

A regulatory analysis of digital financial services and the adoption of central bank digital currencies in Zimbabwe and South Africa¹

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Abstract

The use of digital financial services such as mobile money has created new frontiers for more people, especially the poor, to participate in the formal payment systems in Zimbabwe and South Africa. Individuals who do not have bank accounts are now able to access financial services and products using technological devices such as mobile phones. In this regard, digital financial services have broadened financial inclusion allowing the poor to participate in financial markets and other formal economic activities which they were unable to access before. In addition, digital financial services represent a broad range of emerging financial technology (fintech) products which could lead to the adoption of digital currencies in many countries, including Zimbabwe and South Africa. These fintech products have been useful channels for the poor to transact and receive money since the outbreak of the coronavirus (covid-19) pandemic. However, the regulation of digital financial services and their products remains problematic in South Africa and Zimbabwe owing, in part, to the absence of statutes that expressly and robustly regulate these services. Furthermore, there is no sufficient policy clarity on the adoption of central bank digital currencies in the aforesaid countries. Accordingly, this article explores the adequacy of the regulatory frameworks and robustness of the enforcement approaches adopted in Zimbabwe and South Africa. This is also done in the context of the African Union (AU)'s Agenda 2063 goal of enabling trade linkages amongst African countries.

Keywords: financial technology, mobile money, digital currencies, financial inclusion, the poor.

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1. Introductory remarks

The rapid increase in the use of digital financial services has opened opportunities for the poor, low-income earners, and unbanked individuals to access

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financial services in many countries, including Zimbabwe and South Africa.⁴ Zimbabwe and South Africa are developing countries where many poor persons do not have access to useful, convenient and suitable financial services. In this regard, digital financial services significantly promote financial inclusion for the poor and low-income earners who were previously excluded from the formal financial systems in the two jurisdictions. Accordingly, the poor, low-income earners and unbanked individuals can now rely on digital financial services such as mobile money to access affordable, useful, and convenient financial services.⁵ These digital financial services are mostly accessible through the medium of mobile phones.⁶ The mobile phones do not necessarily have to be connected to the Internet for people to transact, receive or send money. Consequently, digital financial services are considerably changing the profile of participants in the financial markets, financial institutions and the way financial markets operate in Zimbabwe and South Africa.⁷ Put differently, the proliferation of financial technology (fintech) products, artificial intelligence and the Internet of things is recalibrating the way financial markets function in Zimbabwe and South Africa.

One of the key fintech products is mobile money, which is assisting most people, especially the poor, low-income earners and unbanked to start and expand businesses, pay for their children's tuition fees, and meet other financial obligations. This was impossible a few years ago.⁸ Mobile money and related fintech products are fortifying communities' resilience to economic shocks such as the ongoing coronavirus (covid-19) pandemic.⁹ Therefore, digital financial services enhance financial inclusion, especially for the poor, low-income earners and unbanked persons in Zimbabwe and South Africa.¹⁰ The more technology advances, the more

⁴ E. Torerai, 'A Comparative Statutory Analysis of the Use and Regulation of Mobile Money to Promote Financial Inclusion for the Poor in Zimbabwe', (LLD Thesis, North West University 2022), pp. 3-4; J. Guild, 'Fintech and the Future of Finance', *Asian Journal of Public Affairs* (2017), pp. 3-4; L.J. Trautman, 'Is Disruptive Blockchain Technology the Future of Financial Services?', *The Consumer Finance Law Quarterly Report* (2016), pp. 233-234.

⁵ E. Torerai, LLD Thesis, North West University (2022), pp. 3-4; J. Guild, *Asian Journal of Public Affairs* (2017), pp. 3-4.

⁶ See related comments by E. Torerai, LLD Thesis, North West University (2022), p. 3-4; J. Guild, *Asian Journal of Public Affairs* (2017), pp. 3-4.

⁷ T. Tapainainen, 'Toward Fintech Adoption Framework for Developing Countries – A Literature Review based on the Stakeholder Perspective', *Journal of Information Technology Applications & Management* (2020), pp. 2-3.

