



Centre for International  
Finance and Regulation  
Towards Financial System Integrity



# THE REGULATION OF MOBILE MONEY IN MALAWI

## PROJECT REPORT

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UNCDF is the UN's capital investment agency for the world's 48 least developed countries. It creates new opportunities for poor people and their small businesses by increasing access to microfinance and investment capital. UNCDF programmes help to empower women, and are designed to catalyze larger capital flows from the private sector, national governments and development partners, for maximum impact toward the Millennium Development Goals.



Mobile Money for the Poor (MM4P) is a global programme funded by UN Capital Development Fund (UNCDF), the Swedish International Development Cooperation Agency (SIDA) and the Australian Agency for International Development (Australian Aid).

Mobile phones have transformed lives in rich and poor countries alike. Of the world's 7 billion people, there are now 6 billion phone subscriptions globally compared with 2 billion or so bank accounts. Across 40 UN-designated Least Developed Countries (LDCs) surveyed by UNCDF, mobile phone penetration was at 30% while access to a bank account was 14% on average.

MM4P provides support to branchless and mobile financial services in a select group of LDCs where UNCDF currently operates to demonstrate how the correct mix of financial, technical and policy support can build a robust branchless and mobile financial services ecosystem in LDCs. The programme hopes to develop scalable models that can be replicated in other challenging markets and hopes to work with partners that are committed to reaching the unbanked with appropriate, accessible and affordable services.

*The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations or their Member States, including UNCDF and its funding partners.*

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## EXECUTIVE SUMMARY

### Introduction

This report is the result of a study undertaken in late 2013 on Malawi's legal and regulatory framework for mobile money.<sup>1</sup> The study was commissioned by the MM4P and conducted in consultation with the Reserve Bank of Malawi (RBM). The study had three outputs which are the focus of this report:

- (i) to provide a market update on mobile money in Malawi, focusing on the status of mobile money programs and the regulatory environment for mobile money;
- (ii) to identify the main regulatory challenges for mobile money to develop safely in Malawi; and
- (iii) to provide preliminary recommendations for RBM for dealing with those challenges.

The overarching objective of the study is to assist in developing an enabling legal and regulatory environment for market players and end-users in the mobile money space, thereby encouraging that space to develop and grow. Mobile money products and services can be used to provide access to financial services for the unbanked and under-banked, thereby providing greater opportunities for many Malawians to rise above their current standards of living.

The study is part of a broader international research project being undertaken by the Law Faculty at the UNSW on the regulation of mobile money. This international research project is supported by the Centre for International Finance and Regulation (CIFR), UNCDF, Standard Chartered Bank and UNSW.

### Market Update: Status of Mobile Money Programs and Regulatory Environment

Mobile money in Malawi was launched in early 2012. In less than two years, both the mobile money market and the regulatory environment for that market in Malawi have undergone considerable development. As in many other emerging economies, mobile money in Malawi represents a potential way to increase financial inclusion. However a number of challenges face the development of the market, both in terms of building the necessary skills and infrastructure and building sustainable consumer demand. To support this fledgling market, it will be critical for Malawi's regulators to find the right balance between providing appropriate protection for the end-users and adopting risk-based regulatory approaches which support greater financial inclusion.

### Status of Mobile Money Programs

A variety of market participants can be involved in mobile money including mobile network operators (MNOs), banks and micro-finance institutions (MFIs). The services which can be

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<sup>1</sup> A clarification on terminology – we use the term 'mobile money' to refer to the issuing, storage and access of funds on an electronic device, which is generally a mobile phone but can also include other storage devices such as prepaid cards or internet payment services. Mobile money is also referred to as e-money or stored value. This stored value is distinct from bank deposits. Bank deposits can also be accessed using mobile phones and accessing bank deposits in this manner may be invariably referred to as mobile payments, mobile banking and mobile financial services.

accessed using mobile money products include: cash-in/cash-out, payment transfers, top-up of airtime, bill payments, salary payments and government transfers.

Two MNOs, Airtel and TNM, are involved in mobile money in Malawi. Both institutions are continuing to invest in growing their mobile money operations, particularly for rural areas. They are exploring a variety of methods to continue this growth, including simplified know-your-customer (KYC) requirements for mobile money customers and partnerships, and agent-sharing arrangements with banks and MFIs.

### **Regulatory Environment: Coordination between Regulators and Industry Players**

The activity of mobile money involves a range of market players and therefore cuts across various sectors of the financial system. In Malawi, regulators from a range of areas such as banking, payments, telecommunications, competition and consumer protection are involved in coordinating the oversight approach for mobile money. Industry players are also actively involved in contributing to the strategic direction of the mobile money market.

RBM is the lead regulator for the mobile money market. The Ministry of Finance (MOF) in Malawi is involved in the strategic policy development for mobile money as part of its broader role in improving financial inclusion in the country. RBM leads coordinated efforts through industry bodies such as the National Payments Council (NPC) and the Mobile Money Coordinating Group (MMCG), and through an internal cross-departmental task force, the E-Banking Task Force. There is also considerable cooperation occurring between regulators and government bodies using mechanisms such as Memorandums of Understanding (MOUs).

### **Regulatory Environment: Development of Oversight Frameworks**

Legislative and regulatory changes currently being proposed in Malawi are responsive to the need for developing the mobile money market safely in Malawi and for broadening financial inclusion. These legislative and regulatory changes will contribute towards a more enabling legislative and regulatory environment.

The proposed legislation is the *Payments Systems Bill 2013 (Payments Bill)* and the proposed regulations are the draft *Reserve Bank (E-Money) Regulations, 2014 (E-Money Regulations)*. The *Payments Bill* has the potential to provide clarity and transparency to oversight arrangements not only for mobile money but more broadly for Malawi's payments systems and payment system providers, bringing Malawi into line with international best practice in this area.

The *E-Money Regulations* detail regulatory arrangements for e-money (which encompasses all stored value facilities including mobile money), including the requirements for entities issuing and storing the funds which e-money represents and operating the payment systems involved in the transfer of the e-money. The *E-Money Regulations* will replace the existing *Mobile Payment System Guidelines 2011 (Mobile Guidelines)*.

## Regulatory Challenges and Preliminary Recommendations

This study has been undertaken at a time when there are considerable changes afoot in both Malawi's mobile money programs and the regulatory environment. As noted above, several initiatives with policy, legislative and regulatory implications are underway. Malawi faces a number of regulatory challenges arising from these initiatives. This study identifies these challenges and provides preliminary recommendations for RBM as to the way forward, as summarised below with accompanying page references.

<b>Regulatory Challenges &amp; Preliminary Recommendations</b>
<p><b>1. Coordination Among Regulators, Between Regulators and Industry, and Regulatory Capacity (Page 22)</b></p> <ul style="list-style-type: none"><li>• Continue existing cooperative efforts among regulators for the mobile money sector in Malawi.</li><li>• Obtain assistance from development partners to include training on undertaking effective oversight and supervision for mobile money.</li><li>• Develop regulatory framework with industry consultation.</li></ul>
<p><b>2. RBM's Regulatory Mandate &amp; the Oversight Framework for Mobile Money (Page 26)</b></p> <ul style="list-style-type: none"><li>• Clarify and strengthen RBM's mandate for overseeing mobile money sector through the implementation of the <i>Payments Bill</i> and draft <i>E-Money Regulations</i>, amended to clarify:<ul style="list-style-type: none"><li>- RBM's oversight responsibility is for entities issuing, transferring and storing e-money; and</li><li>- RBM's responsibility is irrespective of the payments access method used and independent of technological developments in such access methods.</li></ul></li><li>• Increase clarity and transparency for RBM's supervisory and regulatory framework for mobile money through the implementation of the <i>Payments Bill</i> and <i>E-Money Regulations</i>, using consistent terminology for the legislation and regulations.</li></ul>
<p><b>3. Regulating the Use of Agents Networks (Page 30)</b></p> <ul style="list-style-type: none"><li>• Implement relevant provisions relating to the use of agents in draft <i>E-Money Regulations</i>.</li><li>• Consider implementation issues such as how agent approval process may work and the establishment of data base collection on the use of agents.</li></ul>
<p><b>4. Applying a Risk-Based Approach to Implementing AML/CFT Measures (Page 33)</b></p> <ul style="list-style-type: none"><li>• Implement relevant provisions in draft <i>E-Money Regulations</i>.</li><li>• Clarify how the anti-money laundering/countering the financing of terrorism (AML/CFT) measures in the <i>E-Money Regulations</i> work alongside existing AML/CFT measures in Malawi.</li></ul>

**5. Protection of Funds (Page 36)**

- Use the *E-Money Regulations* to implement trust-related protections of customers' funds focusing on the following methods:
  - Require a mobile money provider to use a trust deed with a declaration of trust (which can create the fund isolation protection);
  - Direct that this deed contain certain provisions relating to liquidity, restrictions on the use of customers' funds, and diversification (which can create the fund safeguarding protection); and
  - Provide RBM with authority to monitor the mobile money provider's compliance with the terms of the trust deed (which can reduce operational risk).

**6. Regulatory Implications of Partnerships between MNOs and Banks/MFIs (Page 42)**

- Assess partnerships on a number of grounds, including:
  - Collaboration risk; and
  - Consumer protection issues as a result of consumers potentially having access to a much broader range of financial services via a mobile phone than simply mobile money.

**7. Understanding and Building Consumer Demand for Mobile Money (Page 44)**

- Continue to focus on understanding the needs of end-users of mobile money products and services in order to support market developments which encourage innovation consistent with the end goal of improving financial inclusion.

## PART 1: INTRODUCTION

### 1.1. OBJECTIVES

1. This report has three objectives:
  - (i) to provide a market update on mobile money in Malawi, focusing on the current status of mobile money programs and the regulatory environment for mobile money;
  - (ii) to identify the main regulatory challenges for mobile money to develop safely in Malawi; and
  - (iii) to provide preliminary recommendations for dealing with those challenges.

### 1.2. FRAMEWORK OF ANALYSIS

2. The framework of analysis used to identify regulatory challenges and make preliminary recommendations has assumed Malawi will continue on its current path of implementing changes which are consistent with establishing an enabling legislative and regulatory environment for market players and end-users.<sup>2</sup> Mobile money is in its early stage of development in Malawi, and there is considerable interest amongst regulators and policy makers to support growth in this market.

3. The framework of analysis specifically focused on four legal and regulatory issues which are the focus of the report's authors' broader international research project being undertaken by the Law Faculty at UNSW on the regulation of mobile money.<sup>3</sup> During fieldwork, and in consultation with RBM, five additional regulatory challenges were identified as being particularly important in the local context of Malawi.

### 1.3. METHODOLOGY

4. A combination of desk based and field based research was undertaken for this report.

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<sup>2</sup> This regulatory approach aims to permit market players to explore different branchless banking outsourcing arrangements and products in order to provide an environment in which innovation and growth are encouraged. See, e.g., David Porteous, *The Enabling Environment for Mobile Banking in Africa*, (Report Commission by the Department for International Development, 2006); Simone di Castri, *Mobile Money: Enabling Regulatory Solutions* (GSMA Mobile Money for the Unbanked, February 2013); Eva Gutierrez and Sandeep Singh, *What Regulatory Frameworks are More Conducive to Mobile Banking? Empirical Evidence from Findex Data* (October 1, 2013); World Bank Policy Research Working Paper No 6652 <<http://ssrn.com/abstract=2338858>>.

<sup>3</sup> Several academics and development agencies throughout the world (World Bank, USAID, United Nations, Alliance for Financial Inclusion (AFI)) are currently studying legal and regulatory issues for mobile money. In order to add to this developing knowledge base, and importantly, avoid duplicating research efforts, our international research project has identified four key legal and regulatory issues in relation to mobile money which to focus upon. These are:

- Protection of customers' funds;
- Agents – legal and regulatory considerations;
- Applying a risk-based approach when implementing AML/CFT measures for mobile money; and
- The role of the regulator in understanding and building consumer demand for mobile money;



5. Desk-based research followed methodology established by the Consultative Group to Assist the Poor (CGAP) for its Branchless Banking Diagnostic Template (CGAP Template).<sup>4</sup> The research team updated the CGAP Template for recent policy developments on mobile money regulation, and focused on gathering background for the four issues pertaining to our broader international research noted above.

6. The research team also reviewed previous research reports detailing recommendations relating to mobile money in Malawi. These reports included: USAID, *Scaling Usage of Mobile Money to Boost Financial Inclusion in Malawi: Summary Action Plan* (November 2011) (*USAID Action Plan*); USAID, *Demand for Mobile Money Services: Survey Results and Report* (November 2011) (*USAID Survey Report*); and FinMark Trust, *Mapping the Retail Payment Services Landscape: Malawi* (October 2012) (*FinMark Report*).<sup>5</sup> The purpose of reviewing these earlier reports was to focus this report on contributing and extending the knowledge base created for understanding Malawi's mobile money regulatory environment.

7. Fieldwork aimed to capture a deeper understanding of Malawi's 'local context'; understanding Malawi's regulatory approach and reasons for any departure from internationally accepted norms. Fieldwork was undertaken from 5-22 December 2013. This fieldwork involved interviews with regulators, including RBM, the MOF, MFIs, MNOs, researchers, regulatory and policy coordinating groups, and development partners.

#### 1.4. STRUCTURE OF REPORT

8. This report consists of three parts and accompanying appendices.

9. Part 1, this part, outlines the objectives of the report, the framework of analysis, the methodology used and acknowledgements.

10. Part 2 provides an update on the mobile money market and regulatory environment in Malawi. It describes the market and the ways in which regulators are responding through new regulations and increased coordination.

11. Part 3 provides an outline of the main regulatory challenges identified in order for mobile money to develop safely in Malawi and contains the report's preliminary recommendations for dealing with the challenges.

12. Part 4 provides a summary of the recommendations and our conclusions.

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<sup>4</sup> CGAP, *Branchless Banking Diagnostic Template* (2010) <<http://www.cgap.org/sites/default/files/CGAP-Branchless-Banking-Diagnostic-Template-Feb-2010.pdf>>. This template was developed using various earlier diagnostic processes and models between 2006 and 2009 and released publically in 2010.

<sup>5</sup> USAID, *Scaling Usage of Mobile Money to Boost Financial Inclusion in Malawi: Summary Action Plan* (2011) <[http://egateg.usaid.gov/sites/default/files/Malawi\\_MM\\_Action\\_Plan\\_FINAL.pdf](http://egateg.usaid.gov/sites/default/files/Malawi_MM_Action_Plan_FINAL.pdf)>; USAID, *Demand for Mobile Money Services: Survey Results and Report* (2011) <[http://egateg.usaid.gov/sites/default/files/Demand%20for%20Mobile%20Money%20Services\\_Malawi\\_FINAL.pdf](http://egateg.usaid.gov/sites/default/files/Demand%20for%20Mobile%20Money%20Services_Malawi_FINAL.pdf)>; FinMark Trust, *Mapping the Retail Payment Services Landscape: Malawi* (2012) <[http://www.finmark.org.za/wp-content/uploads/pubs/Rep\\_RPS\\_landscape\\_Malawi\\_2012.pdf](http://www.finmark.org.za/wp-content/uploads/pubs/Rep_RPS_landscape_Malawi_2012.pdf)>.

13. Appendix 1 provides a list of acronyms used in this report. Appendix 2 notes caveats on our preliminary recommendations. Appendix 3 provides resources on consumer demand related literature. Appendix 4 lists interviewees. Appendix 5 lists source documents used for this report.

## **1.5. ACKNOWLEDGMENTS**

### **Interviewees**

14. Our thanks to the many participants in Malawi's mobile money sector who gave their time and attention over the course of this study. Our particular thanks go to the staff of RBM Payments Department, who served as a focal point throughout the study.

### **Project Sponsors**

15. Our thanks also go to the sponsors of our wider research project: CIFR, UNCDF, Standard Chartered Bank, and UNSW. Funding from these sponsors provided our team with the resources we needed to undertake the fieldwork and write this report.

## PART 2: MARKET AND REGULATORY UPDATE

### 2.1. BACKGROUND ON MALAWI

#### General

17. The Republic of Malawi is a landlocked country in southeast Africa. It is bordered by Zambia to the northwest, Tanzania to the northeast, and Mozambique on the east, south and west.<sup>6</sup> Lilongwe is the capital of Malawi and Blantyre, Malawi's second largest city, is considered the country's financial centre.

