REVOLUTIONISING CROSS-BORDER REMITTANCES; A LEGAL FRAMEWORK FOR MOBILE MONEY INTEROPERABILITY IN SOUTHERN AFRICA.

Mini- Thesis

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By

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Declaration.

I declare that this Mini- Thesis titled **"Revolutionising Cross-Border Remittances; A Legal Framework for Mobile Money Interoperability in Southern Africa."** hereby submitted for the award of the LLM in International Trade and Investment Law in Africa, is my original work and has not been previously submitted for the award of a degree at this or any other Tertiary Institution.

Signed …………………………………………Chido Pamela Mafongoya

Date: 30 November 2021

Signed……………………………………………. Prof P. Lenaghan

Date: 30 November 2021

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List of Acronyms

A2A	Account-to-Account
ADLA	Authorised Dealers with Limited Authority
ADS	Authorised Dealers
AML	Anti-money laundering
ATMs	Automated Teller Machines
B2M	Bank Account to Mobile Money
BCEAO	Banque Centrale des Etats de l'Afrique de l'Ouest
BMGF	Bill & Melinda Gates Foundation
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CGAP	Consultative Group to Assist the Poor
CMA	Common Monetary Area
CPMI	Committee on Payments and Market Infrastructures
DFS	Digital Financial Service
DRC	Democratic Republic of Congo
EAC	East African Community
ECOWAS	Economic Community of West African States
EFT	Electronic Fund Transfer
EMIs	Electronic Money Institutions
e-money	electronic money
ETL	Econet Telecom Lesotho
EU	European Union
E-value	Electronic Value
FATF	Financial Action Task Force
FCP	Financial Consumer Protection
FDI	Foreign Direct Investments
FDIs	Foreign Direct Investments
FIP	Finance and Investment Protocol
FIs	Financial Institutions
FNB	First National Bank
Forex	Foreign Exchange
GDP	Gross Domestic Product
GSMA	Global System for Mobile communications Association
KYC	Know Your Customer
LMICs	Lower Middle Income Countries
M2B	Mobile Money Account to Bank Account
MNO	Mobile Network Operator
MNOs	Mobile Network Operators MNOs

M-PESA	“M” for mobile and “PESA” for money in Swahili
MTN	Mobile Telephone Networks
MTO	Money Transfer Operator
P2P	Person-to-Person
POS	Point of Sale
PSOC	Payment System Oversight Committee
RBZ	Reserve Bank of Zimbabwe
RSPs	Requirements for Remittance Service Providers
RTGS	Real-Time Gross Settlement
SADC	Southern African Development Community
SIM	Subscriber Identity Module
SIRESS	SADC Integrated Regional Electronic Settlement System
TCIB	Transactions Cleared on Immediate Basis
USD	United States Dollars
WAEMU	West African Economic Monetary Union
ZAR	South African Rand

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CHAPTER 1; INTRODUCTION

1.1 Introduction

Regional trade, investment and cross-border remittances are all critical components of economic and social development in the Southern African Development Community (SADC) region.[1] Cross border remittances are a main and stable source of income for a majority of the population in most developing countries, accounting for a third of the total Gross Domestic Product (GDP).[2] One in seven Africans receives remittances from family and friends abroad amounting to approximately US$ 60 million per year.[3]

As such, cross border remittances act as a critical lifeline to developing economies and have had a significant impact on the standard of living of many recipient households.[4] In the SADC region, cross-border remittances are commonplace, wherein remittance inflows account for a sizeable proportion of GDP after Foreign Direct Investments (FDI). They are the largest source of foreign currency for SADC countries.[5] According to FinMark Trust, cross-border remittances in SADC amount to approximately US$11 billion per annum. [6] The ease and cost of sending remittances within the SADC region are therefore crucial to the welfare of many individuals and households reliant on these flows and the economy as a whole. [7]

According to the Consultative Group to Assist the Poor (CGAP), roughly one billion people in the world have a mobile phone but no bank account.[8] The increasing use of mobile money in the SADC region has presented a critical tool for facilitating cross-border remittances. Mobile money reduces remittances costs and maximizes the impact of remittance on development. Further, due

[1]Cross-border remittances for purposes of this thesis refer to money sent mainly from migrants in neighboring countries to their family and friends back home.
[2]Scharwatt, C & Williamson C. 'Mobile money crosses borders: New remittance models in West Africa' (2015) GSMA 6.

[3] Scharwatt, C & Williamson C (2015) 6-7.
[4]Finmark Trust- Cross-Border Remittances (2016) 3-4.
[5]Kachingwe N L & Kaput E N 'The Market for Remittance Services in Southern Africa' (2018) 12984 *World Bank* 1.
[6] SADC Banking Association *White Paper on Regional Payments Integration, Financial Inclusion, and Remittances in the Southern African Development Community (SADC): Reflections on a Work in Progress* (2017) 4-5.
[7] Finmark Trust- Cross-Border Remittances (2016) 3.
[8]Donovan K 'Mobile Money For Financial Inclusion' (2012) 61 (1) Information And Communications For Development, The World Bank 62.

to mobile money's wide reach and growing usage among financially excluded populations, it is uniquely positioned to transform formal remittances markets and advance financial inclusion.

It has been recognised that increased access to mobile money services can potentially improve financial inclusion outcomes. Mobile money interoperability is a service or platform which allows direct and seamless transfer of funds from one mobile money wallet to another across networks.[9] However, several barriers to access exist. Therefore the service currently does on exist in the SADC region. Research has shown that mobile money interoperability would allow mobile money users within the SADC region to send and receive money across different networks, thereby promoting financial inclusion. Therefore, this research will propose a legal and regulatory framework for the implementation of mobile money interoperability services as a revolutionised channel to send and receive remittances.

1.2 Problem Statement

In the SADC region, cross-border remittances are largely informal and expensive. [10] Although the region has a large adult population of approximately 125 million, most people face financial exclusion and have limited access to formal mechanisms to send cross-border remittances.[11] Only 36% of the SADC population has access to banking services, with an additional 18% having access to other formal (non-bank) financial services and 12% having access to informal mechanisms.[12] As a result, the majority of the adult population leverage informal channels that are often slow, inconvenient and risky. According to FinMark Trust, only 2 percent of remittances in SADC are sent through official banking channels. Approximately 70% are sent via bus or taxi, 20% with visiting family or friends, and roughly 8% through other channels.[13]

Further, the cost of sending remittances through formal channels within the SADC region is very high. According to the World Bank, seven of the top twenty most expensive remittance corridors

[9]Mobile Money Interoperability available at *https://ghipss.net/products-services/gh-link/mobile-money-interoperability-faqs* (accessed 21 July 2020).
[10] SADC Banking Association *White Paper on Regional Payments Integration, Financial Inclusion, and Remittances in the Southern African Development Community (SADC): Reflections on a Work in Progress* (2017) 4-5.
[11] SADC Banking Association *White Paper on Regional Payments Integration, Financial Inclusion, and Remittances in the Southern African Development Community (SADC): Reflections on a Work in Progress* (2017) 4-5.
[12] SADC Banking Association *White Paper on Regional Payments Integration, Financial Inclusion, and Remittances in the Southern African Development Community (SADC): Reflections on a Work in Progress* (2017) 4-5.
[13] SADC Banking Association *White Paper on Regional Payments Integration, Financial Inclusion, and Remittances in the Southern African Development Community (SADC): Reflections on a Work in Progress* (2017) 4-5.

are between countries in the SADC region.[14] The cost of sending formal remittances from South Africa to other SADC countries is more than double the global average.[15] Thus, for every dollar transferred, nearly 17 cents (16.8%) is consumed as a transaction cost while the average cost of sending a transaction in the rest of the world is only eight cents (7.7%).[16]

Mobile money has become a real game-changer in the SADC region, with the potential to cater for the population that is financially excluded and reduce the high costs associated with sending money through formal channels. The increasing use and excitement around mobile money has arisen mostly because it is widely seen as an effective way to provide access to finance to millions of people around the globe.

However, the major hurdle is that interoperability of mobile money transfers within the SADC region does not exist. For instance, there is no platform or service that enables a user to send money from a Vodacom Mobile Operator in South Africa to a MTN Mobile Operator in Zambia. While several of the Mobile Network Operators (MNOs) operating in SADC developed cross-border mobile money services, for example, Airtel and MTN, these services are offered only within their mobile networks and to countries in which the MNO is present.[17] The lack of interoperability is regarded as one of the major constraints to financial inclusion of cross border remittances within the SADC region.[18]

The legal and regulatory framework for remittance services are key as they have a significant influence on the cost, availability and accessibility of remittance services.[19] This framework impacts the remittance market in SADC, thus limiting the interoperability of mobile money transfers within the region.[20] According to the World Bank Remittance Assessments conducted in the selected SADC countries, the main legal and regulatory barriers impacting the remittances market were found to be:

[14] Kachingwe N L & Kaput E N (2018) 1.
[15] Kachingwe N L & Kaput E N (2018) 1.
[16] Kachingwe N L & Kaput E N (2018) 1.
[17] Kachingwe N L & Kaput E N (2018) 19.
[18] Hope A (2016) 17.
[19] Kachingwe N L & Kaput E N (2018) 10.
[20] Hoernig S & Bourreau, M 'Interoperability Of Mobile Money International Experience And Recommendations For Mozambique' (2016) *International Growth Center* 7-10.

- Licensing requirements for Remittance Service Providers (RSPs), and in particular for Money Transfer Operators (MTOs);
- Foreign exchange controls and reporting requirements, and Anti-money laundering (AML) / Combating the Financing of Terrorism (CFT) compliance requirements.

The legal and regulatory barriers and the lack of a sound and predictable legal framework between regulators and national authorities has made regional interoperability of mobile money remittances in the SADC region very challenging.[21] It is therefore key to implement a legal and regulatory framework that allows the interoperability of mobile money transfers across the SADC borders.[22]

1.3 <u>Reseach Questions</u>

The central question this mini-thesis asks is; what can be done in terms of mobile money interoperability regulations or law to further financial inclusion of cross border remittances within the SADC region?

To properly address the central question, attempts will be made to answer the following sub-questions:

1. What role can mobile money interoperability play in revolutionising cross –border remittances in SADC?
2. What are the current legal and regulatory frameworks for cross-border remittances in the region and what are the main challenges of same?
3. What legal and regulatory structures have developed mobile money interoperability platforms or systems implemented and what lessons can SADC draw from same?

1.4 <u>Mini-Thesis Statement</u>

This study documents the pivotal role played by cross border remittances in promoting economic and social development in the SADC region and calls for the implementation of a legal and regulatory framework for mobile money interoperability as a cross border payment gateway.

[21] Hoernig S & Bourreau, M (2016) 7 -10.
[22] Kachingwe N L & Kaput E N (2018) 16.

The SADC mobile money guidelines call for the harmonisation of legal and regulatory frameworks for mobile money, in support of greater financial inclusion and market development in the region.[23] The guidelines further call for the implementation of a mechanism that allows domestic and regional interoperability through regulation harmonised on similar principles.

However, the current laws and regulations on mobile money in SADC are still somewhat fragmented across different regulatory areas in the various member states. Each member state has its own regulatory framework that in most cases is dissimilar to others. Thus, the implementation of a harmonised legal and regulatory framework for mobile money interoperability would not only promote financial inclusion, but would also provide a seamless, fast, safe and cheaper avenue to send and receive remittances across the region.

1.5 Significance Of Study

There are gaps in the literature on the link between cross border remittances and mobile money interoperability in the SADC region. SADC is one of the slowest-growing regions in Africa, averaging 2.9% in growth per year.[24] Cross border remittances are key to unlocking SADC's slow growth by alleviating poverty and supporting economic development.[25] However, this depends on the ability to reduce the average cost of sending money across borders. The high cost of sending remittances across borders within the region, limits their transformative impact.[26] Mobile money interoperability can thus play a key role in bolstering the impact of remittances in SADC. Additionally, it can drive regional growth by reducing the average cost and catering for the large populations facing financial exclusion.

[23] Finmark Trust, SADC Mobile Money Guidelines (2016) 2.
[24] Stewart A 'Opinion: Remittances key to uplifting SADC's slow growth' available at *https://www.iol.co.za/business-report/opinion/opinion-remittances-key-to-uplifting-sadcs-slow-growth-19025388* (accessed 20 August 2020).
[25] Stewart A 'Opinion: Remittances key to uplifting SADC's slow growth' available at *https://www.iol.co.za/business-report/opinion/opinion-remittances-key-to-uplifting-sadcs-slow-growth-19025388* (accessed 20 August 2020).
[26] Stewart A 'Opinion: Remittances key to uplifting SADC's slow growth' available at *https://www.iol.co.za/business-report/opinion/opinion-remittances-key-to-uplifting-sadcs-slow-growth-19025388* (accessed 20 August 2020).

Furthermore, the SADC region is the most unequal region in Africa. Introducing a cheaper and more convenient remittance service such as mobile money can significantly assist in tackling inequality within the region.[27]

While a host of literature by several scholars such as Donovan, Madise, McQuerry and Kachingwe on the subject of mobile money regulation and financial inclusion is available, very little research pertaining to mobile money interoperability has been undertaken in SADC. This study will therefore address this lacuna and propose ways in which an overarching legal and regulatory framework for mobile money interoperability can be implemented.

To date, SADC has not established a mobile money interoperable platform. Such a platform would ensure that cross border remittance services are efficient, safe, accessible and are leveraged to improve the welfare of many households and communities in the region. If implemented, the platform would increase financial inclusion through raising living standards of a significant number of people. Additionally, it will also boost economic growth and tackle inequality in the region.

1.6 Methodology

This section outlines the methodology implemented during the research. The study was a desktop and library-based research. It involved consultation of both primary and secondary sources of law, including legislation, agreements, regulations, non-binding instruments from other jurisdictions, textbooks, published articles, journals, newspapers, magazines, internet sources and any other relevant material. The opinions, working documents and reports of international organizations such as GSMA, Finmark Trust, SADC and World Bank were also relied upon.

Descriptive, narrative and critical techniques were used in the study. The emergence and use of mobile money and financial inclusion was illustrated by means of narrative and descriptive techniques, while critical techniques were employed in examining how mobile money can be used as a channel for cross border remittances.

[27] Stewart A 'Opinion: Remittances key to uplifting SADC's slow growth' available at *https://www.iol.co.za/business-report/opinion/opinion-remittances-key-to-uplifting-sadcs-slow-growth-19025388* (accessed 20 August 2020).

A comparative technique was used to conduct a comparison study with established mobile money interoperable models in West Africa namely the Orange Money International Transfer and the MTN Mobile Money in Côte d'Ivoire to Airtel Money in Burkina Faso. The adoption of these two models has been remarkably fast wherein Orange, MTN, and Airtel are now moving a significant share of remittances through their own corridors.[28] The success of both these models to send and receive cross-border remittances using their mobile money accounts sets a good precedent for the SADC region to follow.

1.7 Limitations

The literature review is based on desktop study and no field work or survey was conducted. A survey would have resulted in significant data being collected on the practical issues concerning informal channels of sending remittances and mobile money applicability. A survey using interviews and questionnaires with the necessary stakeholders, including senders, receivers, MTO, banks and taxi or bus drivers would have generated comprehensive data on the subject matter.

Further, the available desktop data relied upon, especially on the size of the remittance market is scarce. The data is not only incomplete on informal flows, which by their nature are hard to track but there is no single reliable source of total migrant remittances sent within SADC annually through the formal sector either. This deficit of complete and high-quality data has makes it challenging to formulate comprehensive and accurate recommendations.

Lastly, the time to effectively and satisfactorily carry out the research and extensively examine the various resources has been limited due to the nature of the course and the COVID-19 pandemic.

1.8 Chapter Outline

The entire research work will run into five chapters.

Chapter 1 introduces the research topic and describes the scope of the research work. To ensure that the argument is concise and easy to understand. The Chapter gives an introduction of the research, the problem statement, justification, limitation of the study, literature review and research outline.

[28] Scharwatt C & Williamson C (2015) 4-5.

Chapter 2 will introduce the theoretical concepts of mobile money, interoperability, and cross border remittances in the SADC region. It will critically discuss the importance of cross border remittances to economic and social development and the role that mobile money interoperability can play in financial inclusion.

Chapter 3 will analyse the current legal and regulatory framework for cross border remittance payment systems in SADC. It will mainly focus on the legal and regulatory barriers of same.

Chapter 4 will be a comparative study of mobile money interoperability platforms that have been developed in established selected economies. The platforms that will be analysed will be the Mowali platform, which is a joint venture between Orange Group and MTN Group that enables interoperable mobile money payments across the African continent. The Mowali platform is significant because it is one of the first pan-African mobile money interoperability service involving two of the largest mobile money operators in Africa. The Mowali platform thus exemplifies the positive effects on interoperability, financial inclusion and the use of mobile money across several countries —the platform has gained great support of the GSMA.

The second platform that will be analysed is the MTN Mobile Money in Côte d'Ivoire to Airtel Money in Burkina Faso. This was the first case in West Africa of two operators from separate groups agreeing to interoperate their mobile money services to facilitate cross-border transfers. The MTN-Airtel cross-border service highlights both the opportunities and challenges of the partnership approach.

The comparative analysis will mainly focus on the legal and regulatory aspects and the lessons to be drawn, in support of the implementation of a similar platform in SADC.

Chapter 5 will encapsulate the findings from the respective chapters and make recommendations for an overarching implementation of a legal and regulatory framework for mobile money interoperability in the SADC region.

CHAPTER 2; THE ROLE OF MOBILE MONEY INTEROPERABILITY TO CROSS-BORDER REMITTANCES

2.1 Introduction

Cross-border remittances within the SADC region are large, wherein a substantial proportion of the flows come from South Africa to other countries in the region. However, sending remittances within the region is very expensive, and the formal remittance channels do not cater for the majority of the population which are financially excluded.[29] As a result, most people have resorted to using informal channels of sending remittances, such as bus, taxi or through family friends. However, these channels are not only risky but are unreliable and relatively quite expensive.[30] The growing use of mobile money within the region presents an alternative channel which can be used to remit money across borders.

This chapter will address the first research question, on the mobile money interoperability plays in revolutionising cross–border remittances in the SADC region. The chapter will therefore discuss how mobile money can be used as a safer, more reliable, more financially inclusive and cheaper channel to send remittances. First, an overview of cross-border remittances in the region, their importance and the channels used to send remittances will be given. Thereafter, a discussion on mobile money will be conducted by unpacking the underpinning theories and concepts of the same. The chapter will subsequently draw the link between mobile money interoperability and cross-border remittances.