⁸ D.A. Zetsche, R.P. Buckley and D.W. Arner, 'Regulating LIBRA: The Transformative Potential of Facebook's Cryptocurrency and Possible Regulatory Responses', *University of New South Wales Research Series* (2019), p. 11-12; T. Trautman, *The Consumer Finance Law Quarterly Report* (2016), p. 234.

⁹ H. Chitimira and E. Torerai, 'The Nexus between Mobile Money Regulation, Innovative Technology and the promotion of Financial Inclusion in Zimbabwe', *Potchefstroom Electronic Law Journal* (2021), p. 21; M.Y. Jnr. Tamburi and Y. Kong, 'Digitizing Payments: Opportunities for Financial Inclusion for Sub-Saharan Africa', *Case Studies Journal* (2019), pp. 21-22.

¹⁰ H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), pp. 3-4; D.A. Zetsche, R.P. Buckley and D.W. Arner, *University of New South Wales Research Series* (2019), pp. 11-12.

it makes digital financial services and fintech products cheap, convenient, and fast.¹¹ This is somehow contrary to banks and other traditional financial institutions that often saddle consumers with onerous processes and requirements such as proof of income, proof of residential addresses, proof of income or employment, identity documents among others, which have kept many poor individuals financially excluded in Zimbabwe and South Africa.¹² Thus, the increasing use of digital financial services poses not only competition but to some extent, an existential threat to banks and other traditional financial institutions, globally.

Nonetheless, digital financial services come with significant challenges to the regulation of financial markets in many developing countries such as Zimbabwe and South Africa. The use of electronic money may not be easily traceable and as such, it is susceptible to money laundering and other related financial crimes.¹³ Money laundering is, *inter alia*, a technique used by criminals to convert illicitly obtained money, gains or profits into legitimate gains, profits or money that could be spend without having it identified as proceeds of a criminal activity.¹⁴ Money laundering is a complex crime that involves primary offenders who launder proceeds of their illicit gains for their own account, but it can also extend to third parties such as lawyers, accountants, and politically exposed persons.¹⁵ Therefore, digital financial services require sufficient statutory regulation to combat money laundering and related financial crimes in Zimbabwe and South Africa.

However, the relevant financial regulatory frameworks in Zimbabwe and South Africa have so far failed to adequately regulate digital financial services. For instance, there is no express legislation that adequately regulates fintech products in these two countries. In this regard, policymakers and regulators should rethink the regulation of fintech products to promote financial inclusion and the combating of

¹¹ T. Trautman, *The Consumer Finance Law Quarterly Report* (2016), p. 234; D.A. Zetsche, R.P. Buckley and D.W. Arner, *University of New South Wales Research Series* (2019), pp. 12-14.

¹² E. Torerai, LLD Thesis, North West University (2022), p. 134; H. Chitimira and S. Munedzi, 'Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money laundering in South African Banks and Related Financial Institutions', *Journal of Comparative Law in Africa* (2021), pp. 45-46; H. Chitimira and M. Ncube, 'The Role of Regulatory Bodies and Other Role-Players in the Promotion of Financial Inclusion in South Africa', *Acta Universitatis Danubius Juridica* (2020), p. 34.

¹³ E. Torerai, LLD Thesis, North West University (2022), p. 13-14; J.K. Winn and L. De Koker, 'Introduction to Mobile Money in Developing Countries: Financial Inclusion and Integrity Conference Special Issue', *Washington Journal of Law, Technology & Arts* (2013), pp. 156-157; Z. Weihuan, D.W. Arner and R.P. Buckley, 'Regulation of Digital Financial Services in China: Last Mover Advantage?', *Tsinghua China Law Review* (2015), p. 43.

¹⁴ Section 8 of the *Money Laundering and Proceeds of Crime Act* [Chapter 9: 4] of 2013, as amended; H. Chitimira, 'The Reliance on Artificial Intelligence Measures to Curb Money Laundering Practices in the South African Banking Institutions and Real Estate Sector', *Acta Universitatis Danubius Juridica* (2020), p. 29; T. Halliday, M. Levi and P. Reuter, 'Anti-Money Laundering: An Inquiry into a Disciplinary Transnational Legal Order', *UC Irvine Journal of International, Transnational and, Comparative Law* (2019), pp. 3-4.

