Policy implications and mobile money regulatory approaches to promote financial inclusion of the poor in Zimbabwe after the COVID-19 pandemic*

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SUMMARY

The increased usage of digital financial products and financial services such as mobile money brought various challenges and opportunities in Zimbabwe during the coronavirus (COVID-19) pandemic. This has also increased the responsibilities of the regulatory authorities in the Zimbabwean financial sector. The financial regulators were inadequately prepared for the regulatory demands of financial technology (fintech) products in Zimbabwe. For instance, they struggled to cope with the increased responsibilities of overseeing mobile money operators and have adequate resources to efficiently monitor and manage such operators to ensure compliance with the relevant laws. Most Zimbabwean financial regulators did not have sufficient resources to employ persons with the relevant skills and expertise to fulfil their responsibilities. Despite this, the widespread use of mobile money has considerably improved the financial inclusion of the poor and previously unbanked persons, particularly during the COVID-19 pandemic in Zimbabwe. Consequently, various policy implications and mobile money regulatory approaches that were considered by policymakers during and after the COVID-19 pandemic in Zimbabwe in a bid to provide adequate supervision of mobile money operators and related digital financial services to curb the financial exclusion of the poor and unbanked persons are investigated. It is against this background that this article discusses the challenges, policy implications, and flaws affecting the adoption of viable mobile money regulatory approaches to promote financial inclusion of the poor in Zimbabwe after the COVID-19 pandemic.

Keywords: Risk-based approach, digital financial services, mobile money, financial inclusion, the poor.

* This article was supported in part by the National Research Foundation of South Africa (NRF), Grant Number: 141933. Consequently, the authors wish to thank the NRF for its support. Also see Torerai A Comparative Statutory Analysis of the Use and Regulation of Mobile Money Services to Promote Financial Inclusion for the Poor in Zimbabwe (LLD Thesis 2022 North West University) 195-207.

How to cite: Chitimira & Torerai 'Policy implications and mobile money regulatory approaches to promote financial inclusion of the poor in Zimbabwe after the COVID-19 pandemic' 2023 *De Jure Law Journal* 241-258
http://dx.doi.org/10.17159/2225-7160/2023/v56a17

1 Introduction

Over the last decade, a surge of new innovative digital financial services (DFS) has evolved, primarily benefiting the poor and other economically marginalised people in Zimbabwe.[1] This approach is aimed at accommodating the poor, low-income earners, small business enterprises, and rural communities that were previously excluded from the formal financial sector and financial markets to enable them to access formal financial products and financial services such as mobile money through their mobile cellphones.[2] Thus, individuals who could not access banking services are able to make deposits, transfer money, withdraw cash, pay utility bills and school fees, buy goods in retail outlets, and save money in their mobile wallets using mobile money services in Zimbabwe.[3] The emergence of DFS such as mobile money has broadened financial access opportunities to the unbanked, the poor, and other financially excluded persons in Zimbabwe.[4] The use of mobile money increased considerably after the outbreak of the coronavirus (COVID-19) pandemic in Zimbabwe and many other emerging economies. While the COVID-19 pandemic brought about a shift in financial behaviour due to health concerns, mobile money made it possible for people to access financial services and transact remotely.[5] In this regard, individuals could process transactions on their mobile phones or other hand-held electronic devices in the comfort of their homes. There was a notable reduction in the usage and reliance on cash and an increased use of mobile money in Zimbabwe during the COVID-19 pandemic. According to the World Health Organisation (WHO), Zimbabwe recorded 262,324 confirmed cases and 5,658 deaths of COVID-19 as of February 2023, against the global total of 755 million confirmed cases and 6.8 million deaths.[6] Zimbabwe's confirmed COVID-19 cases and deaths were relatively low as compared to that of other countries and the overall global COVID-19 pandemic death toll.[7] It appears that the use of mobile money by many people in Zimbabwe somewhat reduced the transmission rate of COVID-19 because no

1 Gukurume and Mahiya "Mobile Money and the (Un)Making of the Social Relations in Chivi, Zimbabwe" 2020 *Journal of Southern African Studies* 1204-1205.

2 Gukurume and Mahiya 2020 *Journal of Southern African Studies* 1204.

3 Lumsden "The Future is Mobile: Financial Inclusion and Technological Innovation in the Emerging World" 2018 *Stanford Journal of Law, Business and Finance* 7-8.

4 Gukurume and Mahiya 2020 *Journal of Southern African Studies* 1204-1205.

5 Financial Action Task Force (FATF) "COVID-19-Related Money Laundering and Terrorist Financing – Risks and Policy Responses" 2020 https://www.fatf-gafi.org/en/publications/Fatfgeneral/COVID-19-ml-tf.html (last accessed 2023-06-30) at 7-8.

6 World Health Organisation (WHO) "Zimbabwe: WHO Coronavirus Disease (COVID-19) Dashboard With Vaccination Data" https://covid19.who.int/region/afro/country/zw (last accessed 2023-02-08).

