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Tanzania

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Approaches and developments

The need for a conducive legislative framework that fosters innovation and innovative products in the financial sector was highlighted in the Ministry of Finance and Planning, (**MOFP**) Financial Sector Development Master Plan, 2020/2021–2029/2030 (**FSDMP**). The FSDMP further recommends the introduction of a national regulatory sandbox. When the regulatory sandbox is launched, it will enable innovations in the financial sector to be tested in a live environment whilst being monitored by regulators who will be tasked with developing regulations to address new product and service offerings. All these matters are expected to be addressed in the national digital economy strategy that is being prepared by the Government of Tanzania.

At present, legislative frameworks governing the financial sector are all undergoing reviews as part of the implementation of the FSDMP. Further, the Government's positive approach to innovations has already benefitted Financial technology (**Fintech**) companies entering the Tanzanian market. In particular, those offering digital financial services are seeing a more progressive approach from the regulators of the banking, insurance, and capital markets.

Fintech offering in Tanzania

The United Nations Capital Development Fund's (**UNCDF**) report identified 33 fintech startups in Tanzania in 2021, predominantly being involved in lending, financing and payments remittances and a limited amount in savings, personal finance, investments and insurance.[1] However, this position may change with the new regulatory framework for insurance digital platforms being expected to increase in fintech activities in the insurance subsector.

Interestingly, 91% were involved in consumer-facing services and only 9% were enabling fintech. This was attributed to the willingness of banks and mobile money operators to partner with consumer-facing fintech to improve services whilst being less willing to partner with enabling fintechs.[2]

For now, Tanzanians continue to monitor the performance of fintech companies entering the Tanzanian market. Notable entrants into the Tanzanian market include Flutterwave, ChipperCash, Settlo Technologies Limited and Mahali Sokoni. The Nigerian fintech Flutterwave, whose head office is located in San Francisco, USA, offers payment solutions for merchants and payment service providers. Chippercash facilitates cross-border funds transfer from the US and UK to Tanzania and other African countries. Tanzanian company Settlo Technologies Limited launched a free android point-of-sale (**POS**) machine used to track sales and inventory and accepts and records cash, card and mobile payments. Further, Akiito Africa, a fintech company offering insurance, lending and payment solutions, is set to launch in Tanzania in 2022. The brainchild behind Akiito Africa, Tanzanian Charles Matondone, has already successfully launched Akigate, an Insurance Gateway for insurers combining channels like bancassurance, agents and brokers solutions. Following the receipt of Payment System Provider authorisation from the Central Bank of Kenya, Akiito launched a very successful payment system known as Akipay in Kenya. It is working on relevant regulatory approvals from the Tanzania Insurance Regulatory Authority (**TIRA**) and a Payment System License (**PSL**) from the Bank of Tanzania (**BOT**) to be able to launch its products in Tanzania in 2022.

Regulatory and insurance technology

The accelarating pace of digital transformation in the Tanzanian insurance industry is partly attributed to the need to improve operational efficiencies due to the global pandemic, the need for innovation to keep up with the growing local and international competition and government initiatives aimed at increasing the penetration of insurance in the country.

Insurers that are leveraging on technological advances are outshining their opponents. Tanzanian insurer, Jubilee, made accident insurance, motor vehicle insurance, agri insurance and travel insurance available on mobile phones, paving the way for other insurers to also launch digital distribution channels. Technology has also changed the way data is shared between licensees and their regulators. TIRA went digital, launching the TIRA Risk Based Supervision Software which collects, processes and analyses data which can be used by all licensed insurance businesses and the regulator. TIRA is expected to launch an online registration system in 2022.

To its credit, TIRA has also been very accommodating of new fintech offerings. This is despite the fact that the Insurance Act[3] only empowers TIRA to licence insurers, insurance brokers and insurance agents and the accreditation of foreign and local reinsurance companies. TIRA also approves banks with bancassurance licences issued by the BOT in accordance with the BOT Bancassurance Guidelines for Banks and Financial Institutions, 2019.[4] Whilst not mandating TIRA to license intermediaries offering fintech products and processes, TIRA was able to exercise supervisory powers over fintech companies by virtue of TIRA's broad powers to formulate standards for the conduct of the business of insurance as per Section 6 (e) of the Insurance Act.

