

INTRODUCTION TO MOBILE MONEY IN DEVELOPING
COUNTRIES: FINANCIAL INCLUSION AND FINANCIAL
INTEGRITY CONFERENCE SPECIAL ISSUE

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This special issue of the *Washington Journal of Law, Technology & Arts* contains papers contributed to a conference held at the University of Washington School of Law on April 20, 2012. The conference, entitled *Mobile Money in Developing Countries: Financial Inclusion and Financial Integrity*, was organized by the University of Washington School of Law with the support of the Linden Rhoads Dean's Innovation Fund, Deakin University School of Law, Australia, and the United Nations Commission on International Trade Law (UNCITRAL).

The conference provided an early opportunity to analyse the impact of the newly-released revised 2012 Financial Action Task Force (FATF) Recommendations on mobile money.¹ These Recommendations were published in February 2012, and represent the most recent version of global standards for national anti-money laundering (AML), counter-terrorist financing (CTF), and proliferation financing efforts. The conference focused on the trade-off between financial inclusion as a development strategy

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¹ FIN. ACTION TASK FORCE [FATF], INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION: THE FATF RECOMMENDATIONS (2012), *available at* [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20\(approved%20February%202012\)%20reprint%20May%202012%20web%20version.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20(approved%20February%202012)%20reprint%20May%202012%20web%20version.pdf).

and financial integrity as a goal of prudential regulation and law enforcement, with specific reference to mobile money initiatives in developing countries and the new 2012 FATF standards.

Financial inclusion is an important social and economic policy objective for many developing countries. “Mobile money” refers to the use of a mobile phone handset to deposit, withdraw or transfer funds; and it holds great promise as a policy instrument for promoting financial inclusion. It provides a practical and cost-effective channel to extend basic banking services to many currently unbanked people in urban as well as remote rural areas. However, mobile money also introduces risks that must be mitigated, including risks of criminal activity. The FATF and its stakeholders seek to ensure that financial integrity risks—the risk of money laundering, terrorist financing, or proliferation financing—are addressed effectively and that bringing more people into the formal financial framework does not come at the expense of effective controls.

Even developed countries with sophisticated regulatory mechanisms find it difficult to pursue crime fighting and economic development strategies simultaneously within the framework of financial services regulation. The profound difficulty of integrating these two distinct strategies into an effective policy framework is exacerbated in the context of rapid technological change. It is therefore not surprising that developing countries working with fewer regulatory resources than developed countries face enormous challenges in trying to integrate crime fighting and economic development goals under conditions of rapid technological innovation.

When the issue of financial inclusion first surfaced in the context of deliberations about global financial integrity standards nearly a decade ago, discussions threatened to become polarized between the more developed countries that set the international AML and CTF agenda on the one hand, and the development community who feared that effective financial integrity controls would create insurmountable barriers to financial inclusion on the other. The FATF, in conjunction with the World Bank and the Asia-Pacific Group on Money Laundering, released a 2011 guidance document on financial inclusion that helped to bridge this gap and moved the debate in the direction of a new consensus that

financial integrity and financial inclusion goals could be complementary.² This new understanding is now integrated into, and strengthened by, the 2012 revised Recommendations.

Speakers from a variety of organizations and countries participated in the conference, providing theoretical, institutional and legal insights into the search for effective strategies to pursue financial integrity and financial inclusion policy objectives. The order of the Articles in this special issue follows the order of the presentations in the conference program, starting with general perspectives on mobile money, financial inclusion and financial integrity before proceeding to various developing and developed country case studies.

Professor Louis de Koker of Deakin University commenced the discussion with an overview of the revised 2012 FATF Recommendations and their impact on mobile money models in developing countries.³ His Article highlights aspects of the new standards, especially the mandatory risk-based approach, that would facilitate innovative mobile money models. In general the new standards are supportive of new payment methods for the unbanked and underbanked, but a number of questions and implementation challenges remain. These include lingering uncertainty about aspects of the risk-based approach. In his Article he also points to broader integrity risks that require attention, especially cyber-crime threats and mobile money-related privacy concerns. Mobile money programs are operating in a number of countries where the privacy of users may not necessarily be respected or effectively protected.

Professor Jane Winn of the University of Washington School of Law follows by looking forward to the challenges of governing the global mobile money network that is now emerging.⁴ She first

² FATF, *FATF GUIDANCE ON ANTI-MONEY LAUNDERING AND TERRORIST FINANCING MEASURES AND FINANCIAL INCLUSION* (2011), available at <http://www.fatf-gafi.org/media/fatf/content/images/AML%20CFT%20measures%20and%20financial%20inclusion.pdf>.

³ Louis de Koker, *The 2012 Revised FATF Recommendations: Assessing and Mitigating Mobile Money Integrity Risks Within the New Standards Framework*, 8 WASH. J.L. TECH. & ARTS 165 (2013).