2.2 Overview of cross-border remittances in the SADC region.

The SADC region comprises of 16 Member States, namely Angola, Botswana, Comoros, the Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe. [31] The region has a population of approximately 258 million and a GDP of USD471,1 billion.[32] SADC was formed by the SADC Treaty which was signed in 1992 by the Member

[29] Kachingwe N L & Kaput E N 'The Market for Remittance Services in Southern Africa' (2018) 12984 World Bank 1.
[30] Kachingwe N L & Kaput E N (2018) 1.
[31] Southern African Development Community available at *https://www.sadc.int/about-sadc/* (accessed 23 November 2020).
[32] Southern African Development Community available at https://www.sadc.int/about-sadc/ (accessed 23 November 2020).

States.[33]The main aim of the treaty is to bring about sustainable, collaborative development in several important areas such as financial service, with the ultimate goal of poverty eradication.

Cross-border remittances within the SADC region are of significant importance on the international stage, particularly the remittances originating from South Africa to other SADC countries.[34] South Africa is recognised as a regional economic hub and has traditionally been a major destination for economic migrants from other neighbouring countries like Zimbabwe. South Africa is thus a major source for regional remittance within the region.[35] It has been recorded that nearly two billion United States Dollars is sent every year from South Africa to other SADC countries, making it the largest source of inter-Africa remittances.[36] This is attributed to the fact that there are more than three million migrants from neighbouring SADC countries in South Africa, with more than two million from Zimbabwe. Many of these migrants are working in the informal sector and send over USD60 per month to their families and friends, representing a significant portion of their monthly earnings.[37] The family and friends that receive these remittances heavily depend on this money to support their daily living expenses.

The G20 forum and the World Bank have recognised that cross-border remittances have great potential to help grow the economies in developing countries.[38] However, over 60% of funds are remitted in the SADC region from South Africa through the informal channels. As a result, governments within these countries are unable to access these funds to support development.[39]

Table 1 illustrates the formal outbound remittances from South Africa to the different SADC Member States in ZAR million (adjusted) from the years 2016 to 2018. There have not been any statistics taken since 2018 that provide more recent information. In the Finmark Trust Report of

[33] Southern African Development Community available at https://www.sadc.int/about-sadc/ (accessed 23 November 2020).
[34] SADC White Paper (2017) 4-5.
[35] SADC White Paper (2017) 4-5.
[36]Technoserve Report- The Digital Remittance Revolution in South Africa; Challenges And Next Steps For Africa's Largest Cross-Border (2016) 2.
[37] Techoserve Report (2017) 2.
[38] Techoserve Report (2017) 2.
[39] A H Bester, C Hougaard & D Chamberlain 'Reviewing the policy framework for money transfers. The Centre for Financial Regulation and Inclusion' (2010) University of Stellenbosch 5.

May 2021, the same satistics were used as Stats SA/Home Affairs. Data on migration is poor and deteriorating.[40]

	2016	2017	2018	Total
Angola	15.58	11.71	10.98	38.27
Botswana	204.44	203.5	230.91	638.84
Comoros	1.31	1.76	2.62	5.68
DRC	102.35	147.12	196.75	446.23
Lesotho	446.19	857.88	1 317.10	2 621.18
Madagascar	28.85	27.42	30.62	86.9
Malawi	843.22	1 581.53	2 353.15	4 777.90
Mauritius	162.5	213.23	233.4	609.13

[40]Damola Owolade' Increasing Formal Remittances in the SA – SADC corridor (FinMark Trust) 2021

Mozambique	453.89	455.44	601.65	1 510.99
Namibia	350.91	345.87	323.14	1 019.92
Seychelles	11.2	14.17	15.73	41.1
Eswatini	123.37	135.84	154.44	413.65
Tanzania	166.5	189.63	206.14	562.28
Zambia	425.63	464.23	492.42	1 382.29
Zimbabwe	4 656.24	4 091.84	3 174.89	11 922.96
Total	**7 992.18**	**8 741.17**	**9 343.94**	**26 077.32**

Source: SARB response to FinMark data request. Adjusted to compensate for tourism transactions, Shoprite Money Transfer to Lesotho, EFT payments to CMA countries.

In the three years 2016 through 2018, remitters across SADC sent a total of approximately ZAR26.1 billion home via formal channels. Zimbabwe had the largest formal channel by a substantial margin. More than ZAR1 billion was also sent to Malawi, Mozambique, Namibia, Zambia and Lesotho. It is important to note that remittance through formal channels increased by about 159% to ZAR10,56 billion between 2016 and 2018. As mentioned above, there is no recent information with the above statistics.

2.3 The Importance of Cross-Border Remittances in Southern African Development Community (SADC)

The Global System for Mobile communications Association (GSMA) affirmed that remittances in Lower Middle Income Countries (LMICs) are expected to retain or even exceed their current levels of importance, with Foreign Direct Investments (FDIs) expected to decline by as much as 35% over the year 2020.[41] There are key factors in increasing financial inclusion, elevating social benefits and alleviating poverty in a number of countries in SADC.[42] Remittance comprise an important means of supporting impoverished communities and a commercial opportunity for financial sector operators. In migrant heavy communities, remittance products can be the most important form of financial service provided.[43]

Despite the devastating wake of the COVID-19 pandemic, the formidable resilience of remittance flows in African markets has been a shining light.[44] Not withstanding the World Bank's predictions that global remittances will decline by about 20% in 2020 as a result of the COVID-19 pandemic and its economic fallout, evidence in the SADC region in countries such as South Africa, Zimbabwe, Malawi and Zambia show that formal remittance flows across African borders have actually increased.[45]They have not only increased, but and are demonstrating to be more resilient and buoyant compared to many other financial services.[46]

The money received from cross-border remittance has brought about social development. It is used to raise children, feed families, fund education, buy daily groceries, buy seeds for subsistence crops, pay for home repairs, pay for medical supplies, sustain households and much more.[47]

[41] Digitalising The Route Of Remittances Will Help Africa's Recovery available at *Https://Www.Businesslive.Co.Za/Bd/Opinion/2020-10-28-Digitalising-The-Route-Of-Remittances-Will-Help-Africas-Recovery/* (accessed 24 November 2020).
[42] Aga G A and Peria M S M 'International Remittances and Financial Inclusion In Sub-Saharan Africa' (2014) The World Bank 6.
[43] Finmark Trust Report SADC (2017) 1-2.
[44] Digitalising The Route Of Remittances Will Help Africa's Recovery available at *Https://Www.Businesslive.Co.Za/Bd/Opinion/2020-10-28-Digitalising-The-Route-Of-Remittances-Will-Help-Africas-Recovery/* (accessed 24 November 2020).
[45] Digitalising The Route Of Remittances Will Help Africa's Recovery available at *Https://Www.Businesslive.Co.Za/Bd/Opinion/2020-10-28-Digitalising-The-Route-Of-Remittances-Will-Help-Africas-Recovery/* (accessed 24 November 2020).
[46] Digitalising The Route Of Remittances Will Help Africa's Recovery available at *Https://Www.Businesslive.Co.Za/Bd/Opinion/2020-10-28-Digitalising-The-Route-Of-Remittances-Will-Help-Africas-Recovery/* (accessed 24 November 2020).
[47] Finmark Trust Report SADC (2017) 1-2.

Countries which have received remittances have been shown to have improved health and economic outcomes.[48] For instance, in Mozambique, it has been recorded that households that have received remittances through an inter-generational tradition of sending men to work in the mines in South Africa have systematically improved their economic status when compared to other households which have not received remittances.[49] Revolutionising the remittance market thus has the potential to reduce household vulnerability and poverty in the region.

Remittances have increased the ability of households to obtain a loan and improve their standard of living. This is because by using remittance information, a financial institution has visibility on their transactions and is able to develop a credit score on the customer in order to extend loans them.[50] Remittances have become a material component of national income and have also played a significant role in assisting countries experiencing economic crisis. For instance, a survey conducted in Zimbabwe showed that income derived from cross border remittances in the form of assistance from family members fell due to the COVID-19 pandemic. These remittances constituted 18% of households' income source on average, and 75% of these households indicated that it had decreased since the start of the COVID-19 restrictions.[51]

2.4 <u>Channels used to send cross border remittances</u>

There exist various channels to remit money within SADC. However, these channels depend on whether the migrant worker is utilising a formal institution or informal players. There are also various factors that influence the choice of channel used. These include the ease of using the channel, familiarity of using the channel within the recipient family, costs associated with sending money, speed of sending the money, risk involved and the accessibility of the channel. [52] In the paragraphs below the various channels will be discussed in the following order:

- Formal channels- Banks, money tranfer operators, and the post office.
- Informal chamnels- Taxis/buses/truck, family and friends.

[48] Pearce B & C Hougaard (2012) Finmark Trust Report 2.
[49] F De Vletter *Migration and Development in Mozambique: Poverty, inequality and survival* (2006) 4.
[50] Anzoategui et al (2011) 12.
[51] Zimstat survey reveals Covid-19 impact on incomes, remittances available at https://bullszimbabwe.com/zimstat-survey-reveals-covid-19-impact-on-incomes-remittances/,
[52] Truen S & Chisadza S 'The South Africa-SADC Africa SADC remittance channel' (2012) DNA Economics for FinMark Trust 30.

The formal channels of remitting money within SADC are undesirable and are seldom used by the majority of migrants due to the onerous paperwork required and the high costs.[53]

a. Banks

In practice, very few migrants have legal migrant status and formal employment records necessary to access banking channels.[54] Furthermore, both the sender and receiver are expected to have bank accounts. Out of the 100 focus group discussion participants who indicated their preferred remittance channel, only 13 used bank transfers.[55] One participant stated the following;

'I have never tried any other method because they require a lot of paperwork. Sometimes you find that they need a passport and a proof of residence which in most cases we don't have. We just prefer the bus because there is no paperwork needed.' [56] - Zimbabwe male focus group, Yeoville.

b. Money transfer operators

Money transfer operators such as Western Union and MoneyGram and newer entrants like Mukuru, Hello Paisa and MamaMoney have become increasingly popular in the region.[57]However, they have similar paperwork requirements to the banking system and are therefore undesirable for most undocumented migrants.[58] Further, many migrants are unaware of the potential of these channels largely due to the relatively few firms that have entered this market.

c. Post Office

The post office has services that enable sending money formally, either by purchasing money orders or by simply enclosing cash in an envelope.[59] However, remittances by money order to Zimbabwe, Mozambique and Malawi are not permitted by the South African Post Office. For this reason, this channel is not very popular.

d. Other

[53] Truen and Chisadza (2012) 30.
[54] Truen and Chisadza (2012) 32.
[55] Truen and Chisadza (2012) 32.
[56] Truen and Chisadza (2012) 32.
[57] Truen and Chisadza (2012) 32.
[58] Truen and Chisadza (2012) 32
[59] Truen and Chisadza (2012) 32.

In some domestic remittance markets, retailers such as Shoprite provide remittance services using their network of shops in partnership with Capitec Bank. However, Shoprite does not offer cross border remitting services and requires a South Africa Identity Document (I.D) on both ends to complete a transaction. It is therefore undesirable for undocumented migrants[60]

Over the years, there has been an increase in innovative channels to send remittances across borders. One such platform is a new product called UhuruWallet. It is a WhatsApp-based digital wallet developed on the Stellar blockchain[61], whose target market is primarily unbanked foreign nationals in South Africa. [62]It currently allows people to send and receive money from Zimbabwe and South Africa, and pay for services like DSTV.[63] It is yet to expand to the rest of SADC. There are also individuals who have started businesses wherein the remitter deposits money into their bank account and the recipient collects the cash. This is common between Zimbabwe and South Africa.

2.5 Informal channels

Most of the remittance market in SADC is informal. Informal channels include sending money through friends and family; buses or taxis and trucks. For instance, in South Africa, migrants prefer to remit money through informal channels as compared to the formal channels.[64] The main reason is that a majority of the migrants are financially excluded and are unable to access formal channels. Further, there is also a general perception in the market that the informal channels have lower fees associated with the transaction than the formal channels. [65]

Table 2 belows shows the estimated total and informal remittances by country corridor.

[60] Lawack V 'The legal and regulatory aspects of international remittances and their impact on migrant workers and asylum seekers in South Africa Notes' (2014) Obiter Volume 32 No. 2, Nelson Mandela University Law Journal 357–370.

[61]Stellar is an open-source, decentralized payment protocol that facilitates fast, cross-border transactions between any pair of currencies and operates using blockchain technology. Instead of being gathered at one centralized source such as a bank, the information is distributed among interconnected nodes (servers) in the Stellar network.
[62] Uhuru available at *https://uhuruwallet.com/* (accessed 20 October 2020).
[63] Zimbabwe-based Uhuru users can make payments directly to merchants in South Africa. This can be done with either the Zimbabwe dollar, the South African Rand or USD and users can purchase consumer products and services, make online payments, perform recurring transactions such as utility bill payments and airtime purchases using Uhuru tokens.
[64] Bester et al (2010) 19.
[65] Truen and Chisadza (2012) 32.

Table 2: Estimate of total and informal remittances.

Source; DNA Calculations, Finmark Trust 2012.

Country of origin	Total estimate-midpoint estimate, ZAR Million	Informal Remittance, ZAR Million
Angola	24.7	9.7
Botswana	182.7	158.3
Dem. Rep. of Congo	125.4	80.5
Lesotho	1 754.3	1 404.6
Madagascar	-	
Malawi	124.2	122.3
Mauritius	82.9	81.7
Mozambique	1 588.6	799.9

Namibia	52.2	51.8
Seychelles	-	-
Swaziland	391.2	343.0
Tanzania	10.1	10.0
Zambia	124.6	122.7
Zimbabwe	6 693.7	4 382.8
Total	**11 154.6**	**7 567.5**

a. Taxis/buses/trucks.

The most common informal channel to send and receive cross-border remittances is by taxi/bus/truck with the driver. According to the focus groups, this is the largest single remitting channel in the SADC region.[66] This channel requires very little documentation, is easily accessible and very convenient as door-to-door delivery of remitted cash and goods can be negotiated with the driver. One of the main disadvantages of this channel is the high level of risk. The sender has no guarantee that the delivery will be done and there is no legal recourse if the delivery is not

[66] Finmark Trust Report (2012) 6.

complete. Further, there are minor or no safeguards against theft. Using this channel is also fairly expensive (costing between ZAR10.00 and ZAR30.00 per ZAR100.00 remitted).[67] Recipients often face unpredictable delays for example, if the taxi delays departure while waiting for additional passengers.

e. Family/ friends

Remitting money through friends and family returning home is very popular because this requires no documentation, is accessible and convenient. In some cases the remitters themselves, when returning home, often take the cash along. However, this method is risky as it subject to fraud and theft, especially if the amount of money involved is very large.

It can be concluded that informal channels are very risky and not only limit the ability to save but to repay debt and manage risk responsibly.[68] On a macroeconomic level, such financial constraints slow economic growth and exacerbate inequality.[69]

2.6 Concept of Mobile Money

Given that more than, 60% of remittances in the region are sent through informal channels, the opportunity to introduce new, innovative remittance products and channels is very relevant.[70] The inclusion of new technologies such as mobile money will open the opportunity for formal services providers from other remittance corridors to offer innovative solutions to the marketplace. This research aims to revolutionize cross-border remittances by introducing the concept of mobile money, which is a great innovation and a more convient way of transacting. Further, in light of the COVID-19 pandemic, the use of mobile money promotes social distance, and is a convient way of sending money in light of the national lockdows.

The increasing pace of coverage of mobile network operators infrastructure in developing economies has enabled mobile phones to become a branchless bank. Thus, the ability of a mobile phone to perform several services has extended financial services beyond ways that were only unique to the traditional banks. The ability to penetrate rural areas has presented a high opportunity

[67] Finmark Trust Report (2012) 6.
[68] Demirguc Kunt A, Beck T & Honohan P 'Finance for all? Policies and pitfalls in expanding access' (2007) The World Bank 113.
[69] Demirguc Kunt A *et al* (2007) 113.
[70] Truen and Chisadza (2012) 32.

of serving the unbanked in developing economies. Mobile money has thus become an integral part of the payments system bringing the financially excluded into the formal financial sector.

2.7 Mobile money defined.

Mobile money has been defined in various ways in different jurisdictions. As such, there is no standard definition. However, certain terms and meanings have been attributed to it across different jurisdictions. According to the Alliance for Financial Inclusion, mobile money refers to any mobile-based transactional service that can be transferred electronically via mobile networks. [71] Mobile money has also has been defined as 'money transmission' or 'transfer of funds' through a mobile phone.[72] Donovan defines mobile money as the provision of financial services through a mobile device.[73] Mobile money has also has been described as a tool that enables individuals to make financial transactions using mobile device technology.[74] The platform allows for any mobile phone subscriber, whether banked or unbanked, to deposit value into their mobile account, send value to another mobile subscriber, and allow the recipient to turn that value into cash or save it.[75] Mobile money turns a phone into a mobile wallet wherein it allows a user to send and receive money, make withdrawals and purchase goods and services.[76] There is a seeming connection in all the above definitions of mobile money being the transfer of money held in a phone from one mobile phone user to the other. Mobile money creates value for both users as it allows a seamless transaction of money avoiding the scenario where users have to meet physically to transact or enage the services of a third party to transact.

In certain jurisdictions, mobile money is synonymous with eletronic money (e-money), an electronic alternative to cash and thus defined as such in the respective legislation.[77] In effect,

[71] Alliance for Financial Inclusion. (2014) Regulatory Approaches to Mobile Financial Services in Latin America available at *http://www.afiglobal.org/sites/default/files/publications/afi_lac_special_report_en_annex_low_res.pdf* (accessed 18 October 2020).
[72] Lowry C 'What's in your Mobile Wallets? An analysis of Trends in Mobile Payments and regulation' (2016) 2 Federal Communication Law Journal 354.
[73] Donovan K (2012) 61.
[74] Jack W & Suri J 'Mobile Money: The Economics of M-Pesa' (2011) 16721 NBER Working Paper 16 at 11.
[75] Lawack-Davies V 'Legal and Regulatory Framework of Mobile Payments in South Africa: A Trade Off' (2014) 24 South Africa Mercantile Law Journal 77.
[76] Madise S The Regulation of Mobile Money (2019) 3..
[77] GSMA Mobile Money Definitions available at https://www.gsma.com/mobilefordevelopment/wpcontent/uploads/2012/06/mobilemoneydefinitionsnomarks56.pdf (accessed 10 October 2020).

mobile money is only a subset of a larger concept such as e-money, which in turn falls under the broader concept of payment systems.