18. Malawi's population is almost 17 million.<sup>7</sup> Around 85% of the population live in rural areas.<sup>8</sup> Malawi has a young population: about 65% of the population is aged under 24 years.<sup>9</sup> Malawi has relatively high literacy levels; 74.8% of the population (age 15 and over) can read and write.<sup>10</sup>

19. Malawi's Human Development Index value for 2012 was 0.418 (placing Malawi in the 'low human development' category), ranking 170 out of 187 countries and territories.<sup>11</sup> Malawi's Gross National Income per head is \$US320.<sup>12</sup> Around 90% of the population is involved in agriculture.<sup>13</sup> Foreign aid comprises just over a quarter of total GDP.<sup>14</sup>

20. Around three quarters of the population live below the international severe poverty line (US\$1.25/day).<sup>15</sup> Life expectancy is low (around 53 years), infant mortality is high (77 in 1000) and there are limited health care resources (just over 1 hospital bed per 1000 people).

#### Access to Finance and Financial Infrastructure

21. It is estimated that 81% of Malawians do not have access to an account at a formal financial institution.<sup>16</sup> Limited financial infrastructure, as indicated by statistics sourced from the *FinMark Report*, has so far inhibited growth in the use of formal financial services and cash remains the most dominant payments mechanism.

22. In 2012, penetration of banking infrastructure per 100,000 adults was as follows:

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<sup>6</sup> Ibid.

<sup>7</sup> Central Intelligence Agency, *Malawi: The World Factbook* (6 January 2014) <<https://www.cia.gov/library/publications/the-world-factbook/geos/mi.html>>.

<sup>8</sup> European Commission, *Malawi: Development and Cooperation* (EuropeAid, 6 January 2014) <[http://ec.europa.eu/europeaid/where/acp/country-cooperation/malawi/malawi\\_en.htm](http://ec.europa.eu/europeaid/where/acp/country-cooperation/malawi/malawi_en.htm)>.

<sup>9</sup> CIA, above n 7.

<sup>10</sup> Ibid.

<sup>11</sup> United Nations Development Programme, *Human Development Report 2013: Malawi* (7 January 2014) <<http://hdr.undp.org/sites/default/files/Country-Profiles/MWI.pdf>>.

<sup>12</sup> The World Bank, *Malawi Data* (2014) <[data.worldbank.org/country/Malawi](http://data.worldbank.org/country/Malawi)>.

<sup>13</sup> CIA, above n 7.

<sup>14</sup> Nationmaster, *Malawi Economic Stats* (6 January 2014) <<http://www.nationmaster.com/country-info/profiles/Malawi/Economy>>.

<sup>15</sup> Unicef, *Malawi Statistics* (6 January 2014) <[http://www.unicef.org/infobycountry/malawi\\_statistics.html](http://www.unicef.org/infobycountry/malawi_statistics.html)>.

<sup>16</sup> See RBM, *Malawi National Payment Systems Vision and Strategy Framework for the Period 2014 to 2018* (December 2013) 7, ('*Payment System Vision for 2014-2018*').

- Bank branches: 1 (166 in the country);
- Automatic Teller Machines (ATMs): 1.9 (300);
- Post offices: 2.4 (380); and
- Agents: 12.6 (around 2,000).

23. The *FinMark Report* noted that cash remained the most dominant payments mechanism and remittances were an important source of income for many Malawians. Popular remittance methods were via the Malawi Postal Corporation's (MPC) FastCash service or through minibus drivers for domestic remittances.<sup>17</sup> FastCash is a domestic and international remittance service which also includes bill payments. The *FinMark Report* highlighted the MPC's extensive branch network throughout Malawi – 330 branches at the time of that report in 2012.

24. This limited financial infrastructure and reliance on basic remittance channels indicate mobile money, as an alternative means of accessing formal financial services, could be embraced by many Malawians. From a strategic policy planning perspective for growth in financial inclusion, consideration may need to be given to how the mobile money infrastructure will be established and become viable alongside existing infrastructure such as that operated by the MPC for FastCash.

### **Telecommunication Infrastructure & Mobile Phone Penetration**

25. Four operators offer fixed and mobile telephone services in Malawi: Bharti Airtel (Airtel), Telekom Networks Malawi Limited (TNM), Access Communications Limited (ACL) and Malawi Telecommunications Limited (MTL).<sup>18</sup>

26. Estimates suggest approximately 90% of the population are covered by a mobile signal and mobile penetration is around 33%, of which 45% is rural based and 55% urban based.<sup>19</sup> While mobile penetration rates are much lower than in many other countries<sup>20</sup>, the rate is higher than the percentage of people currently with access to formal financial services (19%), suggesting mobile phones can be successfully used as an access point for formal financial services, thereby increasing financial inclusion. However, Malawi's reliance on mobile money to facilitate the growth in financial inclusion may be constrained due to the challenges of developing a reliable and extensive mobile network infrastructure.<sup>21</sup>

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<sup>17</sup> Ibid.

<sup>18</sup> Lewis Kalasawa, *Mobile and Cyberthreat Issues* (Presentation to the Fifth Annual African Consumer Protection Dialogue Conference, 10-12 September 2013) 4. More details on the telecommunications sector can be found in a recent report: BuddeComm, *Malawi – Telecoms, Mobile, Broadband and Forecasts* (2014) <<http://www.budde.com.au/Research/Malawi-Telecoms-Mobile-Broadband-and-Forecasts.html>>.

<sup>19</sup> Kalasawa, Ibid, 4.

<sup>20</sup> See World Bank and International Telecommunications Union, *The Little Data Book on Information and Communication Technology 12* (2012).

<sup>21</sup> See Edwin Saidi, 'Mobile Opportunities, Mobile Problems: Assessing Mobile Commerce Implementation Issues in Malawi', *Journal of Internet Banking and Commerce*, 14 (2009) 5, <<http://www.arraydev.com/commerce/jibc/2009-04/Saidi.pdf>>: Saidi refers to poor mobile network infrastructure in Malawi. Also see Kalasawa, above n 19, 4-7: Kalasawa refers to the existence of several problems in relation to mobile and internet use, namely, unsatisfactory and intermittent mobile service quality, high tariffs on internet and mobile phones, poor customer service, and low internet connectivity.

## 2.2. MOBILE MONEY IN MALAWI

### Mobile Money Providers in Malawi

27. At the time of writing this report mobile money was being provided by two MNOs: Airtel and TNM.

- Airtel launched Airtel Money (or ‘Khusa M’manja’) on 29 February 2012.<sup>22</sup> Airtel Money provides payment services including: cash in and out, remittances, top-ups for airtime and insurance.<sup>23</sup> International non-government organisations such as Save the Children and the World Food Program have used Airtel mobile money to distribute cash subsidies to Malawian families.
- TNM, a mobile company, launched TNM Mobile Money on 2 May 2013.<sup>24</sup> TNM Mobile Money enables remittances, bill payments, cash in and out, top-ups for airtime, salary payments and insurance.<sup>25</sup>

28. Extrapolating on data estimates suggest that around 10% of total mobile phone users in Malawi currently use or have mobile money accounts.<sup>26</sup>

29. Airtel and TNM are now partnering with banks and MFIs to add greater depth to mobile money product offerings and leverage on existing agent networks established by banks and MFIs (MNO-bank/MFI partnerships). These partnership initiatives should lead to further growth in mobile money in Malawi. In such partnerships, customers have a mobile money account with the MNO and a deposit account with the partner bank or MFI. Customers are able to transfer money between these accounts. For example, Airtel operates such a partnership with Opportunity Bank, an MFI. TNM is piloting such a partnership with First Merchant Bank.

30. A number of international organisations are active in helping to extend the reach of mobile money in Malawi, such as the MM4P, US Agency for Development (USAID), the World Bank and Family Health International 360 (FHI 360). For example, the USAID-funded Mobile Money Accelerator Program provided by FHI 360 plans to pilot providing teacher payments through mobile money.

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<sup>22</sup> Bharti Airtel is an Indian multinational telecommunications company that purchased the African operations of the Kuwaiti mobile company Zain (including Malawi) in 2010: John Ribeiro, ‘India’s Bharti Airtel Completes Acquisition of Zain Africa’, *PCWorld* (June 8, 2010) <<http://www.pcworld.com/article/198287/article.html>>.

<sup>23</sup> Airtel provides the insurance service in partnership with Smile Life Insurance company: Rogers Siula, ‘Airtel Malawi and Smile Life Insurance in Partnership’, *Nyasatimes* (Press Release, 2012) <[http://mobilemoneyafrica.com/details.php?post\\_id=689](http://mobilemoneyafrica.com/details.php?post_id=689)>.

<sup>24</sup> The service is also called ‘Mpamba’, a local language name meaning ‘Start-up Capital’: ‘TNM Launches Mobile Banking’, *Face of Malawi* (May 3, 2013) <<http://www.faceofmalawi.com/2013/05/tnm-launches-mobile-banking/>>.

<sup>25</sup> TNM provides this insurance service in partnership with Nico Life Insurers: Nico Life and TNM (Corporate Presentation, August 2013) <<http://www.nico-life.com/pdfs/TNM-Moyo-Cover-1-Aug-2013-Corporate-Presentation.pdf>>.

<sup>26</sup> This estimate is based on data estimates: assuming 33% of population has a mobile phone (or 5.5million people, see data quoted above) and MNOs mobile money customer base is between 0.4-0.5 million.

## Challenges to Growth

31. Both MNOs are encountering challenges in expanding the outreach of their mobile money services, particularly in rural areas. Many of these challenges have been noted in earlier reports as barriers to uptake of formal financial services, particularly payment systems.<sup>27</sup>

32. The low level of financial literacy has been a key issue for MNOs when selecting and training agents. This, alongside the other issues which are commonly experienced in building agent networks in emerging countries (and which are now well documented<sup>28</sup>), has led to MNOs using considerable resources in building agent networks. This situation may have restricted the MNOs' expansion of agent networks in Malawi.<sup>29</sup>

33. Challenges faced by MNOs in encouraging customers to use mobile money services include:

- Low levels of financial literacy;
- Limited trust - many Malawians in rural areas have never used banks and so do not sufficiently trust financial services to take up mobile money;
- The absence of a national identification system which can make it difficult for MNOs and agents to comply with KYC requirements for the unbanked;
- Small incomes of customers – MNOs find it difficult to establish profitable business models with customers who often have very small incomes;
- Relatively low penetration rate of mobile phones - many Malawians do not have a mobile phone or do not regularly use one; and
- Limited infrastructure in remote rural areas means some Malawians may need to travel long distances simply to charge their phone, which reduces the convenience that mobile money may be otherwise able to offer.

## 2.3. REGULATORY ENVIRONMENT

### Regulators Involved in Mobile Money

34. The regulation of mobile money generally involves a number of government bodies and regulators. This is due to the range of players in the market and because the provision of mobile money sits between traditional segmented activities of deposit-taking and payments services.

35. In Malawi, RBM is the lead regulator for mobile money and it is now focused on developing and formalising the over-arching regulatory framework for the mobile money sector. The MOF in Malawi is involved in the strategic policy development for mobile money as part of its broader role in improving financial inclusion in the country. A range of other regulators in Malawi are also exploring and developing regulatory responses for the mobile money market, including

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<sup>27</sup> See *FinMark Report*, above n 5; *USAID Action Plan*, above n 5; and *USAID Survey Results*, above n 5.

<sup>28</sup> See, for example, an explanation of the issues in this article focusing on the Reserve Bank of Zimbabwe's (RBZ) directive for mobile money operators to seek RBZ's permission prior to entering into exclusive agreements with agents: 'Mobile Money War: RBZ Moves In', *The Standard* (2 March, 2014) <<http://www.thestandard.co.zw/2014/03/02/mobile-money-war-rbz-moves/>>.

<sup>29</sup> At the time of doing fieldwork for this study, data on the growth in the numbers of agents for mobile money were not available.

regulators from the following sectors: telecommunications, competition, consumer protection and anti-money laundering and countering the financing of terrorism.

36. The regulators in Malawi involved in mobile money and their specific focus are listed below:

#### *The Reserve Bank of Malawi (RBM)*

37. RBM is involved in mobile money through its mandate to promote and oversee Malawi's national payment system.<sup>30</sup> Three departments within RBM are relevant to regulating and supervising mobile money:

- The Payments Department is the lead department for the supervision and regulation of mobile money; it leads coordinated efforts for RBM with a number of regulatory institutions as described below (see Policy and Regulatory Coordination).
- The Bank Department is involved in mobile money through its contribution to the work of the E-Banking Task Force. The Bank Department is now considering regulatory responses to the growing number of MNO-bank/MFI partnerships.
- The Micro-finance and Capital Markets Department (RBM-MF/CM Department) is involved in developing consumer demand for mobile money.

#### *Ministry of Finance (MOF)*

38. By promoting financial sector development and financial inclusion, the MOF has contributed to the growth of mobile money. RBM's focus on developing an enabling regulatory framework to encourage the use of mobile money is to give effect to the MOF's goals for financial inclusion.

#### *Malawi Communications Regulatory Authority (MACRA)*

39. MACRA regulates the postal, telecommunications and broadcasting sectors. It administers the *Communications Act 1998*; and an MNO needs a license from MACRA under this Act in order to provide mobile money.<sup>31</sup>

#### *Financial Intelligence Unit (FIU)*

40. The FIU is an autonomous central national agency reporting directly to the Minister of Finance. The FIU has wide ranging powers in relation to combating money laundering and terrorist financing.<sup>32</sup>

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<sup>30</sup> *Reserve Bank of Malawi Act 1989*, section 4(e) (*RBM Act*): as amended by the *Reserve Bank of Malawi Act 2010*.

<sup>31</sup> *Communications Act 1998*, section 3.

<sup>32</sup> These include the power to 'enter into contracts, responsible for receiving, requesting, analyzing and disseminating to competent authorities disclosures of financial information as required under this Act in order to counter money laundering and financing of terrorism': *AML/CFT Act* s11. Note that 'competent authority' means 'the Director of Public Prosecutions, and includes any person authorized by him in that behalf': *AML/CFT Act*, section 2. There are also several other important institutions involved in AML/CFT, however their work does not directly relate to KYC for mobile money and so they are not specifically considered here. These institutions include the National Anti-Money Laundering and Combating the Financing of Terrorism Committee, the Malawi Police Service, the Director of Public Prosecutions, and the National Counter Terrorism Committee. Furthermore, Malawi is a member of the regional group called the Eastern and Southern Africa Antimoney Laundering Group.

### *Competition and Fair Trading Commission (CFTC)*

41. The CFTC examines competition and consumer protection issues. The role of the CFTC may become more prominent in mobile money in response to MNO-banks/MFI partnerships.

### *Regulatory Coordination*

42. There are significant efforts directed towards coordinating regulatory approaches for mobile money in Malawi. These coordinated efforts support Malawi's move towards establishing an enabling legal and regulatory environment for mobile money.

43. The coordinated regulatory approaches led by RBM is evidenced through industry bodies such as the NPC and through RBM's internal intra-departmental task force, known as the E-Banking Task Force. RBM, along with other regulators, industry players and donor partners also facilitates coordination between regulators and industry through the MMCG.

44. The composition and focus of these coordinating bodies are detailed below:

### *The National Payment Council (NPC)*

45. The NPC consists of RBM and a range of banks and finance companies.<sup>33</sup> It is designed to encourage cooperation in modernising Malawi's payment systems. The NPC provides a forum for institutions to assemble and share ideas.

### *The E-Banking Task Force*

46. The E-Banking Task Force is an intra-departmental group comprising the following departments within RBM: banking, payments, internal audit, information and communication, exchange control and debt management. The E-Banking Task Force was formed to regulate and guide the mobile payment services sector and played a key role in developing the initial guidelines for the mobile money sector by producing the *Mobile Guidelines*.

### *Mobile Money Consultative Group (MMCG)*

47. The MMCG consists of a variety of regulators, donors, banks, and the two MNOs.<sup>34</sup> MMCG aims to boost the use of mobile money in Malawi by facilitating and incorporating the views of a variety of stakeholders (policy, regulatory, and market) into regulation and policy objectives for mobile money. Aside from focusing on regulatory issues, the MMCG is involved in a variety of areas of mobile money, including: financial literacy education, pilot programs for government to person (G2P) and social cash transfers. On 29 January 2014 a study into the MMCG was

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<sup>33</sup> For membership list of NPC see Bank for International Settlements (BIS), *The Payment System in Malawi* 63 <<http://www.bis.org/cpss/paysys/Malawi.pdf>>.