⁴ Jane K. Winn, *Governance of Global Mobile Money Networks: The Role of Technical Standards*, 8 WASH. J.L. TECH. & ARTS 197 (2013).

considers the role of information and communication technology (ICT) standards in the governance of existing global payment networks, including the costs and benefits of private, market-oriented governance systems versus “coordinated” governance systems which permit national regulators to play a greater management role. Because market-oriented global ICT networks can be deployed more quickly, there is always a risk that supporters of a more coordinated approach will be overtaken by rapid technological change. Market-oriented management of global ICT networks may undermine compliance with financial integrity information privacy obligations in the absence of a strong national or international regulatory counterweight. Balancing both market and regulatory requirements in the development of a global mobile money remittance network will be challenging. Achieving that balance will become even more challenging if representatives of developing countries are recognized as stakeholders in the governance of global mobile money networks.

Andrew Harris, a Foreign Affairs Officer at the U.S. Department of State, Professor Seymour Goodman and Assistant Professor Patrick Traynor (both of the Georgia Institute of Technology) raise in their paper concerns regarding the privacy and security of mobile phone users in Africa, particularly in light of FATF recommendations requiring user transparency and the collection of transaction data.⁵ Any requirement of user transparency in nations with weak adherence to the rule of law and limited privacy protections leaves users vulnerable to abuse. Furthermore, the increasing complexity of mobile phone use that is characteristic of mobile money applications raises concerns regarding Africa’s preparedness for heightened security threats that come hand in hand with increased use. The Article closes with specific recommendations for policy actions by African nations to improve consumer privacy and cyber-security.

Luca Castellani, the head of the UNCITRAL Regional Centre for Asia and the Pacific, focuses on the relevance of the UNCITRAL electronic payment framework for mobile money.

⁵ Andrew Harris, Seymour Goodman & Patrick Traynor, *Privacy and Security Concerns Associated with Mobile Money Applications in Africa*, 8 WASH. J.L. TECH. & ARTS 245 (2013).

Existing legal frameworks, whether they are statutory or contractual in nature, are often insufficient to address all the relevant legal issues, especially in developing countries.⁶ Appropriate legal frameworks will be required to fill the gaps in existing law. International standards and model laws, such as those prepared by UNCITRAL, can assist developing countries in filling those gaps in national laws while also ensuring cross-border consistency and reducing barriers to interoperability. The Article reviews elements of existing international instruments and commercial practice, and argues for the preparation of uniform enabling legislative or contractual provisions for mobile payments.

Claire Alexandre, a former Senior Program Officer and Lynn Chang Eisenhart, a Program Officer, both of the Financial Services for the Poor program at the Bill and Melinda Gates Foundation, argue that there are three key synergies between financial inclusion and financial integrity.⁷ These are: (1) mobile money will help reduce dependency on cash, which is the common enemy of both financial inclusion and financial integrity; (2) mobile money generates data which is instrumental to the health and growth of both financial inclusion and financial integrity; and (3) mobile money accelerates the development of accounts, which are the backbone of financial inclusion and financial integrity. If mobile money is to deliver on its promises for both financial inclusion and financial integrity, however, regulatory barriers need to be removed.

Emery Kobor, the keynote speaker at the conference, is the assistant director for strategic policy in the Office of Terrorist Financing and Financial Crimes at the U.S. Department of the Treasury and a member of the U.S. delegation to the Financial Action Task Force.⁸ In his Article he argues that the application of

⁶ Luca G. Castellani, *The Role of UNCITRAL Texts in Promoting a Harmonized Legal Framework for Cross-Border Mobile Payments*, 8 WASH. J.L. TECH. & ARTS 265 (2013).

⁷ Claire Alexandre & Lynn Chang Eisenhart, *Mobile Money as an Engine of Financial Inclusion and Lynchpin of Financial Integrity*, 8 WASH. J.L. TECH. & ARTS 285 (2013).

⁸ Emery S. Kobor, *The Role of Anti-Money Laundering Law in Mobile Money Systems in Developing Countries*, 8 WASH. J.L. TECH. & ARTS 303 (2013).

AML measures does not necessarily determine the success or failure of financial inclusion initiatives or their impact on economic growth. Successful payments system innovation, particularly payment tools targeting underserved markets, requires effective entrepreneurship operating in an environment of good governance and rational economic policies. AML safeguards support a stable and safe environment by deterring corruption and other forms of financial crime. This in turn helps to establish and maintain economic stability and preserve the rule of law, thereby creating a supportive environment for innovation and financial inclusion.

These general perspectives on financial inclusion, financial integrity and mobile money are followed by five papers providing national perspectives on mobile money regulation. The five countries (in alphabetical order) are Brazil, Kenya, South Africa, the United Kingdom, and the United States.