2.8 Terms associated with mobile money

Due to its evolving nature and its use in various jurisdictions, mobile money is known by various terms, but for purposes of this research, mobile money shall be used widely. However, certain terms associated with mobile money are important to note. E-money which is short for 'electronic-money', is stored value held in the accounts of users, agents, and the provider of the mobile money service.[78] Typically, the total value of e-money is mirrored in bank accounts, such that even if the provider of the service were to fail, users could recover 100% of the value stored in their accounts. As such, bank deposits can earn interest, while e-money cannot. Mobile banking refers to when customers access a bank account via a mobile phone. Sometimes they are able to initiate transactions. Mobile money transfer refers to the movement of value that is made from a mobile wallet, accrues to a mobile wallet, and/or is initiated using a mobile phone.[79]

Mobile payment is used to describe only transfers to pay for goods or services, either at the point of sale (retail) or remotely (bill payments). Mobile wallet refers to an account that is primarily accessed using a mobile phone. Digital Financial Service (DFS) is a concept that encompasses a whole range of mobile financial services such as payments, remittances, and savings and insurance accessed and delivered via digital means.[80] Mobile financial services are services in which mobile money may be linked to a bank account to provide the user with a whole range of transactions (savings, credits) that they would ordinarily access at a bank branch.[81]

2.9 History of mobile money

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[78]GSMA Mobile Money Definitions available at *https://www.gsma.com/mobilefordevelopment/wpcontent/uploads/2012/06/mobilemoneydefinitionsnomarks56.pdf* (accessed 10 October 2020).
[79] GSMA Mobile Money Definitions (2010) available at *https://www.gsma.com/mobilefordevelopment/wpcontent/uploads/2012/06/mobilemoneydefinitionsnomarks56.pdf* (accessed 10 October 2020).
[80] GSMA State of the Industry Report (2015) available at *https://www.gsma.com/mobilefordevelopment/programme/mobile-money/2015-state-of-the-industry-report-onmobile-money* (accessed 12 October 2020).
[81] GSMA State of the Industry Report (2015) available at *https://www.gsma.com/mobilefordevelopment/programme/mobile-money/2015-state-of-the-industry-report-onmobile-money* (accessed 12 October 2020)

Mobile money originated in early 2001 as SMART money being operated by SMART Communications in the Philippines. The organisation launched SMART money in partnership with Banco de Oro a a Philippine banking company based in Makati. The service used a SIM Tool-Kit to enable customers to buy airtime, send and receive money domestically and internationally via mobile, and pay for goods using a card.[82] The flexibility of the regulator to enable non-banks to offer financial services in addition to the ability of agents to carry out cash in and cash out functions was the main reason why mobile money became very successful in the Philippines.[83]

In Sub Saharan Africa, mobile money began in Kenya. It started in 2007 as M-PESA ("M" for mobile and "PESA" for money in Swahili). It was originally intended as a mobile-based micro-financing application to extend financial access to the underbanked.[84] When it was discovered that users were using the application more for general money transfers rather than for microloans, MPESA was re-modelled as a mobile money platform. Today, it represents the most successful mobile-money platform to date and has pioneered mobile money in Africa.[85] Mobile money was subsequently adopted in other African countries like Tanzania and Uganda.[86]Mobile money platforms reached a sustainable scale include MTN (Mobile Telephone Networks) Uganda, Vodacom Tanzania, FNB (First National Bank) in South Africa, GCash (Philippines), EcoCash (Zimbabwe) and other platforms in the SADC region. Mobile phones and the availability of new digital technologies are at the forefront of this change, helping to draw more and more people into the formal economy, adressing income inequality and stimulating development in areas including farming to education.

2.10 <u>Functionality of mobile money function</u>

[82]GSMA Mobile Money in the Philippines – The Market, the Models and Regulation available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/06/Philippines-Case-Study-v-X21-21.pdf (accessed 9 August 2021.

[83]Alliance for Financial Inclusion 'Enabling mobile money transfer, the Central Bank of Kenya's treatment of M-pesa' available at *https://www.gsma.com/mobilefordevelopment/wpcontent/uploads/2013/09/enablingmobilemoneytransfer92* (accessed on 20 0ctober 2020).

[84] Mobile money background available at *https://workshop1.cases.som.yale.edu/mpeso/background/mobile-money* (accessed on 15 October 2020).

[85] Mobile money background available at *https://workshop1.cases.som.yale.edu/mpeso/background/mobile-money* (accessed on 15 October 2020).

[86] Mobile money background available at *https://workshop1.cases.som.yale.edu/mpeso/background/mobile-money* (accessed on 15 October 2020).

Firstly, a mobile phone subscriber with a compatible SIM Subscriber Identity Module (SIM) card must register with the mobile network operator (MNO) for the mobile service. Thereafter, they create an account to deposit money into their phone and send funds other registered mobile subscriber accounts. Mobile money services operate by the smooth conversion from cash to electronic value (e-value) and back to cash. Therefore, mobile money allows the transfer of e-value between users. It ultimately works as a three-step remittance system namely the conversion of cash to e-value, the transfer e-value between accounts and lastly the conversion of e-value to cash.[87] A mobile money user can easily perform cash-in and cash-out transactions from the account using the local agents who serve as Automated Teller Machines (ATMs).

Mobile money users can also use their mobile phones to transfer money to both registered and non-registered users, check their balances, pay bills, purchase mobile phone credit, transfer credit to other users and redeem for cash.[88] The charges for the transaction are deducted from users' account and are levied when e-money is sent or when cash is withdrawn.

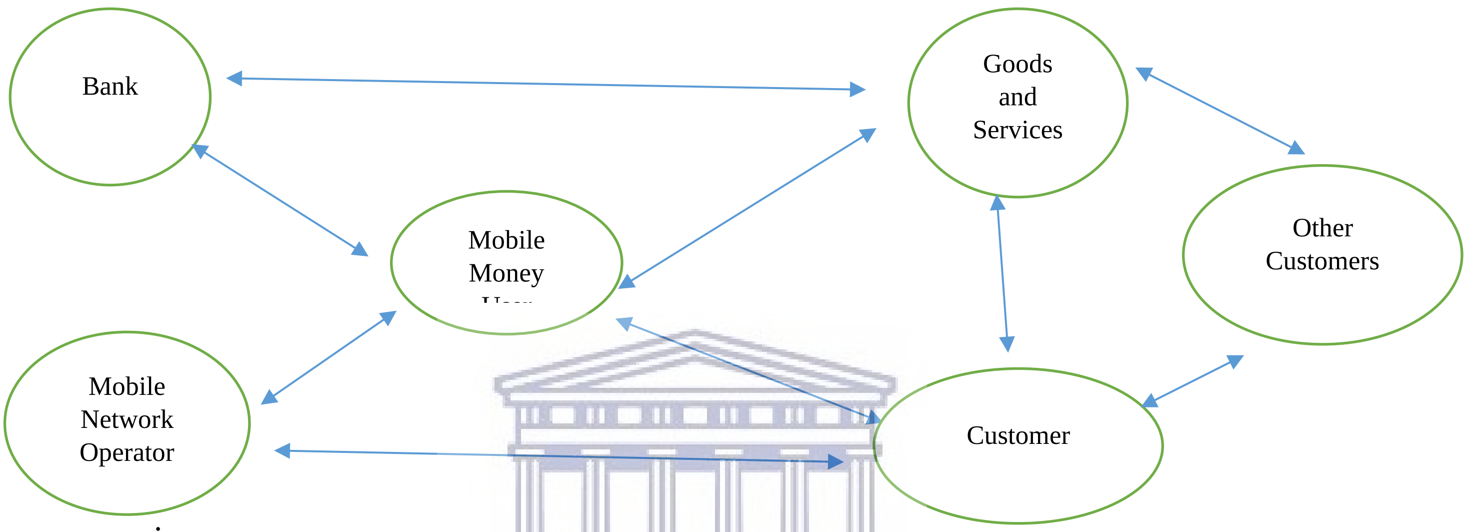
2.11 <u>The mobile money ecosystem</u>

The functionality of mobile money is dependent on the interconnectedness of several key players such as consumers, MNOs, government agencies, and businesses. The infrastructure providers such as the MNOs make the provision of such services possible, whilst banks and financial institutions supply the services through digital means. The government supplies services through established regulatory institutions that create an enabling environment for the provision of these services.[89] The figure below illustrates a simple mobile money ecosystem, looking at a closely-knit and localised network.[90]

[87]Heeks R 'Why M-Pesa Outperforms Other Developing Country Mobile Money Schemes' (2012) ICTs for Development 5.
[88] Taggart TRM and Freese DW 'Regulation of Mobile Payments' (2010) 127 The Banking Law Journal 486.
[89] Madise (2019) 290.
[90] Madise (2019) 290.

Figure 3. A simple mobile money ecosystem.

Source; Jenkins B (2008) 'Developing Mobile Money Ecosystems' (Washington, DC: International Finance Corporation and Harvard Kennedy School).



In essence, the figure underscores 3 main points:

1. The customer does not need to open and operate a bank account to become a part of the ecosystem.

2. Customers can remit money to other customers, peer to peer without having to cash out.

3. Mobile money is a payment system. Therefore, the mobile money ecosystem does provide a means of attaining some level of financial inclusion.

The simplified figure above however has shortcomings and does not represent a complete ecosystem of how mobile money operates.[91] It overlooks that providers of goods and services do not have to cash out their mobile money and that providers can use it to procure goods and services. Consequently, the mobile money issuer also acts as an agent and an outlet of the mobile network operator and is not only a subsidiary of the mobile network operator. Customers can thus use other services such as procuring goods and services such as airtime which can be paid for by mobile

[91] Madise (2019) 290.

money. Further, the figure also omits the fact that cash can be put into the mobile money account by third parties. It also fails to place the role of the various regulators, government agencies, businesses and other key players as part of the ecosystem.

2.12 Regulation of mobile money

Whilst there seem to be no universal definition by scholars of what constitutes regulation, the term refers to a set of binding rules issued by a private or public body.[92] Some scholars have defined regulation as the use of various instruments or any government action that places conditions on providers of services and goods in specific areas of economic enterprise for purposes of preventing abuse by private individuals.[93]

There are two competing theories that underpin regulation, namely the Public Interest Theory and the Chicago theory. These theories have been referenced as they are applicable when addressing regulation of financial services such as mobile money. According to the public interest theory, regulation strives to protect and benefit the public at large and assumes that markets are delicate if left alone. As such, governments implement steps as a neutral arbiter to establish a regulatory body that oversees societal interests and ensure stability.[94] The Chicago theory, on the other hand, proposes that regulation protects the interests of small groups only and assumes that regulators cannot ensure public interest as they lack sufficient information on market operations such as cost, demand and quality. Hence, regulation may not necessarily promote the interest of the public. According to theories of economic regulation, there is a growing body of evidence that financial regulation falls under the public interest theory, as it is not only a delicate market, but seeks to accord the users of the financial products a degree of protection.[95]

According to Madise, the regulation of mobile money is crucial as money is the oil that lubricates financial and payment systems.[96] The increasing use of mobile money as an easily transferable

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[92] Mwenda K *Legal aspects of financial services regulation and the concept of a unified regulator* (2006) World Bank, Washington DC 5.

[93] Hertog J"Review of Economic Theories of Regulation" Discussion Paper Series No. 10-18 (2010) Tjalling C Koopmans Research Institute 10.

[94] Richard A & Posner 'Theories of Economic Regulation, The Bell Journal of Economics and Management Science, Vol. 5 No. 2 (Autumn, 1974) 335-358.

[95] Richard A & Posner 'Theories of Economic Regulation, The Bell Journal of Economics and Management Science, Vol. 5 No. 2 (Autumn, 1974) 335-358.

[96] Madise (2019) 159.

store of value has the potential to increase the effective money supply and cause monetary inflation.[97] It is therefore crucial to regulate mobile money not only the stability and integrity of the financial system, but to ensure equilibrium in the circulation of money. [98]

Mobile money is a recent entrant in the financial market in most Sub-Saharan countries. As such, there are no pre-existing regulatory frameworks in place to supervise the service.[99] As the mobile money industry continues to grow and competition continues to increase, regulators such as non-bank institutions are recognising the need to address this challenge and create an enabling regulatory framework.

Mobile money is currently regulated through a light-touch approach to allow the service to grow and gather momentum.[100] Light touch approach refers to a regulatory environment which is not strictly controlled or supervised. In a report on regulating m-money in Malawi, Buckley et al recommend a proportionate and risk-based approach of regulating mobile money.[101] The approach that has been adopted in regulating most mobile money systems. It has been an innovative combination of 'light-touch' and caution.[102] According to Heyer and Mas, this approach allows the operator a degree of freedom in structuring the business model, service proposition and distribution channels. A 'light-touch' regulatory framework would be sector specific, with the regulatory controls having a primary focus on transparency obligations and being dependent on the human impact of the technology. With the light-touch approach, obligations are placed on mobile money providers to ensure the integrity of agents.[103]

Mobile money requires an enabling regulatory environment which is non-hindering to grow. Porteous describes one such an enabling environment as one which demands openness and certainty at the early stage.[104] Porteous further argues that such an environment requires the

[97] Madise (2019) 169.
[98] Madise (2019) 170.
[99] Madise (2019) 168.
[100] Madise (2019) 172.
[101] Buckley R, Greenacre J & Louise M 'The Regulation of Mobile Money in Malawi' (20150 14 (3) Washington University Global Studies Law Review 480.
[102] Chris Skinner 2015 'When everyone on the planet has a mobile money account, things will change' available at *http://thefinanser.com/2015/06/when-everyone-on-theplanet-has-a-mobile-money account-things-will-change.html/* (accessed 20 October 2020).
[103] Heyer and Mas 'Seeking Fertile Grounds for Mobile Money' Mobile for Development (2009) 12.
[104] Porteous D (2006)'The enabling environment for mobile banking in Africa' 2006 Department for International Development (DFID) 15.

regulator to strike a balance by avoiding an 'over-reacting and stifling market development' and 'under-reacting to potential large scale risks until it is too late".[105] Due to the fact that mobile money is largely used by financially excluded populations, regulators must ensure that they promote the emergence of cost-lowering business models to cater for this population.[106] Further, regulators must also clearly include and define the role of MNOs and their agents, as these were not previously subject to financial regulation and supervision. Responsiveness of both the industry and the regulator are key to an enabling environment. As such, built-in mechanisms that allow same must be put in place.

In providing an enabling environment, it is important for the regulator to be flexible in creating mobile money ecosystems. Thus, the regulatory environment must be one that facilitates the growth and flourishing of such an ecosystem.[107] For an effective mobile money ecosystem, there is a need to allure to a cross-section and wide range of key players such as MNOs, banks, agents, shops, service, and utility providers. As the number of players in the digital financial services ecosystem grows exponentially, regulation is becoming increasingly complex.[108] These developments call for a more nuanced evaluation of regulatory frameworks and collaboration between providers and regulators to achieve the mutual aim of expanding mobile money services.

It is therefore recommended that there is less regulation (light-touch) or much more self-regulation of mobile money as this may spur the growth of the service. The regulator must ensure that the system is not only financially inclusive but also stable and does not pose a risk to the financial system and consumers.

2.13 Mobile Money Usage in the SADC region

[105] Porteous D (2006)'The enabling environment for mobile banking in Africa' 2006 Department for International Development (DFID) 15.
[106] Lyman T (2016) 'Regulation and Supervision' (CGAP) available at http://www.cgap.org/topics/regulation-and-supervision (accessed on 23 October 2020).
[107] Madise (2019) 170.
[108] GSMA State of the Industry Report on Mobile Money (2018) 6.

Mobile money in the SADC region is fast-growing and is revolutionising the financial services landscape. It has improved accessibility of banking services to a majority of the population who were previously financially excluded.[109] SADC has a 15% mobile money penetration rate, which is higher than the Sub Saharan African average of 12%.[110] The growth rate in Southern Africa, measured by the number of new mobile money accounts is twice as fast, with 29% year-on-year growth in 2015-2016. These are the most recent and reliable statistics that could be ascertained at the time of the study. The opportunities for the development of mobile money in Southern Africa abound as the market starts to mature. While there is no official data on recent mobile money statistics by data aggregators such as GSMA, the figure below shows recent statistics of a few SADC countries, money subscriptions and the percentage of the users as of 2020.[111] The figure illustrates that mobile money users in most of the states is relatively high and continues to grow.

Table 4. Mobile Money Suscriptions in selected SADC Countries.

Source; ITC Works 2020.

Countries	***Population***	***Mobile money subscriptions***	***Mobile money users as % of population***	***% of population with Bank accounts***
Botswana	2,351,627	1,150,240	49%	45%
Lesotho	2,142,249	1,261,985	59.00%	33%
Mozambique	31,255,435	6,600,000	21%	33%
Namibia	2,540,905	1,083,600	43%	77%
South Africa	59,308,690	1,000,000+-	2%	75%
Eswatini	1,160,164	703,980	61%	44%
Zambia	18,383,955	4,852,040	28%	36%

109 Donovan K (2012) 62.
110 Fanta A B, Mutsonziwa K, Goosen R, Emanuel M & KettlesN ‘ The role of mobile money in financial inclusion in the SADC region’ (2016) FinMark Trust Policy Research Papers (03) 16.
111 ITC Works The State of Mobile Money in Southern African Countries 2020 available at https://www.ictworks.org/mobile-money-southern-african-countries/#.X4yRnNUzbIU (accessed 23 October 2020)

Zimbabwe	14,862,924	7,334,639	49%	28%

2.2 **Mobile money interoperability defined**

The term interoperability is extensive has been used and defined in so many different ways. In the infrastructure context, it is commonly understood as a tool to interconnect networks.[112] As previously defined, mobile money interoperability refers to the ability to make an e-money transfer between two accounts held at different MNO or banking systems. For purposes of this mini-thesis, mobile money interoperability will refer to international (cross-border) interoperability. Interoperability of mobile money has been one of the industry's north stars for many years. It holds the promise of an interconnected world in which people in emerging markets can send money to each other regardless of the mobile money service they are using.

There are several concepts of mobile money interoperability, but the most important concept for purposes of this mini-thesis is account-to-account (A2A) interoperability. Agent Wallet to Agent Wallet known as A2A interoperability refers to interoperability between an agent sending mobile money from one of his agent wallets to another of his agent wallets on mobile money systems. These transactions allow agents to move mobile money between any of their registered agent wallets. .[113] This includes person-to-person (P2P) interoperability which is the ability for mobile money users to make transfers between their mobile money accounts, bank account to mobile money account (B2M), and mobile money account to bank account (M2B) transfers.

Interoperability improves efficiency by reducing the cost and increasing safety by enabling better risk management. It also creates more trust with end-users as money can be sent from one network to another even across borders. These makes users feel more confident that they will be able to access their money when they need it.[114]

2.14 <u>Mobile money interoperability and financial inclusion</u>

[112] R Weber (2014) 5.
[113] Hoernig S & Bourreau M (2016) 7.
[114]Payments Afrika 'Interoperability: The Next Phase of Mobile Money' available at *https://paymentsafrika.com/payment-news/card/interoperability-the-next-phase-of-mobile-money/* (accessed on 21 July 2020).