¹⁵ H. Chitimira and S. Munedzi, *Journal of Comparative Law in Africa* (2021), pp. 44-45; T. Halliday, M. Levi and P. Reuter, *UC Irvine Journal of International, Transnational and, Comparative Law* (2019), pp. 3-4.

financial crimes such as money laundering that could be perpetrated through the illicit use of digital financial services. In Zimbabwe, legislation such as the National Payments Systems Act,¹⁶ the Exchange Control Act,¹⁷ the Banking Act,¹⁸ the Money Laundering and Proceeds of Crime Act,¹⁹ and the Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations 2020,²⁰ provide some regulatory guidance to few aspects of fintech products such as mobile money. While South Africa has a significantly developed financial regulatory framework, statutes such as the Prevention of Organised Crime Act,²¹ the National Payment System Act,²² the Financial Intelligence Centre Act,²³ and the Financial Sector Regulation Act,²⁴ are not robust enough to regulate fintech products such as mobile money.

2. Scope and limitations

It must be noted that the article is not focused on the risks, disadvantages and/or demerits of digital financial services and digital currencies. It is also not solely focused on the provision of any general benefits to global societies and economies by using digital financial services and digital currencies. Thus, a detailed discussion of these and other related aspects is beyond the scope of this article. Instead, the article advocates for the use of digital financial services and/or the adoption digital currencies that are adequately regulated to promote financial inclusion for the poor, low-income earners, and unbanked individuals in Zimbabwe and South Africa.²⁵ The article analyses the adequacy of the current financial statutory regulatory frameworks of Zimbabwe and South Africa in relation to the use of digital financial services and the adoption digital currencies to promote financial inclusion for the poor, low-income earners, and unbanked individuals, especially in the rural areas and informal settlements of Zimbabwe and South Africa.

The article recognises the need for policy makers, governments and relevant stakeholders to adopt appropriate laws and other measures that increase the access and availability of basic formal financial services to the general public, especially the poor, vulnerable and low-income earners in South Africa and Zimbabwe. Consequently, the article does not discuss or provide any reasons why some scholars

¹⁶ See sections 2 and 3 of the National Payments Systems Act [Chapter 24:23] 21 of 2001, as amended.

¹⁷ Section 2 of the Exchange Control Act [Chapter 22: 05] of 1965, as amended.

¹⁸ Sections 2, 4, 6 and 7 of the Banking Act [Chapter 24: 20] 9 of 1999, as amended.

¹⁹ Sections 12A-12D of the Money laundering and Proceeds of Crime Act [Chapter 9:24] of 2013, as amended.

²⁰ Sections 2 and 3 of the Banking Regulations 2020.

²¹ Section 48 of the Prevention of Organised Crime Act 121 of 1998, as amended (POCA).

²² Section 2 of the National Payment Systems Act 78 of 1998, as amended (National Payment Systems Act).

²³ Sections 20A-21H of the Financial Intelligence Centre Act 38 of 2001, as amended (FICA).

²⁴ Sections 57(b) and 58 of the Financial Sector Regulation Act 9 of 2017 (FSR Act).

²⁵ E. Torerai, LLD Thesis, North West University (2022), p. 3-4; J. Guild, *Asian Journal of Public Affairs* (2017), pp. 3-4; L.J. Trautman, *The Consumer Finance Law Quarterly Report* (2016), pp. 233-234.