<sup>34</sup> Press reports indicate MMCG members are drawn from the World Bank, RBM, Bankers Association of Malawi, Malawi Microfinance Network, MACRA, and the MOF. If this is the case, the MMCG would appear to form the basis of a very useful collaborative effort for mobile money in Malawi given the range of expertise being brought to the table. See Science and Technology World, *Kenya Transferred \$22bn Via Mobile Money – CBK* (31 January 2014) <<http://en.twtn.com/Bignews/57943.html>>.



announced. This study is due to explore moving the MMCG from an institution funded by USAID to an autonomous body.<sup>35</sup>

48. A number of informal and formal mechanisms are also used by regulators in Malawi to establish coordinated efforts with respect to mobile money development, as detailed below:

#### *RBM-Payments Department-Ministry of Finance*

49. The RBM Payments Department coordinates with the MOF to ensure its payment system development is consistent with MOF's broader strategies for the financial system.<sup>36</sup>

#### *RBM-MACRA-Ministry of Finance*

50. An MOU operates between RBM, MACRA and the MOF which states that all three institutions will have input into mobile money regulation.

#### *RBM-FIU*

51. An MOU operates between the FIU and RBM. The FIU is responsible for compliance with AML and CFT regulations.

#### *CFTC-MACRA*

52. An MOU between the CFTC and MACRA was signed in 2013. This MOU establishes a framework for technical cooperation and interaction between the two organisations in the enforcement of anti-competitive behaviour, unfair trading practices, mergers and acquisitions and market studies in the telecommunications sector.

53. At that time of writing this report, regulators in Malawi were exploring additional opportunities to coordinate efforts on mobile money, as detailed below.

#### *RBM-Payments Department-MACRA*

54. The RBM was planning to sign an MOU with MACRA. This MOU would aim to ensure effective coordination on issues of mobile money and streamlined information sharing.

#### *RBM-CFTC*

55. The CFTC was planning to enter into an MOU with RBM to provide a framework for cooperating and enforcing consumer welfare issues in the financial sector. The CFTC aims to implement this MOU by June 2014.

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<sup>35</sup> Telecompaper, *Malawi to Set Up Mobile Money Co-ordination Group* (January 2012) <<http://www.telecompaper.com/news/malawi-to-set-up-mobile-money-coordination-group--992760>>.

<sup>36</sup> For example, as outlined below, the MOF produced the *Financial Inclusion Strategy for 2010-2014*, which focused on extending financial services; RBM has encouraged the development of mobile money to give effect to MOF's vision expressed in its *Financial Inclusion Strategy for 2010-2014* document.

## *CFTC-Ministry of Information*

56. The CFTC plans to engage with the Ministry of Information and Civic Education to better understand this Ministry's plan to enact draft legislation to deal with mobile and cyber issues.

## **Strategic Development for Mobile Money**

57. A number of strategic policy documents are used by RBM and the MOF to outline the road map for both payments system development and financial inclusion, which directly affect the development of the mobile money sector in Malawi. These documents are useful to clarify for all stakeholders the policy objectives of regulators and proposed strategic developments for the financial system in Malawi.

58. These documents include:

- The *Malawi National Payment System Vision and Strategy Framework for the Period 2009 to 2013 (Payment System Vision for 2009-2013)*;<sup>37</sup>
- The draft *Malawi National Payment Systems Vision and Strategy Framework for the Period 2014 to 2018 (Payment System Vision for 2014-2018)*;<sup>38</sup>
- The *Malawi National Strategy for Financial Inclusion 2010-2014 (Financial Inclusion Strategy for 2010-2014)*;<sup>39</sup> and
- The RBM's draft *July 2013 to December 2016 Planned Strategy (RBM Strategy for 2013-2016)*.<sup>40</sup>

59. The focus of these documents is largely on developing strategies and policies to support the move from cash-based payments to an increased use of electronic payment channels with the objective of providing the unbanked and under-banked increased access to formal financial services.

60. Underscoring the Malawi Government's commitment to move from cash based payments to electronic channels was the announcement by the MOF, on 1 July 2013, that it was joining the

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<sup>37</sup> The *Payment System Vision for 2009-2013* contains plans endorsed by RBM, NPC and the Bankers Association of Malawi (BAM). The *Payments System Vision for 2009-2013* advocates for developing electronic payment channels to serve the banked and unbanked through expanding point-of-sale and ATM networks and greater interoperability amongst financial institutions: RBM, *Payment System Vision for 2009-2013*, 12-13, 15 <[http://www.rbm.mw/documents/payment\\_systems/NPS%20Vision%20%20Strategy%20Framework%20December%202008%20Final.pdf](http://www.rbm.mw/documents/payment_systems/NPS%20Vision%20%20Strategy%20Framework%20December%202008%20Final.pdf)>.

<sup>38</sup> The *Payment System Vision for 2014-2018* advocates for extending financial services to the unbanked, including by promoting interoperability between mobile payment providers, promoting financial inclusion through affordable banking solutions, and by broadening the availability of payment products and services and adopting new technologies: *Payment System Vision for 2014-2018*, above n 16, 8, 12, 13.

<sup>39</sup> The *Financial Inclusion Strategy for 2010-2014*, issued by the MOF, emphasises the need to expand services beyond the formal banking sector. This document highlights the need to reduce the costs of a cash economy but to also provide greater access to electronic channels, (including mobile phones) in terms of a broader focus on payments system development. The *Financial Inclusion Strategy 2010-2014* also emphasises that incentives should be offered to financial providers involved in piloting new access-friendly innovations.

<sup>40</sup> This document focuses on encouraging people to take up new payment avenues which will include mobile money through, for example, public awareness campaigns and market-based research.

Better Than Cash Alliance (BTCA).<sup>41</sup> Malawi is also in the process of establishing a national switch which will provide a switching platform for internet banking, remittances and mobile money transactions.<sup>42</sup> All banks and MNOs will be able to join the switch with the intention that retail payment systems will eventually move towards being interoperable.

## Main Regulatory Framework for Mobile Money

61. Currently mobile money in Malawi is predominantly guided by the *Mobile Guidelines*.<sup>43</sup> The *Mobile Guidelines* cover the non-bank led model of mobile money; these guidelines clarify that MNOs are able to provide mobile money in Malawi and to which requirements MNOs are expected to adhere.

62. Legislative and regulatory changes are currently being proposed in Malawi in response to the need for developing the mobile money market in Malawi and for broadening financial inclusion. The proposed legislation is the *Payments Bill* and the proposed regulations are the draft *E-Money Regulations*.

63. The *Payments Bill* will provide greater clarity and transparency to RBM's oversight arrangements not only for mobile money but more broadly for Malawi's payments systems and payment system providers, bringing Malawi into line with international best practice in this area.<sup>44</sup>

64. The draft *E-Money Regulations* detail regulatory arrangements for e-money (which encompasses all stored value facilities including mobile money), including the approval and licensing of entities (and their agents) issuing and storing the underlying funds which e-money represents and operating the payment systems involved in the transfer of the e-money.<sup>45</sup> The regulations do not prohibit any particular type of institution from providing mobile money but instead take an activity-focused approach; any entity providing e-money is captured by the regulations. In this way, the *E-Money Regulations* will cover all entities providing mobile money, including banks and non-banks.<sup>46</sup> The *E-Money Regulations* will replace the existing *Mobile Guidelines*.<sup>47</sup> At the time of writing this report, in March 2014, it was expected that the *E-Money Regulations* would be under consideration by the MOF and then mandated and gazetted by the Minister of Finance, pursuant to the *RBM Act*.

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<sup>41</sup> See BTCA, *Malawi Joins Better Than Cash Alliance* (Press Release, 27 June 2013)

<<http://betterthancash.org/news-releases/malawi-announces-commitment-to-transition-to-electronic-payments>>.

<sup>42</sup> Chikondi Chiyemekeza, *Malawi National Switch Centre Live in 2014* (September 2 2013)

<<http://mwnation.com/malawi-national-switch-centre-live-2014/>>.

<sup>43</sup> Note that the *Mobile Guidelines* are not 'law' per se: laws/regulations must be issued by the Minister of Finance as per *RBM Act*, section 56.

<sup>44</sup> The *Payments Bill* was widely circulated amongst the policy, regulatory, and donor community in Malawi, such as the World Bank and International Monetary Fund.

<sup>45</sup> The *E-Money Regulations* were drafted by RBM-Payments Department with input from a consultant provided through the World Bank's Financial Sector Assistance Program.

<sup>46</sup> 'E-money service provider' is defined in *E-Money Regulations*, section 4 to mean 'a legal entity that accepts banknotes, coins or other means of payment in exchange for e-money, and facilitates the transfer of this e-money to make payments and transfers.' This means a bank or non-bank can be an e-money issuer and so is obliged to confirm with agent rules in the regulations: see *E-Money Regulations*, section 3.1.

<sup>47</sup> *E-Money Regulations*, section 43.

## Additional Regulations Pertaining to Mobile Money

65. Mobile money activities in Malawi are also governed by additional regulations as listed below:

66. The *Money Laundering Proceeds of Serious Crime and Terrorist Financing Act 2006 (AML/CFT Act)* and the *Money Laundering, Proceeds of Serious Crime and Terrorist Financing Regulations 2011 (AML/CFT Regulations)* – mobile money providers are defined as financial institutions (i.e. money transmission services) under the *AML/CFT Act*.<sup>48</sup>

67. The *Communications Act 1998 (Communications Act)* – an MNO must be licensed by MACRA under this legislation in order to undertake the activity of providing mobile money.

68. The *Competition and Fair Trading Act 2000 (Competition Act)* applies to commercial activity in Malawi, potentially also including MNO-bank/MFI partnerships.

69. The *Banking Act 1989 (Banking Act)* – banks are required to obtain approval from RBM before engaging in MNO-bank/MFI partnerships.

70. The *Consumer Protection Act 2003* – MACRA administers this legislation. It includes provisions outlining customers' redress mechanisms and specifies that contracts governing financial transactions shall be interpreted, implemented and enforced: (a) in good faith; (b) consistent with the instrument embodying the contract between the parties; and (c) in a manner consistent with the laws governing or regulating financial transactions.<sup>49</sup> As Malawi further develops its legislative and regulatory framework for mobile money, it is expected that this legislation will be applied more directly to the mobile money sector.

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<sup>48</sup> See *AML/CFT Act*, section 2 (see definition of Financial Institution).

<sup>49</sup> See *Consumer Protection Act 2003*: Part VIII (redress mechanisms), section 28(2) (specifications for contracts). See also *FinMark Report*, above n 5, 18.

## PART 3: REGULATORY CHALLENGES & PRELIMINARY RECOMMENDATIONS

71. The Part outlines the regulatory challenges for mobile money to develop safely in Malawi and provides preliminary recommendations for dealing with the challenges. Some caveats to note on interpreting and considering the implementation of the recommendations in this report are outlined in Appendix 2.

72. The table below summarises the challenges identified and preliminary recommendations. Each of these challenges and recommendations are then addressed in turn in the following sections of this Part of the report.

<b>Regulatory Challenges &amp; Preliminary Recommendations</b>
<p><b>1. Coordination Among Regulators, Between Regulators and Industry, and Regulatory Capacity (Page 22)</b></p> <ul style="list-style-type: none"><li>• Continue existing cooperative efforts among regulators for the mobile money sector in Malawi.</li><li>• Obtain assistance from development partners to include training on undertaking effective oversight and supervision for mobile money.</li><li>• Develop regulatory framework with industry consultation.</li></ul>
<p><b>2. RBM's Regulatory Mandate &amp; the Oversight Framework for Mobile Money (Page 26)</b></p> <ul style="list-style-type: none"><li>• Clarify and strengthen RBM's mandate for overseeing mobile money sector through the implementation of the <i>Payments Bill</i> and draft <i>E-Money Regulations</i>, amended to clarify:<ul style="list-style-type: none"><li>- RBM's oversight responsibility is for entities issuing, transferring and storing e-money; and</li><li>- RBM's responsibility is irrespective of the payments access method used and independent of technological developments in such access methods.</li></ul></li><li>• Increase clarity and transparency for RBM's supervisory and regulatory framework for mobile money through the implementation of the <i>Payments Bill</i> and <i>E-Money Regulations</i>, using consistent terminology for the legislation and regulations.</li></ul>
<p><b>3. Regulating the Use of Agents Networks (Page 30)</b></p> <ul style="list-style-type: none"><li>• Implement relevant provisions relating to the use of agents in draft <i>E-Money Regulations</i>.</li><li>• Consider implementation issues such as how agent approval process may work and the establishment of data base collection on the use of agents.</li></ul>
<p><b>4. Applying a Risk-Based Approach to Implementing AML/CFT Measures (Page 33)</b></p> <ul style="list-style-type: none"><li>• Implement relevant provisions in draft <i>E-Money Regulations</i>.</li><li>• Clarify how the anti-money laundering/countering the financing of terrorism (AML/CFT) measures in the <i>E-Money Regulations</i> work alongside existing AML/CFT measures in Malawi.</li></ul>

### **5. Protection of Funds (Page 36)**

- Use the *E-Money Regulations* to implement trust-related protections of customers' funds focusing on the following methods:
  - Require a mobile money provider to use a trust deed with a declaration of trust (which can create the fund isolation protection);
  - Direct that this deed contain certain provisions relating to liquidity, restrictions on the use of customers' funds, and diversification (which can create the fund safeguarding protection); and
  - Provide RBM with authority to monitor the mobile money provider's compliance with the terms of the trust deed (which can reduce operational risk).

### **6. Regulatory Implications of Partnerships between MNOs and Banks/MFIs (Page 42)**

- Assess partnerships on a number of grounds, including:
  - Collaboration risk; and
  - Consumer protection issues as a result of consumers potentially having access to a much broader range of financial services via a mobile phone than simply mobile money.

### **7. Understanding and Building Consumer Demand for Mobile Money (Page 44)**

- Continue to focus on understanding the needs of end-users of mobile money products and services in order to support market developments which encourage innovation consistent with the end goal of improving financial inclusion.

## **3.1. COORDINATION AMONG REGULATORS, BETWEEN REGULATORS AND INDUSTRY, AND REGULATORY CAPACITY**

### **Background**

#### ***Coordination between Regulators – Essential for Mobile Money Sector***

73. As the activity of mobile money may involve a range of market players it may involve a number of regulators with different regulatory responsibilities. Cooperative efforts among regulators are essential to ensure consistent and coordinated policy approaches and the smooth implementation of legislative and regulatory initiatives. For these reasons it is important for a country to have mechanisms in place for effective cooperation between the regulators.<sup>50</sup>

#### ***Capacity of Regulators Needs Assessment***

74. Cooperation and coordination between regulators will be most effective when the relative strengths of the different regulators are drawn on. Local context will ultimately determine which regulator leads and what responsibilities other regulators assume. An assessment of the capacity of the regulators to undertake their designated roles should be conducted. Training and education should be arranged, where necessary, in order to develop expertise.

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<sup>50</sup> Further details on international best practice on cooperative oversight arrangements can be found in the BIS, *Central Bank Oversight of Payment and Settlement Systems* (May 2005) <<https://www.bis.org/publ/cpss68.htm>>.

### *Approach to Regulation – Implications for Effectiveness of Coordination Approaches*

75. Specific regulatory approaches will have implications for how cooperation between regulators proceeds. For example, if regulations adopt an entity-focused regulatory approach there may be a tendency for regulators to operate with a silo approach to developing regulations reflecting their own areas of expertise rather than reflecting a holistic risk-based approach to developing regulations. This can lead to an unequal playing field for the different entity types being regulated, creating problems such as disproportionate regulation or regulatory arbitrage. In contrast, an activity-focused risk-based regulatory approach will encourage cooperation between regulators to develop a level playing field for the different entities involved in the same activity of providing mobile money products and services.

### *Industry Consultation*

76. A regulatory framework developed with industry consultation will be more responsive to new market players and technological innovations and regulators may find it easier to assess the potential market impact of regulatory changes. Regulators who actively engage new players in the policy development process will be able to more readily keep pace with the developments in this innovative sector of the payments system. This will be beneficial for regulators, market players and the end-users. Industry players can highlight the risks for the regulators and identify how they will mitigate them. Financial regulators will be better prepared to respond to consumer confidence issues or concerns on system stability risks.

### *Coordination Among Regulators and Between Regulators and Industry Players in Malawi*

77. In Malawi, regulators from a range of areas such as banking, payments, telecommunications, competition and consumer protection are involved in coordinating the oversight approach for mobile money. Industry players are also actively involved in contributing to the strategic direction of the mobile money market. These coordinated efforts should support Malawi in moving towards establishing an enabling legal and regulatory environment for mobile money.

### *RBM Leading Coordinated Efforts*

78. RBM is the lead regulator for the mobile money market. The MOF is involved in the strategic policy development for mobile money as part of its broader role in improving financial inclusion in Malawi. RBM leads coordinated efforts through industry bodies such as the NPC and the MMCG, and through an internal cross-departmental task force, the E-Banking Task Force.<sup>51</sup> There is also considerable cooperation occurring between regulators and government bodies using informal and formal mechanisms such as MOUs.<sup>52</sup> As an example of informal cooperation and coordination RBM has encouraged the development of mobile money to give effect to MOF's vision expressed in its *Financial Inclusion Strategy for 2010-2014* document to extend financial services to the unbanked. At that time of writing this report, regulators in Malawi were continuing to explore additional opportunities to coordinate efforts on mobile money.<sup>53</sup>

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<sup>51</sup> The composition and focus of the coordinating bodies are detailed in Part 2.3 of this report.