Governments in Africa have begun to appreciate the fundamental role financial inclusion can play in combatting poverty by opening blocked advancement opportunities for disadvantaged segments of the population. Financial inclusion also contributes to sustainable inclusive economic growth and stability.[115] As a result of this realisation, a number of countries in Africa are developing national financial inclusion strategies, key programs and initiatives to develop financial markets.[116]

Financial inclusion has have been defined as the delivery of financial services and products in a manner that is available, accessible and affordable to all sections of the population.[117] Financial inclusion in the SADC region is relatively low, although over half of adults (66%) are financially included. This is 12% higher than the continent-wide average. Approximately 41.9 million people (34%) still do not have access to either formal or informal financial services or products.[118]

Mobile money interoperability is a 'silver bullet' for greater financial inclusion as it increases transaction volumes and extends the range of financial products offered through the mobile phones. Mobile money interoperability is seen as a 'silver bullet particularily in respect to cross-border remittances as it provides a seemingly magical, solution to difficult problems that have been encountred with sending money across borders across SADC. Further, by embracing interoperability network operators can enable greater volumes of mobile transactions from current customers and create a more open and inclusive financial ecosystem.[119] There has been considerable progress in Sub-Saharan Africa where mobile money has emerged as the mainstay of financial inclusion.[120]

Further, advancing interoperability of mobile money operators increases financial inclusion of the poor and unbanked. This is because the reach of mobile networks is much larger (and increasing) than that of the formal banking sector, thus mobile money offers the prospect of a low-cost solution to create access to the financial sector.[121] Interoperability thus resolves two aspects. Firstly, it

115 SADC Financial Inclusion Strategy Report (2016) 12.
116 SADC Financial Inclusion Strategy Report (2016) 12.
117 SADC-SADC Financial Inclusion Strategy Report (2016) 12.
118 SADC Financial Inclusion Strategy Report (2016) 12
119 Payments Afrika 'Interoperability: The Next Phase of Mobile Money' available at https://paymentsafrika.com/payment-news/card/interoperability-the-next-phase-of-mobile-money/ (last accessed on 21 July 2020).
120 Vodacom Group Limited Public Policy Series Report (2019) 6.
121 Hoernig S & Bourreau, M (2016) 9.

substantially improves the value proposition of mobile money by increasing customer benefits.[122] Secondly, it reduces the cost of actually reaching the most outlying parts of the population through the agent network.[123]

2.15 The role of mobile money interoperability in cross border remittances

Mobile money interoperability can play a major role in promoting cross border remittances by providing a reliable and efficient service that allows users to send money seamlessly across the borders without any documentation. Above all, it has the ability to increase financial inclusion of the unbanked whilst reducing the costs of sending money through formal channels. Further, it increases the utility of financial services, reduces the friction in payments, drives greater usage of digital funds and generates more value for customers, businesses and governments.[124] Mobile interoperability can potentially drive the achievement of the United Nations Sustainable Development Goal of reducing the cost of transferring remittances from an average of 7% to less than 3%.[125]

2.16 Conclusion

This chapter explored the first research question- what role can mobile money interoperability play in revolutionising cross–border remittances in SADC region? The question is the basis for much of discussions that relate to cross border remittances and mobile money. The chapter further summed up the pivotal role played by mobile money interoperability in cross border remittances. It recognised that most cross-border remitters in the region turn to risky and opaque informal, cash-based channels due to legal documents and regulatory barriers and high costs. It concluded that mobile money offers a more affordable, secure, traceable and transparent way of sending remittances. The chapter recognised that channelling informal remittances through formal channels such as mobile money has significant potential to increase financial inclusion in the

[122] Hoernig S & Bourreau, M (2016) 9.
[123] Hoernig S & Bourreau, M (2016) 9.
[124] Vodacom Group Limited Public Policy Series Report (2019) 6.
[125]Harnessing the power of mobile money to achieve the Sustainable Development Goals available at https://www.gsma.com/mobilefordevelopment/resources/harnessing-the-power-of-mobile-money-to-achieve-the-sustainable-development-goals/ (last accessed 5 September 2021).

SADC region.[126] The ensuing chapter will discuss the payment systems in the region and the legal and regulatory framework concerning cross border remittance payment systems.

[126] SADC Financial Inclusion Strategy Report (2016) 22.

CHAPTER 3; LEGAL AND REGULATORY FRAMEWORK FOR CROSS-BORDER REMITTANCE SERVICES

3.1 Introduction

The previous chapter defined the important concepts that are central to this research, the underpinning theories and the pivotal role that mobile money interoperability can play in reforming cross-border remittances. This chapter will address the second research question- what are the current legal and regulatory frameworks for cross-border remittances in the region and what are the main challenges of same? The chapter will delve into the current payment or remittance services within the region and explore the legal and regulatory framework surrounding cross-border remittances services paying close attention to Licensing Requirements for Remittance Service Providers (RSPs), foreign exchange controls and reporting requirements, anti-money laundering/Combating the Financing of Terrorism (AML/CFT), compliance requirements and immigration laws. The mini-thesis has limited itself to these specific aspects because research conducted in the SADC region has shown that these specific aspects are the key legal and regulatory barriers impacting the remittances market.

This chapter will illustrate why there is a need for regional regulation in the SADC region and why regional regulation is suitable under the cicumstances. This is because as discussed in the last chapter, remittances across the borders are widespread and costly, and regional regulation would alleviate this. As previously discussed, the use of mobile money is an increasingly important component of national and regional economic development within SADC. According to Maimbo et al, for mobile money usage to reach its full potential governments across SADC must establish more efficient legal and regulatory frameworks and implement well-designed pilot programs to test a full rollout of mobile money transactions.[127] The implementation of pilot projects has already been done in countries like Kenya and the Philippines, and has been a progressive step in establishing strong and efficient regulation. As discussed in the last chapters the SADC region has already launched a pilot project, which has not yet been implemented to allow users to send money seamlessly through their mobile phones. It is recommended that the pilot project glean from the recommendations of Maimbo et al, who suggest that regulation in the region must be broad, robust

[127] Maimbo S, Saranga T & Strychacz N 'Facilitating cross-border mobile banking in Southern Africa' (2010) 3.

and efficient to promote cross-border remittances and cross-border trading through branchless and mobile banking. [128] The region is faced with a huge number of undocumented migrant populations, informal markets, and underdeveloped financial and telecommunications networks. As such, regulation must be broad and flexible. Based on these characteritics, it is recommended that the SADC region develops a risk-based, community- driven development approach with the flexibility to incorporate small-value accounts and transactions. [129] Further, policy makers should develop directives and policies to provide legal clarity on outsourcing, branchless banking, and electronic transactions.[130]

It should be recognized that, at both an international level and regional level, the attention of regulators is required with respect to competition and interoperability across providers in the mobile money ecosystem. In the SADC region, consistency and harmonization issues arise with respect to interoperability of mobile money transactions, due to the digital complexity ecosystem. Therefore, regulatory harmonization with respect to all of these issues within regional and continental blocs is recommeded.[131] While some of these responsibilities are the role of central banks, some are the role of electronic communications sector regulators, and competition authorities.

3.2 Overview of Payment Systems in the Souther African Development Community (SADC) region.

As discussed in the last chapter, the SADC Treaty aims to promote regional integration, sustainable economic growth and social development.[132] Within the SADC framework, only the SADC Treaty and SADC Protocols and their annexes are legally binding. This means that they are subject to ratification in accordance with member states' constitutional provisions and are subject to domestication.[133] These objectives are to be achieved through increased regional integration

[128] Maimbo S et al (2010) 4.
[129] Maimbo S et al (2010) 4.
[130] Maimbo S et al (2010) 4.
[131] Abrahams L ' Regulatory imperatives for the future of SADC's "digital complexity ecosystem" (2017) The African Journal of Information and Communication (AJIC), 20, 13.
[132] Declaration and Treaty of Southern African Development Community 1992.
[133] Langhan and K Smith FinMark Trust Report - The Legal And Regulatory Framework For Payments In 14 Member SADC Member States Master Report (2014) 10.

founded on democratic principles, equitable and sustainable development. To achieve this, the treaty sets out several key areas of co-operation required between member states, one of which includes co-operation in trade, industry, finance, investment and mining.

In 2006, the SADC Heads of State signed the Finance and Investment Protocol (FIP) which has been ratified by all member states.[134] The FIP is the legal basis for regional cooperation and harmonisation in finance, investment and macroeconomic policy.[135] It recognises that payment systems are critical infrastructures for the economic development and strengthening of financial and capital markets in the region.[136]

In 2010, the SADC Financial Industry launched a multi-phase, regional payments initiative known as the SADC Payments Project.[137] The project was primarily designed to enhance financial market infrastructure for inter- and intra-regional trade.[138] The payment project was focused on interoperability and cooperative space. Interoperability mainly focussing on bringing all member states and their banks together using the same platform to exchange payments across borders.[139] The cooperative space focuses on the development of industry improvements that players in all the countries can leverage. [140]

In July 2013, the SADC defined its priority payments stream and launched a high-value, bank-to-bank payments system across borders, known as the SADC- Real Time Gross Settlement (RTGS) (formerly known as SADC Integrated Regional Electronic Settlement System (SIRESS)). The SADC- RTGS is a regional cross-border real-time gross settlement (RTGS) system that enables real-time settlement among the banks and their customers in all 16 member states.[141] This payment system was necessitated by the need for an exchange of priority payments where the value of the transactions is recorded and finalised between the counterparties in the different countries.[142]

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[134] Langhan S & Smith K (2014) 10.
[135] Langhan S & Smith K (2014) 10.
[136] Langhan S & Smith K (2014) 10.
[137] SADC Banking Association *White Paper on Regional Payments Integration, Financial Inclusion, and Remittances in the Southern African Development Community (SADC): Reflections on a Work in Progress* (2017) 5.
[138] SADC Banking Association White Paper (2017) 5.
[139] SADC Banking Association White Paper (2017) 5.
[140] SADC Banking Association White Paper (2017) 5.
[141] SADC Banking Association available at https://www.sadcbanking.org/payments-project/ (accessed 6 November 2020).
[142] SADC Banking Association White Paper (2017) 7.

The SADC-RTGS is an automated interbank settlement system operated by the South African Reserve Bank (SARB), as appointed by the SADC participating member central banks.[143] Participants in SADC-RTGS include central banks and financial institutions such as banks and non-banks that are authorised by their respective central bank to participate. All payments are settled in the South African Rand (ZAR). The SADC-RTGS system has significantly grown since its implementation as at March 2019, with 81 participants having processed 1.38 million transactions amounting to ZAR 5.61 trillion.[144] The successful implementation of the SADC-RTGS system has paved the way to enable the introduction of two payment schemes. One on cross-border instant payment low-value mobile fund transfers and the other on low-value cross-border electronic fund transfer (EFT) credit payment scheme.[145]

The instant payment scheme was initially launched as the mobile money payment project by the SADC Banking Association in 2019.[146] The payment project aims to enable instant mobile money transfers across the region.[147] The initiative is the brainchild of the Regional Payments Scheme Management Body that seeks to give people from across the region a same day money transfer system through their mobile phones. The goal is to ease ways of doing business, sending and receiving remittances.[148] However, the initiative is still a pilot project that has not yet been implemented. It is not clear why this pilot project has not yet been implemented and the timelines for a launch. From the looks of things, it seems that SADC is working on the framework currently known as Transactions Cleared on Immediate Basis (TCIB), which was launched sometime in 2020.[149] Currently, the TCIB in pre-regulatory approved controlled environment and has has seen an increased involvement by banks and non-banks with approximately 64 participants currently various stages of on-boarding.[150]In a nutshell, the TCIB payment scheme allows funds to be

143 SADC Banking Association available at *https://www.sadcbanking.org/payments-project/ (*accessed 6 November 2020).
144 SADC- SADC Payment System Oversight Committee Report April 2017 – March 2019 (2019) 5.
145 SADC- SADC Payment System Oversight Committee Report April 2017 – March 2019 (2019) 5.
146 SADC- SADC Payment System Oversight Committee Report April 2017 – March 2019 (2019) 5.
147 SADC Develops Regional Mobile Money Platform available at *https://www.eyetrodigital.com/2019/10/15/sadc-develops-regional-mobile-money-platform/* (accessed 21 July 2020).
148 SADC Develops Regional Mobile Money Platform available at *https://www.eyetrodigital.com/2019/10/15/sadcdevelops-regional-mobile-money-platform/ (*accessed 21 July 2020).
149 SADC Develops Regional Mobile Money Platform available at *https://www.eyetrodigital.com/2019/10/15/sadcdevelops-regional-mobile-money-platform/* (accessed 21 July 2020).
150 SADC Banking Association -Transactions Cleared on an Immediate Basis (TCIB – Low-Value Cross Border Credit Transfers) available at *https://regtechafrica.com/sadc-banking-association-transactions-cleared-on-an-immediate-basis-tcib-low-value-cross-border-credit-transfers/* (accessed 16 September 2021).

applied immediately to the end-user account wherein the interbank settlement will happen as agreed by the payments industry.[151] The payment scheme is built on the ISO 20022 [152]standard to ensure compliance with the Financial Action Task Force (FATF) and other regulatory needs.[153] The TCIB enables transfers to be made in any SADC currency or United States Dollars (USD). The SADC Payment System Oversight Committee (PSOC) has the mandate to review the regulatory aspects and participation requirements to accommodate non-banks for this payment scheme.[154] The platforms are progressive step for remitting funds across the region, especially in light of the effects of the COVID-19 pandemic, wherein most migrants have faced economic hardship. The TCIB payment scheme enables secure, cost-effective and convenient access to remittances across the region. Through promoting low cost remittances, the schemes alleviates some of the pandemic-related financial pressure amongst those receiving cross-border remittances.

The low-value cross-border electronic fund transfer (EFT) credit payment scheme permits the transfers of low values from the originator to a beneficiary.[155] These credit transfers are non-urgent payments that are often processed in overnight batches via automated clearinghouse.[156] The payment scheme has not yet been implemented and will be implemented in the Common Monetary Area (CMA) region first, consisting of Eswatini, Lesotho, Namibia and South Africa, before moving on to the broader SADC region.[157]

Another payment scheme that is yet to be implemented is the Direct Debits system, an end-to-end process where the party receiving the funds sends an instruction to request funds from the payer. Direct debits are usually used for purpose of collections or bill payments, and are often referred to as pull payments.[158] A "Point of Sale" (POS) transaction is a purchase made with a Visa debit card, wherein one is required to enter a PIN on a keypad. The Card POS Transactions are done at a

[151] Introducing the SADC TCIB Payment scheme available at https://www.sadcbanking.org/wp-content/uploads/2019/09/0090-022-SADC-TCIB-Newletter-2019-02-21-11h33.pdf (accessed 6 November 2020).
[152] ISO 20022 is an emerging global and open standard for payments messaging which creates a common language and model for payments data across the globe.
[153] Introducing the SADC TCIB Payment scheme available at https://www.sadcbanking.org/wp-content/uploads/2019/09/0090-022-SADC-TCIB-Newletter-2019-02-21-11h33.pdf (accessed 6 November 2020).
[154] SADC- SADC Payment System Oversight Committee Report April 2017 – March 2019 (2019) 5-6.
[155] SADC- SADC Payment System Oversight Committee Report April 2017 – March 2019 (2019) 6.
[156] SADC- SADC Payment System Oversight Committee Report April 2017 – March 2019 (2019) 6.
[157] SADC Banking Association White Paper (2017) 6.
[158] SADC Banking Association White Paper (2017) 6.

device allowing the use of payment cards at a physical (not virtual) point of sale. The payment information is captured either manually on paper vouchers or by electronic means.[159]

Despite progress toward automation in the payment systems, the lack of interoperability between payment networks and payment instruments presents a constraint to the growth of innovative e-payment services, including remittances.[160] This is because interoperability promotes e-payment services as it allows the seamless transfer of money across different networks. Notwithstanding these developments for domestic money transfers, interoperability for international remittances currently does not exist.[161] While several MNOs operating in the SADC region have developed cross-border mobile money services, for example, with Airtel and MTN these services are offered only within their mobile networks and to countries in which the MNO is present.[162]

Presently, a harmonised legal and regulatory framework for payments does not exist in SADC as the region faces several institutional and regulatory challenges.[163] In terms of institutional challenges, the SADC Central Bank is yet to be established and the region does not have a parliament with legislative powers as in other similar regions such as the East African Community (EAC)[164], European Union (EU)[165] and the Economic Community of West African States (ECOWAS).[166] Further, there are no SADC regulations or directives on payments save for Annex 6 of the FIP which establishes a framework for cooperation coordination between central banks on payment, clearing and settlement systems.[167] The SADC Tribunal, whose mandate was to ensure adherence to and proper interpretation of the provisions of the SADC Treaty was disbanded in 2010.[168] However in 2014 at the SADC Summit, a new Protocol for the SADC Triburnal was adopted and signed. The new Protocol will bring about far-reaching institutional and practical modifications. Such changes should be founded on sound legal principles and procedures.

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[159] SADC Banking Association White Paper (2017) 6.
[160] SADC- SADC Payment System Oversight Committee Report April 2017 – March 2019 (2019) 5.
[161] Kachingwe N L & Kaput E N (2018) 21.
[162] Kachingwe N L & Kaput E N (2018) 21.
[163] Langhan S & Smith K (2014) 15.
[164] More information avialbale at *https://www.eac.int/* (accessed 2 October 2021)
[165] More information available at *https://www.europarl.europa.eu/portal/en* (accessed 2 October 2021)
[166] Langhan S & Smith K (2014)
[167] Langhan S & Smith K (2014) 15.
[168] Langhan S & Smith K (2014) 15.

In terms of regulatory challenges, there are several different regulatory models applied in the SADC Member States, wherein direct regulation is still the most common regulatory model with the Central Bank at the centre as the designated competent authority.[169] Several countries such as Botswana, Seychelles, Swaziland and Zimbabwe apply the direct regulation model, while countries like South Africa, Namibia and Lesotho apply a hybrid or delegated regulatory model.[170] The direct regulation states what is permitted and what is illegal, while with a hybrid regulatory framework various regulatory models, such as direct regulation by government, regulation by independent agencies, regulation by contract and outsourcing of regulatory functions to third parties, coexist. This makes harmonisation of payment systems very difficult as it is challenging to syncronise the various regulatory models into one.

3.3 Legal and Regulatory framework

As discussed in the last chapter, more than 60% of the remittances sent across the region are sent through informal channels which are not only risky but offer no legally binding guarantee.[171] Further, informal channels are not subject to the supervision of any regulatory authority and usually offer a high level of anonymity. Taking this concerns into consideration, it would be preferable for more remittances to be channelled through more formal financial mechanisms such as mobile money services, banking services and remittance service providers. However, the legal and regulatory provisions in sending and recipient countries are a major factor that often hinders remitters from accessing formal financial services.