are skeptical of the adoption and use digital financial services and digital currencies to promote financial inclusion in South Africa and Zimbabwe. Thus, possible risks and challenges that could be associated with digital financial services and digital currencies such as money laundering, terrorist financing, Ponzi schemes and market abuse are beyond the scope of this article.²⁶ Likewise, the fact that there are various types of digital currencies currently available globally which are somewhat unregulated and volatile from an economic perspective is not discussed as a barrier to the promotion of financial inclusion through the use of such currencies in South Africa and Zimbabwe. In fact, evidence from Zimbabwe clearly suggest that digital financial services such as mobile money and digital currencies are beneficial and crucial to the promotion of financial inclusion for the poor and low-income earners who are often excluded from accessing the formal financial services and products.²⁷ Zimbabwe does not have its own formal currency since January 2009 to date. It adopted a multi-currency system in January 2009 due to, *inter alia*, hyperinflation, an economic downturn and political instability. Efforts to reintroduce the Zimbabwean dollar have largely failed owing to an economy tottering on the brink of collapse and runaway inflation. The so-called plastic money, mobile money and multi-currency system are mostly used in Zimbabwe. Against this background, it is submitted that the proper adoption and use of digital financial services and/or central bank digital currencies that are statutorily regulated will enhance financial inclusion of the poor and low-income earners in Zimbabwe.²⁸ In this regard, the general economic argument that there is no limit to the number of bitcoins that can be created does suffice for the purposes of this article since its advocacy for the adoption of adequate laws that regulate the adoption and use of digital financial services and digital currencies to promote financial inclusion of the poor and low-income earners in South Africa and Zimbabwe. Thus, we do not argue that traditional currencies that have an intrinsic value based on the ability of central banks to regulate it and/or the ability of national governments to impose and collect taxes must be discarded. Rather, we argue that digital financial services such as central bank digital currencies should be carefully utilised and statutorily regulated to combat financial exclusion

²⁶ H. Chitimira and S. Munedzi, *Journal of Comparative Law in Africa* (2021), pp. 42-66; H. Chitimira and M. Ncube, 'The Role of Regulatory Bodies and Other Role-Players in the Promotion of Financial Inclusion in South Africa', *Acta Universitatis Danubius Juridica* (2020), pp. 24-37; H. Chitimira and M. Ncube, 'Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe', *Potchefstroom Electronic Law Journal* (2021), pp. 1-46; H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), pp. 1-33.

²⁷ E. Torerai, LLD Thesis, North West University (2022), p. 3-4; H. Chitimira and S. Munedzi, *Journal of Comparative Law in Africa* (2021), pp. 42-66; H. Chitimira and M. Ncube, *Acta Universitatis Danubius Juridica* (2020), pp. 24-37; H. Chitimira and M. Ncube, *Potchefstroom Electronic Law Journal* (2021), pp. 1-46; H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), pp. 1-33.

²⁸ C. Chibango, 'Mobile Money Revolution: An Opportunity for Financial Inclusion in Africa', *The International Journal of Humanities & Social Studies* (2014), pp. 59-67; H. Chitimira, *Acta Universitatis Danubius Juridica* (2020), pp. 28-43; H. Chitimira and P.T. Magau, 'A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa', *Potchefstroom Electronic Law Journal* (2021), pp. 1-27.

of the poor and low-income earners in South Africa and Zimbabwe.

As indicated above, there is abundant evidence from several developing countries such as Zimbabwe that digital financial services such as central bank digital currencies could ameliorate financial exclusion challenges of the poor and low-income earners. The use of mobile money and other digital financial services have greatly improved the access to basic financial products and services for the poor and low-income earners in Zimbabwe. The possible instability and volatility digital currencies such as Bitcoin, Coinbase and other cryptocurrencies are not discussed in this article because it is focused on the adoption of such currencies to promote financial inclusion for the poor and low-income earners in South Africa and Zimbabwe. It is submitted that the proper regulation and use of digital financial services such as central bank digital currencies have a huge potential to improve financial inclusion of all people in South Africa and Zimbabwe. This submission is premised on the legal basis that the proper use of digital financial services such as mobile money and plastic money has improved the access to basic traditional financial services and products for the poor, vulnerable and low-income earners in Zimbabwe.

3. Research methodology

No interviews, questionnaires or other empirical research methods are used in this article. The qualitative research method and the legal doctrinal research method are employed for comparative analysis of the fintech regulatory frameworks in Zimbabwe and South Africa. These research methods are employed to examine and analyse legislative and policy instruments as well as other relevant literature on the regulation of digital financial services in Zimbabwe and South Africa.²⁹ This approach is used to comparatively explore similarities and differences between the digital financial services' regulatory frameworks in both Zimbabwe and South Africa. However, it must be noted that the comparative analysis is limited to digital financial services, especially the adoption of central bank digital currencies in the stated countries. Put differently, the article is mainly focused on mobile money services that are manned by mobile network operators (MNOs). Therefore, financial products such as crypto currencies and bitcoin fall outside the scope of this article.