<sup>52</sup> Details on MOUs are outlined in Part 2.3 of this report.

<sup>53</sup> Details on these plans are outlined in Part 2.3 of this report.

79. The MMCG is an example of coordination between donor partners, regulators and industry. The MMCG consists of a variety of regulators, donors, banks, and the two MNOs. MMCG focuses on coordinating activities to promote mobile money expansion in Malawi. In late January 2014, plans were announced to study how the MMCG could be established as an autonomous group once the USAID funding for the existing group comes to a completion.<sup>54</sup>

### *Cooperation and Coordination on Strategic Development for Mobile Money in Malawi*

80. Malawian regulators also notably make use of a number of strategic policy documents to outline road maps for both payments system development and financial inclusion, which directly affect the development of the mobile money sector in Malawi. These documents are useful to clarify for all stakeholders the policy objectives of regulators and proposed strategic developments for the financial system in Malawi. Details of these documents are provided in Part 2.3 of this report. The focus of these documents is largely on developing strategies and policies to support the move from cash-based payments to an increased use of electronic payment channels with the objective of providing the unbanked and under-banked increased access to formal financial services.

81. Underscoring the Malawi Government's commitment to move from cash-based payments to electronic channels was the announcement by the MOF, on 1 July 2013, that Malawi was joining the BTCA.<sup>55</sup>

### *Activity-Focused Risk-Based Approach to Regulating Mobile Money Facilitates Coordination and Cooperation Efforts in Malawi*

82. RBM's oversight framework for mobile money, as detailed in the proposed *E-Money Regulations*, uses an activity-focused risk-based approach. We support this approach as it will encourage the various regulators with responsibility for the mobile money sector (e.g. RBM, CFTC, MACRA, FIU) to continue to work together on strategic and policy development for the mobile money sector in Malawi.<sup>56</sup>

## **Regulatory Capacity in Malawi**

### *RBM's Intradepartmental Coordination – Beneficial for Regulatory Capacity*

83. RBM's existing intra-departmental coordination on mobile money issues, and electronic banking more generally, would contribute positively to building the skills and expertise of regulators involved in supervision and oversight of mobile money sector. The E-Banking Task Force, an intra-departmental group comprising a number of departments within RBM (including

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<sup>54</sup> Currently MMCG is funded through the Mobile Money Programme funded by the USAID.

<sup>55</sup> See BTCA, above n 41.

<sup>56</sup> For further discussion on issues arising from ineffective cooperation see, Loretta Michaels, *Can Mobile Money Support Post-Conflict Development?* (9 August 2011) <<http://www.cgap.org/blog/can-mobile-money-support-post-conflict-development>>; Pierre-Laurent Chatain et al, 'Protecting Mobile Money Against Financial Crimes: Global Policy Challenges and Solutions' (World Bank, 2011) 119 <[http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/03/10/000333037\\_20110310000727/Rend ered/PDF/600600PUB0ID181Mobile09780821386699.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/03/10/000333037_20110310000727/Rend ered/PDF/600600PUB0ID181Mobile09780821386699.pdf)>.



banking, payments, internal audit, information and communication, exchange control and debt management) formed to regulate and guide the mobile payment services sector, should ensure its activities continue. In particular, the activity of supervising and regulating mobile money requires expertise from both payments systems oversight and banking supervision functions (because mobile money products sit in between deposit taking activities and payments system transfer services) and so coordination mechanisms between these two functions within RBM are essential to building and maintaining regulatory capacity for mobile money.

### *Inter-Regulatory Coordination – Beneficial for Regulatory Capacity*

84. Existing approaches for inter-regulatory cooperation in Malawi would also contribute positively to capacity development of the regulators. In further strengthening the capacity of RBM as the ‘lead regulator’ focus should be placed ensuring the regulators continue to cooperate together in regulatory oversight in support of the lead role of RBM.

### *Building Regulatory Capacity through Training and Development*

85. Assistance from development partners should include training on undertaking effective oversight and supervision for mobile money. Regional groups such as those facilitated by the African Mobile Phone Financial Services Policy Initiative (AMPI),<sup>57</sup> and the UN’s Economic Commission for Africa (ECA) may be well placed to help Malawi with regulatory policies.<sup>58</sup> The United Nations Conference on Trade and Development (UNCTAD) has helped the East African Community to prepare guidelines on electronic transactions, electronic signatures and authentication, data protection and privacy, consumer protection, and computer crime.<sup>59</sup> The MM4P has also seen extensive collaboration with RBM, resulting in such efforts as this report; ongoing support from MM4P could also contribute to building regulatory capacity.

86. With the proposal to implement the *Payments Bill* and *E-Money Regulations*, consideration should be given to organising training sessions to raise awareness and understanding of the implications of the new regulatory environment. For example, early training sessions could focus on ensuring a consistent understanding of key terminology being used in the new regulatory framework. At a later date, training sessions could focus on how to implement the *E-Money Regulations* and ensure ongoing compliance.

### *Industry Consultation*

87. Industry players are actively involved in contributing to the strategic direction of the mobile money market in Malawi. As noted above, industry players are represented in industry bodies such as the NPC and the MMCG. There are many benefits from having close involvement with

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<sup>57</sup> This suggestion of leveraging on the expertise of groups represented by AMPI was suggested at the recent meeting of AMPI, held in March 2014. A copy of the Final Communique of AMPI can be found at <<http://www.afi-global.org/library/publications/second-ampi-leaders-roundtable-final-communique>>.

<sup>58</sup> This suggestion of the ECA being well placed to help Malawi with regulatory policies was taken from Edwin Saidi, ‘Towards a Faultless Mobile Commerce Implementation in Malawi’, *Journal of Internet Banking and Commerce* Vol. 15 (April 2010) 9, where it was also suggested the ECA could assist with security and data protection issues.

<sup>59</sup> UNCTAD, *Mobile Money for Business Development in the East African Community: A Comparative Study of Existing Platforms and Regulations* (2012) 33 <[http://unctad.org/en/PublicationsLibrary/dtlstict2012d2\\_en.pdf](http://unctad.org/en/PublicationsLibrary/dtlstict2012d2_en.pdf)>.

industry players for strategic policy development. However, RBM and the other regulators need to ensure that industry players are not relied on to *guide* policy development; industry dialogue should centre on *feedback* and *discussion* on policy development.<sup>60</sup> Regulators also need to distinguish between their role in promoting payments system development and regulating payment systems and ensure mechanisms are in place in the internal structure of the regulatory organisations and industry bodies to address any potential conflict of interest in this area.

## Conclusion

88. Malawi would appear to have the basis for sound cooperation and coordination arrangements among regulators and between industry and regulators. These arrangements, alongside the entity-focused risk-based approach for regulating mobile money, as described in the *E-Money Regulations*, suggest the risk of coordination failure, regulatory duplication or unilateral regulatory approaches should be lower than in other countries. Following on from these well-coordinated regulatory approaches we would expect a smooth implementation process for the new oversight and supervisory arrangements. RBM's lead role in coordinating regulatory and industry initiatives, supported closely by the work of the MOF, is very positive for the mobile money market.

## 3.2. RBM'S REGULATORY MANDATE & THE OVERSIGHT FRAMEWORK FOR MOBILE MONEY

### Background

#### *Current Arrangements*

89. As outlined in this report, there are a range of regulators, government departments and coordinating groups involved in mobile money policy and regulation in Malawi. These include RBM, FIU, MOF, NPC, CFTC, and MMCG.

90. The RBM takes a lead role in the supervision and regulation of mobile money. This is currently primarily through its administration of the *Mobile Guidelines* and its leading role in coordinating groups focused on mobile money, such as the E-Banking Task Force, the MMCG and the NPC.

91. RBM has assumed this lead role in the regulation of mobile money based on its broader mandate to regulate payments and promote the national payment system under the *RBM Act*. Two provisions of the *RBM Act* have been specifically used in relation to RBM's oversight of the mobile money sector:

- Section 4 (e) states RBM shall be responsible for promoting a sound financial structure in Malawi, including payment systems, clearing systems and adequate financial services. RBM

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<sup>60</sup> Saidi, above n 58, 6, noted the potential conflict of interest for RBM if it is regulating entities which are guiding its policy development process. This issue can be addressed through focusing on developing regulatory capacity on an ongoing basis, particularly important when regulatory financial services which are undergoing rapid developments such as mobile money products and services.

has used section 4(e) of the *RBM Act* to underpin its current approach to supervising and regulating the mobile money sector, and payment systems more broadly, in Malawi.<sup>61</sup>

- Section 56 states the Minister of Finance may, after consultation with RBM, make regulations for the better carrying out of the objectives and purposes of the *RBM Act*, or to give force or effect to its provisions, or for its better administration. The *E-Money Regulations* will initially be mandated and gazetted by the Minister of Finance, pursuant to this section of the *RBM Act*.

92. RBM, in collaboration with the NPC, has also outlined a clear roadmap for payments system development in the draft document *Payment System Vision for 2014-2018*. The RBM's existing mandate is made clear from the outset in the *Payment System Vision for 2014-2018*; Section 1 states:

The RBM is mandated to promote and oversee the national payment system in the country. The mandate is entrenched in the RBM Act, (1989) which empowers the RBM *to promote a sound financial infrastructure in Malawi, including payment systems, clearing systems and adequate financial services*. Based on this mandate, the RBM plays a leading role in transforming the country's NPS.<sup>62</sup>

93. RBM proposes to report on the follow-up for strategies outlined in the *Payment System Vision for 2014-2018* using RBM's *Annual Payment Systems Report*.<sup>63</sup> The roadmap and initiatives outlined in the *Payment System Vision for 2014-2018* contribute to providing greater clarity, certainty and transparency on the oversight framework for RBM for mobile money and payment systems more broadly. It is also commendable that the vision and strategy is considered to be a shared responsibility for all stakeholders and that consultation with stakeholders will be done through the NPC; industry collaboration on strategic and policy development contributes to a more responsive and enabling regulatory environment.

### *Plans for Clarifying and Strengthening RBM's Regulatory Mandate & Oversight Framework for Mobile Money*

94. Plans are underway in Malawi to clarify and strengthen RBM's mandate and framework for conducting oversight of the mobile money sector (and payment systems more broadly) using payments system legislation and the *E-Money Regulations*.

95. Payments system legislation is used to provide greater clarity and transparency with respect to the oversight role of a central bank for payment systems and payments system providers, including new payments players such as mobile money providers. Specifically, payments system legislation can be designed so central banks can regulate and supervise payment systems and payment system providers so as to assist central banks in meeting broader and more traditional oversight objectives such as ensuring financial system stability. Payments system legislation is also a means of providing a level playing field for providers of payment services, as the legislation can be designed to be activity-focused rather than entity-focused. The enactment of

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<sup>61</sup> The RBM has also used section 4(e) when issuing the *Mobile Guidelines* and for other payment initiatives, such as those outlined in the *Payment System Vision for 2009-2013* and the *Payment System Vision for 2014-2018*.

<sup>62</sup> *Payment System Vision for 2014-2018*, above n 16, 4.

<sup>63</sup> *Ibid*, 11.

payments system legislation for these reasons is now commonplace and accepted as international best practice and supportive of promoting financial inclusion.<sup>64</sup>

## Recommendations for Clarifying RBM's Regulatory Mandate & Oversight Framework for Mobile Money

96. Outlined below are recommendations for consideration in drafting and implementing the proposed *Payments Bill* and *E-Money Regulations* in Malawi.<sup>65</sup> These recommendations are designed to clarify RBM's mandate for overseeing mobile money.

### *Update the Payment System Vision for 2014-2018*

97. The *Payment System Vision for 2014-2018* could be updated to include more detail on the *Payments Bill*, which is in its final drafting stages, and the *E-Money Regulations*, also in its final drafting stage.<sup>66</sup> The *Payment System Vision for 2014-2018* also refers to the *Mobile Guidelines* as being for regulating and guiding the mobile payments market, however it is planned that these guidelines will be superseded by the *E-Money Regulations*; so this development could also be reflected in the *Payment System Vision for 2014-2018*.

### *Use Consistent Terminology in the Payments Bill and E-Money Regulations*

98. The version of the *Payments Bill* which we reviewed refers to 'mobile payments' which appears to be referring to the same concept as 'e-money' as defined under the *E-Money Regulations*. However, as explained below, the term 'mobile payments' can be more restrictive than the term 'e-money'. It is recommended that terminology in the *Payments Bill* be made consistent with terminology used in the *E-Money Regulations* so it is clear what RBM is overseeing, supervising and regulating.

99. Mobile payments generally refer to the payments access method – i.e. e-money (which represents an underlying stored value) or deposits which can be accessed via a mobile phone. However, it is primarily the activity of issuing the e-money (or stored value) which is being regulated and supervised. Stored value can be accessed and transferred using payment methods other than mobile phones (e.g. online access via the internet or via prepaid cards). Technological

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<sup>64</sup> A GSMA article published in December 2013 on the regulatory development for mobile money in Brazil and Peru provides a very good overview of the reasons for such developments and the benefits of leveling the playing field for non-banks through regulation: Mireya Almazan, *Mobile Money for the Unbanked* (December 19 2013) <<http://www.gsma.com/mobilefordevelopment/mobile-money-regulation-in-latin-america-leveling-the-playing-field-in-brazil-peru>>. Kenya also provides a good example of legislative and regulatory developments for mobile money. The enactment of its *National Payments System Act* (No 39 of 2011) and the draft regulations which will soon follow (these are now being finalised, following the closing of the consultation period in October 2013) will, among other things, provide greater clarity and certainty on the regulatory arrangements for non-bank payments providers: Central Bank of Kenya, *National Payment Systems Draft Regulations – Invitation for Comment* <<https://www.centralbank.go.ke/index.php/news/323-nps-draft-regulations>>.

<sup>65</sup> The authors of this report have provided earlier comments to RBM on how this topic is dealt with in the *E-Money Regulations*.

<sup>66</sup> The *Payment System Vision for 2014-2018* notes: "A draft Payment Systems Bill was finalised and submitted to the Ministry of Justice through Ministry of Finance which is expected to be enacted in 2014.", *Payment System Vision for 2014-2018*, above n 16, 6. This detail could be expanded on to include more detail on the intention and planned implementation process of the legislation and regulations.

innovations will continue through time resulting in possibly new access channels or payment methods which have not yet been contemplated. In so far as legislation and regulations are concerned with payments access methods the legislation and regulation should be designed independent of the type of technology used, which can be done by focusing on the activity itself not the payment access method.

100. The *Payments Bill* and the *E-Money Regulations* should be drafted to capture the activity of issuing e-money (where that e-money represents an underlying stored value).<sup>67</sup> The *Payments Bill* may be an appropriate place to include such provisions regarding the issuance of stored value because this stored value is accessed using payment instruments and payment systems.<sup>68</sup> It is then common practice to issue more detailed regulations with respect to the stored value pursuant to the payments law.

### *Clarify Interim Regulatory Arrangements to Market Participants in Malawi's Mobile Money Sector*

101. It is our understanding that the intention is to pass the *E-Money Regulations* pursuant to the *Payments Bill* once it is enacted. We support this approach. However, we understand that as an interim measure, as the *E-Money Regulations* may be ready for implementation prior to the *Payments Bill* being passed by Parliament, the *E-Money Regulations* will be mandated pursuant to section 56 of the *RBM Act*. Consideration could be given to explaining these interim arrangements for all players involved in mobile money in Malawi by, for instance, providing details of these plans in the *Payment System Vision for 2014-2018*. This approach would clarify the path ahead for oversight arrangements for mobile money (and stored value more broadly), particularly by making it clear that RBM's regulatory mandate extends to include oversight of mobile money.

### **Conclusion**

102. We support the plans for Malawi to clarify and strengthen RBM's mandate and framework for conducting supervision and oversight of the mobile money sector (and payment systems more broadly) using the *Payments Bill* and *E-Money Regulations*. The *Payments Bill* will provide a clear mandate for RBM to conduct oversight of mobile money activities. We recommend that the legislation and regulations be drafted using the same terminology when referring to the providers of e-money and the activity of issuing e-money itself. This will clarify that RBM is overseeing and supervising the activity of issuing e-money, or in other words, that RBM is conducting activity-focused oversight rather than entity-focused oversight. This activity-focused approach is important for oversight and supervisory activities in mobile money because it can create a level playing field for a range of players (banks and non-banks) that may become involved in this sector.