7 WHO "Zimbabwe: WHO Coronavirus Disease (COVID-19) Dashboard With Vaccination Data" https://covid19.who.int/region/afro/country/zw (last accessed 2023-02-08).

physical coins or notes were used to transact, especially during the COVID-19 pandemic. Moreover, the use of mobile money increases financial access and financial inclusion in Zimbabwe.[8]

Nonetheless, despite the advantages and opportunities that financial technology (fintech) provides such as convenience, affordability, and real-time services, it could also give rise to some regulatory risks and challenges to the financial sector and financial markets.[9] For instance, although new fintech products and financial services such as mobile money have the potential to improve financial inclusion for the poor in Zimbabwe, they also provide opportunities for criminals and terrorists to launder money and engage in other related financial crimes.[10] In other words, the risks that could emanate from fintech services include financial fraud, money laundering, terrorist financing, and related financial crimes.[11] These crimes could give rise to financial sector crises and financial markets arbitrage in Zimbabwe. Consequently, a comprehensive policy framework and/or statute that adequately regulates mobile money financial services must be enacted in Zimbabwe.[12]

Against this backdrop, the article explores the regulation of mobile money and the promotion of financial inclusion for the poor in Zimbabwe. Accordingly, mobile money regulatory approaches that are employed to promote financial inclusion of the poor in Zimbabwe, particularly after the COVID-19 pandemic are discussed. In this regard, the risk-based approach (RBA) and other measures that are adopted by regulatory bodies and enforcement authorities are examined. Notably, the RBA is premised on the application of regulatory measures that are commensurate to the potential harm or risk posed by the illicit conduct

8 See related comments by Alexandre and Eisenhart "Mobile Money as an Engine of Financial Inclusion and Lynchpin of Financial Integrity" 2013 *Washington Journal of Law, Technology and Arts* 288-289.

9 FATF "COVID-19-Related Money Laundering and Terrorist Financing – Risks and Policy Responses" 2020 https://www.fatf-gafi.org/en/publications/Fatfgeneral/COVID-19-ml-tf.html (last accessed 2023-06-30) 5-8.

10 FATF "Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers" 2021 https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html (last accessed 2023-06-30) at 7.

11 FATF "COVID-19-Related Money Laundering and Terrorist Financing – Risks and Policy Responses" 2020 https://www.fatf-gafi.org/en/publications/Fatfgeneral/COVID-19-ml-tf.html (last accessed 2023-06-30) at 5-8; Winn and De Koker "Introduction to Mobile Money in Developing Countries: Financial Inclusion and Integrity Conference Special Issue" 2013 *Washington Journal of Law, Technology and Arts* 156-157.

12 See related comments by FATF "Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers" 2021 https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html (last accessed 2023-06-30) at 12-14.

in question.[13] Put differently, the RBA empowers the enforcement authorities and regulatory bodies to increase or relax their regulatory measures in relation to the extent or degree of the available risks. Furthermore, a good regulatory environment is vital for the effective promotion of digital financial inclusion for the poor in Zimbabwe.[14] Consequently, various policy implications and mobile money regulatory approaches that were considered by policymakers during and after the COVID-19 pandemic in Zimbabwe in a bid to provide adequate supervision of mobile money operators and related digital financial services to curb the financial exclusion of the poor and unbanked persons are investigated. In addition, the article discusses the challenges, policy implications, and flaws affecting the adoption of viable mobile money regulatory approaches to promote financial inclusion of the poor in Zimbabwe in the wake of the COVID-19 pandemic.

2 Definition of key terms and concepts

The DFS generally refers to products, applications, processes, business models, and financial services provided through mobile phones, and this includes mobile money which is delivered through mobile network operators (MNOs)-led or bank-led models.[15] In this regard, the MNO-led model is sometimes referred to as the non-bank-led financial services model which has become very popular in developing countries such as Zimbabwe.[16]

Mobile money entails financial services typically provided by MNOs through mobile phones or other hand-held devices such as tablets to individuals who do not afford or meet the eligibility criteria to use bank accounts.[17] In other words, mobile money enables one to store, transact and manage money in an account linked to their mobile phone without the need for a bank account. Mobile money refers to financial transactions and financial services that are utilised through a mobile

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13 FATF "Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers" 2021 https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html (last accessed 2023-06-30) at 13.

14 Buku "Risk-Based Supervision for Digital Financial Services – Policy and Practice" 2022 *Global Centre on Cooperative Security, Washington DC*, https://www.globalcenter.org/wp-content/uploads/22Feb_Risk-Based-Supervision-of-Digital-Financial-Services_FINAL-1.pdf (last accessed 2023-06-30) at 3.

15 Gibson, Lupo-Pasini and Buckley "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" 2015 *Singapore Journal of Legal Studies* 26-45.

16 Alliance for Financial Inclusion "Digital Financial Services Basic Terminology" 2016 https://www.afi-global.org/sites/default/files/publications/2016-08/Guideline%20Note-19%20DFS-Terminology.pdf (last accessed 2023-01-10).

17 Chitimira and Torerai "The Nexus Between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *PELJ* 3; see related comments by Lumsden 2018 *Stanford Journal of Law, Business and Finance* 21.

device such as a mobile phone or tablet. The International Monetary Fund (IMF) defines mobile money as "a pay-as-you-go digital medium of exchange and store of value using mobile money accounts, facilitated by a network of mobile money agents".[18] Thus, mobile money is a non-bank-led financial service that enables the poor and unbanked persons to access formal financial services and financial products through their mobile phones in Zimbabwe.