4. Definition of key terms

For the purposes of this article, digital financial services refer to various financial services that are accessed and/or delivered through digital methods and devices such as computers, tablets, smartphones, or mobile financial services, including branchless banking, electronic money, savings, remittances, credit, insurance, and electronic payments. Digital financial services also refer to information communication technologies (ICTs) such as mobile phones, the Internet

²⁹ V.M. Gawas, 'Doctrinal Legal Research Method: A Guiding Principle in Reforming the Law and Legal Systems Towards the Research Development', *International Journal of Law* (2017), pp. 128-129.

of things, applications and software that are used to provide affordable, fast and real-time financial services.³⁰ Accordingly, digital financial services represent a subset of innovative fintech products that are providing convenient financial services to the poor and other previously marginalised persons in Zimbabwe and South Africa.

Financial inclusion refers to the provision of useful, sustainable, affordable, and convenient financial services and financial products to all people in a properly regulated environment in a country.³¹ The relevant financial services include, *inter alia*, savings, credit, insurance, and other financial tools that allow the people, particularly the poor to meet their daily needs.³² The failure of governments, financial institutions, and other relevant stakeholders to adequately provide these financial services leads to financial exclusion of other persons, especially the poor, vulnerable and low-income earners.

The poor and/or low-income earners refer to persons who earn below the prescribed minimum wage in Zimbabwe and South Africa.³³ Unbanked individuals are persons who do not have access to formal financial services such as bank accounts.³⁴

There is no uniform definition of “central bank digital currency” but for the purposes of this article, it refers to the adoption and use of virtual and/or electronic version of the existing legal tender instead of the traditional fiat currency or physical banknotes and coins in the payment system of a particular jurisdiction.³⁵ In other words, we submit that central bank digital currencies should be adopted in South Africa and Zimbabwe instead of cryptocurrencies and/or bitcoin in all their forms. In this regard, Zimbabwe can choose to use an e-dollar while South Africa can adopt an e-rand as official electronic versions of the Zimbabwean dollar and the South African rand respectively. It must be noted that both Zimbabwe and South Africa are developing countries and they have not yet officially adopted central bank digital currencies although there are ongoing policy considerations in this regard. As will be discussed later, this article provides a legal perspective on the regulation of digital financial services such as central bank digital currencies with a view to enhance financial inclusion for the poor and low-income earners in Zimbabwe and South Africa.

³⁰ H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), p. 2; V. Lawack-Davids, ‘The Legal and Regulatory Framework of Mobile Banking and Mobile Payments in South Africa’, *Journal of International Commercial Law and Technology* (2012), p. 320.

³¹ E. Torerai, LLD Thesis, North West University (2022), p. 4-5; D. Mhlanga, S.H. Dunga and T. Moloi, ‘Financial Inclusion and Poverty Alleviation Among Smallholder Farmers in Zimbabwe’, *Eurasian Journal of Economics and Finance* (2020), pp. 171-172.

³² H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), pp. 9-12.

³³ E. Torerai, LLD Thesis, North West University (2022), p. 9; D. Mhlanga, S.H. Dunga and T. Moloi, *Eurasian Journal of Economics and Finance* (2020), pp. 169-170.

³⁴ H. Chitimira and P.T. Magau, *Potchefstroom Electronic Law Journal* (2021), pp. 3-4; H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), p. 4.

³⁵ J.E. Glass, ‘What is Digital Currency?’, *The Journal of the Franklin Pierce Centre for Intellectual Property* (2017), pp. 481-483; N. Arvidsson, *Building a Cashless Society: The Swedish Route to the Future of Cash Payments* (Springer Nature, Switzerland 2019), pp. 64-65; H.H. Tee and H.B. Ong, ‘Cashless Payment and Economic Growth’, *Financial Innovation* (2016), pp. 2-3.