Hence, prior to 2022, TIRA developed a practice of requiring fintech companies seeking to launch products in Tanzania to partner with a licensed insurer and seek 'no objections' from TIRA prior to launching the product. Recently, Axieva Africa Lab Limited, a subsidiary of Axieva Inc of Dubai, was able to get a 'no objection' to launch travel insurance and motor vehicle insurance products in partnership with Alliance Insurance and later Jubilee Insurance. Axieva offers an end-to-end digital platform, having earlier obtained National Application Services from the Tanzania Communication Regulatory Authority (**TCRA**) in 2021.

Going forward, insurance digital platform providers will no longer need to partner with insurance companies in order to get approvals from TIRA. On 22nd April 2022, TIRA released the Insurance Digital Platform Guidelines[5] (**IDP Guidelines**). The IDP Guidelines came into effect on 1st May 2022. It introduced a new requirement for operators of insurance digital platforms to be licensed by TIRA. Hence, operators of insurance digital platforms will no longer need to partner with a TIRA licensee before seeking TIRA approvals. However, TIRA retained supervisory control over future partnerships between a licensed IDP and other TIRA licensees by requiring TIRA to approve all contracts to be entered by TIRA licensees with the licensed IDPs. The requirement for TCRA licences as a condition for no objection letters had proved to be a challenge for fintech companies offering products or processes which did not fit within the TCRA licence criteria. The IDP Guidelines has addressed this matter by requiring applicants for IDP licences to submit either clearance letters from TCRA or TCRA licences. These changes have been taken positively by stakeholders. It has granted TIRA a mechanism for regulating digital platforms which will reduce risks and enhance consumer protection whilst encouraging the launch of insurance digital platforms that can be used as enablers for the insurance business and as a result increase penetration and availability of insurance services in Tanzania.

Regulatory bodies

The lack of a signal regulator or regulatory framework governing innovations means players in the fintech ecosystems are regulated by sectorial regulators. Fintech companies involved in digital financial services are regulated by the BOT, the Capital Markets and Security Authority (**CMSA**), the TIRA, the Social Security Regulatory Authority (**SSRA**) and the TCRA. Whilst the SSRA is currently a department within the Prime Minister's Office, BOT, CMSA and TIRA are independent legal bodies under the supervision of the MoFP, while the TCRA falls under the supervision of the Ministry of Information, Communication and Information Technology (**MICIT**).

The BOT is responsible for the licensing, regulation and supervision of all banks and financial institutions as well as regulating and supervising payment, clearing and settlement systems. Fintech engaged in digital financing services usually engage BOT when seeking PSLs and approvals to issue payment instruments. However, the majority of Fintech partners are able to launch their products through partnering with licensed banks and mobile money providers.

TIRA is mandated to supervise the insurance industry and perform the functions listed in Section 6 of the Insurance Act. This includes, but is not limited to, performing the following functions:

- coordinating and implementing insurance policies;
- regulating insurers including insurers, insurance brokers, insurance agents and other insurance players;
- formulating insurance standards for the conduct of insurance business; and
- protecting the interest of policy holders.

TIRA's approach to the supervision of fintech companies is discussed above.

TCRA is the principal regulator of telecommunications, broadcasting and postal services in Tanzania in accordance with the Electronic and Postal Communications Act, 2010 (Act No. 10 of 2010) (**EPOCA**). Its functions include the power to license and regulate electronic and communications systems in Tanzania.[6] As such, sectorial regulators will not, as a matter of practice, approve any digital product or service without seeking confirmation as to whether the provider requires a TCRA licence to operate the digital product or service.

The SSRA's primary functions are to protect, regulate and promote the growth of the social security sector whilst protecting the interest of the members of the social security funds.[7] It regulates the three primary social security service offerings in Tanzania, being the social assistance programmes, the mandatory contributory pension schemes and the supplemental schemes such as the personal saving schemes and occupational health schemes.