For the purposes of this article, financial inclusion is the provision of useful, sustainable, secure, affordable, and convenient financial services and financial products to all people, especially the poor and low-income earners, in a properly regulated environment.[19] Mobile money promotes financial inclusion by empowering the poor to enjoy financial services such as depositing, withdrawing, electronic payments, savings, credit, insurance, and money transfer using their mobile phones.[20]

The term "poor" is relative. For the purposes of this article, "the poor" refers to individuals who do not have an income or those who earn below the prescribed minimum wage in Zimbabwe.[21]

3 Mobile money regulatory approaches

Although Zimbabwe had some regulatory challenges in the mobile money sector at the onset of the COVID-19 pandemic, there were about 6.5 million active mobile money subscribers by the end of 2020 and the number is still increasing.[22] Mobile money requires adequate regulation to operate in a manner that keeps the financial sector and financial markets free from risks such as money laundering, terrorism financing,

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18 IMF "FAS: What is Mobile Money? How is it Different from Mobile Banking?" Year/Date unknown https://datahelp.imf.org/knowledgebase/articles/1906552-fas-what-is-mobile-money-how-is-it-different-fro (last accessed 2023-04-29).

19 Mukoka and Chipanga "Financial Inclusion and GDP Per-capita Nexus: Evidence from Zimbabwe" 2021 *International Journal of Innovative Science and Research Technology* 1723-1724; also see Chitimira and Torerai 2021 *PELJ* 3.

20 Chitimira and Torerai 2021 *PELJ* 3-4; Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 156.

21 See Morduch "Concepts of Poverty" in United Nations Statistics Division Special Project on Poverty Statistics, *Handbook on Poverty Statistics: Concepts, Methods and Policy Use* https://unstats.un.org/unsd/methods/poverty/pdf/Chapter-2.pdf (last accessed 2023-07-01) at 23-50. The United Nations (UN) argues that the term "poor" applies to individuals who live on less than one United States of America dollar a day; also see Lumsden 2018 *Stanford Journal of Law, Business and Finance* 10.

22 Postal and Telecommunications Regulatory Authority of Zimbabwe "Abridged Postal & Telecommunications Sector Performance Report" 2020 *Fourth Quarter*, https://t3n9sm.c2.acecdn.net/wp-content/uploads/2021/03/Abridged-Sector-Performance-report-4th-Q-2020.pdf (last accessed 2023-01-15).

and related financial crimes.[23] Money laundering refers to the concealing or disguising of the true nature, source, or ownership of tangible or intangible property by any person while knowing or reasonably suspecting that such property is the proceeds of illegal activities or crime.[24] Mobile money is particularly attractive to criminals owing to the quick pace of transactions, the potential for anonymity, and its availability in cross-border and international digital payment channels.[25] There are other consumer protection concerns too. For instance, mobile money services raise challenges around data security, phishing schemes, identity theft, and fraud which broadly fall under cybersecurity and cybercrime problems.[26] The FATF and other international standards-setting bodies have developed the anti-money laundering (AML) and combating of terrorism financing (CTF) best practices that guide global financial institutions and financial markets operations.[27] In this regard, promoting financial inclusion for the poor should not come at the expense of effective regulatory control of mobile money in order to combat money laundering, terrorist financing, and other financial crimes.[28] Notably, at the inception of fintech products, regulators in Zimbabwe relied on the statutory regulatory frameworks that were tailor-made for traditional financial services such as banking. Thus, no specific fintech statute and/or fintech regulations were enacted in Zimbabwe. It appears that a traditional one-size-fits-all approach was employed to regulate fintech services and products under the Banking Act (Chapter 24:20) 9 of 1999, as amended (Banking Act) at the inception of such

23 Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 156; see related comments by De Koker 2012 *Washington Journal of Law, Technology and Arts* 178-179.

24 S 8 of the Money Laundering and Proceeds of Crime Act [Ch 9:24]; see related comments by Chitimira "The Reliance on Artificial Intelligence Measures to Curb Money Laundering Practices in the South African Banking Institutions and Real Estate Sector" 2020 *Acta Universitatis Danubius Juridica* 29; Sulieman and Salleh "Anti-Money Laundering Risk Posed By Mobile Money Services in Sub-Saharan Africa" 2020 *Journal of Critical Reviews* 569; Chitimira and Munedzi "Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 44-45.

25 Buku "Risk-Based Supervision for Digital Financial Services – Policy and Practice" 2022 *Global Centre on Cooperative Security, Washington DC*, https://www.globalcenter.org/wp-content/uploads/22Feb_Risk-Based-Supervision-of-Digital-Financial-Services_FINAL-1.pdf (last accessed 2023-06-30) at 3.

26 As above.

27 FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations" 2012 https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf (last accessed 2023-07-01) at 6; Kersop and Du Toit "Anti-Money Laundering Regulations and the Effective Use of Mobile Money in South Africa Part 1" 2015 *PELJ* 1608; Alexandre and Eisenhart 2013 *Washington Journal of Law, Technology and Arts* 290.

28 De Koker 2013 *Washington Journal of Law, Technology and Arts* 195; Winn and De Koker 2013 *Washington Journal of Law, Technology and Arts* 156; Kersop and Du Toit 2015 *PELJ* 1608.

services and products in Zimbabwe. Thereafter, regulatory authorities introduced different approaches to regulate mobile money services. Therefore, four regulatory approaches namely, the "wait-and-see", the "test-and-learn", the "innovation facilitators model" and the RBA are discussed below. The first three regulatory approaches are briefly discussed while more emphasis is placed on the RBA.