5. Overview background of the growth and use of digital financial services in Zimbabwe and South Africa

The increased use of innovative technology in the ICT sector has spread to other sectors such as the financial markets in Zimbabwe, South Africa and other countries.³⁶ Mobile network companies have developed software and applications that can process various transactions, allowing the poor, low-income earners, and unbanked persons to send and receive money anywhere using mobile phones and other electronic devices. Recent figures show that nearly eight million out of a population of about 15 million people have mobile phones that are subscribed to mobile money services in Zimbabwe.³⁷ There are several mobile money platforms but the most successful one is Ecocash which is run by Econet Wireless, the biggest mobile network operator in Zimbabwe.³⁸ Mobile money has plugged gaps created by the recurring liquidity crunch and high inflation in the last three decades when the financial services sector faced a myriad of challenges in Zimbabwe.³⁹ Since the outbreak of the covid-19 pandemic, mobile money provided access to fast, convenient, and safe modes of financial transactions in many countries including Zimbabwe and South Africa.⁴⁰ However, there is no separate statute that expressly and robustly regulates fintech products in Zimbabwe to date.⁴¹

Although earlier efforts to launch mobile money were not as successful in South Africa as was the case in Zimbabwe, indications are that this fintech product is on the resurgence. At the beginning of 2020, one of South Africa's leading telecommunications company, Mobile Telephone Network (MTN) revived its Mobile Money (Momo) platform.⁴² The relaunch of the Momo platform coincided with the covid-19 pandemic, and this could have contributed to the increased use of

³⁶ T. Trautman, *The Consumer Finance Law Quarterly Report* (2016), p. 234; D.A. Zetsche, R.P. Buckley and D.W. Arner, *University of New South Wales Research Series* (2019), pp. 12-14.

³⁷ Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) (2020), <https://t3n9sm.c2.acecdn.net/wpcontent/uploads/2021/03/Abridged-SectorPerformance-report-4th-Q-2020.pdf> accessed 14 March 2021.

³⁸ H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), p. 6; P. Levin, *Big Ambition Meets Effective Execution: How EcoCash is Altering Zimbabwe's Financial Landscape*, <https://www.gsma.com/mobilefordevelopment/wpcontent/uploads/2013/07/EcoCash-Zimbabwe.pdf>, accessed 29 June 2020.

³⁹ C. Phiri and G. Muponda, 'Public Confidence and its Impact on the Performance and Stability of Banks in Zimbabwe', *University of Zimbabwe Business Review* (2016), p. 3; S. Mavhiki, T. Nyamwanza and T. Shumba, 'Impact of Mobile banking on Traditional Banking Practices in Zimbabwe', *International Journal of Economics, Commerce and Management* (2015), p. 2.

⁴⁰ R.J. Mann, 'Driver for Contactless Payments' in K. Pistor, *Law in the Time of COVID-19* (Columbia Law School New York 2020), p. 177; T. Kasradze, 'Challenges Facing Financial Inclusion Due to the Covid-19 Pandemic', *European Journal of Marketing and Economics* (2020), p. 70; R. De, N. Pandey and A. Pal, 'Impact of Digital Surge during Covid-19 Pandemic: A Viewpoint on Research and Practice', *International Journal of Information Management* (2020), p. 3.

⁴¹ H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), p. 12.

⁴² D. McLeod, *MTN in Big E-Commerce Play with Mobile Money* page number unknown <https://techcentral.co.za/mtn-mobile-money-can-now-be-used-for-online-shopping/99192/>, accessed 10 December 2020.

mobile money in South Africa.⁴³ Several other role-players are also coming up with new products, showing that there is a general acceptance of digital financial services and products in the financial sector in South Africa. Initial attempts to launch mobile money platforms in South Africa failed owing to, *inter alia*, a rigid financial regulatory framework that is largely pro-banks.⁴⁴ Despite the revival of the Momo platform, the South African financial regulatory framework has largely remained unchanged. This raises questions on whether the Momo platform will suffer the same fate as its predecessors.