The legal and regulatory framework for remittance services are a very important aspect because it has a significant impact on the cost, availability, and accessibility of remittance services, and the structure of the remittances market.[172] According to the Committee on Payments and Market Infrastructures (CPMI) World Bank General Principles for International Remittances Services (General Principle 3),[173]remittance services should be supported by a sound, predictable, non-discriminatory and proportionate legal and regulatory framework.[174] A sound legal and regulatory

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[169] Langhan S & Smith K (2014) 15.
[170] Langhan S & Smith K (2014) 19 -20.
[171] See Chapter 2 Introduction.
[172] Kachingwe N L & Kaput E N (2018) 10.
[173] General Principles for International Remittances Services available at https://www.bis.org/cpmi/publ/d76.htm (accessed 2 October 2021).
[174] Kachingwe N L & Kaput E N (2018) 10.

framework minimises the risks to both consumers and RSPs while a predictable framework ensures that there is clarity and consistency in the regulation of remittance services. A non-discriminatory framework is one in which the legal and regulatory requirements are equally applied to different types of RSPs providing equivalent services and a proportionate framework that is not overly restrictive to the number and value of remittances.[175]

Like most financial services, remittance services are also subject to laws such as anti-money laundering and combating the financing of terrorism legislation.[176] These laws impose Know Your Customer (KYC) or Customer Due Diligence (CDD) obligations that require financial institutions to gather, what at times can be extensive, information from their clients and report on suspicious transactions.[177] These regulatory requisites impose compliance costs which have an impact upon remittance transaction fees. Regulatory requirements can also bear significant implications for the competition within the remittance industry, especially in circumstances were RSPs are required to obtain a license or registered to provide remittance services.[178] A potential effect of the latter would be the limitation of competition within the remittance market by excluding potential RSPs from entering into the remittance industry.[179] According to the World Bank Remittance Assessments conducted in the selected SADC countries, the main legal and regulatory barriers impacting the remittances market were found to be:

- Licensing requirements for Remittance Service Providers (RSPs), and in particular for Money Transfer Operators (MTOs).
- Foreign Exchange Controls and Reporting requirements and Anti-money laundering (AML)/Combating the Financing of Terrorism (CFT) compliance requirements and Immigration Laws. These are discussed in turn next.

3.3.1 Licensing requirements for Remittance Service Providers (RSPs)

[175] Kachingwe N L & Kaput E N (2018) 10.
[176] Kachingwe N L & Kaput E N (2018) 10.
[177] IAMTN "G8 Nations agenda to cut remittance transfer costs" available at http://www.iamtn.org/content/global-moneytransfer-monthly-3; CPSS "General principles for international remittance services 10 (accessed 20 November 2020).
[178] Kachingwe N L & Kaput E N (2018) 10.
[179] Kachingwe N L & Kaput E N (2018) 10.

The licensing and regulatory requirements for MTOs and other RSPs vary across SADC countries, wherein the licensing framework in most SADC countries limits the ability of MTOs to offer remittance services independently of banks or other licensed financial institutions.[180] Traditionally, most commercial banks provide remittance services as part of the banking services prescribed under the relevant banking law and regulations.

The lack of remittance licenses for non-bank RSPs in many SADC countries negatively affects competition and also places a disproportionate burden on these entities in terms of regulatory compliance.[181] Furthermore, non-bank RSPs are subject to the same compliance standards as their partner banks despite the relative lower-risk profile of their lines of business, including low-value, high volume remittance payments, and particularly with regard to AML/CFT compliance and monitoring.[182] The licensing procedure for non-bank RSPs is often very costly accompanied with excessive delays that discourage innovation. Regulators in the region are, therefore, not able to keep up with the fast-paced technological advances, leading to licensing delays for innovators.[183]

Further, in most SADC countries non-bank financial institutions are required to partner with a bank or a licensed financial institution to offer remittances services.[184]According to the World Bank, five of the nine countries surveyed as part of the World Bank remittance assessments, MTOs and other non-bank financial institutions are required to partner with a bank or other licensed financial institution to offer remittance services.[185] However, some countries have in recent years introduced regulations to enable MTOs to operate independently of banks and other licensed financial institutions.[186] In South Africa, the SARB in 2014 introduced a new category of Authorised Dealer with Limited Authority (ADLAs) namely 'Category 3' to allow MTOs to operate independently of Authorised Dealer (ADSs) and ADLAs.[187] The business activities of a Category Three ADLA (MTO) are restricted to money remittance services, i.e. cross-border person-toperson payments of relatively low value, single remittance transactions up to ZAR5 000 per transaction, only the applicant's proof of identity has to be viewed by the ADLA concerned

[180] Kachingwe N L & Kaput E N (2018) 10.
[181] Esser A & Cooper B (2020) 6.
[182] Kachingwe N L & Kaput E N (2018) 10.
[183] Kachingwe N L & Kaput E N (2018) 10.
[184] Kachingwe N L & Kaput E N (2018) 11.
[185] Kachingwe N L & Kaput E N (2018) 11-12.
[186] Kachingwe N L & Kaput E N (2018) 11-12.
[187] Kachingwe N L & Kaput E N (2018) 11-12.

and where a business relationship has been established, transactions are limited to ZAR5 000 per transaction per day within a limit of ZAR25 000 per applicant per calendar month.[188] This has have been to some extent useful for migrant workers as funds earned in South Africa are eligible for transactions, where the equivalent in value is within the specified sum. For that specified value, ADLAs should possess either a passport, asylum seeker permit, maroon refugee identity document or any other acceptable form of identification and obtain the residential address for reporting purposes prior to effecting transfers in this regard. This is less stringent than banking institutions that require valid documentation. Zimbabwe also introduced a similar category of ADLAs which allow internationally and locally incorporated MTOs to offer remittance services independently of banks or other financial institutions.[189] Since this introduction, the Reserve Bank of Zimbabwe (RBZ) has licensed approximately 27 companies as Authorised Dealers with Limited Authority (ADLA) in line with the country's exchange control policy measures.[190]This has have been a much-celebrated move by the RBZ as cross-border remittances account for significant portion of the economy and this move has promoted cross- border remittances and investment in the country.

In Lesotho, Malawi, and Zambia MTOs operate independently, either as licensed payment system businesses or licensed financial institutions.[191] The flexibility of operating independently has given an opportunity for the expansion of financial service options for the excluded and underserved thus promoting financial inclusion, while making remittance services accessible and cheaper. This has also made partnerships possible for instance Econet Zimbabwe has partnered with MTN Zambia to enable cross border remittances. [192]An MTN Zambia subscriber can transfer money from his MTN Mobile Money wallet to an Econet Subscriber's EcoCash wallet. MNOs in Lesotho have also launched inbound cross-border remittance services in partnership with licensed international money transfer service providers. As part of the expansion of its cross-border remittance services, Econet Telecom Lesotho (ETL) also partnered with Flash South Africa, and subsequently

[188]SARB Currency and Exchanges Manuals for Authorised Dealers in foreign exchange with limited authority 2021-08-20 .
[189] Kachingwe N L & Kaput E N (2018) 10.
[190] 'Zimbabwe licenses 27 Money transfer firms' available at https://mobilemoneyafrica.com/index.php/blog/zimbabwe-licenses-27-money-transfer-firms (accessed 20 Seotember 2021)
[191] Kachingwe N L & Kaput E N (2018) 10.
[192] MTN & EcoCash partnership enables wallet to wallet transfers across borders available *https://www.techzim.co.zw/2016/05/ecocash-officially-launch-remittance-partnership-with-mtn-zambia/#*: (accessed 20 September 2021)

launched inbound cross-border money transfer service for remittances from South Africa to Lesotho in December 2017. [193]This service enables South African identity document or passport holders and Lesotho passport holders to remit money through their phones.

There is also a unified licensing framework. It is a simplified framework under existing EMI/PSP regulatory framework offering greater process efficiencies. No further license is required to provide international remittance services.[194] Most importantly, it has the ability to increase competition and reduce remittance transaction costs while offering unified reporting requirements. This has have been done with Rwanda and Ghana, wherein mobile money providers holding an EMI license issued by the National Bank provide inward and outward international remittance services.[195]

Some SADC countries still face regulatory restrictions on independent MTOs. For instance, the regulations and practices in Tanzania require MTOs to operate in partnership with a bank or other licensed financial institution, including bureau de change, and in the premises of a financial institution.[196] In Madagascar, the Foreign Exchange Code equally dictates that cross-border remittances between residents and non-residents of Madagascar can only be made by authorised intermediaries, which include commercial banks and the Madagascar Postal Service.[197] In Mozambique, banks are recognised as the main financial providers of payment services. As such only banks are permitted to perform cross-border remittance services either as proprietary services or in partnership with MTOs.[198] However, banking agents are allowed to process inward remittance transactions on behalf of banks. Similarly, in Namibia MTOs may offer remittance services only in partnership with ADs of foreign exchange, typically banks or with ADLAs such as a bureau de change.[199] This clearly shows that remittance services in different countries still face regulatory restrictions and therefore harmonization as a region would be difficult.

193 "The Assessment of International Remittances Markets in Lesotho: Implications for Economic and Social Development" Journal of Payment Strategy and Systems, Vol. 12, No.2.
194 Farooq S Licensing mobile money remittance providers: Early lessons; GSMA 2017 3.
195 Farooq (2017) 3.
196 Kachingwe N L & Kaput E N (2018) 11.
197 Kachingwe N L & Kaput E N (2018) 11.
198 Kachingwe N L & Kaput E N (2018) 11.
199 Kachingwe N L & Kaput E N (2018) 11.

Over the years, a number of new and innovative MTOs such as Western Union and MoneyGram have emerged across SADC countries, wherein the regulatory framework allows for the same to operate independently. For instance, in South Africa four MTOs have, since been licensed as ADLA Category 3 institutions. These include Exchange4Free[200], Hello Paisa[201], Mama Money[202], and South-East Exchange Company.[203] Similarly, in Zimbabwe, Econet MNO is currently partnering with several MTOs, including World Remit, Western Union, MoneyGram, Mukuru, Hello Paisa, and Mama Money and others.[204]In Lesotho, both local MNOs have partnered with MTOs to offer cross-border mobile money remittances while in Zambia one MNO has developed a proprietary cross-border mobile money remittance service available in several African countries. Similarly, Malawian's Airtel MNO offers its proprietary service and other independent MTOs including Hello Paisa and Mukuru have built extensive agent networks to offer remittances services in the country. These instruments promote the revolutization of cross-border remittances and are a progressive step in the right direction. Therefore, these instruments should be celebrated as they also bridging the gap by promoting financial inclusion. However, regulatory barriers do hinder the successful implementation of these instruments.

3.3.2 Foreign exchange control and reporting requirements

Foreign exchange controls broadly refer to the various methods employed by governments in an attempt to control the purchase and sale of foreign currency by residents as well as non-residents. Most SADC countries have prohibitive foreign exchange controls, wherein some or all cross-border transfers may be subject to review and/or government authorisation before a transfer may occur.[205] The fact that this transactions typically occur in a bank branch and/or authorised dealer in foreign exchange has severe cost and logistics implications for digital services, such as mobile money remittances and other non-bank RSPs that rely on banks.[206] The exchange control laws in the SADC region further hinder remittances through their capacity to present formidable barriers

[200] More information available at https://exchange4free.com/ (accessed 20 September 2021).
[201] More information available at https://hellopaisa.co.za/ (accessed 20 September 2021).
[202] More information avaialbe at https://www.mamamoney.co.za/ (accessed 20 Septemeber 2021).
[203] More information available at https://moneytransferexchange.com/southeast-exchange-company-in-johannesburg-south-africa/ (accessed 20 September 2021).
[204] Kachingwe N L & Kaput E N (2018) 12 -13
[205] Esser A & Cooper B (2020) 6.
[206] Esser A & Cooper B (2020) 6.

to potential remitters and their ability to compromise competition within the remittance industry by prohibiting potential RSPs from entering the remittance market.[207]

There are certain restrictions placed on cross-border remittances in the SADC region, for instance, the Foreign Exchange Act and Regulations in Lesotho[208], Namibia and South Africa permits the free flow of funds within the CMA. It places no limit on inflows from non-CMA countries and provides a single discretionary allowance of a certain amount for purposes of travel, study allowance, gifts, donations, and maintenance. [209] However, the Exchange Control Act in Malawi limits inflows and places a limit of US$1,000 per transaction for outflows.[210] Similarly, in Mozambique there are no limits on inflows and approvals, as required from the Bank of Mozambique for outflows over US$5,000. While in Tanzania, Zambia and Zimbabwe there are no limits on inflows, but outflows are limited to a certain amount per transaction per day.[211]

In respect to reporting requirements, each authorised dealer, bank or RSP is usually required to report every foreign exchange transaction, regardless of the amount through the respective Cross Border Foreign Exchange Transaction Reporting System. The reporting system is relatively expensive to install and very onerous.[212] The costs incurred in reporting transactions are ultimately passed on to the remitter as part of the transaction costs and contribute to the significantly high cost of sending money. This high cost of remitting funds via formal mechanisms acts as a barrier to low-income consumers resulting in the use of informal mechanisms to remit funds as a substitute. These reporting requirements and other restrictions in the SADC region are often not proportionate to the value of remittances sent and received. For example, in Malawi residents can remit up to US$1,000 per transaction and there is no limit on inward remittances, whilst in Mozambique, senders are required to provide information on the reasons for sending the funds, the relationship between the parties, the source of income, evidence of tax paid by the sender and other evidence to justify the transaction.[213] The foreign exchange reporting requirements imposed on MTOs in the region are generally burdensome and disproportionate to the average value of

[207] Esser A & Cooper B (2020) 6.
[208] Kachingwe N L & Kaput E N (2018) 14.
[209] Kachingwe N L & Kaput E N (2018) 14.
[210] Kachingwe N L & Kaput E N (2018) 14.
[211] Kachingwe N L & Kaput E N (2018) 14.
[212] Hennie B, Hougaard C & Chamberlain D ‘ Reviewing the Policy Framework for Money Transfers’ (2010) Finmark Trust 19
[213] Kachingwe N L & Kaput E N (2018) 13.

remittances sent and received.[214] Regulatory authorities obtain information on foreign exchange outflows and rely on foreign exchange reporting for information on financial flows for the balance of payments purposes and for monitoring compliance with AML/ CFT requirements. As such it has been recommended that institutions report directly to the National Bank as opposed to requiring them to report strictly via the Cross Border Foreign Exchange Transaction Reporting System.[215]

While foreign exchange control requirements are necessary to monitor the foreign currency flows in a country and maintain the integrity of the financial system, the transaction costs of compliance are too high for the consumers. This being one of the main reason which contributes to the high costs of formal regulated remittance services, which results in a majority of remitters using informal channels which remitters believe are more convenient and cheaper although they are unregulated.

3.3.3 Anti-money laundering (AML)/Combating the Financing of Terrorism (CFT) compliance requirements

Remittance services have has increasingly been subjected to an increased level of scrutiny due to the fact they are perceived as being vulnerable to misuse for purposes related to money laundering and terrorist financing.[216] Remittances are, by nature, unrequited transfers of money that do not necessitate the remitter to provide any documentation to substantiate the purpose for which funds are remitted.[217] This affords criminals the opportunity to disguise their illicit funds as legitimate remittances and, by doing so, avoid the ordinary frustrations associated with obtaining legitimate documents that hide the true nature of the funds.[218]

Money laundering generally refers to any activity that is intended at concealing the illegal proceeds of criminal activity to give the impression that the illegal funds are from a legitimate source.[219] Although there is no concise or universal definition for the financing of terrorism, the definition

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[214] Kachingwe N L & Kaput E N (2018) 13.
[215] Mbalekwa S The Legal And Regulatory Aspects Of International Remittances Within The SADC Region (published LLM thesis, Nelson Mandela Metropolitan University, 2011) 158.
[216] Kachingwe N L & Kaput E N (2018) 13.
[217] Hennie B, Hougaard C & Chamberlain D (2010) 17.
[218] Genesis Analytics Report 'Supporting remittances in Southern Africa: Estimating market potential and assessing Regulatory Obstacles' (2005) 4.
[219] Cowling M G 'Money Laundering-International and National Perspectives' (1999) *S. Afr. Mercantile LJ* 11 463.

found in the provisions of Article 2 of the United Nations International Convention for the Suppression of the Financing of Terrorism can be taken into account.[220] The provisions of the convention defines terrorist financing as the act of collecting or providing funds that are intended to be used to cause death or serious bodily injury to a person, who is not an active participant in an armed conflict, and where the purpose of such is to intimidate a population, or compel a government or international organisation, to do or abstain from doing any act.[221] Thus, whilst money laundering is aimed at legitimising the proceeds of criminal activity, financing of terrorism is focused on using either legitimate or illicit funds to finance terrorist activities.

Regulators are becoming increasingly concerned with AML/ CFT financing requirements to ensure safety, efficiency and security of payment systems.[222] The importance of a harmonised AML regulatory framework for SADC is set out in Annex 12 of the SADC Protocol of FIP which states that harmonisation of key aspects of relevant laws and policies will increase the effectiveness of the measures taken by State Parties to address money laundering and financing of terrorism in the region and support finance and investment.'[223]

It further states that the harmonisation of key aspects of the relevant laws and policies will create an enabling environment for increased access to financial services in the region, minimise compliance costs for affected regulated institutions that operate cross-border in the region and lessen the danger that criminal acts will be displaced from one State Party to another.[224] It is important to note that the preamble of the FIP affirms the importance of the full implementation of the Financial Action Task Force (FATF). The FATF contain several recommendations that have direct applicability to payment systems and the provision of payment services. This shall be discussed below as they are relevant to payment services.

The KYC and AML/CFT requirements in many SADC countries are inappropriate and costly, wherein regulators have a rigid approach to AML/CFT compliance and/or enforcement, often not effectively implementing the risk-based approach.[225] Most jurisdictions in SADC started with a

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[220] Article 2 of the United Nations International Convention for the Suppression of the Financing of Terrorism.
[221] Article 2 of the United Nations International Convention for the Suppression of the Financing of Terrorism.
[222] Langhan and K Smith (2014) 248.
[223] Langhan and K Smith (2014) 248.
[224] Langhan and K Smith (2014) 249-250.
[225] Esser A & Cooper B (2020) 6.

purely rules-based approach[226] to AML and have slowly introduced the concept of the risk-based approach[227] through regulations, or exemptions. This leads to several complications for RSPs, including licensing delays, disproportional scrutiny by partner banks, and exclusion of consumers due to the lack of documentation, costly face-to-face onboarding of new consumers as well as the lack of harmonisation of AML/CFT standards across countries.[228]

Thus, AML/CFT requirements particularly the KYC documentation requirements, have long been a significant barrier to access for remittance services. It is estimated that a sizeable proportion of migrants in the SADC region are undocumented or lack full KYC documentation, such requirements act as a further access barrier to regulated remittance services—especially where proof of a valid work or residence permit may be required.[229] KYC or CDD regulation or guidelines are too stringent and disproportionate to the level of risk of low-value transactions in many SSA markets, despite the FATF recommendations on the risk-based approach. It seems that regulators are not all equally able to provide clarity around KYC requirements in their jurisdiction, which causes confusion in the region. This can result in banks terminating partner relationships as they cannot establish whether the partner institution fulfills the KYC requirements to the right standard.