3 1 The "wait and see" approach

Many countries, including Zimbabwe, adopted the "wait and see" approach to the regulation of mobile money services.[29] The "wait and see" approach is a regulatory method where the regulator operates like a mere observer who has a passive interest in the issue at hand.[30] The "wait and see" approach is credited for allowing MNOs to roll out mobile money services without many regulatory restrictions since regulatory bodies monitored them from a distance and intervened only where necessary.[31] However, the "wait and see" approach did not effectively produce good results for regulatory bodies in Zimbabwe. The regulatory bodies were too slow to understand mobile money operations. Consequently, they gradually introduced some control measures to regulate mobile money financial services and financial products.[32] The "wait and see" approach was adopted in Zimbabwe owing to the ambiguity and confusion regarding the relevant regulatory authority to deal with the new fintech products and services such as mobile money.[33] The "wait-and-see" approach enabled regulatory bodies to promote new

29 In Kenya, financial regulatory authorities waited for the M-Pesa mobile money services to roll-out before introducing regulations. This allowed mobile money services to get established without regulatory hindrances.

30 World Bank "How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 10; Pazarbasioglu et al *Digital Financial Services* (2020) 12.

31 Pazarbasioglu et al (2020) 12; see related comments by the World Bank "How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 10; Bångens and Söderberg *Mobile Banking–Financial Services for the Unbanked?* (2008) 34.

32 World Bank "How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 10; Bångens and Söderberg (2008) 34.

33 World Bank "How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 10; see related comments Greenacre "Regulating Mobile Money: A Functional Approach" September 2018 *Pathways for Prosperity Commission Background Paper Series* 4.

innovations and develop regulatory measures without undue pressure.[34] In this regard, Econet Wireless, NetOne, and Telecel launched Ecocash, Onewallet, and Skwama mobile money platforms respectively in Zimbabwe in 2011.[35] For almost a decade, no comprehensive mobile money laws and regulations were introduced in Zimbabwe, and this granted MNOs the space to grow their mobile money services. Thus, the rapid growth and reliance on mobile money services and products in Zimbabwe is attributed to the adoption of the "wait and see" approach.

3 2 The "test and learn" approach

The "test and learn" approach is a cautiously permissive regulatory mechanism that empowers regulators to apply appropriate regulatory rules, regulations, and/or laws on a flexible case-by-case basis.[36] For example, financial regulators in Kenya developed a customised regulatory framework that enabled mobile money services to operate with a "no objection" letter.[37] Moreover, M-Pesa was launched on the basis of a "no objection" letter which opened the way for mobile money to be introduced and established with minimum regulatory restrictions in the Kenyan financial sector and financial markets. The "test-and-learn" approach does not disregard existing statutory regulatory frameworks. In addition, it provides a partial exemption for new mobile money MNOs entrants to enable them to introduce their financial services and products before stringent rules, regulations, and/or laws are introduced.[38] It appears that the "test-and-learn" approach is partially employed in Zimbabwe since some provisions of statutes such as the

34 World Bank How "Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 10; see related comments by Pazarbasioglu et al (2020) 12.

35 See Gukurume and Mahiya 2020 *Journal of Southern African Studies* 1203-1204; Chitimira and Torerai 2021 *PELJ* 6; see further Munyanyi 2014 *Greener Journal of Banking and Finance* 1-2.

36 Lal and Sachdev "Mobile Money Services – Design and Development for Financial Inclusion" July 2015 *Harvard Business School Working Paper Series* https://www.hbs.edu/faculty/Pages/item.aspx?num=49129 (last accessed 2023-07-01) at 14; World Bank "How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 11.

37 Pazarbasioglu et al (2020) 12; World Bank How "Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857 /pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approa ches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 11.

38 See related comments by Pazarbasioglu et al (2020) 12; Lal and Sachdev 2015 "Mobile Money Services – Design and Development for Financial Inclusion" July 2015 *Harvard Business School Working Paper Series* https://www.hbs.edu/faculty/Pages/item.aspx?num=49129 (last accessed 2023-07-01) at 14.

Banking Act and the National Payments Systems Act are sometimes utilised when supervising mobile money services. Nevertheless, the said statutes do not fully regulate mobile money in Zimbabwe. Thus, MNOs were allowed to keep mobile money operating within the confines of the existing legal framework before a specific statute on mobile money regulation was enacted. Therefore, the "test-and-learn" approach cautiously promotes financial inclusion for the poor in Zimbabwe and Kenya.[39] This approach has allowed MNOs to flexibly develop and establish their mobile money services in accordance with the current regulatory frameworks in Zimbabwe and Kenya.[40] According to Greenacre, the "test-and-learn" approach requires MNOs to act with reasonable care to mitigate risks that could jeopardise their profits.[41] Consequently, mobile money services became convenient and accessible to the poor in Zimbabwe, especially during the COVID-19 pandemic.[42] Furthermore, the "test-and-learn" approach also granted central banks the opportunity to study technology-driven financial services and financial products before their regulation.[43] This was done to avoid premature regulation of mobile money which limits competition and negatively affects the quality of financial services and products that are offered to all financial consumers.[44] Put differently, the premature and poor adoption of the "test-and-learn" approach jeopardises the integrity of the financial sector and financial markets. For instance, the "test-and-learn" approach appears to unduly shield new fintech developments by MNOs at the expense of other role-players such as banks.[45] Thus, in terms of the "test-and-learn" approach, mobile money services by MNOs are likely to receive flexible and favourable regulatory

39 See related comments by Goncalves "Financial Inclusion in Peru: Lessons from Kenya's Regulatory Approach to E-Money" 2013 *University of Miami International and Comparative Law Review* 33; Greenacre 2018 *Pathways for Prosperity Commission Background Paper Series* 4.

40 Greenacre 2018 *Pathways for Prosperity Commission Background Paper Series* 9; Goncalves 2013 *University of Miami International and Comparative Law Review* 33; Tuba "The Regulation of Electronic Money Institutions in the SADC Region: Some Lessons from the EU" 2014 *PELJ* 2275.