While fintech products have some benefits such as better access to fast and convenient financial services, poverty reduction and employment creation, they are susceptible to risks and regulatory uncertainties. The risks include money laundering, terrorist financing, fraud and corruption. Fintech services and products could also be abused by faceless persons, making it difficult for law enforcement agencies to apprehend criminals. Accordingly, there should be a careful balance between the use of digital financial products and the enforcement of anti-money laundering (AML) and counter-terrorist financing (CTF) measures to combat money laundering, terrorist financing and other illicit financial activities in countries such as Zimbabwe and South Africa.⁴⁵ Against this background, this article discusses the relevant measures that are employed to regulate digital financial services, digital financial products and digital currencies in Zimbabwe and South Africa. This is done to investigate whether Zimbabwe and South Africa have adopted sufficient legislative measures to adequately regulate digital financial services to promote financial inclusion for the poor and low-income earners in their financial institutions and financial markets.

5.1 The regulation of digital financial services in Zimbabwe

Zimbabwe does not have a statute that specifically and expressly regulates and supervises digital financial services. Owing to this, regulators rely on several related legislation to regulate fintech products. Some of the key statutes are discussed below.

5.1.1 The regulation of digital financial services under the National Payment Systems Act in Zimbabwe

The National Payment Systems Act was enacted in 2001 before digital financial services became a huge factor in the Zimbabwean financial sector.⁴⁶ Although there have been amendments to this Act, it does not have any provision

⁴³ D. McLeod, *MTN in Big E-Commerce Play with Mobile Money* (2020), p. unknown.

⁴⁴ R. Abrahams, 'Financial Inclusion in South Africa: A Review of the Literature', *Southern African Accounting Association* (2017), p. 650; P.I. Chatain, A. Zerzan, W. Noor, N. Dannaoui and L. De Koker, *Protecting Mobile Money Against Financial Crimes: Global Policy Challenges and Solutions* (The World Bank, Washington DC, USA, 2011), p. 66.

⁴⁵ H. Chitimira and S. Munedzi, *Journal of Comparative Law in Africa* (2021), pp. 48-49.

⁴⁶ Section 2 of the National Payment Systems Act.

that expressly deals with digital financial services. Consequently, banks and other traditional financial institutions form part of the recognized payment systems in Zimbabwe.⁴⁷ Furthermore, section 2 of the National Payment Systems Act provides for the recognition, operation, and regulation of clearing and payments systems between financial institutions in Zimbabwe. Thus, financial institutions could be banks or any other institutions that engage in financial activities listed in the Banking Act.⁴⁸ Nevertheless, it is expected that the Reserve Bank of Zimbabwe (RBZ)'s National Payments Systems Division (NPSD) should supervise the regulation of digital financial services in Zimbabwe.⁴⁹ In this regard, it is possible that the RBZ can recognise a payment system such as digital financial services and regulate it such like other payment systems in Zimbabwe.⁵⁰ However, the absence of an adequate provision that expressly deals with digital financial services in the National Payment Systems Act has negatively affected the regulation of such services in Zimbabwe.⁵¹

5.1.2 The regulation of digital financial services under the Banking Act in Zimbabwe

The Banking Act provides for the registration, supervision and regulation of banks and other financial institutions in Zimbabwe.⁵² The Banking Act provides a list of financial institutions in Zimbabwe which includes banks, building societies, insurers, and pension funds.⁵³ However, the list excludes digital financial service providers that are operated by MNOs in Zimbabwe. Although the Banking Act defines mobile banking, it is silent on digital financial services such as mobile money.⁵⁴ It defines mobile banking as an arrangement that allows a customer of a bank, MNOs, or any other registered wireless communication system in Zimbabwe to access financial services and financial products through the mobile phone.⁵⁵ Financial institutions that provide mobile banking services in Zimbabwe include banks, MNOs and/or independent operators. Nonetheless, the Banking Act does not expressly provide for the regulation of digital financial services in the context of mobile banking. To this end, it is submitted that the terms “mobile banking” and “digital financial services” are not the same and they should not be used interchangeably. Although mobile banking provides convenient access to various

⁴⁷ Section 2 of the National Payments Systems Act.

⁴⁸ Section 2 of the National Payment Systems Act read with section 7(a); (d); (f) and (l) of the Banking Act.

⁴⁹ Section 3 of the National Payments Systems Act.

⁵⁰ Section 3(1)(a)-(c) of the National Payments Systems Act.