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<sup>67</sup> Examples of jurisdictions which take this approach include (in no particular order) Australia, Kenya, Philippines, Singapore, and the EU. The *FinMark Report* noted this issue as being important to clarify how institutions should treat funds held in trust which represent the stored value and not classified as deposits: *FinMark Report*, above n 5, 23.

<sup>68</sup> The *FinMark Report* has previously canvassed issues relating to the clarification and definition of the term 'stored value' and provided a good explanation as to how e-money comprises the electronic funds representing the underlying stored value, *Ibid*.

103. As the path forward for implementing these oversight and supervisory arrangements may be affected somewhat by the timetable for passage of legislation, we recommend RBM conveys to the industry its planned changes for its oversight and supervisory arrangements for mobile money by updating and including more detail in policy documents such as the *Payments System Vision for 2014-2018*. This approach will clarify the path ahead for entities subject to supervision and oversight arrangements for mobile money (and stored value more broadly). This approach will also contribute to further strengthening and clarifying RBM's oversight mandate for mobile money.

### 3.3. REGULATORY ARRANGEMENTS FOR THE USE OF AGENTS

#### The Growth of Agent Networks in Malawi

104. Regulations governing the use of agents will become increasingly important in Malawi. This is because both the size of agent networks and the range of services available through mobile money platforms are expected to grow (in particular, the growing number of MNO-bank/MFI partnerships means that agents may provide a wider range of services through mobile phones).

#### Issues Arising from Use of Agent Networks

105. The low level of financial literacy in Malawi has been a key issue for MNOs when selecting and training agents. This, alongside the other issues which are commonly experienced in building agent networks in emerging countries (such as agent illiquidity and operational risk) – all of which are now well documented,<sup>69</sup> has led to MNOs using considerable resources in building agent networks. This situation may have restricted the MNOs' expansion of agent networks in Malawi.<sup>70</sup>

106. Liquidity and operational risk have been reported in relation to the use of agents for mobile money in Malawi. Cash-out constraints are a common issue because agents need to be able to meet the customer demand for the physical cash.<sup>71</sup> Operational risk in Malawi arose due to agents being unable to perform tasks effectively due to low levels of financial literacy and high staff turn-over.

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<sup>69</sup> See material contained in: USAID, *Mobile Financial Services Risk Matrix* (USAID, 2010); Neil Davidson and Paul Leishman, *Managing a Mobile Money Agent Network* (GSMA, 2010).

<sup>70</sup> At the time of doing fieldwork for this study, data on the growth in the numbers of agents for mobile money were not available.

<sup>71</sup> For a more detailed discussion on liquidity risk see Claire Alexandre, Ignacio Mas and Daniel Radcliffe, 'Regulating New Banking Models that can Bring Financial Services to All', *Challenge Magazine* 54 (2010) 116 <<http://ssrn.com/abstract=1664644>>. This article focuses on the mobile money transaction process to identify the functions and regulatory issues that arise at each step of the transaction process such as account opening procedures, the cash-in cash-out arrangements, the electronic messaging arrangements, the float management and the settlement arrangements.

## Regulations Governing the Use of Agents in Malawi

107. The *Mobile Guidelines* and proposed *E-Money Regulations* contain a variety of rules and regulations designed to reduce risks that arise from agent activity. The *E-Money Regulations* will replace the *Mobile Guidelines* and it is expected that these regulations will be mandated in 2014. The *E-Money Regulations* are more comprehensive than the *Mobile Guidelines* and apply to any entity providing e-money services (which includes mobile money). Therefore, comments below on the regulatory arrangements governing the use of agents focus on those arrangements as described in the proposed *E-Money Regulations*.<sup>72</sup>

108. RBM, like many other regulators involved in overseeing mobile money activities, views the use of agents as an outsourcing arrangement between the mobile money provider (referred to as an E-Money Service Provider (EMSP) in the *E-Money Regulations*) and its agents. Therefore the *E-Money Regulations* focus on requirements and expectations of the EMSP with respect to its use of agents. These rules include that the MNO: is required to use a written contract with agents; is liable for the agents' actions; must conduct agent training; and must obtain certain details about the agent prior to signing-on the agent.<sup>73</sup> The *E-Money Regulations* are comprehensive in addressing the main risks arising from the use of agents. Provisions in the regulations focus on: managing agent illiquidity; operational risk; customer mistreatment; KYC/Customer Due Diligence (CDD) requirements; credit risk; and operational risk.<sup>74</sup>

109. RBM does not directly regulate agents outside of the following activities: monitoring and enforcing KYC for agents, and intermittently inspecting agents and reviewing monthly information on agent activity which MNOs provide to RBM-Payments Department.

## Recommendations for the Proposed *E-Money Regulations*

### *Approval of Agents*

110. The *E-Money Regulations* appear to define an agent as an entity requiring the 'approval' of RBM. Approving individual agents may be an onerous task for a regulator and also for regulated entities. RBM may need to consider streamlining the approval process. For example, if regulated institutions confirm in writing to RBM that all of its agents operate under a contractual outsourcing agreement, and this agreement has been approved by RBM, then this could be considered as the agency arrangement being 'approved by the Bank'. This approach to streamlining the approval process is one example of how to minimise the regulatory burden on regulated entities, agents and RBM itself; other approaches could also be used.

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<sup>72</sup> The authors of this report have provided earlier comments to RBM on how this topic is dealt with in the *E-Money Regulations*.

<sup>73</sup> *E-Money Regulations*, section 19(1) (permitted activities of agents), section 12(11) (principal-agent liability), section 12(11-12), section 13, section 20(1), section 21(1), section 22(1), section 23(1), section 26 (the relationship between the principal and agent), section 23(d, e), section 31, section 34 (methods by which RBM can monitor agent activity), and section 13 (outsourcing).

<sup>74</sup> Protections in the *E-Money Regulations* operate as follows: agent illiquidity (sections 22(1)(c), 23(1)(f)), operational risk (section 23), customer mistreatment (sections 22, 23); KYC/CDD (sections 22(1)(d), 23(1)(b)), credit risk (section 22(1)(f, g)), and operational risk (section 23(1)). CDD is the same as Know Your Customer (KYC). These terms are used interchangeably in this report.

### *Agent Bank Regulations vis-a-vis E-Money Regulations*

111. The *E-Money Regulations* apply to banks and non-banks providing mobile money, and so provide the same agency regulations for both types of institutions.<sup>75</sup> This service-based approach is highly desirable as it creates a ‘level playing field’ between banks and non-banks providing mobile money.<sup>76</sup> This may encourage banks to begin providing mobile money in Malawi, which will help attain financial inclusion objectives.

112. However, participants may require clarification on how the *E-Money Regulations* sit alongside the *Financial Services (Agent Banking) Regulations 2012 (Agent Banking Regulations)*. The *Agent Banking Regulations* apply to agents carrying on agent banking activities and involve further requirements given the increased range of activities which agent banking activities involve compared to e-money activities. A policy statement to accompany the *E-Money Regulations* once they are mandated could provide such clarification for industry.

### *Exclusivity of Agents*

113. The *E-Money Regulations* prohibit agents being contracted on an exclusive basis. Some countries have been reluctant to regulate on this and are pursuing the same end through non-regulatory means or by requiring permission from the regulator if exclusive agreements are to be used. While there is merit in prohibiting exclusive agent agreements, it is useful to assess the pros and cons of this approach and discuss with industry players their concerns about ‘free riders’ versus ‘network benefits’.<sup>77</sup>

### *Data Collection on Use of Agents*

114. Good quality quantitative and qualitative background information is the backbone of good policy making. The *E-Money Regulations* include a number of reporting requirements, both regular reporting and event driven reporting. These reports should enable RBM to compile and analyse statistics on the growth and use of mobile money agent networks in Malawi. It is recommended that plans for collating and analysing the information be considered alongside implementation of the *E-Money Regulations* to ensure all data needed is captured in the regulations.

### **Conclusion**

115. The regulatory arrangements governing the use of agents for mobile money will be considerably clarified and strengthened once the *E-Money Regulations* are in place. The *E-Money Regulations* are more comprehensive than the existing *Mobile Guidelines* and clarify uncertainties regarding ‘equal playing field’ issues with respect to agents of banks versus non-

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<sup>75</sup> See *E-Money Regulations section 3, Part IV*. Note that banks may be held to additional rules if conducting banking businesses through agents (*E-Money Regulations, section 22.1.4*).

<sup>76</sup> For further discussion on the issue of a level playing field when it comes to legal liability for the actions of agents, see Michael Tarazi and Paul Breloff, *Non-Bank E-Money Issuers: Regulatory Approaches to Protecting Customers Funds* (Focus Note 63, Washington, D.C., 2010) <[http://www.cgap.org/gm/document-1.9.45715/FN63\\_Com.pdf](http://www.cgap.org/gm/document-1.9.45715/FN63_Com.pdf)>.

<sup>77</sup> See, for example, an explanation of the issues in this article focusing on the RBZ’s directive for mobile money operators to seek RBZ’s permission prior to entering into exclusive agreements with agents: ‘Mobile Money War: RBZ Moves In’, above n 28.



banks providing mobile money. When implementing the *E-Money Regulations* we recommend RBM ensure the following:

- The process of approving agents is not too onerous for regulators and the industry;
- Industry players understand the reasons for differences between agent banking regulations and the regulations of the use of agents in the *E-Money Regulations*;
- The decision of prohibiting exclusivity of agents has been deliberated on in terms of impact on the existing market players; and
- Reporting requirements in the E-Money Regulations allow for the establishment of a comprehensive data collection on the use of agents.

### 3.4. APPLYING A RISK-BASED APPROACH TO IMPLEMENTING AML/CFT MEASURES

#### Background

116. It is important that mobile money providers are able to implement AML/CFT measures and that regulators can assess this implementation in a manner consistent with international standards, particularly those issued by the Financial Action Task Force (FATF), the global standard-setting body for AML/CFT measures. FATF can impose sanctions on countries that have inadequate AML/CFT controls. However, it is also important that implementing AML/CFT measures does not become unduly burdensome for either the regulated entity or the end-user. Overly burdensome processes for implementing AML/CFT measures can lead to financial exclusion.<sup>78</sup> Such processes are to be avoided as they work against the goal of promoting mobile money in the first instance. A risk-based approach to implementing AML/CFT measures for mobile money is designed to further financial inclusion by avoiding AML/CFT measures which are unduly burdensome for end-users.

117. In recent years, FATF has been working to increase international awareness and understanding of the risk-based approach, particularly for products such as mobile money. The underlying premise of this international agenda to promote a risk-based approach to implementing AML/CFT measures is that the goals of financial inclusion, integrity and stability can be pursued simultaneously. The general principle behind FATF's risk-based approach to AML/CFT measures and supervision is that there is no 'one size fits all' approach to CDD. This means that when higher risks are identified and assessed then enhanced CDD measures are **required** to manage and mitigate risks, and when risks are lower then simplified CDD measures **may be used** and in certain specific situations **exemptions** from CDD are possible.

118. In June 2013, FATF issued a guidance note titled *Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-Based Payment Services (Guidance Note)*.<sup>79</sup> This document seeks to provide regulators and institutions with a greater understanding of the risk-

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<sup>78</sup> If the documentation required to open a new mobile money account is unnecessarily extensive the consumer may simply decide it is easier not to open the account and continue using informal financial services, such as cash payments and the hawala systems for transferring funds; they continue to be 'financially excluded'.

<sup>79</sup> The *FATF Guidance Note* reiterates a great deal of the content of the *FATF Guidance on Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion (2013)* but with an emphasis on applying the risk-based approach RBA to NPPS.

based approach so as to make more informed judgments as to level of CDD required to mitigate money laundering/terrorist financing (ML/TF) risk and comply with international standards. To this end, the *Guidance Note*, which is non-binding, does the following:

- Encourages the use of simplified CDD for new payment products and services (NPPS) which are specifically aimed at growing financial inclusion;
- Provides details on how to apply the risk assessment and risk mitigation processes, which underpin the risk-based approach, for NPPS; and
- Provides details for regulators on how to undertake the regulation and supervision of entities involved in providing NPPS.

119. This report examines how FATF's risk-based approach is being used to implement AML/CFT measures for mobile money in Malawi.<sup>80</sup> Recommendations are provided which aim to encourage Malawian regulators to be more proactive in promoting the use of the risk-based approach among EMSPs in Malawi.

### Malawi's Approach to Implementing AML/CFT Measures

120. Based on discussions with fieldwork interviewees, it is apparent that obtaining correct identification is a challenge for many potential mobile money customers in Malawi, particularly in rural areas. This, in turn, creates a challenge for EMSPs hoping to sign-up new customers.

#### Current AML/CFT Framework

121. Currently, Malawi's main CDD obligations for mobile money are contained in the *AML/CFT Act* and *AML/CFT Regulations*.<sup>81</sup> The *Customer Due Diligence Directive for Banks and Financial Institutions 2005 (CDD Directive)* may also apply to mobile money, however this directive appears to only apply to banks.<sup>82</sup> Malawi's proposed *E-Money Regulations* provide an updated approach on applying AML/CFT measures for mobile money and apply to all providers of mobile money.

122. The *AML/CFT Act* provides that KYC requirements for individuals should include the name, address and occupation of the person and applicable official identifying documents such

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<sup>80</sup> The authors of this report have provided earlier comments to RBM on how this topic is dealt with in the *E-Money Regulations*. The *FinMark Report*, above n 5, commented on the use of a risk-based approach for implementing AML/CFT measures. The *FinMark Report* was written before the *E-Money Regulations* were drafted. Its main points on AML/CFT were:

- The *AML/CFT Act* did not specify a reduced KYC framework for low value transactions; nor did it specify whether transaction limits could be used for determining the level of KYC;
- The *AML/CFT Act* did not specify whether the KYC identification information could be held electronically.
- The *CDD Directive*, which focuses on KYC rules and procedures, did provide for the use of tiered KYC. However, the approach for applying the tiers was left to individual banks and financial institutions to determine.
- The description in the *CDD Directive* of identification requirements needed for basic KYC was such that it possibly precluded new customers without regular employment and so the *CDD Directive's* potential was more additive than transformative for financial inclusion.
- It was not clear whether the *AML/CFT Act* superceded the *CDD Directive* because the latter was not referenced in the former.

<sup>81</sup> The *AML/CFT Act* applies to mobile money due to sections 9.1.4 and 13.2 of the *Mobile Guidelines*.

<sup>82</sup> *CDD Directive*, section 3.

as a National Identity Card or passport.<sup>83</sup> These obligations can be reduced if the transaction is part of an existing and regular business relationship with a person who has already produced sufficient evidence of identification, or, if the transaction is an occasional transaction that does not exceed a certain amount.<sup>84</sup>

123. The *AML/CFT Act* does not provide a reduced KYC framework for low value transactions and so may be ‘unduly burdensome’ for mobile money providers and customers. However, the *AML/CFT Regulations* outline that the FIU is authorised to allow the use of reduced KYC requirements.<sup>85</sup> This provides the sort of tiered approach to KYC that is not available through the *AML/CFT Act*. Using this power, the FIU has informed Airtel and TNM that a letter from a local chief or voter registration card is sufficient for KYC requirements.

124. However, such reduced KYC requirements may still be unduly burdensome for mobile money providers and customers in Malawi. Both MNOs have found it challenging to implement KYC requirements, primarily because the lack of national identification system in Malawi makes it difficult to identify clients. MNOs have experienced increased costs due to delays in obtaining a photocopy of identification or a letter from a local chief. Obtaining information on the source and level of income has also been found to be relatively costly.

### *Proposed AML/CFT Framework*

125. There are a number of provisions in the *E-Money Regulations* that relate to KYC requirements for mobile money. These provisions are designed to harmonise with and not replace those obligations contained in the *AML/CFT Act*. Under the *E-Money Regulations*, EMSPs can use tiered KYC.<sup>86</sup> These provisions also provide additional detail on how such a tiered approach would operate. In implementing these regulations it is recommended the following points be taken into consideration:

126. *Implementation of Part VII* – Part VII, section 30 of the *E-Money Regulations* indicates that RBM will determine the applicable transaction limit for each tier. This approach contrasts with the EU for example where the EU sets the actual amount in its Directives. Consideration on how RBM will make its determination on applicable transaction limits could involve industry consultation.

127. *Clarifying Identification* – The RBM will need to determine how customer’s identification can be captured. The *E-Money Regulations* imply only paper based records are permissible. For example, section 32.1.1.3 refers to photocopying the identification, and manually recording the

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<sup>83</sup> *AML/CFT Act*, section 24(1).

<sup>84</sup> *AML/CFT Act*, section 24(7).

<sup>85</sup> *AML Regulations*, sections 3 (sub-regulations 5 and 7), and 23.