41 Greenacre 2018 *Pathways for Prosperity Commission Background Paper Series* 9; see related comments by Lumsden 2018 *Stanford Journal of Law, Business and Finance* 28.

42 See related comments by Goncalves 2013 *University of Miami International and Comparative Law Rev*iew 33; Lumsden 2018 *Stanford Journal of Law, Business and Finance* 28.

43 Tuba 2014 PELJ 2275; Lumsden 2018 *Stanford Journal of Law, Business and Finance 28*; Goncalves 2013 Univers*ity of Miami International and Comparative Law Review* 33.

44 Lal and Sachdev 2015 "Mobile Money Services – Design and Development for Financial Inclusion" July 2015 *Harvard Business School Working Paper Series* https://www.hbs.edu/faculty/Pages/item.aspx?num=49129 (last accessed 2023-07-01) at 14; see related comments Tuba 2014 *PELJ* 2276.

45 Pazarbasioglu et al (2020) 12; see related comments by World Bank "How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 11.

conditions than those of banks and/or other traditional financial institutions.

3 3 The innovation facilitators approach

Policymakers in many other jurisdictions adopted the innovation facilitators approach in a bid to carefully regulate mobile money services without curtailing them unduly.[46] The innovation facilitators approach is similar to the "test-and-learn" approach except that the former is regulator driven.[47] Thus, the innovation facilitators approach empowers the regulator to set the standards to be followed rather than to react and/or adapt to the evolving fintech innovations. The innovation facilitators approach requires MNOs to consult with regulators beforehand to try and influence the development of rules, regulations, and laws that are conducive for their mobile money services and products.[48] The major disadvantage of the innovation facilitators approach is its capital and/or resource-intensive nature, which makes access to financial services and financial products costly and cumbersome.[49] Consequently, the innovation facilitators approach is yet to make a meaningful contribution to the promotion of financial inclusion for the poor through mobile money services and products in Zimbabwe.

3 4 The RBA

The RBA requires regulatory bodies and enforcement authorities to identify, assess and understand available risks such as money laundering and terrorist financing and take the necessary measures to combat such risks.[50] Moreover, the RBA obliges policymakers to understand the nature of possible risks and have the necessary resources to provide mitigatory and preventive measures to curb such risks.[51] The available risks should be categorised according to their severity and potential harm in order to determine and inform the nature of the regulatory response. In other words, the RBA requires the regulatory bodies to apply

46 World Bank "How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 14.
47 Pazarbasioglu et al (2020) 12.
48 As above.
49 World Bank "How Regulators Respond to Fintech: Evaluating the Different Approaches-Sandboxes and Beyond" 2020 https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf (last accessed 2023-07-01) at 14-15.
50 Buku "Risk-Based Supervision for Digital Financial Services – Policy and Practice" 2022 *Global Centre on Cooperative Security, Washington DC*, https://www.globalcenter.org/wp-content/uploads/22Feb_Risk-Based-Supervision-of-Digital-Financial-Services_FINAL-1.pdf (last accessed 2023-06-30) at 5.
51 FATF "Risk-Based Supervision" 2021 https://www.fatfgafi.org/media/fatf/documents/Guidance-Risk-Based-Supervision.pdf (last accessed 2022-11-20) at 7-97.

regulatory measures that are commensurate to the identified risk. The FATF has made numerous recommendations to affirm that the RBA should be applied to enhance the regulation of mobile money services and other DFS.[52] In this regard, policymakers should utilise the RBA to balance the need for adequate AML/CTF measures and other key aspects such as data protection and privacy, financial inclusion, de-risking, consumer and investor protection, and financial innovation.[53]

3 4 1 Applying the RBA during the COVID-19 pandemic

The COVID-19 pandemic provided the regulatory bodies with an opportunity to test the viability and application of the RBA in Zimbabwe and many other countries. The need to balance the promotion of financial inclusion for the poor and the robust enforcement of AML/CTF measures and related financial crimes was amplified during the COVID-19 pandemic.[54] In this regard, regulators in Zimbabwe had to apply the RBA to combat money laundering and other financial crimes while allowing MNOs to provide mobile money services to promote financial inclusion for the poor.[55] The regulatory bodies were obliged to carefully and flexibly apply the AML/CTF measures to promote financial inclusion for the poor in light of the COVID-19 pandemic challenges.[56] For instance, regulatory bodies were required to strictly apply customer due diligence (CDD) measures and know your customer (KYC) monitoring on

52 FATF "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations" October 2021 (Recommendation 1) https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf (last accessed 2022-11-20) at 8-119.

53 FATF "Updated Guidance for a Risk-Based Approach: Virtual Assets and Virtual Asset Service Providers" 2021 https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html (last accessed 2023-06-30) at 12.

54 Alexander "Financial Inclusion and Banking Regulation: The Role of Proportionality" 2021 *Law and Contemporary Problems* 142-143; Buheji et al "The Extent of COVID-19 Pandemic Socio-Economic Impact on Global Poverty: A Global Integrative Multidisciplinary Review" 2020 *American Journal of Economics* 216.

55 FATF "Guidance for a Risk-Based Approach for the Banking Sector" 2014 https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Risk-based-approach-banking-sector.html (last accessed 2023-07-02) at 6-47; FATF "Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion" 2013 https://www.fatf-gafi.org/content/dam/fatf/documents/reports/AML_CFT_Measures_and_Financial_Inclusion_2013.pdf (last accessed 2023-07-02) at 18.