Gilberto Almeida of the Pontifical Catholic University of Rio de Janeiro discusses the regulatory framework for mobile money in Brazil.⁹ The Brazilian hyper-inflation period led to the development of a sophisticated payments platform and a vast network of banking correspondents all over the country. The Article notes the significance of the rapid expansion of “banking correspondents” which are often retail vendors authorized to serve as cash-in/cash-out points for traditional bank accounts for financial inclusion in Brazil. While Brazil has made impressive strides in financial inclusion in recent years, mobile money has not played a significant role in these policies to date. Almeida does note, however, the growing interest among Brazilian regulators in adding mobile payments to their financial inclusion strategies. The Article addresses key aspects of the current mobile money framework in Brazil and the ways in which Brazilian regulators responded to financial integrity challenges posed by mobile money.

Mercy Buku, the Senior Manager of Safaricom’s Money Laundering Reporting Office and Michael Meredith of the

⁹ Gilberto Martins de Almeida, *M-Payments in Brazil: Notes on How Country Background May Determine Timing and Design of Regulatory Model*, 8 WASH. J.L. TECH. & ARTS 347 (2013).

University of Washington School of Law discuss Safaricom's M-PESA mobile money program in Kenya.¹⁰ The M-PESA service is recognized globally for its economic and social success. Since March 2007 it has enrolled more than 15.2 million users and transferred more than 1.4 trillion dollars in electronic funds. Their Article traces the development of the M-PESA service in Kenya and considers the role that services like M-PESA might play in national and international AML and CTF efforts.

Professor Vivienne Lawacks, the Executive Dean of the Faculty of Law, Nelson Mandela Metropolitan University in Port Elizabeth, South Africa, analyses the South African legal and regulatory framework for mobile money and examines issues relating to financial integrity and financial inclusion as they present themselves in South Africa.¹¹ While South African regulators developed a supportive framework for mobile money, it is not a fully inclusive framework. The author highlights the plight of undocumented migrants and argues for a better balance between the regulation of risk and access to the payment system through an enhanced implementation of a risk-based approach.

Miriam Goldby of the Centre for Commercial Law Studies, Queen Mary, University of London, considers in detail a specific customer due diligence obligation, namely the obligation to report suspicions of money laundering.¹² The United Kingdom has adopted stringent regulations regarding the reporting of suspicious transactions combined with draconian sanctions for failure to comply. As might be expected under such circumstances, the result has been a blizzard of suspicious activity reports filed with U.K. law enforcement that produce few discernible financial integrity benefits. She considers what the impact might be in a developing country of adopting reporting requirements similar to those that the

¹⁰ Mercy W. Buku & Michael W. Meredith, *Safaricom and M-PESA in Kenya: Financial Inclusion and Financial Integrity*, 8 WASH. J.L. TECH. & ARTS 375 (2013).

¹¹ Vivienne A. Lawack, *Mobile Money, Financial Inclusion and Financial Integrity: The South African Case*, 8 WASH. J.L. TECH. & ARTS 317 (2013).

¹² Miriam Goldby, *Reporting of Suspicious Activity by Mobile Money Service Providers in Accordance with International Standards: How Does it Impact on Financial Inclusion?*, 8 WASH. J.L. TECH. & ARTS 401 (2013).

United Kingdom adopted in response to FATF requirements. The Article argues that certain features of the U.K. suspicious activity reporting regime make it unsuitable for wholesale adoption into such a context.

Erin Fonté of Cox Smith Matthews discusses mobile banking/mobile payments in the United States.¹³ Unlike mobile banking/mobile payments services in developing countries, these developments in the United States have not been driven primarily by financial inclusion concerns but rather by competition to serve an affluent target market more effectively. But with a high usage rate of mobile devices by the unbanked/underbanked in the United States, financial inclusion may also be improved through new mobile products and services. The Article outlines the regulatory framework for mobile money in the United States and discusses the regulatory position relating to mobile money. The position taken by the U.S. Treasury Department and the Financial Crimes Enforcement Network (FinCEN) with respect to the revised FATF Recommendations on transparency, customer due diligence and new technology could have an impact on who is eligible to participate in mobile payments.

APPRECIATION

We record our appreciation to all the presenters at the conference and to those who were able to contribute Articles to this special edition of the *Washington Journal of Law, Technology & Arts*. The authors took care to reflect developments through mid-2012 to ensure that the Articles are current and contribute to the dynamic international mobile money discussion.

We also wish to express our appreciation to the following persons and organization that made special contributions to ensure the success of the conference and the preparation of this special edition. The financial support of the Linden Rhoads Dean's Innovation Fund made the entire conference possible. Laura

¹³ Erin F. Fonté, *Mobile Payments In the United States: How Disintermediation May Affect Delivery of Payment Functions, Financial Inclusion and Anti-Money Laundering Issues*, 8 WASH. J.L. TECH. & ARTS 419 (2013).

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