<sup>86</sup> *E-Money Regulations*, section 30. In addition, there are limitations on registration requirements of accounts for customers in certain tiers (*E-Money Regulations* section 12(10)); e-money service providers must ensure their agents comply with AML laws, rules and regulations (*E-Money Regulations*, section 12(12)); and agents must perform KYC/CDD procedures when registering new customers (*E-Money Regulations*, section 22(1)(d)).

identification if no photocopying facility is available.<sup>87</sup> As will be further explained below, it may be useful for such information to be captured electronically.

128. *The Consistency of Malawi's AML/CFT Legislative and Regulatory Instruments* – From our on-site discussions with the FIU we understand the provisions within the *E-Money Regulations* have been designed to be consistent with, and not replace, the *AML/CFT Act*. Furthermore, the FIU contributed to the design of the AML/CFT measures outlined in provisions in the *E-Money Regulations*. A policy statement may be required to clarify how the two instruments are consistent. For example, it should be made clear whether provisions in the *E-Money Regulations* that allow for tiered KYC and electronic capturing of identification supersede the more conservative requirements in the *AML/CFT Act*.

129. A policy statement would also be useful to clarify how the *CDD Directive* fits with the *AML/CFT Act* and the *E-Money Regulations*. The three instruments should be consistent in terms of applying a risk-based approach to implementing AML/CFT measures for mobile money, irrespective of whether a bank or non-bank issues the e-money.

## Conclusion

130. A risk-based approach to implementing AML/CFT measures for mobile money is designed to further financial inclusion by avoiding AML/CFT measures which are unduly burdensome for end-users. The general principle behind a risk-based approach to AML/CFT measures and supervision is that there is no 'one size fits all' approach to CDD. The *E-Money Regulations* are a step in the right direction in terms of clarifying the AML/CFT measures which apply to all providers of e-money, irrespective of whether they are a bank or a non-bank. The *E-Money Regulations* outline a tiered KYC approach which is based on a risk-based approach.

131. We recommend RBM focus on ensuring the *E-Money Regulations* are implemented in a way that is consistent with promoting the use of a risk-based approach for EMSPs in Malawi. Implementation issues relate to questions about how:

- The tiered KYC approach will work in practice;
- Identification information will be captured (electronically or otherwise); and
- RBM and FIU can improve industry understanding of how existing AML/CFT regulations work together with the *E-Money Regulations*.

## 3.5. PROTECTION OF CUSTOMERS' FUNDS

### Background

132. Protection of customers' funds is an integral part of a consumer protection framework for mobile money. Customers' funds require protection because these funds (which customers give to the mobile money provider in exchange for mobile money) are not generally considered to be

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<sup>87</sup> As a separate point to consider, this section should possibly be applied to 30(1) (a), (b) and (c) instead of only being under 30(1)(a)(3) because this would make it clear that it applies to the capturing of identification irrespective of whether it is for Tier One, Two or Three.

deposits and so are not covered by depositor protection provisions or deposit insurance.<sup>88</sup> Regulatory requirements focus on fund isolation, fund safekeeping and operational risk management.

133. This report focuses on the protection of customers' funds aspect of a consumer protection framework; specifically the protection of customers' e-money funds held by the EMSPs in Malawi. An analysis of Malawi's overall consumer protection framework for mobile money is beyond the scope of this report.<sup>89</sup>

### Risks Relating to Protection of Customers' Funds

134. If stored without adequate protection, customers' funds are at risk of loss through a number of means including theft, fraud, and general funds mismanagement (giving rise to liquidity and/or insolvency risks). The mobile money sector is not immune to these risks; for example, in May 2012, it emerged that employees of Telco MTN Uganda had stolen around US\$3.5 million from an account used to store cash which had been incorrectly sent through its mobile money service.<sup>90</sup>

135. The consequences of such losses will become greater as mobile money continues to grow. Mobile money providers will hold ever larger amounts of customers' funds and the loss of such funds will have a greater impact on the local economy and cause increased economic hardship to individual mobile money account holders.

### Using Trusts as a Means for Protecting Customers' Funds

136. Currently, both MNOs in Malawi store customers' funds in a trust account at a commercial bank. As outlined below, this storage method can protect customers' funds, but additional regulation can strengthen these arrangements. This section explores how *trusts can be used to provide additional protection of customers' funds that are held by MNOs*. It draws heavily on a 'knowledge product' written by Jonathan Greenacre and Professor Ross Buckley and supported by the Pacific Financial Inclusion Programme, titled *Trust Law Protections for E-Money Customers: Lessons and a Model Trust Deed Arising from Mobile Money Deployments in the*

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<sup>88</sup> There is controversy in the literature as to whether stored value should be considered a deposit, however, for the purposes of analysing this regulatory challenge for Malawi it is assumed that e-money funds are not considered deposits – consistent with Malawi's approach as outlined in its draft *E-Money Regulations*, see section 12.6. For background literature on this topic see Tarazi and Breloff, above n 76.

<sup>89</sup> This is not to suggest this issue does not deserve the attention of regulators. On the contrary, it is expected that as mobile money market develops the accompanying consumer protection framework will require significant development and strengthening. In particular, Malawian regulators should ensure an initial assessment is made, if not made already, as to whether existing consumer protection measures (such as appropriate disclosures requirements and redress mechanisms for consumer complaints) apply to EMSPs or if regulations need to be amended to ensure these measures apply to EMSPs. The recently-released document *Mobile Financial Services: Consumer Protection in MFS (2014)* developed by the AFI's Mobile Financial Services Working Group, released in March 2014, provides a framework of analysis for identifying these issues and presents options for regulators in addressing the issues. AFI, *Mobile Financial Services: Consumer Protection in MFS (2014)* <<http://www.afi-global.org/library/publications/mobile-financial-services-consumer-protection-mfs-2014>>.

<sup>90</sup> See Jeff Mbanga, 'Uganda: How MTN Lost Mobile Billions', *The Observer* (24 May 2012) <<http://allafrica.com/stories/201205250847.html>>.

*Pacific Islands* (October 2013).<sup>91</sup> The Trust Knowledge Product (Trust KP) can be read along with this section in order to provide additional detail and clarification on the risks to customers' funds and trust-related mechanisms to reduce those risks.

137. Trusts provide an important means for protecting customers' funds and using trusts for this purpose in relation to e-money is required in the *E-Money Regulations*.<sup>92</sup> Under these regulations the EMSP is required to open a trust account at one or more commercial bank and a variety of provisions in the regulations outline how these accounts should be operated.<sup>93</sup>

138. Our recommendations focus on using trusts for three main protections: fund isolation, fund protection and reducing operational risk by providing the regulator with 'active' regulatory powers so it can enforce the terms of a trust on behalf of customers. Information on these protections is available in the Trust KP.

139. The RBM could use the *E-Money Regulations* to implement these protections through the following methods:

- Require the EMSP to use a trust deed with a declaration of trust (which can create the fund isolation protection);
- Direct that this deed contain certain provisions relating to liquidity, restrictions on the use of customers' funds, and diversification (which can create the fund safeguarding protection); and
- Provide RBM with authority to monitor the EMSP's compliance with the terms of the trust deed (which can reduce operational risk).

### Implementation Considerations

140. Further details are provided below on these three methods. However, these suggestions should be carefully considered for the reasons outlined below:

141. *Holistic Approach* - It should be considered whether or not the suggestions duplicate or contravene pre-existing methods of protecting customers' funds. For example, many of the suggested protections relating to fund safeguarding may already be contained in non-trust related documents, such as the contract between the customer and EMSP.

142. *Local Context* - Like any country, trust-related laws in Malawi will be complex and drawn from a range of sources, such as legislation, regulation and case law. How these suggestions can be implemented in ways that are consistent with this area of law in Malawi will need to be considered.

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<sup>91</sup> The Trust KP draws on the following papers: Michael Tarazi and Paul Breloff, *Nonbank E-Money Issuers: Regulatory Approaches to Protecting Consumer Funds* (CGAP, 2010); and Kate Lauer and Michael Tarazi, *Supervising Nonbank Mobile Money Issuers* (CGAP, 2012).

<sup>92</sup> The authors of this report have provided earlier comments to RBM on how this topic is dealt with in the *E-Money Regulations*.

<sup>93</sup> See, e.g., *E-Money Regulations*, section 12(14-15).

143. *Proportionate Regulation* - The trade-off between minimising risk and regulatory burden needs consideration; a proportionate risk-based approach should be followed when implementing the suggestions. These suggestions involve additional regulatory costs which may discourage EMSPs from expanding their services into rural areas of Malawi, or providing e-money altogether.

144. *Use of a Trust Deed* - The provisions we recommend could be inserted directly into the *E-Money Regulations*. However, we recommend these provisions be contained in a ‘model trust deed’, which could be attached to the *E-Money Regulations* as a template which EMSPs must use. Such a trust deed is attached to the Trust KP.

145. This approach would mean the trust deed can serve as a ‘rule book’, containing all fund isolation, fund safeguarding, and operational risk protections that apply to customers’ funds. These rules would consist of duties on the EMSP, which would be both express (contained in the trust deed) and implied (the court determines the duty if it is required to ‘fill a gap’ in the trust deed).

146. Having these rules in one place may make it easier for RBM to monitor whether the EMSP is complying with its obligations to protect customers’ funds. Our recommendations are based on this approach. Furthermore, our recommendations in this document (and the Trust KP) assume that the EMSP is the trustee of the trust account in which customers’ funds are held. However, the recommendations are still valid if a third party is trustee.

## **Method 1: Fund Isolation**

### ***E-Money Regulations***

147. As outlined earlier, under the *E-Money Regulations*, an EMSP is required to open a trust account at a commercial bank.<sup>94</sup> This provision may create the fund isolation protection; however it is unclear whether this requirement alone will do so. This is because the fund isolation protection is only available if and when a court finds sufficient evidence of an intention to create a trust relationship between the customer and EMSP. Storing customers’ funds in a trust account is likely to be sufficient to establish such an intention but it may not be beyond doubt.

### ***Suggestions***

148. The *E-Money Regulations* can provide stronger evidence of an intention to establish a trust relationship through requiring the EMSP to do the following:

- Use a trust deed; and
- Include a ‘declaration of trust’ as one of the provisions in the trust deed. This provision states that the EMSP holds customers’ funds on trust for the customer.

149. These two requirements are generally sufficient to establish that a trust relationship exists between two parties.

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<sup>94</sup> *E-Money Regulations*, section 12(14-15).

## Method 2: Fund Safeguarding

### *E-Money Regulations*

150. The *E-Money Regulations* provide rules relating to how the trust account must be operated. These rules cover liquidity, restrictions on the use of customers' funds and diversification of stored funds.<sup>95</sup> These fund safeguarding rules can reduce liquidity risk (by ensuring the EMSP maintains sufficient liquidity) and operational risk (by requiring the EMSP to have adequate safeguards in place to protect customers' funds).

### *Suggestions*

151. In order to further strengthen the protection of customers' funds, the *E-Money Regulations* could require the trust deed to include additional fund safeguarding provisions on the use of trust funds. These can take the form of trustee duties which specify the following:

- The EMSP must pay all customers' funds into the trust account;
- Customers' funds cannot be used to finance the EMSP's operating expenses;
- Customers are entitled to their funds when they seek to cash-in an equivalent amount of e-money; and
- The EMSP must return customers' funds if the trust is terminated.<sup>96</sup>

## Method 3: Reduce Operational Risk through an 'Active Regulator'

### *E-Money Regulations*

152. The *E-Money Regulations* grant RBM extensive monitoring powers over the EMSP's accounts, including the trust account. This monitoring is available through a variety of mechanisms including auditing requirements for the EMSP and powers of RBM to check such audits.<sup>97</sup> These provisions can enable RBM to detect theft of customers' funds.

### *Suggestions*

153. Operational risk can be further reduced if RBM is given powers to monitor whether the EMSP is complying with the terms of the trust deed, including auditing requirements. This is required for two reasons:

154. *Other Forms of Operational Risk* – Operational risk can arise in ways other than theft (such as misuse, negligence, or poor administration) and so may not be reduced through auditing requirements alone. This is because the EMSP may comply with auditing obligations but take other actions which breach trustee duties, particularly those relating to fund safeguarding which ultimately puts customers' funds at risk.

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<sup>95</sup> *E-Money Regulations*; liquidity – section 12(5, 14-15, and 18); restrictions on the use of customers' funds – sections 12 (7, 14, 16, 17, 18, 22, 23, and 24), 6(1)(o), 6(2); and diversification – section 12(19).

<sup>96</sup> Note that RBM has certain powers to require RBM to repay customers' funds (*E-Money Regulations*, sections 11(5) and 38). This power may authorise RBM to require the EMSP to pay customers' funds to customers if the fund is terminated. However, RBM may also want a more specific requirement on EMSPs.

<sup>97</sup> *E-Money Regulations*, sections 12(3, 4, 20, and 21), 34 and 35.



155. *Customer Monitoring Challenges* – Usually in a trust arrangement, the beneficiaries (which are mobile money customers) must monitor whether the EMSP is complying with the terms of the trust deed.<sup>98</sup> However, this traditional arrangement may not be appropriate because mobile money is the first sustained interaction many Malawians have had with formal financial services; they will not be educated and experienced in relation to trust-related rules and principles.<sup>99</sup>

156. Given these factors, the *E-Money Regulations* could provide RBM with powers to monitor and enforce the terms of the trust *on behalf of the customers*. This approach would involve providing RBM with the powers, responsibilities, and duties involved in operating as a ‘protector’.<sup>100</sup> Some of these already exist in the *E-Money Regulations*, and so could be moved into a model trust deed, as proposed above (and in some cases slightly amended, as outlined in the footnote references). The following protector powers, responsibilities and duties would be required in the *E-Money Regulations*:

- Specify that RBM will serve as a protector in relation to customers’ funds;
- Require RBM to comply with a number of duties when serving as a protector, specifically to act in the best interests of customers; and
- Specify that RBM has the following powers:
  - Require the EMSP to provide it with additional audits of the trust account;<sup>101</sup>
  - Remove an EMSP as trustee of the trust;<sup>102</sup>
  - Refuse to provide consent to the EMSP’s proposed application to appoint a new person as a trustee;<sup>103</sup>
  - Revoke an EMSP’s approval to provide e-money for failing to operate in the interests of the customers;<sup>104</sup>
  - Refuse to agree to the EMSP’s application to amend the trust deed;<sup>105</sup>
  - Refuse to provide consent to the EMSP’s application to terminate or wind up the trust; and
  - Enforce the terms of the trust on behalf of the customers, including by suing the trustee.<sup>106</sup>

## Conclusion

157. Malawi’s draft *E-Money Regulations* provide considerable protection of customers’ funds. The recommendations above focus on strengthening these protections. As noted above, these

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<sup>98</sup> In turn this is because of their power to enforce the terms of the trust by suing the EMSP (as trustee) for breaches of the trust’s terms.

<sup>99</sup> Denise Dias and Katharine McKee, *Protecting Branchless Banking Consumers: Policy Objectives and Regulatory Options* (CGAP, 2012).

<sup>100</sup> Antony Duckworth, ‘Protectors: Law & Practice’ (2010) 19(1) *Trusts & Trustees* 98 at 100.

<sup>101</sup> Note that this power exists in *E-Money Regulations*, section 12(21) but RBM may wish to demand such audits at will without having to prescribe them.

<sup>102</sup> This power may exist in *E-Money Regulations*, sections 6(2), 10(1), but should be made clearer through revised drafting.

<sup>103</sup> See footnote above.

<sup>104</sup> Similar powers exist in *E-Money Regulations*, section 11(i-j).

<sup>105</sup> Similar powers exist in *E-Money Regulations*, section 12(16).

<sup>106</sup> The RBM can take various actions in the event of revocation of approval (*E-Money Regulations*, section 11(5-9)) and can impose various penalties on the trustee (*E-Money Regulations* section 37), but is not specifically authorised to sue on behalf of the beneficiaries.

recommendations are drawn from the aforementioned Trust KP, which we recommend be read for further detail on this topic.

### **3.6. REGULATORY IMPLICATIONS OF PARTNERSHIPS BETWEEN MNOS AND BANKS/MFIS**

#### **Background**

158. In MNO-bank/MFI partnerships, customers may have a mobile money account with the MNO and a deposit account with the partner bank or MFI. Customers are able to transfer money between these accounts. Partnerships may also involve more basic cooperation where mobile money customers are able to use a partner bank's ATM to withdraw money.<sup>107</sup>

159. Partnerships between non-banks and banks within the mobile money space are beneficial on a number of fronts. Partnerships can assist in addressing regulatory concerns; the pool of funds held by a non-bank may be reduced as end-users transfer funds into deposit accounts at a bank as a result of that bank operating in partnership with the mobile money provider; bank accounts are subject to well-established depositor protection provisions. Partnerships can also allow for deeper product offerings; beyond bill payments and remittance activities to providing customers with a greater range of services, including savings, credit and insurance.

