions that need to be answered:

- Is there a need to register a legal entity in the country in order to be entitled to the proper documents for foreign staff?

- If I need to register in the country, which type of legal entity should I incorporate?

These questions need to be addressed as part of the planning process, before the mobilization of staff. The answers to these questions and others will help you to define a mobilization plan.

When planning for mobilization, one should bear in mind that many

African jurisdictions have specific challenges, among them:

- There is a lack of regulation or lack of clarity on the interpretation of regulations. When that happens, normally the interpretation of the authorities, often restrictive, will prevail. This often requires the assistance of a lawyer to intervene to press for a more permissive interpretation, consistent with the law, in order to avoid bureaucratic delays.
- The protectionist interpretation of laws in favor of national workers to the detriment of foreign workers is another challenge in many African jurisdictions. In Mozambique, for example, although the labor law applies to all workers, regardless of nationality, the labor authorities have a tendency to avoid the application of certain rules that would facilitate the hiring of foreign staff. Alert and timely intervention is often needed.

- There is a lack of technical capacity among the civil service in processing work permit applications. This often leads to delays in issuing work permits, with legal deadlines effectively ignored. Regular insistence is needed to ensure that a client's application does not sink into a bottomless pile.

Good immigration law and practice is a mobilization pillar for oil and gas projects in Africa. It depends on getting sound, timely advice when creating the mobilization plan, including options on hiring expats under the legal system as well as labor and strategic tax information. Firms should avoid hiring service providers that cope with new, extemporaneous requirements by public officials by rolling over

rather than demonstrating that the new requirement is not consistent with the law. A single-case strategy that might work in the short term will complicate the firm's hiring goals in the longer term. Riskier still are providers that handle such challenges with bribes or corruption; they may ensnare the firm in criminal violations in both local and domestic jurisdictions. Make sure the lawyers you hire in this domain are licensed, insured and qualified to deliver the services you seek, and that their law firm has adopted internal anti-bribery and corruption policies consistent with your own.

Immigration law and practice in the oil and gas industry in Africa is not simply a matter of pushing paper for visas and work permits; it starts with building a realistic mobilization plan against the backdrop of a challenging civil service environment. The oil and gas business depends first and foremost on its people, and having them in the right place at the right time is crucial. Forward human resource planning, including for immigration and labor purposes, is integral to a project's success.



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