With respect to CDD requirements, Section 15 of the Zimbabwean Money Laundering and Proceeds of Crime Act, 2013 is the most compliant provision found in a statute in the SADC region.[230] However, all fourteen countries require financial institutions to conduct CDD when establishing a business relationship and conducting an occasional transaction.[231] The provision on occasional transactions in either the law or regulation in several countries does not set a threshold, this is the case in Botswana, Namibia, South Africa, Tanzania and Zambia.[232]

In conclusion, the disparity in the AML/CFT requirements in the SDAC region have had a neggiative impact on the cost and the ease of remitting funds across the boarders, epescailly the

[226] The Rules based approach requires compliance with rules irrespective of the underlying risk.
[227] The Risk based approach requires banks and other financial institutions to carefully assess any potential risks may face.
[228] Esser A & Cooper B (2020) 6.
[229] Kachingwe N L & Kaput E N (2018) 15.
[230] Langhan S & Smith K (2014) 248.
[231] Langhan S & Smith K (2014) 248.
[232] Langhan S & Smith K (2014) 248.

KYC requirements that do not cater for most undocumented migrants. This is invariably lined to Immigration laws will be discussed below.

3.3.4 Immigration Laws

The legality of a remitters' presence in the country of remittance plays an important role in determining whether or not a remitter can access formal financial services. The discussion below will look at the labour migrants and refugees and asylum seekers and their status in respect to accessibility of formal services.

South Africa is the destination for 86 per centare of all migrants from Botswana, Lesotho, Mozambique, Swaziland and Zimbabwe given its role as a regional economic powerhouse and its political stability.[233] Due to economic and political hardships in neighbouring countries such as Zimbabwe, a large number of migrants have been 'forced' to relocate to South Africa in search of greener pastures.[234]These migrants usually either enter and/or reside in South Africa without any valid documentation.[235]

In South Africa, the status of labour migrants is currently governed by the Immigration Act 13 of 2002, [236]and is administered by the Department of Home Affairs. In terms of the Immigration Act, migrants seeking to work legally can apply for either a quota, general, exceptional skills or an intracompany transfer work permit.[237] These permits primarily accommodate skilled and educated immigrants and the requirements for attaining such permits are fairly burdensome. What is noticeably absent is any form of work permit that would allow an unskilled person to enter South Africa outside of these corporate permits.[238] Such a permit would allow unskilled persons whom are the majority to access formal financial services.

Thus, immigrants seeking informal or temporary work in the construction or hospitality industries, or as domestic workers, are only able to enter South Africa illegally.[239] Refugees and asylum seekers when granted such status can work in the country. The undocumented nature of the bulk

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233 Hennie B, Hougaard C & Chamberlain D (2010) 3.
234 Hennie B, Hougaard C & Chamberlain D (2010) 3.
235 Hennie B, Hougaard C & Chamberlain D (2010) 3.
236 Immigration Act 13 of 2002.
237 Immigration Act 13 of 2002.
238 Hennie B, Hougaard C & Chamberlain D (2010) 3.
239 Hennie B, Hougaard C & Chamberlain D (2010) 3.

of South African unskilled migration has important consequences for the formalisation of this market.[240] The stringent requisites that must be fulfilled for migrants to attain any one of the above-mentioned permits and the fact that South Africa's immigration laws do not cater for unskilled migrants (who form the majority of the migrants) result in most of the migrants who work in the informal sector to work without any formal permit.

Further, Section 45 of the Immigration Act states that prescribed institutions may, in a specified manner, be required to ascertain the residence status or citizenship of persons with whom they enter into commercial transactions.[241] In terms of the regulations passed in terms of section 7 of the Immigration Act, banks, and other financial institutions, amongst other institutions and organisations are accountable institutions as contemplated in section 45 of the Immigration Act. In the event that a financial institution fails to ascertain the latter, or discovers that its client is an illegal immigrant, it has a duty to report such to the Department of Home Affairs. [242]

The duty placed upon financial institutions acts as a barrier to most migrants who are undocumented and are not in possession of any work permit. This is one of the main reasons why migrant workers resort to informal remittance channels. Most of the migrants who are in South Africa illegally are unable to access the services of formal financial institutions by virtue of the fact that the provision of such services is intertwined with the policing of immigration laws.[243]The link between financial services and the policing of immigration laws is a major obstacle for illegal immigrants to access financial services and remit funds back home. These migrants, however, constitute the majority of the population who remit money across borders. Migrants without proper documentation will be hesitant to use the services of formal financial institutions as they risk being deported from South Africa if they do so.

With respect to refugees the movement of refugees and asylum seekers across the SADC been prominent over the past few years. [244] This is because conflicts in Southern Africa and neighbouring regions have resulted in the movement of millions of refugees seeking peace and

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[240] Hennie B, Hougaard C & Chamberlain D (2010) 4.
[241] Immigration Act 13 of 2002.
[242] Hennie B, Hougaard C & Chamberlain D (2010) 5.
[243] Hennie B, Hougaard C & Chamberlain D (2010) 5.
[244] SADC refugees available at https://www.sadc.int/themes/politics-defence-security/public-securit/refugees/ (accessed 6 October 2021).

security in neighbouring countries. The SADC Protocol on Facilitation of the Movement of Persons of 2005 seeks to fulfil the objectives of the SADC Treaty with respect to the elimination of obstacles to the free movement of capital and labour, goods and services and of the people of the region.[245] It further affirms member sates commitment to co-operate with the International Organisation for Migration and the Office of the UN High Commission for Refugees on issues relating to refugees in the region. This protocol facilitats the entry, with lawful purpose, without visa into another SADC member state for a maximum of 90 days, permanent and temporary residence in the territory of another state to establish oneself and work in the territory of another State.[246]

Most SADC citizens have fled to South Africa seeking refugee or asylum status due to[247] the country's serious committement to upholding human rights of asylum seekers and refugees. Furthermore, the South African Refugees Act provides the right for asylum seekers and refugees to work and study in the country.[248] In most SADC states, refugees and aslylum seekers may only work or start a business once the refugee status is granted by the Department of Home Affairs. This application for such a status is cumbercome and often requires the assistance of a legal practitioner. This has been a deterrent for most resulting in most refugees and asylum seekers being undocumented and unable to access formal financial services to remit funds back home. To circumvent this, it has been recommended that the policing of immigration laws be separated from the provision of formal remittance services.[249] This removes that regulatory hinderance not only on remittance services but on the remitters thereby promoting financial inclusion. This approach has been adopted in the United States of America (USA) where undocumented Mexican migrants can access formal financial services by using a Matricular card issued by the Mexican Consulate. [250]Truen et al, also suggests that instead of an identity card being used, foreigners should be granted

[245] SADC refugees available at https://www.sadc.int/themes/politics-defence-security/public-securit/refugees/ (accessed 6 October 2021).
[246]Protocol on Facilitation of Movement of Persons (2005) available at *https://www.sadc.int/documentspublications/show/Protocol_on_Facilitation_of_Movement_of_Persons2005.pdf* (accessed 6 October 2021).
[247] Neighbors In Need Zimbabweans Seeking Refuge in South Africa available at *https://www.hrw.org/report/2008/06/19/neighbors-need/zimbabweans-seeking-refuge-south-africa* (accessed 6 October 2021).
[248] Immigration Act 13 of 2002.
[249]Mbalekwa (2011) 161.
[250]Mbalekwa (2011) 161.

access to formal financial products on presentation of a valid passport alone without the client residential status being taken into account.[251]

3.4 <u>Conclusion</u>

This Chapter has captured the payment systems in the region and the key legal and regulatory frameworks concerning the same. Drawing from the discussion above, it is undeniable that the legal and regulatory framework of the current payment systems makes it difficult for the majority of the remitters whom are undocumented and financially excluded to access formal remittance services. This is because the framework of the services do not cater for the majority of the undocumented remitters.

The picture emerging from this Chapter is clear: a large undocumentated migrant population, mostly sending money informally, presents an untapped market for formalised innovate remittance services. A number of new and innovative remittance services have already emerged in the SADC region which include remittances services that can be initiated via a mobile phone. For example, Mukuru has recently partnered with several mobile money operators in several SADC countries such as Lesotho, Mozambique, South Africa and Zimbabwe to allow for the receipt of remittances directly into mobile wallets.[252] With the establishment of the regional money transfer initiative under the TCIB payment scheme, mobile money interoperability provides a unique and tremendous contribution to the remittance system. However, what is clear that SADC region requires its own platform that caters for mobile money interoperatbility. The ensuing chapter will discuss regional mobile money interoperability and make a comparative study of selected regions that have enacted mobile money interoperable systems.

[251] Mbalekwa (2011) 161.
[252] Kachingwe N L & Kaput E N (2018) 16.

CHAPTER 4; COMPARATIVE STUDY OF MOBILE MONEY INTEROPERABILITY IN THE WEST AFRICAN ECONOMIC MONETARY UNION (WAEMU); LEGAL & REGULATORY FRAMEWORK.

4.1 Introduction

The previous chapter made an in-depth examination of the legal and regulatory framework for cross-border remittance services in the SADC region. The chapter made an analysis of the said legal and regulatory frameworks, and its inadequacy in addressing the challenges pertaining to mobile money services. This chapter will answer the final research question- what legal and regulatory structures have developed mobile money interoperability platforms or what systems have been implemented and what lessons can SADC draw from same? In doing so, the chapter will draw a comparative study of the mobile money interoperability platforms in the West African Economic Monetary Union (WAEMU), specifically the legal and regulatory insights from two early examples in the WAEMU, namely Mowali platform and the Airtel platform. Member states are socio-economically integrated on these platforms and adoption of mobile money has been rapid. The choice of which is based on the WAEMU being one of the first African mobile money interoperability platforms that allows mobile money payments across different countries.

The first platform that will be discussed is the Mowali platform (Orange Group and MTN Group) that enables interoperable mobile money payments across three boarders. The Mowali platform has been selected because it is one of the first pan-African mobile money interoperability service involving two of the largest mobile money operators in Africa. The Mowali platform therefore exemplifies the positive effects on interoperability in respect to cross border remittances, financial inclusion and the use of mobile money.

The second platform that will be analysed is the Airtel platform that is the MTN mobile money in Côte d'Ivoire to Airtel Money in Burkina Faso. This was the first case in West Africa of two operators from separate groups agreeing to interoperate their mobile money services to facilitate cross-border transfers. The MTN-Airtel cross-border service highlights both the opportunities and challenges of the partnership approach.

While a choice has been made of the Mowali and Airtel platform, further to the reasons advanced, the two platforms are not only common law countries but are within the same trade bloc, which aims to build a harmonised and integrated economic space in West Africa. This guarantees total freedom of movement of people, capital, goods, services, and factors of production. The choice is also made because just like the SADC region, cross border remittances are widespread with most migrants resorting to informal channels of remitting money due to various legal and regulatory bottlenecks. The two platforms thus mirror the platform that this mini-thesis intends to propose.

4.2 Mobile money interoperability; Orange Mobile Money in Côte d'Ivoire, Mali and Senegal (Mowali).

As in the case of SADC, internal and regional migration serves as an income source for millions of households in West Africa. The WAEMU came in to existence in 1994 to strengthen economic integration among countries that share the CFA franc as a common currency. It exists as a sub-regional grouping within the Economic Community of West African States (ECOWAS). WAEMU is both a customs and monetary union, consisting of eight of the ECOWAS countries namely Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.[253] Member states share a common currency and a monetary policy. The West African sub-region has historically been a 'walked-across land' in that the migration of people within and across borders has traditionally been an integral part of the social organization of societies within the sub-region.[254] For example, 50% of households have at least one seasonal migrant, often migrating within Niger or to North and West Africa. Similar statistics exist for other West African countries. Cross-border remittance are therefore prevalent within the region with Côte d'Ivoire being the largest and most urbanised population with the strongest economy, making it the destination for regional migrant workers and a critical sending market for intra-regional remittances. [255] The majority of migrant workers come from the WAEMU region, primarily Burkina Faso and Mali, which are among the world's poorest countries. Surveys in Burkina Faso and Senegal show that over 60% of receiving households use informal channels for cross-border remittances.[256] However,

[253] Economic Community of West African States- ECOWAS available at https://www.pacci.org/economic-community-of-west-african-states-ecowas/ (accessed 20 August 2021).
[254] Rain D 'Eaters of the Dry Season: Circular Labour in the West African Sahel' (1999) Westview Press Colorado 2.
[255] Scharwatt, C & Williamson C 'Mobile money crosses borders: New remittance models in West Africa' (2015) GSMA 9.
[256] Scharwatt C & Williamson C (2015) 6.

research shows that although informal channels are more affordable, users face substantial security risks, complex and lengthy transaction processes, and uncertain price structures.

Côte d'Ivoire, Mali, and Senegal are all members of the WAEMU, including other member states. These Francophone markets are not only unified but are highly interconnected, with a common currency and central bank, the BCEAO (Banque Centrale des Etats de l'Afrique de l'Ouest), and liberalized cross-border migration and trade.[257] Despite substantial volumes of remittances, the cost of cross-border payments in the WAEMU is estimated to be one of the highest in the world. The introduction of digital financial services, primarily mobile money offers new opportunities for reducing the transaction costs associated with remittances.[258] In fact, the cost of cross-border payments in the WAEMU is estimated to be one of the highest in the world, representing up to 30% of transfer value[259], while the global average is 8%.[260] Although there is a common currency across eight of the WAEMU countries, the cost of cross-border transfers continues to be high partly due to low levels of financial inclusion wherein less than 35% of the population in West Africa has access to an account at a formal financial institution, similar to the average in sub-Saharan Africa in 2017[261]. As a result, migrants often use other services, such as local money transfer systems, hawalas, friends or buses to remit money.[262]

In 2018 two of Africa's largest mobile operators and mobile money providers, Orange Group and MTN Group launched a pan-African mobile money interoperability service named 'Mowali'. e It enables interoperable payments across three different countries. Orange Group has emerged as the dominant mobile money provider in Côte d'Ivoire, accounting for at least 70 percent of overall mobile money transaction value, over half of all mobile money customers, and thousands of agents (at least 11,000 total, 7,500 active at end 2015). [263] At the time of this research, recent statistics could not be ascertained save that Orange's digital bank had 500,000 users in Cote d'Ivoire in

[257] Scharwatt C & Williamson C (2015) 6-7.
[258] Aker J 'Migration, Money Transfers and Mobile Money: Evidence from Niger. Pathways for Prosperity Commission Background Paper Series' (2018) Oxford 5.
[259] This means that the cost of sending cross-border remittances is high wherein wages are low.
[260] Aker J (2018) 5.
[261] Aker J (2018) 5.
[262] Aker J (2018) 5.
[263] Meagher P 'Regulatory Framework for Digital Financial Services in Côte d'Ivoire: A Diagnostic Study' (2017) Working Paper Washington, D.C CGAP 5.

2021. MTN and Orange saw an opportunity to channel substantial cross-border remittance flows through mobile money.

The Mowali platform is significant part of this study as it illustrates how mobile money interoperability can be used as platform to send and receive cross-border remittances within a regional bloc. The Mowali platform is the first example of mobile money transfers between three different markets namely Côte d'Ivoire, Mali and Senegal, enabling six distinct remittance corridors, including one of the largest flows in Sub-Saharan Africa.[264] The main aim of the Mowali platform is to promote cross border remittances by increasing the usage of mobile money by consumers and merchants and at the same time enabling the sending and receiving of money across borders. Mowali thus makes it possible to send money between mobile money accounts issued by any mobile money provider, in real time and at low cost.

Mobile money services in these three markets have gained significant traction over the past years wherein Côte d'Ivoire, has been the leading mobile money market and Mali. Orange money has also seen strong growth in its active customer base, with mobile money transactions reaching almost 20% of Mali's reported 2014 GP.3. However, in Burkina Faso and Senegal mobile money has not yet reached the same scale.[265] Indeed, Demirguc-Kunt has shown a recent expansion of financial inclusion through mobile money accounts in WAEMU countries, particularly in Ivory Coast and Mali. The BCEA found that about 21.9 million individuals now have a mobile phone account against 11 million in 2013 in WAEMU.[266]

Mowali as a digital payment infrastructure that connects financial service providers and customers in one inclusive network[267] functions as an industry utility, open to any mobile money provider in Africa, including banks, money transfer operators and other financial service providers. By enabling interoperability between different countries, the Mowali platform embraces mobile money as an alternative method of payment in Africa, thus increasing financial inclusion through

[264] Scharwatt C & Williamson C (2015) 4.
[265] Scharwatt C & Williamson C (2015) 9.
[266] Demirguc-Kunt, A, Klapper, L F, Singer D, Van Oudheusden P, 'The Global Findex Database 2014: Measuring Financial Inclusion around the world' (2015) 10.
[267] Ray Sharma, 'Orange, MTN Launch Mowali - Pan-African Mobile Money Interoperability' available at *https://www.thefastmode.com/services-and-innovations/13727-orange-mtn-launch-mowali-pan-african-mobile-money-interoperability* (accessed 10 August 2021).

the use of digital technology and lowering remittances fees. The platform provides customers with simpler, safer and more advantageous services of sending and receiving money across borders.[268]

Interoperability of digital payments in Africa has been one of the toughest hurdles for the financial services industry to overcome, in support of financial inclusion. However, the Mowali platform is a trendsetter in this respect, and encourages other companies, to scale digital financial services across Africa. Given the above overview of the Mowali platform, the following paragraph will discuss the legal and regulatory framework of the Mowali platform.

4.2.1 <u>The legal and regulatory landscape</u>

The legal and regulatory framework for financial services, including MNOs in the WAEMU region shall be discussed first followed by a discussion on the legal and regulatory aspects that affect remittance services and lastly a discussion on the regulatory aspects of the Mowali platform.