160. However, partnerships between non-banks and banks also give rise to potential risks which regulators need to assess when considering whether to grant approval of partnerships. This report focuses on two such issues for regulators to include in their assessments of partnerships:

- Collaboration risk; and
- Consumer protection issues which arise as a result of a greater range of product offerings being available via a mobile phone.

#### **Collaboration Risk**

161. Partnerships between MNOs and banks/MFIs can be structured in a number of ways. The two entities can enter into a legal partnership, but are highly unlikely to want to do so because, at law, partners are liable for each other's obligations and for this reason we would recommend against 'partnerships' adopting the structure of legal partnerships.

162. The more likely structure to be adopted is some form of joint venture. Joint ventures can be incorporated which means a new corporate legal entity is created in which the MNO and bank or MFI would each hold shares; or they can be unincorporated which means the two entities do business together but no new legal entity is created, i.e. the unincorporated joint venture is simply two entities working together. There can be tax or other advantages to either form of joint venture.

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<sup>107</sup> See the recent announcement by MTN that its mobile money customers in 12 African countries will soon be able to use Ecobank ATMs to withdraw money. Note those customers also need to be Ecobank customers: Nicole Cassandra Naidoo, 'MTN, Ecobank Partner in Mobile Money Venture', *CNBC Africa* (17 March 2014) <<http://www.cnbcfric.com/news/technology/2014/03/17/mtn,-ecobank-partner-in-mobile-money-venture/>>. Countries include: Benin, Cameroon, Ivory Coast, Ghana, Guinea Bissau, the Republic of Guinea, Liberia, Congo Brazzaville, Rwanda, South Sudan, Uganda and Zambia.

163. An incorporated joint venture will only have whatever assets the shareholders inject into it, which may cause a concern for regulators, as it probably will not be a substantial organisation in financial terms. For this reason, regulators may prefer an unincorporated joint venture or may ask that the shareholders give guarantees of the liability of an incorporated joint venture.

### *Consumer Protection Issues as a Result of MNO-Bank/MFI Partnerships*

164. Consumer protection issues which arise as a result of a greater range of product offerings being available via a mobile phone need assessment by the regulator. This assessment is necessary prior to these issues becoming a problem for the end-users; the very people which promoters of financial inclusion are encouraging to use formal financial services so as to improve their standard of living.

165. By providing loans to customers of the MNO-bank/MFI partnerships, the partnership needs to be wary of excessive interest rate charges or poor credit risk assessments which may lead to client indebtedness and potential loan defaults.<sup>108</sup>

### **The Operation of MNO-Bank/MFI Partnerships in Malawi**

166. As outlined above in Part 2, Airtel and TNM are now partnering with banks and MFIs to add greater depth to mobile money product offerings and leverage on existing agent networks established by the banks and MFIs. For example, Airtel operates a partnership with Opportunity Bank (an MFI). TNM is piloting a partnership with First Merchant Bank.

### **The Regulation of MNO-Bank/MFI Partnerships in Malawi**

167. The RBM is yet to determine a regulatory and supervisory approach for MNO-bank/MFI partnerships. Furthermore, regulation from other areas, such as competition, has yet to be applied. At the time of writing this report, MNO-bank/MFI partnerships did not involve loans to customers.

### **Conclusion**

168. Partnerships between non-banks and banks within the mobile money space are beneficial. They can address regulatory concerns and allow for deeper product offerings; beyond bill payments and remittance activities to providing customers with a greater range of services, including savings, credit and insurance. Regulators need to be aware of the implications of regulated entities entering into partnerships and respond accordingly. Regulators will need to assess partnerships on a number of grounds. They may include the proposed legal nature of the partnership which we refer to as collaboration risk. Partnerships will also raise consumer protection issues as a result of consumers potentially having access to much broader range of financial services via a mobile phone than simply mobile money.

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<sup>108</sup> See a discussion of high interest rates in banking from Charles A Bruch, 'Taking the Pay Out of Payday Loans: Putting an End to the Usurious and Unconscionable Interest Rates Charged by Payday Lenders', *University of Cincinnati Law Review*, 69 (2001) 1257.

169. We recommend RBM engage in dialogue with industry players to stay in close contact on developments in partnerships. This process will ensure RBM is able to develop an oversight approach which supports the benefits from partnerships in the mobile money space but also responds to the additional risks which may arise as a consequence of the players' involvement in partnerships.

### **3.7. UNDERSTANDING AND BUILDING CONSUMER DEMAND FOR MOBILE MONEY**

#### **Background**

##### *Importance of Consumer Demand for Mobile Money*

170. While mobile money has seen great success in many countries, particularly Kenya and the Philippines, mobile money roll-outs in developing countries have often been plagued by low uptake and inactive users. This situation may have occurred due to a focus on broadening accessibility (i.e. through developing agent networks and mass sign-ups of end-users) at the expense of understanding the needs of end-users. As a consequence, development partners are now encouraging greater focus on the demand side, i.e. understanding the needs of end-users. To develop successful mobile money ecosystems, and digital financial services (DFS) ecosystems more broadly, it is recognised there is a need to go beyond ensuring these products are simply available, accessible and affordable. There is a need to ensure they have an effect, are used and become sustainable.<sup>109</sup>

##### *The Changing Nature of Central Banks in Response to Financial Inclusion Focus*

171. Financial regulators can work with industry players to understand and build consumer demand. This role for regulators is consistent with the general trend for regulators to now extend themselves beyond traditional oversight roles of encouraging the safety and stability of financial systems to also focus on actively directing efforts towards increasing financial inclusion. Financial inclusion efforts are being aligned, and pursued in tandem, with efforts directed towards financial stability, integrity and consumer protection because they are seen as complementary and because financial inclusion is now recognised as an important means for alleviating poverty and promoting a country's broader economic development.<sup>110</sup> In late 2013 Alfred Hannig (Executive Director of AFI) noted that this phenomenon is mostly being seen in emerging countries and is progressing to the extent that these emerging countries are 'reshaping the approach of central banking'.<sup>111</sup>

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<sup>109</sup> A note on terminology in this section: Digital Financial Services (DFS) or Mobile Financial Services (MFS) are terms which are being increasingly used in place of more specific terms such as mobile money. In this section, DFS is used to refer to a range of financial services accessible via digital remote access as opposed to traditional financial services accessed through physically visited a bank branch. Mobile money is included in the definition of DFS.

<sup>110</sup> The focus on financial inclusion is seen in many international forums: G20 Summits, the Global Policy Forum (GPF) of AFI, BTCA, FATF, and the Basel Committee on Financial Inclusion.

<sup>111</sup> Alfred Hannig, *Developing Countries Focused on Financial Inclusion are Reshaping Central Banking* (25 November 2013) <<http://www.afi-global.org/blog/2013/11/25/developing-countries-focused-financial-inclusion-are-reshaping-central-banking>>.

172. Regulators can develop an understanding of consumer demand so as to better appreciate which market developments need to be encouraged or facilitated through policy and regulatory changes. In understanding and building consumer demand, regulators can facilitate the building of sustainable mobile money ecosystems and move closer to the goal of providing financial access for all.

## Understanding Consumer Demand

### *Focusing Beyond Developing the Financial Architecture to Ensure End-User Needs are Met*

173. Problems arise when payment providers assume the position of ‘build it and they will come’ and regulators respond only to the immediate problem of how to regulate new types of entities rolling out new payments products and services.<sup>112</sup> By focusing on the need to understand and promote consumer demand, regulators will assist in avoiding those problems.

### *Focusing on Local Context and Customer Value Proposition*

174. Regulators can assess a mobile money product’s potential for promoting financial inclusion by considering how well the initiative focuses on local context and the customer value proposition. Emphasising these two aspects in mobile money initiatives will ensure players and products are being encouraged to deliver mobile money solutions which are useful and relevant for the under-banked and un-banked. There has been considerable research undertaken on these issues. Appendix 3 provides details on research in this area specifically related to mobile money and digital financial services more broadly.

175. Customer demand surveys are also useful but care should be taken in interpreting the results of the demand studies. For example, survey results depend heavily on the precise questions asked, and a study may be done at a single point in time but what is needed is an understanding of the longer run perspective – what the customer may need next week, in a month’s time or in a year’s time. Customer perceptions are also important - on their existing access to financial services (formal and informal) and what they may consider valuable in a new service or product.<sup>113</sup>

## A Regulator’s Role in Building Consumer Demand

176. Regulators can encourage the development of successful and sustainable DFS ecosystems by encouraging, and being a part of, efforts to build consumer demand. Examples of what these efforts can entail are listed below, references in footnotes provide further information:

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<sup>112</sup> Graham Wright (head of Microsave) recently commented on this point in his reflections on the Mor Committee report – Wright notes the report offers a “sophisticated vision of the financial architecture” and a road map for providing financial access to all, however he questioned whether due consideration was given to the demand side noting that “the report seems to imply that low income people’s demand for formal financial services was a given”. See Graham Wright, *The Mor Committee Report – the Demand Side Conundrum* (February 2014) <<http://blog.microsave.net/the-mor-committee-report-the-demand-side-conundrum/>>.

<sup>113</sup> Debbie Watkins, *Context and Culture: Designing Relevant Financial Services* (13 August 2013) <<http://www.cgap.org/blog/context-and-culture-designing-relevant-financial-services>>.

- Being an enabling regulator;<sup>114</sup>
- Encouraging the movement of cash payments to be done electronically using mobile money or DFS, particularly government payments (such as G2P and person-to government (P2G));<sup>115</sup>
- Facilitating financial literacy efforts which focus on incorporating end-users needs;<sup>116</sup>
- Developing open/interoperable/interconnected systems;<sup>117</sup> and
- Acknowledging the importance of partnerships by allowing or enabling traditional and non-traditional players to partner and leverage on the ‘sum is greater than the parts’.

## Understanding Consumer Demand for Mobile Money in Malawi

177. There have been various initiatives in Malawi which have contributed towards understanding the needs of end-users both in terms of local context issues and the customer value proposition.

178. In terms of local context, both the *National Strategy Document for 2014-2018* and the *RBM Strategy for 2013-2016* consider many of the local issues which are important in building the mobile money ecosystem in Malawi. The *National Strategy Document* recognises the importance of focusing on interoperability issues and improving cash distribution/handling arrangements; these are two issues which will have a lasting effect on the end-user’s experience of mobile money.

179. In terms of understanding the customer value proposition, user demand surveys have been undertaken. The *USAID Action Plan* studied demand for mobile and branchless banking in Malawi.<sup>118</sup> The *FinMark Report* notes that mobile money will be directly competing with the existing domestic remittance service offered by the MPC product FastCash.<sup>119</sup> While there are

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<sup>114</sup> For a brief description of an enabling regulatory environment for mobile money, see Gutierrez and Singh, above n 2. These authors cite David Porteous, ‘The Enabling Environment for Mobile Banking in Africa-report Commissioned by Department for International Development’, *Department for International Development* (2006); and David Porteous, ‘Mobilizing Money through Enabling Regulation’, *Innovations* 4 (2006) 1 75.

<sup>115</sup> BTCA, *Homepage* (2014) <<http://betterthancash.org/>>.

<sup>116</sup> See Ignacio Mas, ‘Digitizing the Kaleidoscope of Informal Financial Practices’ (2013) <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2359942](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2359942)>; Also see Tilman Ehrbeck, *Avoid Blaming the Victim in the Financial Literacy Debate* (19 December 2013) <[http://www.huffingtonpost.com/tilman-ehrbeck/the-financial-literacy-debate\\_b\\_4459311.html](http://www.huffingtonpost.com/tilman-ehrbeck/the-financial-literacy-debate_b_4459311.html)>.

<sup>117</sup> Interoperability issues are currently under consideration by many regulators in emerging markets. The Philippines, for example, are currently focused on determining the best path towards interoperability. Bangko Sentral Ng Pilipinas (BSP), which is the Philippines’ central bank, has preferred industry involvement and for BSP to not have to mandate arrangements. For mobile money, BSP has highlighted concerns around efficiency, competition, affordability and financial inclusion as being important for interoperability. BSP is now working with the industry to develop how this interoperability will come into effect (For more details see: USAID, *Building Consensus Towards Enabling an Efficient and Inclusive National Payments System in the Philippines: A Significant Step* (April 24 2013) <<http://www.simmphil.org/misc/building-consensus-towards-enabling-an-efficient-and-inclusive-national-payments-system-in-the-philippines-a-significant-first-step>>; for Africa, references to the pending launch of the East Africa Payments System (EAPS) are expected to have implications for interoperability in payment systems in this region: *East Africa’s Top Economies Launch Cross-border Payment System*, Reuters (11 December 2013) <<http://www.reuters.com/article/2013/12/11/us-eastafrika-trade-idUSBRE9BA0GF20131211>>.

<sup>118</sup> *USAID Action Plan*, above n 5.

<sup>119</sup> *Ibid*, 14.

many paths toward greater financial inclusion; consideration of the impact of policy changes on the various paths is useful.<sup>120</sup>

180. Malawians are still at a stage where accessibility and reliability of basic financial services remains a fundamental challenge. For regulators responding to market developments in mobile money, these fundamental challenges will require more focus as well as asking basic questions as to how well Malawians will use new DFS. These questions should include: can the instructions on the mobile phone be read, can the phone be charged and so be a reliable access point and do most adults have the means to own a phone?

### **Building Demand for Mobile Money in Malawi**

181. As described in Part 2 of this report, there are a number of regulators and government departments focused on improving financial inclusion in Malawi. This focus has resulted in several initiatives in Malawi which aim to increase the uptake of financial services, including mobile money.

#### *Financial Literacy Efforts*

182. The RBM organised the country's first financial literacy week which was held in December 2013. The aim was to help Malawians learn about the benefits of budgeting, savings, investing and generally being aware of their rights in relation to financial products. The RBM is now considering developing the Financial Literacy Week through, for example, one day of financial awareness every quarter.

183. MOF, the Malawi Institute of Education, and RBM have also implemented a financial literacy syllabus into Malawi's secondary school curriculum. There are also plans to introduce such programs at the tertiary level.

#### *Promoting Use of Electronic Payment Systems*

184. The *RBM Strategy for 2013-2016* details several initiatives to further promote the use of electronic payment systems. These include:

- Implement public awareness campaigns on payment systems to promote financial inclusion;
- Conduct market based research and moral suasion to influence affordability of payment services; and
- Periodically assess cost structures provided by payments systems operators.<sup>121</sup>

185. From our discussions with RBM there was also interest in encouraging the use of electronic payment systems for G2P.

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<sup>120</sup> Both the *USAID Action Plan* and *FinMark Report* were undertaken before Airtel and TNM began providing mobile money in Malawi, updated consumer demand studies may be needed to determine how the new schemes meet end-user needs versus other methods of money transfer such as FastCash.

<sup>121</sup> National Payments System Department, *July 2013 to December 2015 Planned Strategy*, 2.

### *Open, Interoperable and Interconnected Payment Systems*

186. Malawi is on a path towards encouraging and facilitating interoperability. For example, it is building a national switch for retail payment systems. In a speech delivered by the Minister of Economic Planning and Development to the BTCA, the Honourable Ralph Jooma noted that the national switch “will provide a switching platform for internet banking, remittances, and mobile money transactions”.<sup>122</sup> Mr Jooma said “we have decided to develop this as a shared payment services arrangement with the Bankers Association of Malawi so as to facilitate inter-operability and help ensure the volumes to make the investment viable”.

187. Interoperability is also identified as a policy objective in a number of RBM’s regulatory and policy documents.<sup>123</sup> While interoperability is identified as being required in the *Mobile Guidelines* this has not been enforced or pursued by RBM.<sup>124</sup> At this stage, the two mobile money schemes in Malawi are not interoperable. From discussions with RBM it is understood that the intention is for interoperability to be considered once the mobile money schemes are more established.

188. Under the proposed *E-Money Regulations*, agents will be required to operate on a ‘non-exclusive basis’.<sup>125</sup>

### **Recommendations**

#### *Continue Existing Efforts and Plans for Understanding and Building Consumer Demand*

189. Regulators may be of the view that the sector is still in its nascent stage and needs to become more established before being widely promoted. However, this is a ‘chicken and egg’ situation and without the focus on ensuring mobile money systems meet consumer needs, the mobile money ecosystem may not gain traction and become well-established. The benefit of providing financial services to the unbanked is a strong reason for regulators to continue encouraging the development of successful mobile money ecosystems.

