



DIGITAL FINANCIAL INCLUSION

Key Regulatory Principles and Guidelines for Mobile Financial Services

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Table of Contents

1. Preamble/Foreword/Introduction..... 2

2. Digital Financial Inclusion Best Practices 3

3. Summary of National Regulators’ Responsibilities and Objectives..... 3

4. Core Principles of Regulatory Best Practice in Digital Financial Services..... 5

5. Factors to consider in applying the core principles..... 6

6. Conclusion and Recommendations 7

Annex 1: MoU Template..... 8

ACRYNOMS

CRASA	Communications Regulators' Association of Southern Africa
DFI	Digital Financial Inclusion
DFS	Digital Financial Services
ICT	Information and Communications Technologies
MNOs	Mobile Network Operators
NRAs	National Regulatory Authorities
QoS	Quality of Service
SADC	Southern African Development Community

1. INTRODUCTION

Digital financial inclusion, or DFI in short, refers to the use of digital access methods to access and use formal financial services by communities that cannot access the conventional financial services (Kate Lauer and Timothy Lyman, 2015). The digital methods are referred to as Digital Financial Services (DFS). In terms of regulation, DFI and DFS fall within the remit of financial regulators. However, the regulation of DFS requires the collaboration of several regulators in addition to the primary regulator. These other regulators include regulators responsible for competition management, Information and Communications Technologies (ICT), data protection, financial intelligence and the prevention of money laundering, and consumer protection.

The purpose of these Guidelines is to provide guidance regarding the role of Communications Regulators' Association of Southern Africa (CRASA) members in DFI, and to recommend a set of guidelines for CRASA members regarding DFI.

2. DIGITAL FINANCIAL INCLUSION BEST PRACTICES

The goal of financial inclusion requires enabling regulatory practices that include:

- a) Increasing and formalising the collaboration between financial and telecoms authorities with respect to DFS.
- b) Identifying and tackling key issues limiting the development of safe and enabling DFS ecosystem.
- c) Identifying key stakeholders in the DFS ecosystem.
- d) Developing policy recommendations for authorities and other stakeholders on how to approach issues relating to DFI.

3. SUMMARY OF NATIONAL REGULATORS' RESPONSIBILITIES AND OBJECTIVES

Different Southern African Development Community (SADC) member states have different institutional arrangements for regulation and the list below may not be exhaustive. However, typically, regulators that are involved or relevant in DFS are as listed below, together with their objectives and remit:

a) Telecoms regulator

- i. To administer the relevant telecommunications sector acts/regulations
- ii. Quality of Service (QoS)
- iii. Data privacy and security
- iv. Interoperability
- v. Access to key infrastructure (e.g. USSD)

- vi. Consumer protection (pricing)

b) Financial regulator

- i. To administer the relevant financial sector acts/regulations
- ii. Approve, regulate, monitor, oversee and investigate bank/financial institutions to ensure affordable, safe, transparent, reliable, accessible, efficient and stable payment system
- iii. Promote public confidence in national payment systems

c) Competition regulator

- i. Ensure interoperability
- ii. Ensure equal access to DFS infrastructure
- iii. Guarding against monopolies and collusion in order to ensure a wide variety of product choice

d) Financial intelligence

- i. Guard against money laundering and terrorist financing

e) Consumer bodies

- i. Consumer education, protection and awareness
- ii. Promoting a fair consumer market place
- iii. Consumer advocacy

f) Non-financial regulator (e.g. insurance)

- i. Ensure consumer protection
- ii. To administer the relevant non-financial sector acts/regulations
- iii. Approve, regulate, monitor, oversee and investigate non-bank/financial institutions to ensure affordable, safe, transparent, reliable, accessible, efficient and stable non-financial sector

g) Data Protection agencies

Responsible for controlling the way information is handled and to give legal rights to people who have information stored about them.

4. CORE PRINCIPLES OF REGULATORY BEST PRACTICE IN DIGITAL FINANCIAL SERVICES

For achieving DFI, the regulation of DFS has to follow practices that enhance the functioning of the DFS market. Noting that DFS are provided predominantly over mobile network services, which are regulated by the communications regulators, the communications regulators need to consider following best practice for regulation of DFS as outlined below.

a) Clarification of Roles and Responsibilities of Various Regulatory Actors

There has to be clarity regarding the roles of the different regulators relating to the relevant aspects of DFS, both for domestic transactions and for cross border transactions. The relevant regulators have to have a common understanding of their different roles. The communications regulator may need to take the lead in approaching other regulators to meet and discuss this matter.

b) Use Of Service-Based Regulation Rather Than Institution Based Regulation Approach

Regulation of DFS has to be related to the services. For instance, in DFS, issues relating to financial services, such as the safety of deposits, should be regulated by the relevant financial regulator, while those relating to the telecommunications aspects should be by the relevant communications regulator.