56 FATF "Guidance for a Risk-Based Approach: The Banking Sector" 2014 https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Risk-based-approach-banking-sector.html (last accessed 2023-07-02) at 6-47; also see De Koker "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 282.

high-risk persons and lower the standard or completely waive CDD and KYC requirements on low-risk persons such as the poor.[57] Thus, the RBA empowered regulatory bodies and enforcement authorities to dispense with rigid and unnecessary compliance requirements that could hinder financial inclusion for the poor in Zimbabwe.[58]

3 4 2 Relaxation of AML/CTF measures during COVID-19

Although the FATF advocated for the relaxation of some KYC and CDD requirements for mobile money users during the COVID-19 pandemic, there were regulatory concerns in Zimbabwe that such relaxation could give rise to fraud and other financial crimes.[59] The allocation of resources for the RBA was difficult to achieve in Zimbabwe because more priority was placed on the purchase of drugs and vaccinations to mitigate the negative health effects of the COVID-19 pandemic.[60] Employees of regulatory bodies and enforcement authorities resorted to remote working and this caused new mobile money users to register online without providing physical identity documents for AML/CTF purposes.[61] The COVID-19-induced lockdowns provided regulatory bodies with opportunities to apply the RBA to monitor and combat money laundering, terrorist financing, and other financial crimes that affected

57 De Koker 2014 *Journal of Money Laundering Control* 283; FATF "Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion" 2013 https://www.fatf-gafi.org/content/dam/fatf/documents/reports/AML_CFT_Measures_and_Financial_Inclusion_2013.pdf (last accessed 2023-07-02) at 19.

58 FATF "Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion" 2013 https://www.fatfgafi.org/content/dam/fatf/documents/reports/AML_CFT_Measures_and_Financial_Inclusion_2013.pdf (last accessed 2023-07-02) at 18; De Koker 2014 *Journal of Money Laundering Control* 283.

59 FATF "COVID-19-Related Money Laundering and Terrorist Financing Risks and Policy Responses" 2020 https://www.fatf-gafi.org/en/publications/Fatfgeneral/COVID-19-ml-tf.html (last accessed 2023-07-02) at 6-28; see related comments Chatain et al *Protecting Mobile Money Against Financial Crimes: Global Policy Challenges and Solutions* (2011) 9-183.

60 Gutiérrez-Romero and Ahmed "COVID-19 Response Needs to Broaden Financial Inclusion to Curb the Rise in Poverty" 2021 *World Development* 2-37; FATF "COVID-19-Related Money Laundering and Terrorist Financing – Risks and Policy Responses" 2020 https://www.fatf-gafi.org/en/publications/Fatfgeneral/COVID-19-ml-tf.html (last accessed 2023-07-02) at 11.

61 Jenik, Kerse and De Koker "Rapid Account Opening in a Pandemic: How to Meet AML/CFT Rules for Social Assistance Payments" https://www.cgap.org/sites/default/files/publications/2020_07_COVID_Briefing_Rapid_Account_Opening.pdf (last accessed 2020-08-20) 1-15; FATF "COVID-19-Related Money Laundering and Terrorist Financing – Risks and Policy Responses" 2020 https://www.fatf-gafi.org/en/publications/Fatfgeneral/COVID-19-ml-tf.html (last accessed 2023-07-02) at 14.

the mobile money financial sector of Zimbabwe.[62] In this regard, the COVID-19 pandemic availed some opportunities for regulatory bodies and enforcement authorities to deploy artificial intelligence (AI) measures in order to monitor financial transactions for AML/CTF compliance in the financial sector. AI generally refers to the ability of machines to emulate human cognition and to do activities that are normally done by people.[63] For example, instead of the physical verification of documents for KYC purposes, programmed machines could do the same work in what is now called electronic KYC (e-KYC). Thus, the COVID-19 pandemic created opportunities for the integration of AI and machine learning into the mobile money sector to improve the application of AML/CTF measures. In this regard, the government of Zimbabwe and its policymakers should adopt innovative regulatory measures to sufficiently address the AML/CTF concerns in the fintech sector.[64] The KYC and CDD measures should be relaxed or simplified only where money laundering and terrorist financing risks are minimal to promote financial inclusion for the poor in Zimbabwe.[65]

3 4 3 The RBA and the regulation of mobile money agents in Zimbabwe

The banning of some aspects of mobile money operations further illustrates the absence of a clear regulatory approach for fintech products in Zimbabwe. In 2020, the Reserve Bank of Zimbabwe (RBZ) banned mobile money agents on allegations that some of them had become conduits of illicit activities including money laundering and the creation

62 Jenik, Kerse and De Koker "Rapid Account Opening in a Pandemic: How to Meet AML/CFT Rules for Social Assistance Payments" 2020 https://www.cgap.org/sites/default/files/publications/2020_07_COVID_Briefing_Rapid_Account_Opening.pdf (last accessed 2020-08-20) 1-15; FATF "COVID-19-Related Money Laundering and Terrorist Financing – Risks and Policy Responses" 2020 https://www.fatf-gafi.org/en/publications/Fatfgeneral/COVID-19-ml-tf.html (last accessed 2023-07-02) at 12.