#### *Understand More about G2P Challenges*

190. GSMA’s Mobile Money Unit has written about Airtel’s experiences with G2P in Malawi (GSMA use the term G2P to refer to social transfers which may be funded by NGOs and donors in addition to government).<sup>126</sup> GSMA emphasised that G2P may look attractive for providers and those making payments however the business is challenging and “requires fully committed partnerships”. CGAP has also recently release four case studies (from Haiti, the Philippines,

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<sup>122</sup> Ralph Jooma, *Inclusive Growth in Malawi and Digital Financial Inclusion* (Speech to UNGA Week, 24 September 2013) <<http://betterthancash.org/speech-delivered-by-hon-ralph-jooma-mp-minister-of-economic-planning-and-development-at-partnership-for-digital-financial-inclusion-a-driver-of-inclusive-growth/>>

<sup>123</sup> *Payment System Vision for 2009-2013*: sections 3.2, 3.2.3, 3.2.6, 3.2.9, 4.2, Table 2; *Payment System Vision for 2014-2018*, sections 3.3.8 and 4.2.

<sup>124</sup> *Mobile Guidelines*: sections 5.5, 8.6, 10.1.1, 10.3.3, 11.10, and 14.11.

<sup>125</sup> *E-money Regulations*, section 28.1.

<sup>126</sup> Mireya Almazan, *G2P Payments and Mobile Money: Opportunity or Red Herring?* (September 30 2013) <<http://www.gsma.com/mobilefordevelopment/g2p-payments-mobile-money-opportunity-or-red-herring>>.



Kenya and Uganda) examining the challenges in establishing mobile money based G2P payment systems.<sup>127</sup>

191. Statistical analysis could be undertaken on transaction behaviour related to Government welfare payments. The following issues could be investigated:

- Are social payments fully withdrawn each time they are paid into recipients' bank accounts?
- Is data available on the cost of cash distribution for these welfare payments? And how might this compare to the cost of distributing the payments through a mobile phone banking service?
- Where are the existing cash-out points for social payments and will it lead to increased efficiencies to consider replacing, or building on, these cash-out points with mobile money agent's cash distributions points.

### *Interoperability Considerations*

192. Interoperability can occur at many levels. The issue is therefore complicated by terminology and what type of interoperability is required. RBM would benefit from clarifying further what type or level of interoperability is to be aimed for in relation to mobile money schemes in Malawi.

193. Currently the intention of connecting mobile money systems to the national switch has been identified as a way of introducing interoperability. This initiative is in line with international developments in payment system infrastructure.<sup>128</sup> The initiative would benefit from continued industry consultation as it is occurring.

194. Also under the proposed *E-Money Regulations*, agents will be prohibited from operating exclusively for any particular mobile money provider. This allows for interoperability at a different level – the user level. How this regulation will be implemented may need further clarification for industry players.

### **Conclusion**

195. Regulators can develop an understanding of consumer demand so as to better appreciate which market developments need to be encouraged or facilitated through policy and regulatory changes. In understanding and building consumer demand, regulators can facilitate the building of sustainable mobile money ecosystems and move closer to the goal of providing financial access for all.

196. There have been various initiatives in Malawi which have contributed towards understanding the needs of end-users both in terms of local context issues and the customer value proposition. There have also been many initiatives in building demand.

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<sup>127</sup> Jamie Zimmerman and Kristy Bohling, *E-Payments in Low-Income Settings: Cutting-Edge or High Risk?* (12 March 2014) <<http://www.cgap.org/blog/e-payments-low-income-settings-cutting-edge-or-high-risk>>.

<sup>128</sup> For example Australia is currently developing a national retail payments switch which should allow for payments innovations such as mobile money to connect to. The Philippines is also considering developing a national switch (noted from BSP's discussions at ADB-CGAP Branchless Banking in the Pacific Seminar in Sydney, November 2013).

197. We recommend these initiatives be continued and developed to ensure market players keep end-users' needs front and centre of business decisions. We recommend careful assessment of the challenges to be expected in roll-outs of G2P programmes and we suggest data analysis may assist in this assessment. On interoperability as a means of building consumer demand, we recommend further industry discussion on the level and type of interoperability being considered; interoperability is a term which can have many meanings and it is important for both the regulators and industry players to be clear about what type of interoperability is being discussed in order to set clear goals for moving towards interoperability.

198. Understanding and building consumer demand for mobile money initiatives should remain at the forefront of those focused on improving financial inclusion. This will contribute towards the establishment of sustainable and successful mobile money markets.

## PART 4: SUMMARY AND CONCLUSION

199. The overarching objective of the study was to assist in developing an enabling legal and regulatory environment for market players and end-users in Malawi's mobile money sector, thereby encouraging that space to develop and grow. Mobile money products and services can be used to provide access to financial services for the unbanked and under-banked, thereby providing greater opportunities for many Malawians to rise above their current standards of living.

200. Mobile money in Malawi was launched in early 2012. As in many other emerging economies, mobile money in Malawi represents a potential way to increase financial inclusion. In less than two years, both the mobile money market and the regulatory environment for that market in Malawi have undergone considerable development.

201. A number of challenges face the development of the mobile money market in Malawi, both in terms of building the necessary skills, infrastructure and sustainable consumer demand. To support this fledgling market, it will be critical for Malawi's regulators to find the right balance between providing appropriate protection for the end-users and adopting risk-based regulatory approaches which support greater financial inclusion.

202. Legislative and regulatory changes currently being proposed in Malawi are responsive to the need for developing the mobile money market safely in Malawi and for broadening financial inclusion. These legislative and regulatory changes will strengthen and clarify regulatory requirements for the mobile money market in Malawi and contribute towards a more enabling legislative and regulatory environment. The proposed changes are the *Payments Bill* and draft *E-Money Regulations*.

203. This report identifies a number of issues which can be addressed through implementing the *Payments Bill* and *E-Money Regulations*. A number of recommendations are made for specific considerations in drafting and finalising the implementation of these new oversight and supervisory arrangements, particularly with respect to the use of agents, implementing simplified KYC measures and improving the arrangements for the protection of customers' funds.

204. There is extensive cooperation and coordination occurring between the many regulators involved in mobile money in Malawi. Following on from these well-coordinated regulatory approaches we would expect a smooth implementation of the new oversight and supervisory arrangements. RBM's lead role in coordinating regulatory and industry initiatives, supported closely by the MOF, is very positive for the mobile money market. Malawi is positioned well to deal with the regulatory challenges ahead.

205. As the mobile money market grows and develops, we expect an increased focus on the importance of partnerships between MNOs, banks and MFIs for deepening the product offerings available to end-users of mobile money. We also expect an increased focus on ensuring innovations in financial services meet end-users' needs. Malawi's oversight approach for mobile money will need to respond to these market developments and regulatory requirements may need to be adjusted accordingly. This will enable mobile money to develop safely in Malawi alongside bringing the benefits for improved financial inclusion.

## APPENDIX 1: ACRONYMS

AML/CFT	Anti-money laundering/counter the financing of terrorism
AML/CFT Act	Money Laundering Proceeds Of Serious Crime And Terrorist Financing Act 2006
AML/CFT Regulations	Money Laundering, Proceeds of Serious Crime and Terrorist Financing Regulation 2011
AMPI	African Mobile Phone Financial Services Policy Initiative
ATM	Automatic Teller Machine
BAM	Bankers Association of Malawi
BTCA	Better Than Cash Alliance
CBK	Central Bank of Kenya
CFTC	Competition and Fair Trading Commission
CGAP	Consultative Group to Assist the Poor
CDD Directive	Customer Due Diligence Directive for Banks and Financial Institutions 2005
FIU	Financial Intelligence Unit
FATF	Financial Action Task Force
FATF Guidance Note	FATF Guidance Note on Prepaid Cards, Mobile Payments, and Internet-Based Payment Services 2013
FHI360	Family Health International 360
G2P	Government-to-person
KYC	Know-Your-Customer requirements (part of AML/CFT obligations)
MACRA	Malawi Communications Regulatory Authority
ML/TF	Money Laundering /Terrorist Financing
MM4P	Mobile Money for the Poor

MNO	Mobile Network Operator
MOU	Memorandum of Understanding
MUSCCO	Malawi Union of Savings and Credit Cooperatives
NPC	National Payments Council
NPPS	New Payment Products and Services
P2G	Person-to-government
P2P	Person-to-person
RBM	Reserve Bank of Malawi
RBM Act	Reserve Bank of Malawi (RBM) Act 2010
RBM-Bank Department	RBM Bank Supervision Department
RBM-Payments Department	RBM Payments Systems Department
RBM Strategy 2013-2016	July 2013 to December 2016 Planned Strategy
RBM-MF/CM Department	RBM Micro-finance and Capital Markets Department
TNM	Telekom Networks Malawi Limited
UNCDF	United Nations Capital Development Fund
UNCTAD	United Nations Conference on Trade and Development
USAID	US Agency for Development

## APPENDIX 2: CAVEATS FOR PRELIMINARY RECOMMENDATIONS

Preliminary recommendations in this report draw upon ‘best practice’ responses to regulatory challenges for mobile money. However, best practice is still developing because mobile money is still a relatively new phenomenon and consensus on appropriate regulatory responses is still emerging. For example, research is yet to conclusively determine the appropriate use of interest payments from a trust fund in which customers’ funds are held.<sup>129</sup>

These recommendations do not constitute legal advice. A more detailed examination of Malawi’s legal system would be required to determine how these recommendations could be specifically implemented in Malawi.

The report does not represent a risk assessment; where the likelihood or magnitude of risks are assessed. A detailed impact assessment would be recommended as a precursor to determine if and when to implement the preliminary recommendations identified in this report.

The implementation of the preliminary recommendations may address the challenges identified, however, the implementation process may also impose increased and unanticipated regulatory costs on participants in Malawi’s mobile money sector. The trade-off between addressing challenges and the regulatory costs of doing so should be taken into consideration as part of an impact assessment process. Increased regulatory costs can have the effect of reducing innovation on the part of market players and reducing incentives to expand and develop products which could be beneficial for financial inclusion growth.

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<sup>129</sup> See, for example, Tilman Ehrbeck and Michael Tarazi, *Putting the Banking in Branchless Banking: Regulation and the Case for Interest-Bearing and Insured E-money Savings Accounts* (World Economic Forum, 2011).

## APPENDIX 3: RESOURCES ON CONSUMER DEMAND RELATED LITERATURE

MicroSave has written extensively and presented on the importance of the customer value proposition and keeping the clients' need at centre focus when designing new products.

Davis, Ben and John Owens, *POS vs. Mobile Phone as a Channel for M-Banking* (MicroSave Briefing Note #66, February 2009) <[ww.microsave.org](http://www.microsave.org)>.

Manoj Sharma, *DFS for the Under-Banked* (MicroSave Presentation, 2013) <[http://www.microsave.net/files/pdf/MicroSave\\_DFS\\_for\\_the\\_Under\\_Banked.pdf?utm\\_source=MicroSave+Clients+and+Partners&utm\\_campaign=d559f24ebc-MicroSave\\_Website\\_Launch\\_FINAL4\\_15\\_2013&utm\\_medium=email&utm\\_term=0\\_3fa38a71d6-d559f24ebc-63197533](http://www.microsave.net/files/pdf/MicroSave_DFS_for_the_Under_Banked.pdf?utm_source=MicroSave+Clients+and+Partners&utm_campaign=d559f24ebc-MicroSave_Website_Launch_FINAL4_15_2013&utm_medium=email&utm_term=0_3fa38a71d6-d559f24ebc-63197533)>

CGAP also has a number of articles focusing on understanding the consumer value proposition. Two recent examples are:

Deyners, Lesley, *How Do Smallholder Farmers Access Information* (31 January 2014) <<http://www.cgap.org/blog/how-do-smallholder-farmers-access-information>>.

Watkins, Debbie, *Context and Culture: Designing Relevant Financial Services* (13 August 2013) <<http://www.cgap.org/blog/context-and-culture-designing-relevant-financial-services>>.

Ignacio Mas, Senior Research Fellow, Said Business School, University of Oxford, has looked at the issue of why moving consumers from informal financial mechanisms to formal financial mechanisms, such as DFS, is not as straightforward as it may seem.

Mas, Ignacio, *Digitizing the Kaleidoscope of Informal Financial Practices* (2013).

Ishita Gosh from the Institute for Money, Technology and Financial Inclusion has written on the need to understand low-income consumer demand – see blog below where Eko realised early on the need for financial literacy programs and a need to understand how consumers do or do not save. Ishita Gosh, *Remittances vs Savings on the Mobile Money Platform (Part 2)* (Institute for Money, Technology and Financial Inclusion, July 23 2013) <<http://blog.imtffi.uci.edu/2013/07/remittances-vs-savings-on-mobile-money.html>>.

## APPENDIX 4: INTERVIEWEES

Institution	Name	Position
African Development Bank	Jonathan Kamkosi Banda	Senior Private Sector Officer, Malawi Country Office
Airtel	Andrew Santhe	Country Director - Airtel Money
Competition and Fair Trading Commission	Lewis Kulisewa	Director, Consumer and Welfare Education
E-Banking Task Force	Mushane Mwangonde	Manager, National Payments System
Family Health International 360	Kilyelyani Kanjo	Chief of Party, Mobile Money, FHI360
Financial Intelligence Unit	Fumbani Mhango	Monitoring and Analysis Division
	Masautso Ebere	Compliance and Prevention
	Vincent Chipeta	-
Local Researcher	Edwin Saidi	Local researcher
Opportunity Bank	Wilson Moleni	Chief Operating Officer
Microsave	Venkata N.A	Specialist, Microsave
Malawi Union of Savings and Credit Cooperatives	Daniel Imfa	IT Manager
Ministry of Finance	Boyd Hamella	Financial Sector Policy Unit (FSPU), Economic Affairs Division, Ministry of Finance
	Sadaat Siddiqi	Consultant, FSPU
Mobile Money Co-ordinating Group	Kilyelyani Kanjo	-
United Nations, Capital Development Fund, Mobile Money for the Poor	Tillman Bruett	Manager, MM4P
	Fletcher Chilumpha	Technical advisor, MM4P
	Francois Coupienne	Branchless and Mobile Banking Specialist, MM4P
Reserve Bank of Malawi – Payment System Department	Mushane Mwangonde	Manager, National Payments System
	George Chioza	-
	Chikondi Chigamba	-
Reserve Bank of Malawi-Bank Supervision Department	Themla	-
	Yananga Phiri	Principal examiner, Policy and Regulation



<b>Institution</b>	<b>Name</b>	<b>Position</b>
Reserve Bank of Malawi- Micro-finance and Capital Markets Department	Lanjes Sinoya	-
TNM	Charles Kamoto	Head of Commercial
	Webster Mbekeani	Country Head of TNM Mobile Money
USAID	Kilyelyani Kanjo	Chief of Party for USAID's Mobile Money Program

## **APPENDIX 5: SOURCE DOCUMENTS**

### **Legislation and Regulations**

*Financial Services (Agent Banking) Regulations 2012*

Bank Indonesia Circular Letter Concerning Mobile money, No. 11/11/DASP

Bank Indonesia Regulation Concerning Electronic Money, No. 11/12/PBI/2009, 13 April 2009

*Banking Act 1989*

*CDD Directive*

*Central Bank of Kenya Act 1966*

*Communications Act 1998*

*Competition and Fair Trading Act 2000*

*Consumer Protection Act 2003*

*E-Money Regulations 2013 (Kenya)*

*FATF Guidance Note on Prepaid Cards, Mobile Payments, and Internet-Based Payment Services 2013*

*Financial Action Task Force, Guidance Note for Prepaid Cards, Mobile Payments, and Internet-Based Services (2013)*

Guideline on Electronic Money BNM/RH/GL-16-3, July 2008 (Malaysia)

*July 2013 to December 2016 Planned Strategy*

*Malawi National Payment System Vision and Strategy Framework for the Period 2009 to 2013*

*Malawi National Payment Systems Vision and Strategy Framework for the Period 2014 to 2018*

*Mobile Payment System Guidelines 2011*

*Money Laundering Proceeds Of Serious Crime And Terrorist Financing Act 2006*

*Money Laundering, Proceeds of Serious Crime and Terrorist Financing Regulation 2011*

*National Payment System Act 2011 (Kenya)*

*National Payment Systems Bill 2013*

*Reserve Bank of Malawi (RBM) Act 1989*

*Reserve Bank of Malawi (E-Money) Regulations 2014*

## **Policy Documents**

*Financial Inclusion Strategy 2010-2014*

*G20 Principles for Innovative Financial Inclusion*

*Malawi National Payment Systems Vision and Strategy Framework for the Period 2014 to 2018 (draft)*

*Payment System Vision for 2009-2013*

*Payment System Vision for 2014-2018 (draft)*

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