c) Competition And Level Playing Field

DFI may only be realised in a competitive environment and where there is a level playing field. Therefore, communications regulators have to ensure consumers are protected from unfair business practices by Mobile Network Operators (MNOs). They also have to ensure that the MNOs do not restrict other DFS providers access to the telecommunications infrastructure in order to limit competition or abuse a dominant market position .

d) Effective Oversight And Supervision

Communications regulators, in collaboration with other relevant regulators, have a responsibility to protect consumers of DFS in respect of:

- Data privacy and protection
- Fraud prevention
- Dispute resolution

The communications regulator, working with other stakeholders, have to ensure that the necessary and effective policy, legal and regulatory frameworks are in place for the issues listed above.

e) Encourage Infrastructure Rollout to Unserved Areas

The use of DFS relies on the availability of network services. Therefore, communications regulators should put in place regulatory mechanisms that encourage network rollout to unserved areas.

f) Ensure QoS

Communications regulators have a responsibility to ensure that networks provide reliable services to consumers because unreliable networks will discourage users from DFS, and this works against the goal of DFI. Communications regulators have to ensure that MNOs comply with QoS regulations.

g) Transparent regulation (e.g. stakeholder participation in the development of policies and regulations)

Communications regulators should establish mechanism for engagement with stakeholders in the development of policies and regulations. Communication regulators, singularly or in collaboration with other regulators relevant in the regulation of DFS, should undertake regular engagement with regulated entities focusing on improving the operation and outcomes of DFS. Structured and regular consultation mechanisms with regulated entities is one way that transparency can be ensured.

h) Collaboration and coordination

Communications regulators need to collaborate with other sector regulators when confronted with crosscutting issues. There is a need to guard against regulatory arbitrage.

5. FACTORS TO CONSIDER IN APPLYING THE CORE PRINCIPLES

5.1 Supply side:

- 5.1.1 Access (physical and virtual infrastructure) and availability (applications), spectrum, number resources
- 5.1.2 Issues of competition (address anticompetitive prices)
- 5.1.3 Consumer protection and risk management; and
- 5.1.4 Cross network transactions (interoperability)
- 5.1.5 Level of Quality of Service;
- 5.1.6 Cyber security (e.g. CERT, assurance)
- 5.1.7 Cross border transactions
- 5.1.8 Collaborative regulation (connectivity of platforms).

5.2 Demand side:

- 5.2.1 Consumer protection and risk management;

- i. Provision of information and transparency
 - ii. Fraud prevention
 - iii. Data privacy
 - iv. Dispute resolution (consumer and service provider)
- 5.2.2 Consumer education (e.g. digital literacy, awareness raises);
- 5.2.3 Consumer choice (better value for money, variety of services);
- 5.2.4 Service pricing and affordability;
- 5.2.5 Level of Quality of Service;
- 5.2.6 Cyber security (how consumers can use service safely)
- 5.2.7 Collaborative regulation (consumer protection, consumer education and awareness).

5.3 Other considerations :

- 5.3.1 Stage of market development (e.g creation of level playing field vs Qos considerations);
- 5.3.2 Country context (varying country requirements e.g KYC, sim card registration); and
- 5.3.3 Trade-offs (Innovation ensures services are delivered efficiently but it comes at a cost, direct competition with traditional services, QoS and market instability).

6. CONCLUSION AND RECOMMENDATIONS

The following are recommendations to the National Regulatory Authorities (NRA) in SADC:

- a) Collaborative approach to regulation;
- b) Need for functional MoUs between the different regulators – addressing overlaps between sectors;
- c) Service specific regulation as opposed to institutional based regulation; and
- d) Enable cross-border transactions.

Memorandum of Understanding

Between

(WHERE APPLICABLE)

THE TELECOMMUNICATIONS REGULATOR, a telecommunications regulatory body established under (hereinafter referred to as its acronym “.....”); the parties choose the following address as their address for all purposes under this memorandum, whether in respect of court processes, notices or other documents or communication of whatsoever nature

THE FINANCIAL REGULATOR, a financial regulatory body established under
(hereinafter referred to as its acronym “.....”); the parties choose the following address as their address for all purposes under this memorandum, whether in respect of court processes, notices or other documents or communication of whatsoever nature

THE COMPETITION REGULATOR, a competition regulatory body established under (hereinafter referred to as its acronym “.....”); the parties choose the following address as their address for all purposes under this memorandum, whether in respect of court processes, notices or other documents or communication of whatsoever nature

THE CONSUMER BODY, a consumer regulatory body established under(hereinafter referred to as its acronym “.....”); the parties choose the following address as their address for all purposes under this memorandum, whether in respect of court processes, notices or other documents or communication of whatsoever nature

And

THE NON-FINANCIAL REGULATOR a regulatory body established under (hereinafter referred to as its acronym “.....”); the parties choose the following address as their address for all purposes under this memorandum, whether in respect of court processes, notices or other documents or communication of whatsoever nature