63 Chitimira and Magau "A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa" 2021 *PELJ* 15.

64 Jenik, Kerse and De Koker "Rapid Account Opening in a Pandemic: How to Meet AML/CFT Rules for Social Assistance Payments" 2020 https://www.cgap.org/sites/default/files/publications/2020_07_COVID_Briefing_Rapid_Account_Opening.pdf (last accessed 2020-08-20) 1-15; FATF "COVID-19-Related Money Laundering and Terrorist Financing – Risks and Policy Responses" 2020 https://www.fatf-gafi.org/en/publications/Fatfgeneral/COVID-19-ml-tf.html (last accessed 2023-07-02) at 14; Lyman, De Koker, Meier and Kerse "Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion" August 2019 *Consultative Group to Assist the Poor Working Paper* 3.

65 FATF "COVID-19-Related Money Laundering and Terrorist Financing – Risks and Policy Responses" 2020 https://www.fatf-gafi.org/en/publications/Fatfgeneral/COVID-19-ml-tf.html (last accessed 2023-07-02) at 14.

of phantom money.[66] The mobile money agents were further accused of illegally trading in foreign currency and overcharging consumers.[67] Mobile money agents refer to individuals, shops, supermarkets, and many other persons that are contracted by MNOs to provide mobile money services to people in their communities.[68] Mobile money agents also recruit and register new mobile money consumers and help in the processing and receiving of monetary payments.[69] However, there is no clear legislative policy regulating the activities of mobile money agents in Zimbabwe. The banning of mobile money agents in 2020 exposed the AML/CTF flaws and the inadequacy of the Zimbabwean mobile money regulatory framework.[70] The banning of mobile money agents was a self-defeating exercise on the promotion of financial inclusion for the poor. The proper application of the RBA encourages the adoption of fintech innovations and promotes financial inclusion for the poor in Zimbabwe.

4 The RBA and Mobile Money Statutory Framework in Zimbabwe

There is no clear regulatory approach for mobile money services in Zimbabwe. Consequently, it appears that the Zimbabwean policymakers rely on a combination of the "wait and see",[71] the "test and learn"[72] and the RBA. Despite this confusion, regulatory bodies have enabled mobile money services to thrive in Zimbabwe.[73] Nonetheless, there is no specific statute that was expressly enacted to regulate mobile money services in Zimbabwe. Notwithstanding this flaw, several legislative measures have been gradually developed either as amendments or

66 Reserve Bank of Zimbabwe (RBZ) "Monetary Policy Statement 2020" 2020 https://www.rbz.co.zw/documents/mps/Monetary-Policy-Statement-17-February-2020.pdf (last accessed 2023-07-02) at 18; Chitimira and Ncube "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *PELJ* 1-10.

67 *Ecocash Zimbabwe (Pvt) Ltd v RBZ* (2020) ZWHC 333 para unknown; Chitimira and Ncube 2021 *PELJ* 10.

68 See Gibson, Lupo-Pasini and Buckley "Regulating Digital Financial Services Agents in Developing Countries to Promote Financial Inclusion" 2017 *University of New South Wales Law Research Series* 2; Chibango "Mobile Money Revolution: An Opportunity for Financial Inclusion in Africa" 2014 *The International Journal of Humanities and Social Studies* 61.

69 Buckley, Greenacre and Malady "The Regulation of Mobile Money in Malawi" 2015 *Washington University Global Studies Law Review* 451.

70 *Ecocash Zimbabwe v RBZ* 2020 para unknown; Chatain et al (2011) 44; Chitimira and Ncube 2021 *PELJ* 10.

71 See related comments in para 3 1 above.

72 See para 3 2 above.

73 Goncalves 2013 *University of Miami International and Comparative Law Review* 35; Buku and Meredith "Safaricom and M-Pesa in Kenya: Financial Inclusion and Financial Integrity" 2013 *Washington Journal of Law, Technology and Arts* 386.

independent regulations to supervise mobile money services in Zimbabwe.[74] Some of these measures are briefly discussed below.

4 1 The Banking Act and the Regulation of Mobile Money in Zimbabwe

The Banking Act[75] is one of the main statutes used to regulate mobile money services in Zimbabwe. However, it has several flaws since it was enacted to regulate traditional financial services that are mainly offered by banks as opposed to DFS offered by non-banks institutions such as MNOs. In 2015, the legislature amended the Banking Act to expand the definition of "financial institution". Nonetheless, this new definition does not include MNOs that are mainly responsible for mobile money services in Zimbabwe.[76] The amendments also included the definition of "mobile banking" which refers to an arrangement that allows customers of MNOs or any other operator of a wireless system to access financial services.[77] Apart from the definition, there are no further provisions in the Banking Act that deals with the concept of mobile banking. Owing to this, we argue that mobile banking is not the same as mobile money and the two terms should not be used interchangeably.[78] Most provisions of the Banking Act are more relevant to traditional banking transactions than mobile money services.[79] Therefore, the amendments to the Banking Act do not adequately regulate the use of mobile money and they do not promote financial inclusion for the poor in Zimbabwe. In this regard, policymakers should consider further amendments to the Banking Act and/or enacting a separate statute that expressly regulates mobile money and related DFS in Zimbabwe.

4 2 Mobile Money Regulation under the Banking Regulations 2020

In 2020, the Banking Regulations 2020[80] came into effect through a statutory instrument in response to the growing usage of mobile money in Zimbabwe. The Banking Regulations 2020 provide for, *inter alia*, the licensing of non-bank institutions that offer mobile money services in Zimbabwe.[81] Thus, the Banking Regulations 2020 require MNOs that provide mobile money services to be registered. The Banking

74 Greenacre 2018 *Pathways for Prosperity Commission Background Paper Series* 4; Goncalves 2013 *University of Miami International and Comparative Law Review* 35; Buku and Meredith 2013 *Washington Journal of Law, Technology and Arts* 386.
75 S 2.
76 S 2 of the Banking Act.
77 S 2(m) of the Banking Act.
78 See the definition of "mobile money" provided in para 2 of this article.
79 See s 28E of the Banking Act.
80 Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations, 2020 (hereinafter Banking Regulations 2020), see s 2.
81 S 3 of the Banking Regulations 2020.