Looking back over the past two decades since Consultative Group to Assist the Poorest (CGAP) was formed in 1995, there have been significant changes in the financial inclusion landscape of WAEMU.[269]Most importantly, the region has transitioned from primarily offering informal microfinance to fully regulated and diversified financial institutions offering all kinds of products and services.[270]The regulation of financial services falls under the purview of WAEMU's central bank, namely the Banque Centrale des États de l'Afrique de l'Ouest (BCEAO). The bank exercises exclusive authority over the money supply and is the primary authority (with the participation of the regional Banking Commission) for the regulation and supervision of financial institutions (FIs), payment systems, and digital finance.[271] However, the WAEMU Commission's jurisdiction extends to activities that may have a potential impact on the regional market, for instance, in competition regulation. Therefore, member countries, including Côte d'Ivoire, retain legal authority in other areas affecting digital financial services, such as telecommunication (telecom)

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[268]Orange and MTN Launch Mowali Pan-African Mobile Money Interoperability to Scale up Mobile Financial Services Across Africa available at *https://pctechmag.com/2018/11/orange-and-mtn-launch-mowali-pan-african-mobile-money-interoperability-to-scale-up-mobile-financial-services-across-africa/* (accessed 10 August 2021).

[269] Orange and MTN Launch Mowali Pan-African Mobile Money Interoperability to Scale up Mobile Financial Services Across Africa available at *https://pctechmag.com/2018/11/orange-and-mtn-launch-mowali-pan-african-mobile-money-interoperability-to-scale-up-mobile-financial-services-across-africa/* (accessed 10 August 2021).

[270]Corinne R '20 Years of Financial Inclusion Progress in WAEMU; More to Come!' available at *https://www.cgap.org/blog/20-years-financial-inclusion-progress-waemu-more-come* (accessed 10 August 2021).

[271]Meagher P (2017) 2.

regulation and general consumer protection. For example, while BCEAO retains sole authority to regulate financial services from a Financial Consumer Protection (FCP) perspective, countries such as Côte d'Ivoire have general consumer protection laws and oversight institutions that impact financial services. [272]

Following the adoption, in 2006 of a Central Bank instruction establishing a flexible regulatory framework aimed at encouraging e-money business, the cornerstone of Digital Finance Services (DFS) was the issuance of electronic money (e-money) in 2015.[273] The BCEAO defines e-money as a monetary value in electronic form, issued without delay against funds in (at least) equal amount, and accepted as a means of payment by third parties.[274]. The 2015 instruction enables issuers to accept funds from the public for purposes of e-money issuance without (simply for that reason) having to obtain a deposit-taking license. A range of e-money issuers that is banks, payment financial companies, Microfinance institution (MFIs), and e-money institutions are permitted to issue e-money with a few preconditions. [275] It is expected that this 2015 directive will change the landscape to facilitate more innovations from MNOs and push banks to re-think their position in the branchless banking market.[276] Ultimately, this should result in increased levels of financial inclusion. The market in the region is increasingly dominated by partnerships between banks and telecommunications operators, which represented 25 of the 33 licensed or authorised e-money issuers at the end of December 2015.[277] In the framework of this model, known as the bank model, the bank has responsibility for issuing the e-money. The other seven non-bank institutions, under the non-bank model, are authorized to issue e-money as 'Electronic Money Institutions' (EMIs).[278] In terms of this 2015 instruction, e-money issuers are supported by a regulatory framework that ensures increased security and quality of payment services backed by e-money.[279]

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[272] Meagher P (2017) 2.
[273] This framework can be found at https://www.bceao.int/en/ (last accessed 21 November 2021).
[274] Meagher P (2017) 12.
[275] Meagher P (2017) 12.
[276] Meagher P (2017) 12.
[277]Tiémoko M K 'Mobile financial services are making headway in WAEMU' available at *https://www.brookings.edu/blog/africa-in-focus/2016/06/14/mobile-financial-services-are-making-headway-in-waemu/* (last accessed 10 August 2021).
[278] EMI: any legal entity, other than a bank, financial payment institution, or decentralized financial system, that is authorized to issue payment instruments in the form of electronic money and whose business activities are restricted to electronic money issuing and distribution.
[279] Meagher P (2017) 12.

It without doubt that the regulatory landscape in the WAEMU region is progressive and has created a more conductive environment for technological advancements such as mobile money.[280]

Coming to the legal and regulatory aspects, as previously discussed in Chapter 3, the main legal and regulatory aspects impacting the remittances are licensing requirements for Remittance Service Providers (RSPs), and in particular for Money Transfer Operators (MTOs); Foreign Exchange Controls and Reporting requirements and Anti-money laundering (AML) / Combating the Financing of Terrorism (CFT) compliance requirements and Immigration Laws.[281] This shall be discussed below.

In terms of licensing requirements for RSPs, and in particular for MTOs, the 2015 directive on e-money, defines a license as a permit to issue e-money obtained by a non-FI which requires more thorough scrutiny by the central bank. Non-financial companies may also issue e-money after obtaining a license.[282] These issuers are called Etablissements de Monnaie Electronique (EMEs or 'non-FI issuers'). They must meet separate standards on corporate governance and related matters such as fit-and-proper standards and internal controls to obtain a license. These EME companies must be solely dedicated to e-money issuance that is providing payment, transfer, and cash-in/out services [distribution de monnaie électronique]).[283] As mentioned, some MNOs are in the process of setting up e-money subsidiaries to use this EME license or have done so already as in the case of Mowali platform in preference to partnering with (or acquiring) a bank. The authorization and licensing applications require documents such as business plans, financial projections, risk management approach, and technical systems architecture and issuers are expected to establish satisfactory internal control and risk management systems.

In terms of foreign exchange controls, since all three markets share the West African CFA franc currency, there is no need for foreign exchange (forex), which simplifies in-house implementation.[284] These markets also share a common central bank, the BCEAO, which has taken an enabling position on mobile money-based remittances. This is good as it makes regulation less

[280] Meagher P (2017) 12.
[281] See Chapter 3, Section 3.3.1 to section 3.3.4.
[282] Meagher P (2017) 9.
[283] Meagher P (2017) 7.
[284] Scharwatt C & Williamson C (2015) 10.

complex given that there is no need to put in place mechanism to regulate foreign exchange, thus reducing the cost of sending remittances.

In terms of reporting requirements, the general reporting requirements are that E-money issuers must report to BCEAO the current list of agents, and the risk mitigation measures in place in its agent network, including governance and liquidity risks.[285] The 2015 WAEMU directive on e-money stipulates that monthly reports on e-money outstanding and e-money float balances in trust accounts must also be reported. Quarterly reports on capital ratios against e-money outstanding, balances in trust accounts, balance sheet, e-money account volume and activity, total numbers of agents and service points, figures on mobile money and card transactions, risk indicators for new products, and fraudulent transactions must also be reported as well as annual audited financial reports.[286]

The 2015 WAEMU directive provides anti-money laundering and combatting the financing of terrorism (AML/CFT) safeguards for the financial sector and a wide range of actors involved in relevant activities.[287] The list of entities covered includes banks, MFIs, e-money issuers, payments and transfers companies, commercial and consumer credit providers, insurance providers, and agents that provide financial services. Know Your Customer (KYC) procedures are spelt out in the directive and before any business is transacted, all covered entities must identify their clients both individuals and organizations. [288]The 2015 WAEMU directive on AML/ CFT also provides a comprehensive set of basic protections in client Identification (ID) (although the quality of enforcement in practice is less certain).[289] This AML/CFT regime does not sufficiently accommodate financial inclusion and DFS through tiered, risk-based KYC standards.[290] The directive on AML/CFT provides some risk-based accommodation in the form of lighter-touch KYC, but does not create KYC tiers.

In terms of immigration laws, it was concluded in Chapter 3 that the link between financial services and the policing of immigration laws are a major obstacle for illegal immigrants to access financial

[285] Meagher P (2017) 16.
[286] Meagher P (2017) 8.
[287] Meagher P (2017) 10.
[288] Meagher P (2017) 10.
[289] Meagher P (2017) 10.
[290] Meagher P (2017) 10.

services and remit funds back home.[291] However, Member States of ECOWAS share the ECOWAS passport which is a common passport document for several countries in West Africa. The common passport was created to facilitate the intra-regional travel of member states' citizens for periods of unlimited duration. [292] The passport can be used within the sub-region (visa-free) and is also recognised for international travel. There are some ECOWAS countries such as Cape Verde who have not started issuing the actual ECOWAS passport but the purpose of the ECOWAS passport is still valid for their nationals. In other words, even though they have not started issuing the actual ECOWAS passport, their national passports still allow them freedom of movement within all ECOWAS and all other ECOWAS citizens can also freely move within such states. Immigration laws are therefore not a major barrier to remitting remittances but despite this due to the limited access to formal financial services, migrants often use other means such as Western Union or MoneyGram, hawalas, friends or bus operators who act as money agents to send remittances home.[293] This is because West African migrants are often hit with a 'double whammy' of low wages and high money transfer costs which has resulted in most migrants resorting to other informal channels.

In terms of the regulatory and legal landscape of Mowali, the three markets share a common central bank which is the BCEAO. The bank has taken an enabling position on mobile money-based remittances. The bank is the common partner bank which holds Orange Money customer deposits in all three markets and facilitates the settlement process.[294] The Mowali platform also provides for a common mobile money platform, in that the three Orange Money deployments in these markets all use the same platform provider, which makes the integration process much simpler. Mowali's selection of launch markets simplified the regulatory approval process and technical implementation as Orange requested approvals from the BCEAO via its partner bank and conducted the integration in-house, avoiding the need to share value with a third party.[295] Orange adapted the 'Bill and Keep' Model which a revenue-sharing model that distributes the benefits

[291] See Chapter 3, section 3,3.4.
[292] ECOWAS Passport available at https://www.wikizero.com/en/ECOWAS_passport (accessed 20 August 2021)
[293] Aker J (2018) 2.
[294] Scharwatt C & Williamson C (2015) 11.
[295] Scharwatt C & Williamson C (2015) 11.

fairly between the operating companies and allows each to control its own tariffs and fees.[296] The following are the key features of the model:[297]

a. The sender is charged a transfer fee, which is described in the following section. The sending operator keeps the entire fee to cover the cash-in commission that the sending operator pays the agent, overheads and a profit margin.

b. As with a domestic P2P transfer, the receiver is not charged for receiving the remittance they are only charged when they cash out (which may be the next step, or following other mobile money transactions). The receiving operator keeps the cash-out fee, which covers the commission it must pay the agent, overheads, and profit margin.

The binding legal instrument regulating the interoperability model is a Direct Bilateral Agreement.[298] This is a signed contract between the three subsidiaries that defines their roles and obligations wherein each manages the electronic money versus cash money in its country with a daily reconciliation process, and bank settlements are performed periodically depending on transaction volumes.[299] Since all three operators are subsidiaries of the same sub-regional bloc, the parties agreed that the receiving deployment would assume settlement risk. Usually the bearer of counter-party risk would want to be paid for this, or pre-funded wallets would be used to minimise this risk.[300] The sender pays a single transfer fee, while the receiver pays only the regular cash-out fee (in the event that they decide to cash-out the transfer). Transfer fees are based on a simple three-tier structure with a fixed transfer fee within each tier. These fees represent 4%, 2.4%, and 1.6% of the central value respectively; on average, customers pay around 2% of the transaction value.[301] This is significantly lower than the fees charged by formal MTOs or informal remittance providers in these markets, which typically exceed 5%.[302] In terms of the licensing Orange and MTN have established e-money subsidiaries licensed by BCEAO. In 2016, Orange Money and

296 Scharwatt C & Williamson C (2015) 11.
297 Orange and MTN partner to launch a mobile wallet Mowali available at https://www.iol.co.za/technology/orange-and-mtn-partner-to-launch-a-mobile-wallet-mowali-18239632 (accessed 9 March 2022)
298 Scharwatt C & Williamson C (2015) 11.
299 Ray Sharma, 'Orange, MTN Launch Mowali - Pan-African Mobile Money Interoperability' available at https://www.thefastmode.com/services-and-innovations/13727-orange-mtn-launch-mowali-pan-african-mobile-money-interoperability (accessed 10 August 2021) .
300 Scharwatt C & Williamson C (2015) 11.
301 Scharwatt C & Williamson C (2015) 11.
302 Scharwatt C & Williamson C (2015) 12.

MTN established affiliates that are now licensed as e-money issuers under the new regulation adopted in 2015. The core value proposition of the Mowali platform is 'convenience' and the ease of remitting funds. Orange Money launched the service with a focus on convenience and ease of use: 'Faster, Simpler, Accessible Everywhere'.[303]

4.3 Mobile money interoperability; MTN Mobile Money in Côte d'Ivoire and Burkina Faso (Airtel)

In 2014 MTN Group and Airtel Africa announced a cross-border remittance partnership that sought to remove the hinderances of transferring money between Ivory Coast and Burkina Faso. Transmitting money between these two countries had always incurred high fees resulting to the widespread usage of informal channels and with the lack of proximity to withdraw money.[304] MTN and Airtel saw an opportunity for the broad adoption of mobile money services in their respective footprints by connecting markets through remittance services. The service was aimed at facilitating remittances sent by migrant workers in Burkinabe living in the Ivory Coast. MTN's mobile money service has approximately 15 million users in 14 countries and Airtel Money has reached 7.5 million customers across 16 countries.[305] MTN and Airtel therefore collaborated and launched a landmark interoperable platform which allows MTN mobile money customers in Côte d'Ivoire to transfer money to Airtel Money customers in Burkina Faso.[306]

The platform is unique for two reasons, firstly because it was the first time two mobile money operators from different groups interconnected their mobile money services internationally to offer cross-border remittances services and secondly it is the first cross-border mobile to mobile remittance service in West Africa.[307] MTN saw an opportunity to tap into the international remittance opportunity that presented in Burkina Faso, which is the largest remittance corridor in

[303] Scharwatt C & Williamson C (2015) 11.
[304] MTN Group and Bharti Airtel Partner to Launch Cross-Border Remittance available at https://paymentsafrika.com/payment-news/mobile/mtn-group-and-bharti-airtel-partner-to-launch-cross-border-remittance/ (accessed 22 August 2021).
[305] MTN Group and Bharti Airtel Partner to Launch Cross-Border Remittance available at https://paymentsafrika.com/payment-news/mobile/mtn-group-and-bharti-airtel-partner-to-launch-cross-border-remittance/ (accessed 22 August 2021).
[306] MTN Group and Bharti Airtel Partner to Launch Cross-Border Remittance available at https://paymentsafrika.com/payment-news/mobile/mtn-group-and-bharti-airtel-partner-to-launch-cross-border-remittance/ (accessed 22 August 2021).
[307] Scharwatt C & Williamson C (2015) 11.

the region Since M.[308]TN did not have a significant presence in Burkina Faso it saw an opportunity to partner with Airtel which was considering opening a remittance corridor with Côte d'Ivoire. MTN being the mobile money service that has 15 million users in 14 countries brought the same added value to international transfers such as reliability, instant, affordability and proximity with customer through our distribution network. The platform was designed to eliminate the challenges associated with remitting funds between the two countries while offering best-in-class security that protects Burkinabes that want to remit funds back home to their loved ones.[309] The platform deepens financial inclusion whilst providing a secure, cost effective and quick way of helping the communities enhance their personal financial transactions.

4.3.1 **The legal and regulatory landscape**

The legal and regulatory framework for financial services including MNOs in the WAEMU region has already been discussed above and same principles apply to the Airtel platform. The discussion above with respect to the legal and regulatory aspects for remittance services also equally applies to Airtel platform. Thus, the discussion below will only be in respect to the legal and regulatory aspects of the Airtel platform.

Unlike the Mowali platform, the Airtel platform involves multiple groups. Whilst there is also a single market involved, the interoperability model is that of Indirect Settlement Hub (HomeSend).[310] The choice of indirect settlement hub was due to the fact that both operators had very limited experience with international money transfers as such there was need to work with an intermediary that would act as a hub between the two services. In June 2013, the operators engaged with HomeSend, which was the most established remittance hub at the time. The main aim of HomeSend was to provide two main services to MTN and Airtel, firstly a real-time money transfer messaging platform and interface and the management of anti-money laundering activities. [311]In

[308] Scharwatt C & Williamson C (2015) 11.
[309] Ray Sharma, 'Orange, MTN Launch Mowali - Pan-African Mobile Money Interoperability' available at https://www.thefastmode.com/services-and-innovations/13727-orange-mtn-launch-mowali-pan-african-mobile-money-interoperability (accessed 10 August 2021).
[310] Scharwatt C & Williamson C (2015) 4.
[311] Scharwatt C & Williamson C (2015) 16.

order to keep all transactions in the local currency (CFA franc), MTN, Airtel, and HomeSend decided it would be easier for the two operators to settle funds directly between themselves. [312]

The revenue sharing model is that, of shared sending fees, MTN and Airtel agreed that the sender on MTN's side would pay a service-specific transfer fee, but Airtel's receiving customers would not pay to receive a cross-border transfer (the same as for domestic P2P transfers).[313]This model ensured that all parties would be rewarded fairly and would avoid any regulatory bottlenecks and would also be easy to implement. Having all this considerations into mind, it was agreed by the parties that Airtel would keep the cash-out fee, while the sending fee would be shared between the three parties, with 72.5% going to MTN and the remaining 27.5% shared between Airtel and HomeSend.[314] As a result, MTN and Airtel decided to compete strongly on pricing, with fees averaging only 2.4% of the face value of the transfer. In fact, low-value mobile money remittances from Côte d'Ivoire to Burkina Faso cost the same for MTN users as domestic transfers: FCFA 100 to send up to FCFA 5,000 to Burkina Faso using mobile money compared to FCFA 500 using a traditional MTO. [315]

After analaysing the two platforms and the legal and regulaytory frameworks of the same, the below paragraph will discuss the key general observations that emanate from the frameoworks which the SADC region can learn from.

4.4 General observations from the legislative frameworks in Mowali and Airtel

In a bid to promote the ease of remitting funds through mobile money services and fostering financial inclusion, the Mowali and Airtel platforms have implemented a comprehensive legal and regulatory framework for mobile money interoperability across different countries. Both the Mowali and Airtel platforms have performed exceptionally well from the onset. The rate of customer adoption being remarkably fast in both cases. In the case of Mowali, it was recorded that by the second half of 2014, the value of cross-border remittances on Orange Money accounted for an remarkable 24.7% of all remittances reported by the World Bank between these three

[312] Scharwatt C & Williamson C (2015) 11.
[313] Scharwatt C & Williamson C (2015) 17
[314] Scharwatt C & Williamson C (2015) 17
[315] Scharwatt C & Williamson C (2015) 17.

markets.[316] While with the Airtel platform the service rapidly gained traction, with transaction value growing tenfold from June 2014 to February 2015.[317]

In both instances, this has largely been attributed to the strong pre-existing mobile money foundations, the transaction volumes and values that are already high and continue to grow at a substantially faster rate than domestic P2P transfers have in these markets.[318] Further, to this, mobile money presented an alternative safer and cheaper avenue for migrants to remit money back home with consumers being offered a significantly lower price than current market rates.