Section 10 of the Capital Markets and Securities Act outline the functions of the CMSA. This includes the following:

- to maintain surveillance over securities to ensure orderly, fair and equitable dealings in securities;
- to register, license, authorise or regulate stock exchanges, investment advisers, securities dealers, and their agents and to control and supervise their activities;

- to formulate principles for the guidance of the industry;
- to monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of any such licence holder is in doubt; and
- to create the necessary environment for the orderly growth and development of the capital market.

Key regulations and regulatory approaches

Fintech in Tanzania is regulated within the existing sectorial legislative frameworks with each sectorial regulators taking a different approach to regulating players in the FinTech ecosystem.

Fintech offering digital finance solutions is governed by the Bank of Tanzania Act, 2006 (Act No. 4 of 2006), Banking and Financial Institutions Act, 2006 (Act No. 6 of 2006), Cooperative Societies Act, 1996 (Act No 4 of 1996), Financial Leasing Act, 2008 (Act No. 5 of 2008), Foreign Exchange Act, 1992 (Act No. 2 of 1992), Insurance Act, 2009 (Act No. 10 of 2009), Microfinance Act 2018 (Act No. 10 of 2018) and the National Payment System Act, 2015 and related subsidiary legislations. Fintech offering telecommunications and other technology-based solutions is governed by diverse sectorial laws as well as the EPOCA Act and the Universal Communications Services Access Act, 2006 (Act No. 11 of 2006) (**UCSA Act**) and supporting regulations. The regulatory approach to innovations and digital finance, in particular, has become increasingly more progressive. The FSDMP 2020/21 – 2029/30, released by the MoFP in June 2020, acknowledged the lack of adequate policy and legal framework for fostering innovation as one of the inferences towards development of appropriate products and models that offer effective solutions for consumers and inadequate infrastructure for digital financial services. As a result of this, all policies, laws and regulations affecting the financial sector are underway.

The BOT has also been at the forefront of development in interoperability. The evolution of mobile money services in Tanzania from 2008 was largely attributed to the BOT's willingness to permit mobile network operators (**MNOs**) to launch mobile money services on conditions stated in the no objection letters. The lessons learned from this 'test and learn' approach formed the basis of the payment system legislative framework, launched in 2016, with the operation of the National Payment Systems Act[8] 2015 and related regulations.

Prior to 2021, interoperability between MNOs and banks was carried out via bilateral arrangements using multiple systems. The BOT foresaw the need for a single switch for all digital financial service providers to remove the multiple layers. Hence, they developed a local switch known as Tanzania Instant Payments System (**TIPS**) which facilitates real time payment transfers between all digital financial services providers with a PSL. Three banks, NMB Plc, CRDB Plc and Exim Bank and two MNOs, TIGO and Airtel, took part in the successful pilot programme that commenced in August 2021. In April 2021, the BOT commenced the onboarding process for all licensed financial service providers. The financial service providers will all incur a one-off development cost to be able to use the system. Additionally, MNOs and other non-bank entities will also need to update their infrastructures to support TIPs. Once this is done, TIPs is expected to enhance efficiency and liquidity.

Restrictions

Banking sector – restrictions on Electronic Money Issuer Licences

On 18th December 2020, the BOT issued a circular regarding the restriction of electronic money licences to licensed MNOs. Electronic Money Issuance Approvals and Licences are issued to banks, financial institutions, MNOs and non-MNOs who are licensed payment system providers who want to issue electronic money. The guidelines effectively documented an existing practice as part of a risk adverse approach aimed at safeguarding the stability of the financial system. Existing non-MNOs licence holders were not affected by this directive.

Cryptocurrencies

Despite Tanzania ranking 19th overall out of 154 countries in the 2021 Global Crypto Adoption Index,[9] and significant increases in cryptocurrency trading in Tanzania, cryptocurrency remains banned in Tanzania. The BOT issued a Public Notice on 16th November 2019 titled 'Public Notice on the use of Crypto Currencies' in which they reiterated that trading, marketing and usage of cryptocurrencies contravenes foreign exchange regulations and that the BOT remains the only institution with authority to issue currencies and coins and declare legal tender in Tanzania.[10] The official reason provided for the ban was the potential to contravene foreign exchange regulations. However, cryptocurrency is unregulated in Tanzania. Therefore, consideration must have also been given to the risk posed by the volatility of cryptocurrency compared to hard currency as well as the difficulty of controlling its use to facilitate money laundering and terrorism financing and to protect consumers. Further, despite the 2019 public notice, recent statements by public authorities indicate that the authorities continue to look into cryptocurrency.