Regulations 2020 empowers regulatory bodies to exercise some legislative authority when regulating all the activities of the MNOs to curb financial crime in Zimbabwe. Although the Banking Regulations 2020 refer to mobile money, they do not expressly define mobile money.[82] Moreover, like the Banking Act, the Banking Regulations 2020 use the term "mobile banking" instead of mobile money.[83]

The Banking Regulations 2020 require MNOs that provide mobile money services to be part of the national payment systems. They also require such MNOs to be connected to the national payment switch together with other participants such as banks.[84] Additionally, MNOs are required to open trust bank accounts that are used exclusively for mobile money services.[85] Trust bank accounts are a protective measure that separates the MNOs' own funds from those of mobile money consumers to combat fraud and other abuse of consumer funds. In this regard, MNOs should ensure that funds transacted in the mobile money value chain have a corresponding balance in the trust bank account.[86] Maintaining a balance in the funds transmitted and the money in the bank assists in combating illicit activities where unscrupulous mobile money providers could generate fictitious money which could compromise financial markets' integrity. The Banking Regulations 2020 are the closest step the legislature has taken to regulate mobile money services in Zimbabwe. However, the Banking Regulations 2020 do not provide a significant departure from the traditional regulatory approach used for banks and other traditional financial institutions. Therefore, policymakers should review the Banking Regulations 2020 to provide a comprehensive regulation of mobile money services in Zimbabwe. Moreover, the policy makers should enact a specific statute to effectively regulate mobile money and other fintech products in Zimbabwe.

5 Key recommendations

In light of the discussion above, it is recommended that a comprehensive policy framework and/or statute that regulates mobile money services in a way that promotes financial inclusion for the poor should be introduced in Zimbabwe. Moreover, the policy goal of promoting financial inclusion for the poor should be carefully achieved through effective regulatory control of mobile money to detect and combat systemic risks and threats of financial crimes such as money laundering, terrorist financing, fraud, and cybercrime in the Zimbabwean financial sector and financial markets.

It is also submitted that Zimbabwe should not rely on statutes designed for traditional financial institutions such as banks to regulate

82 S 2 of the Banking Regulations 2020.
83 As above.
84 S 4(1)(2) of the Banking Regulations 2020.
85 S 4(3) of the Banking Regulations 2020.
86 S 4(4) of the Banking Regulations 2020.

mobile money. Thus, as indicated in paragraph 4 2 above, policymakers should enact a specific statute to regulate mobile money and other fintech products in Zimbabwe. The Zimbabwean regulatory bodies and enforcement authorities should carefully employ the RBA to regulate mobile money services to curb financial crime without curtailing the promotion of financial inclusion for the poor.

The Zimbabwean regulatory bodies and enforcement authorities should employ persons with the relevant expertise to effectively enforce mobile money regulatory rules, regulations, laws, and/or related measures. Such persons should be empowered to work remotely as well as to use innovative regulatory measures such as AI to enhance mobile money services in Zimbabwe. The Zimbabwean government and other relevant stakeholders should provide adequate financial resources and political will to enable regulatory bodies and enforcement authorities to conduct their functions effectively.

6 Concluding remarks

As indicated in this article, there were several approaches to the regulation of mobile money services. Notably, regulatory approaches such as the "wait-and-see", the "test-and-learn", the "innovation facilitators model" and the RBA were discussed. These regulatory approaches should be carefully employed to promote financial inclusion for the poor in Zimbabwe. There is no clear position on the regulatory approach that is employed by regulatory bodies to oversee mobile money services in Zimbabwe. However, it appears that a combination of the "wait and see",[87] the "test and learn",[88] and the RBA[89] is employed to regulate mobile money services in Zimbabwe. As earlier stated, each of these approaches has its own advantages and disadvantages. For instance, the "wait and see" approach and the "test and learn" approaches are good for the early stages of fintech innovations regulation. The RBA is good at balancing the promotion of financial inclusion and the preservation of financial markets and financial sector integrity.[90] The RBA allows regulators to allocate adequate resources to enhance CDD and KYC measures in proportion to the potential risk. In this regard, the poor are often considered low-risk financial consumers which do not require too many resources to regulate.

87 See para 3 1 of this article.
88 See para 3 2 of this article.
89 See para 3 4 of this article.
90 See para 3 1 to 3 4 of this article.

As argued above, the current statutory framework for mobile money in Zimbabwe is flawed and weak owing to the absence of a specific statute that regulates mobile money. Although there have been amendments to the Banking Act[91] and the gazetting of Banking Regulations 2020,[92] the current mobile money regulatory framework is not robust enough to promote financial inclusion for the poor in Zimbabwe. Therefore, we argue that the RBA should be employed to enhance the regulation of mobile money to promote financial inclusion for the poor in Zimbabwe post-COVID-19 pandemic. It is hoped that the identified regulatory flaws and the suggestions advanced in this article will be considered by policymakers, regulatory bodies, and other relevant stakeholders to enhance mobile money regulation in Zimbabwe.

91 See para 4 1 of this article.
92 See para 4 2 of this article.