According to the GSMA the success of the mobile money interoperability service across different borders such as Mowali and Airtel is dependent on three key enablers namely, addressable remittance corridors, strong mobile money foundations in both sending and receiving markets and strong mobile money foundations in both sending and receiving markets.[319]

Addressable remittance corridors are of paramount importance for any cross-border remittances to succeed as the demand for the service is the starting point. The WAEMU region has very close socio-economic integration which provides for exceptionally strong remittance corridors as migrant workers in one country regularly remit funds back home.[320] As alluded above, the marketing strategy for the Mowali was 'convenience' while the Airtel sold 'affordability'. Evidence shows that both approaches have been successful, indicating that there was strong demand for these services as both value propositions were attractive to customers.[321]

Strong mobile money foundations in both sending and receiving markets is also a crucial element in the success of implementing a cross border mobile money services. In both cases a large part of the population was not only aware of the mobile money services but had already been using the same mainly through regular domestic P2P transfers with well managed agent networks in place.

[316] Scharwatt C & Williamson C (2015) 12.
[317]Orange and MTN Launch Mowali Pan-African Mobile Money Interoperability to Scale up Mobile Financial Services Across Africa available at *https://pctechmag.com/2018/11/orange-and-mtn-launch-mowali-pan-african-mobile-money-interoperability-to-scale-up-mobile-financial-services-across-africa/* (accessed 10 August 2021
[318] Scharwatt C & Williamson C (2015) 22.
[319] Scharwatt C & Williamson C (2015) 22.
[320] Scharwatt C & Williamson C (2015) 22.
[321] Scharwatt C & Williamson C (2015) 22.

For convenience sake, operators in these markets made every attempt to mirror their platforms with domestic transfers in respect to both the cost and the user experience.[322]

Finally, and most importantly, the legal and regulatory framework. The two main key success factors for Mowali and Airtel were the support of the BCEAO and the existence of a common regulation in all of the markets involved.[323] This is important as regulatory approvals remain one of the biggest barriers to remittances services as ordinarily each Bank in each country will have its own approval processes and regulatory requirements. The WAEMU region being a monetary union having one central bank and an enabling regulatory framework has been one of the key elements to unlocking cross-border mobile money transfers in the region.

The interoperability model is also important just like domestic mobile money interoperability, cross-border mobile money interoperability also depends on operators transacting across platforms and settling funds directly between each other.[324] This interoperability can be implemented either directly through bilateral agreements or indirectly through a processor. While Mowali opted for a bilateral model which is simplified by a common platform, currency, and partner bank for all three markets Airtel opted to interconnect through a processor or 'hub', HomeSend.[325]

The success of both the platforms illustrate that mobile money interoperability provides a cheaper, more convenient, safer and more accessible way of remitting the money in the region. However, this can only be achieved when there is a sound legal and regulatory framework in place. Both the platforms highlight the potential opportunity for established mobile money operators to interconnect and digitize strong flows of cross-border remittances, with relatively modest investment providing customers. The success of both the platforms has prompted the mobile operators to expand into other markers and target key intra-regional corridors for cross-border remittances. As such MTN and Airtel opened new corridors for cross-border mobile money transfers in December 2014, between MTN Côte d'Ivoire and MTN Benin.[326] MTN is still preparing to launch in Southern and East African markets and has engaged the other

[322] Scharwatt C & Williamson C (2015) 22.
[323]Scharwatt C & Williamson C (2015) 23.
[324] Scharwatt C & Williamson C (2015) 23.
[325] Scharwatt C & Williamson C (2015) 23.
[326] Scharwatt C & Williamson C (2015) 21.

telecommunication groups to partner in delivering interoperable cross border transfers.[327] Airtel, on the other hand, is planning to launch cross-border mobile money transfers with other mobile operator groups in the West Africa region and has integrated with Orange for the Côte d'Ivoire - Burkina Faso corridor.[328] Airtel Group is also going to allow transfers between its customers in East Africa, linking Kenya, Rwanda, and Uganda.

The use of mobile money interoperability platforms to remit cross-border remittances is gaining momentum in African markets. This because the platforms facilitate increased remittances and regional trades at very low costs with universal distribution network. Presently there are approximately eight examples of intra-regional mobile money interoperability platforms used to remit money, five of which are based in West Africa. These include the Tigo Tanzania and Tigo Rwanda platform, the Orange Côte d'Ivoire platform, the Orange Mali, and Orange Senegal platform, the Orange Côte d'Ivoire and Airtel Burkina Faso platform, the MTN Côte d'Ivoire and MTN Benin platform, the MTN Côte d'Ivoire and Airtel Burkina Faso platform, the Moov Côte d'Ivoire, Moov Benin, Moov Niger and Moov Togo platform, the Safaricom Kenya and Vodacom Tanzania platform and lastly the Airtel Zambia, Airtel Rwanda, and Airtel DRC platform.[329]

The momentum was also spread to Central Africa wherein the mobile money interoperability platform in the Central African Economic and Monetary Community (CEMAC) which includes Cameroon, Chad, the Central African Republic, Equatorial Guinea, Gabon, and the Republic of Congo became effective early last year. This interoperability platform allows mobile money wallet holders to directly transfer money to the wallet of another user even if they are not clients of the same mobile operator across different countries in the CEMAC.[330] The interoperability platform means transactions can be carried out directly between bank accounts, mobile money wallets, and bank cards unlike before when there was no common interoperability platform which meant when an MTN Cameroon user sends a mobile money payment to an Orange Cameroon subscriber, the latter had to go to an MTN collection point within three days or the transaction would be

[327] Scharwatt C & Williamson C (2015) 21.
[328] Scharwatt C & Williamson C (2015) 21.
[329] Scharwatt C & Williamson C (2015) 6.
[330] Mobile money interoperability is now effective across Central Africa region available at *https://mobilemoneyafrica.com/blog/mobile-money-interoperability-is-now-effective-across-central-africa-region* (accessed 22 August 2021).

cancelled.[331] Also key to the regulatory aspect is the involvement of well-established MNOs who have a footprint in the region. Such operators must be willing to partner and work together in order for the implementation to succeed.

The SADC region like the WAEMU region is dependent on the three key enablers namely, addressable remittance corridors, strong mobile money foundations in both sending and receiving markets and strong mobile money foundations in both sending and receiving markets. Against that background, it is likely that the implementation of a interoparble mobile money framework would succeed as the 'key ingredients are present. Further, in light of the effects of the COVID-19 pandemic wherein physical contact has been restricted, mobile money transactions have become even more popular as they allow users to send money digitally. Mobile money is thus a revoluntised channel of remitting cross-border remittances through a well regulated and sound interoperable platform.

In concluding this section, the cross-border remittance patterns in WAEMU region highlighted above are similar to the patterns in the SADC region. In both regions cross-border remittances are common and migrant workers are forced to use informal channels due to the high costs and financial exclusion. While the legal and regulatory framework highlighted above can be likened to the SADC mobile service regulatory scene, a number of issues remain outstanding and strides need to be taken by the SADC policy makers and regulators to put in place the appropriate enactments and regulatory framework. Further, unlike the WAEMU region wherein regulatory laws are harmonized and there is one currency and a common bank, the SADC region does not have a central bank, most countries have their own currencies and laws are not harmonized. The implementation of a mobile money interoperability platform would there be more complicated although doable.

4.5 <u>Conclusion</u>

This chapter has addressed the last research question of how mobile money interoperability services are regulated in other jurisdictions and the lessons that SADC can draw from same in the implementation of a similar structure. In addressing this issue, the chapter has highlighted that the

[331] Mobile money interoperability is now effective across Central Africa region available at *https://mobilemoneyafrica.com/blog/mobile-money-interoperability-is-now-effective-across-central-africa-region* (accessed 22 August 2021).

journey to achieving the legislative framework involves operators' collaboration and benchmarks, appropriate marketing strategies, flexible laws and an enabling regulatory environment. The Mowali and Airtel platforms are very progressive as they provide an alternative method for remitting cross border remittances by not only supporting financial inclusion of all sectors of the population but by providing a safer channel and a cheaper channel. Both platforms provide essential guidelines that SADC regulators should consider when implementing a similar channel. The success of both channels serves as an ideal template and yardstick for the SADC region and SADC has a lot of lessons it can draw from the same. Thus, the ensuing chapter attempts to address the central question of this mini thesis, which is what can be done in terms of mobile money interoperability regulations or law to further financial inclusion of cross border remittances within the SADC region, making specific recommendations for an appropriate legal and regulatory framework

CHAPTER 5; CONCLUSION AND RECOMMENDATIONS.

5.1 Introduction

The primary objective of this mini-thesis was to recommend a legal framework for mobile money interoperability in the Southern African Development Community (SADC) region pursuant to an examination of the importance of cross-border remittances and how the increased use of mobile money could revolutionise cross-border remittances in the region. In doing so, this mini-thesis set out to answer one broad research question - what can be done in terms of mobile money interoperability regulations or law to further financial inclusion of cross border remittances within the SADC region? This study was spilt into three broad questions. The first question addressed the role that mobile money interoperability plays in revolutionising cross –border remittances in SADC region. The second question undertook a comparative study of the legal and regulatory structures of developed mobile money interoperability platforms or systems in the WAEMU region. The central question of this research sought to address how an overarching legal framework for the regulation of mobile money interoperability in the SDAC region can be created.

5.2 Summary of the research findings

The examination of the above research questions revealed certain findings as encapsulated below, in which the research concludes and makes recommendations for a legal and regulatory framework for mobile money interoperability in the SADC region.

The study argues that there is need to revolutionise cross-border remittances across SADC as the current remittances system is expensive, risky, unsafe and does not promote financial inclusion of the majority of the remitters. Hence, with the growing use of mobile money there is need to implement a sound legal framework that will cater for mobile money interoperability across SADC.

Chapter 2 examined the interplay between cross-border remittances, mobile money and the pivotal role played by mobile money interoperability in promoting cross border remittances. It recognised that most cross-border remitters in the region turn to risky and opaque informal, cash-based channels due to legal documents and regulatory barriers and high costs[332]. It found that these

[332] See Chapter 2, Section 2.13.

challenges create an opportunity for the use of mobile money interoperability as a revolutionised channel to remit money.[333]

Chapter 3 delved into the current payment or remittance services within the region. It explored the legal and regulatory framework surrounding cross-border remittances services paying close attention to licensing requirements for RSPs,[334] Foreign Exchange controls and Reporting requirements, Anti-money laundering (AML) / Combating the Financing of Terrorism (CFT) Compliance Requirements and Immigration Laws. It found that the present legal and regulatory framework of the current payment systems makes it difficult for most undocumented and financially excluded remitters to access remittance services. A more financially inclusive and flexible channel would be to do away with most challenges faced under the present legal and regulatory framework.

Chapter 4 made a detailed comparison of the mobile money interoperability platforms in the West African Economic Monetary Union (WAEMU) region, specifically regarding the legal and regulatory framework. The comparison revealed that the legislative framework in the WAEMU region involves operators' collaboration and benchmarks, appropriate marketing strategies, flexible laws and an enabling regulatory environment. It was found that unlike the WAEMU region wherein regulatory laws are harmonised and there is one currency and a common bank, the SADC region does not have a central bank, most countries have their own currencies and laws are not harmonized. Drawing from the comparative study, the SADC region lags behind the WAEMU region on the creation of an overarching legal framework for mobile money interoperability. As such, the region when implementing a legal and regulatory framework must try to harmonise its laws.

5.3 Conclusion

Mobile money is revolutionising the cross-border remittance by lowering prices and increasing access to financial services. It is also a powerful way to digitise large flows of informal cash transfers, which in-turn contributes to the integrity of financial markets. In particular, it reduces the risk of money laundering and the financing of terrorism, since electronic transactions can be

[333] See Chapter 2, Section 2.13.
[334] See Chapter 3 Section 3.3.1 to 3.3.4.

monitored and traced easily than cash. Yet, the full potential of mobile money has not been realised, in part because of legal and regulatory barriers. The central argument of this mini-thesis is to implement a legal framework for mobile money interoperability. Such a framework will create an enabling environment for the revolution of cross-border remittances in the region. However, the current remittance channels do not adequately address the challenges that underpin the majority of the remitters. These include financial exclusion to access formal channels, high costs and most importantly the legal and regulatory barriers. The potential of mobile money to provide safer, cheaper and more accessible financial services to millions of migrants is immense, and the potential lies in the implementation of a sound legal framework as legal and regulatory aspect have been a major hinderance to remittance of funds across borders. Thus, without the support of a conducive environment and an enabling legislative framework, efforts in establishing a mobile money interoperability may be meaningless.

Findings in this research reveal that other regional blocs in Africa have established mobile money interoperability legislative frameworks. The SADC region is fortunate as it has a starting point and can draw lessons from the same without re-inventing the wheel. The research therefore proposes recommendations based on lessons drawn from the comparative study. It internationally recognised regulatory standards in developing mobile money that can be tailored to suit the SADC context. Important factors to consider in implementing the legal framework include mobile money operators' collaboration and benchmarks, appropriate marketing strategies, flexible laws and an enabling regulatory environment. The legal and regulatory frameworks should promote the continued progression of mobile money and further advancement of financial inclusion in the region.

5.4 Recommendations

In light of the detailed comparative study and the juxtaposition of other legislative framework, the following recommendations are made in respect to the legal and regulatory aspects of implementation of a mobile money interoperability platform. The recommendations will be limited to the specific aspects covered in Chapter 3 namely Licensing Requirements for RSPs, Foreign Exchange controls and Reporting requirements, Anti-money laundering / Combating the Financing of Terrorism (AML/CFT) Compliance Requirements and Immigration Laws. They shall be discussed below as follows:

a. Licensing Requirements

As discussed in Chapter 3, a license is required for a mobile money operator to offer cross-border remittance services.[335] The lack of remittance licenses for non-bank Remittance Service Providers (RSPs) such as mobile money operators in many SADC countries negatively affect remittance services for money. Based on other developed mobile money markets, it is recommended that SADC implements a unified licensing framework for mobile money and international remittances. This framework allows mobile money operators to be directly licensed to provide international remittance services. This has been done with Rwanda and Ghana, wherein mobile money providers holding an EMI license issued by the National Bank provide inward and outward international remittance services.

b. Foreign Exchange controls and Reporting requirements,

Most SADC countries have prohibitive foreign exchange controls, wherein some or all cross-border transfers may be subject to review and/or government authorisation before a transfer may occur. Further, there are certain restrictions placed on cross-border remittances. This may be with the requirement that each authorised dealer, bank or RSP is usually required to report every foreign exchange transaction regardless of the amount.

It is recommended in this respect that the SADC region adopts a more lenient approach to the manner in which foreign exchange transactions are to be reported by remittance businesses. For instance, each country would be required to report to its Central Bank or its central regulator and then report to a regional body. SADC can thus put into place a central system or platform to report the same. At the regional level, the regulator will have access to all the information. There must also be uniformity in the manner in which the reporting should be done to ease the process and make it more flexible. Further, SADC countries must harmoinse their mininus thresholds and ensure that only transactions that go beyond the specified threshold amount should be reported .

It is recommended that SADC permits institutions to report directly to their National Banks as opposed to requiring them to report strictly via the Cross Border Foreign Exchange Transaction Reporting System. This promotes competition within the market and reduces costs.

[335] See Chapter 3, Section 3.3.1.

c. Anti-money laundering (AML)/Combating the Financing of Terrorism (CFT) Compliance Requirements

The AML/CFT requirements particularly the KYC documentation requirements in the region, have long been a significant barrier to access for remittance services. In most SADC countries, these requirements are too rigid and end up being costly, often not effectively implementing the risk-based approach.[336] This has resulted in several complications for RSPs and MNOs. It is recommended that, in line with the SADC Protocol of FIP, countries aim to harmonise their AML regulatory framework. In doing so, they must consider a flexible approach like the one implemented in Zambia and Zimbabwe, wherein a foreigner aside from using a passport, may use a variety of particulars to verify their identity. This could be their driver's license or national identity card. Zambia a variety of methods including an employment reference to confirm residential addresses aside from official documentation such as a utility bills. It is also suggested that the duty placed upon financial institutions to obtain and verify client's residential address be extinguished.

d. Immigration Laws

It has been established that immigration laws play in acritical role in a remitter's ability to access financial services. Most migrants remitting money back home are migrants that are not formally employed, as such they are not in possession of formal work permits. This also extends to refugees and asylum seekers, whom in most instances secure some sort of informal employment and remit money . place an obligation upon financial institutions to police immigration laws. Further, the immigration laws in the SADC region place an obligation on financial institutions to take steps to ascertain the residential or citizenship status of their clients and to examine their identity cards or passports, in the case of foreigners and report in the case of illegality.

It is therefore recommended that SADC harmonises its policies as they apply to a remitter's immigration status viz-a- via his/her ability to access financial services. The policing of immigration laws should be separated from the provision of formal remittance services. The SADC region ought to consider adopting a policy similar to that which applies in the United States of America (USA), where undocumented Mexican migrants can access formal financial services by using a Matricular card issued by the Mexican Consulate. Instead of an identity card being used,

336 See Chapter 3, Section 3.3.3.

foreigners should be granted access to formal financial products on presentation of a valid passport alone without the client residential status being taken into account. SADC can follow the approach in Zambia and Zimbabwe, wherein the immigration laws do not place an obligation upon financial institutions to establish the residential status of their clients.

In terms of the regulatory landscape, it is recommended that the SADC implement the 'Bill and Keep' model adopted by the Mowali platform.[337] It is a less rigid model that allows countries to collaborate. Given the disparity in legal systems and economic status, it is recommended that SADC adopt this model and risk-based approach to regulation. The risk based approach is flexible and assists in lessening risk involved with illicit money flows.

The recommended binding legal instrument regulating the interoperability model is a Direct Bilateral Agreement. This would be a signed contract between the subsidiaries that would define their roles and obligations, wherein each manages the electronic money versus cash money in its country with a daily reconciliation process, and bank settlements are performed periodically depending on transaction volumes. This instrument is more flexible as such would be best suited for the SADC region.

The research provides an analysis of the implementation of a legal and regulatory framework that the SADC region can put in place as a revolutionsed channel to remit cross-border remittances via mobile money. Whilst harmonization is recommeded it should be noted that this will be substantially a difficult and long process given the disparity of the SADC as most countries have different currencies and legal system and there is no central bank. The research was limited to main legal and regulatory barriers. As such future studies should explore in more depth the monetary limits that such a legal framework may be permitted to send across borders and how these limits can be regulated.

[337] See Chapter 4, Section 4.2.1.

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