Data centre

Regulation 20 of the BOT Business Continuity Management Guidelines 2021[11] reinforced the requirement for banks and financial institutions to locate their primary data centres in Tanzania and ensure their IT personnel can operate the data centre. This is an extension of the earlier directives via Circular No. FA.56/293/043/VOL.III/28 3rd March 2014 which required banks and financial institutions whose primary and secondary data centres were located outside Tanzania to relocate one of the data centres to Tanzania within two months. This timeline was extended to 3rd March 2017 via BOT Circular No. FB.44/475/01/35. Circular FB.44/475/01/35 and Circular No. FA.56/235/20/29 further clarified the need for the secondary data centre to be operational and have a maximum data replication time lag.

TIRA has taken a similar approach. On 1st February 2020, TIRA issued Circular No. 085/2020 requiring insurers, reinsurers and all intermediaries to locate their primary and secondary data centres in Tanzania by 30th June 2020. Both the BOT and TIRA cited concerns that locating data centres outside Tanzania may impair the ability of these regulators to perform their supervisory functions by limiting their ability to access the data. Interestingly, the TIRA circular stresses that TIRA encourages the automation of processes to improve operational efficiencies. Therefore, it is not surprising that neither TIRA nor the BOT have provided rigid specifications for the primary data centre, instead favouring engagements with individual licensees. This limited flexibility is encouraging particularly for local subsidiaries whose core systems are hosted in group shared data centres and migration to in-country primary data centres would require significant financial investments.

Cross-border business

There are three main players in the cross-border business in Tanzania. The first is licensed banks who hold PSL and approvals to issue payment system instruments (**PSI**). The second group consists of mobile money operators who are licensed by the BOT as Electronic

Money Issuers that have approval to issue Payment System Instruments. They are able to make cross-border transfers within the East African Community. The third group of players are the international money transfer operators (**MTOs**) who are able to perform inbound and outbound cross-border transfers by partnering with banks who have PSLs and PSI approvals.

In May 2017, TerraPay became one of the first companies to obtain approval from the BOT to effect cross-border transfers in this manner. Since then, five other MTOs (Africash, Express Money, Western Union, Moneygram and WorldRemit) have been approved to perform inbound and outbound cross-border transfers by partnering with banks and/or mobile money operators. This is, among other reasons, why the BOT favour this approach, rather than direct approval of an MTO because the mobile money operator or partner banks will be responsible for obtaining the necessary supporting documents and conducting necessary checks for money laundering.

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Endnotes

1. UNCDF Tanzania, 'The Fintech Start Up Land Scape in Tanzania', March 2021.
2. UNCDF Tanzania, 'The Fintech Start Up Land Scape in Tanzania', March 2021.
3. Insurance Act, 2009 (Act No. 10 of 2009).
4. BOT, Bancassurance Guidelines for Banks and Financial Institutions, 2019 https://www.bot.go.tz/Publications/Acts,%20Regulations,%20Circulars,%20Guidelines/Guidelines/en/2020031901555169.pdf.
5. TIRA, Insurance Digital Platform Guidelines, April 2022 https://www.tira.go.tz/sites/default/files/MWONGOZO%20WA%20UTOAJI%20HUDUMA%20ZA%20BIMA%20KIDIJITALI.pdf.
6. See Section 4 of the Electronic and Postal Communications Act, 2010 (Act No. 10 of 2010).
7. See Section 5, Social Security Act, 2008 (Act No. 8 of 2008).
8. National Payment Systems Act, 2015 (Act No. 4 of 2015) (**NPS Act**).
9. Chainanalysis, '2021 Global Crypto Adoption Index', https://blog.chainalysis.com/reports/2021-global-crypto-adoption-index/.
10. BOT, Public Notice on Crypto Currencies, https://www.bot.go.tz/Adverts/PressRelease/sw/2020031307240424208.pdf.
11. https://www.bot.go.tz/Publications/Acts,%20Regulations,%20Circulars,%20Guidelines/Guidelines/en/2021063015270799.pdf.

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