WHEREAS

THE TELECOMMUNICATIONS REGULATOR, is mandated with legislative powers to inter alia, license and regulate the telecommunications sector, ensure QoS, data privacy and security, interoperability, access to key infrastructure and consumer protection;

THE FINANCIAL REGULATOR is mandated with legislative powers to inter alia, administer the relevant financial sector acts/regulations, approve, regulate, monitor, oversee and investigate bank/financial institutions to ensure affordable, safe, transparent, reliable, accessible, efficient and stable payment system and promote public confidence in national payment systems;

THE COMPETITION REGULATOR is mandated with legislative powers to inter alia, ensure interoperability, equal access to DFS infrastructure, guarding against monopolies and collusion in order to ensure a wide variety of product choice;

THE CONSUMER BODY is mandated with legislative powers to inter alia, ensure consumer education, protection and awareness, promotion of a fair consumer market place and consumer advocacy;

And

THE NON-FINANCIAL REGULATOR is mandated with legislative powers to inter alia, ensure consumer protection, to administer the relevant non-financial sector acts/regulations, approve, regulate, monitor, oversee and investigate non-bank/financial institutions to ensure affordable, safe, transparent, reliable, accessible, efficient and stable non-financial sector.

AND WHEREAS THE ABOVE-MENTIONED REGULATORS have mutual interest to enhance its cooperation in regulating and supervising **Digital Financial Service** (hereinafter referred

to as “DFS”) providers in order to ensure effective risk management; equitable and affordable access to financial services; protection of interest of consumers and financial viability of efficient suppliers; promotion of the availability of regulated services to all consumers; enhancement of public knowledge; awareness and understanding of regulated sectors; compliance to legislative and regulatory requirements; and maintaining financial stability in the country in the manner stipulated in this Memorandum of Understanding.

NOW, THEREFORE the parties hereto agree mutually to the following areas of cooperation:

1. Areas of Cooperation

- (a) Share and exchange information that is necessary to facilitate supervision, regulation or monitoring of the DFS providers;
- (b) Provide technical expertise in joint onsite examination of DFS providers;
- (c) Provide technical opinions and comments in the drafting and reviews of legal and regulatory instruments;
- (d) Conduct consumer redress and market conduct to ensure effective protection of interest of consumers using financial services offered by DFS providers;
- (e) Liaise in public sensitisation on financial services or payment system services offered by DFS providers;
- (f) Share and exchange information on capacity building in the areas of finance of DFS providers;
- (g) Dissemination of public information relating to DFS providers;
- (h) Implement government strategies or policies relating to enhancing financial services through information and communication technology;
- (i) Enforcement of information and communication technology laws that relate to financial services offered by DFS providers; and
- (j) Conduct consumer awareness and education on the rights and obligations of consumers and regulated DFS providers.

7. 2. Liaison Officials

(a) For purpose of ensuring effective execution of the cooperative initiatives stipulated above, the parties shall designate the following contact persons:-

i For **THE TELECOMMUNICATIONS REGULATOR**:
.....

ii For **THE FINANCIAL REGULATOR**:

.....

iii For **THE COMPETITION REGULATOR**:

.....

iv For **THE CONSUMER BODY**:

.....

v For **THE NON-FINANCIAL REGULATOR**:

.....

3. Commencement and Duration

- (a) This Memorandum of Understanding shall commence from date of its execution and remain in force until such times when the parties by a three months' notice agree to terminate the Memorandum of Understanding.
- (b) The parties agree that termination of this Memorandum of Understanding shall not prejudice any of the foregoing cooperative initiatives and undertake to take measures to complete existing activities prior to the date of termination.

4. Amendment

This Memorandum of Understanding may be amended and or varied from time to time as circumstances of its implementation may compel provided that such amendment shall not come into force unless and until agreed upon by all parties involved.

5. Communication and Notification

Notices with respect to this Memorandum of Understanding shall be served to the representatives of the parties and copied to the liaison officials.

6. Amicable Settlement Of Disputes

In the event of any dispute or difference arising out of or relating to the implementation of this Memorandum of Understanding, the parties shall use their best endeavours to settle such dispute or difference amicably.

IN WITNESS WHEREOF the parties have dully executed these Memorandum of Understanding in the manner and onday of20....., hereunder appearing:

Name:

Title:

Designation:

Signature:

For and on Behalf of **THE TELECOMMUNICATIONS REGULATOR**

Name:

Title:

Designation:

Signature:

For and on Behalf of **THE FINANCIAL REGULATOR**

Name:

Title:

Designation:

Signature:

For and on Behalf of **THE COMPETITION REGULATOR**

Name:

Title:

Designation:

Signature:

For and on Behalf of **THE CONSUMER BODY**

Name:

Title:

Designation:

Signature:

For and on Behalf of **THE NON-FINANCIAL REGULATOR**