⁵¹ See sections 2 and 3 of the National Payments Systems Act.

⁵² See Long Title of the Banking Act.

⁵³ Section 2 of the Banking Act.

⁵⁴ Section 2 of the Banking Act.

⁵⁵ Section 2 of the Banking Act.

banking products, especially for individuals who have bank accounts,⁵⁶ it is not always accessible to the poor, economically vulnerable and low-income earners. On the other hand, mobile money is available to the vulnerable, poor, and low-income earners who may not have bank accounts. Furthermore, most MNOs that provide digital financial services in Zimbabwe do not have registration certificates required of financial institutions for purposes of the Banking Act.⁵⁷ Owing to this, MNOs are not expressly and statutorily recognised as financial institutions and their network provision activities do not qualify for registration under the Banking Act.⁵⁸ Therefore, MNOs that provide digital financial services and financial products are not registered as banks and they are expressly regulated under the Banking Act.⁵⁹

5.1.3 The regulation of digital financial services under the Reserve Bank of Zimbabwe Act

The central bank supervises banking institutions, regulates the monetary system, fosters liquidity, solvency, stability, and the proper functioning of the financial system to promote the smooth operation of the payment system in Zimbabwe.⁶⁰ Banking institutions are defined as commercial banks, accepting houses, discount houses or finance houses that are registered or are required to be registered as such in Zimbabwe.⁶¹ However, none of the RBZ functions expressly refers to digital financial services or institutions that provide digital financial services in Zimbabwe.⁶² It appears that digital financial services fall outside the regulatory ambit of the RBZ.⁶³ Furthermore, no provision in the RBZ Act regulates or treat MNOs as digital financial service providers in Zimbabwe.⁶⁴ Notwithstanding this regulatory gap, the RBZ partially regulates digital financial services since fintech products form part of the payments system in Zimbabwe.⁶⁵ Generally, the state issues money or currency through the central bank which in turn supervises commercial

⁵⁶ V. Lawack-Davids, *Journal of International Commercial Law and Technology* (2012), p. 319; P. Mbengo and M.A. Phiri, 'Mobile Banking Adoption: A Rural Zimbabwean Marketing Perspective', *Journal of Corporate Ownership & Control* (2015), p. 197; D. Porteous, *The Enabling Environment for Mobile Banking in Africa* (Bankable Frontier Associates, Boston, USA 2006), p. 17.

⁵⁷ Section 7(1) of the Banking Act.

⁵⁸ Sections 6 and 8 of the Banking Act.

⁵⁹ See sections 6 and 8 of the Banking Act.

⁶⁰ Reserve Bank of Zimbabwe Act [Chapter 22:15] 5 of 1999 (RBZ Act), see section 6(a)-(e); see related comments by N.A. Tagoe, 'Who Regulates the Mobile Money Operations by Telcos? The Need for an Effective and Robust Legislative and Regulatory Framework in Ghana', *Journal of Business & Financial Affairs* (2016), p. 2.

⁶¹ Section 2 of the RBZ Act.

⁶² Section 6 of the RBZ Act.

⁶³ R. Buckley, J. Greenacre and L. Malady, 'The regulation of Mobile Money in Malawi', *Washington University Global Studies Law Review* (2015), p. 438; A.B. Makulilo, 'Privacy in Mobile Money: Central Banks in Africa and their Regulatory Limits', *International Journal of Law and Information Technology* (2015), p. 378.

⁶⁴ Section 6 of the RBZ Act.

⁶⁵ Section 6(e) of the RBZ Act.

banks and other role-players in the payment systems.⁶⁶ Owing to this, the RBZ has a legislative duty to supervise payment systems, including digital financial services and financial products in Zimbabwe.

5.1.4 The regulation of digital financial services under the Exchange Control Act in Zimbabwe

The Exchange Control Act provides for the registration and licensing of persons that carry on business in gold, currency, or securities in Zimbabwe.⁶⁷ The Exchange Control Act seeks, *inter alia*, to prohibit illicit dealings in foreign currency by unlicensed persons in Zimbabwe.⁶⁸ However, some of the regulatory flaws of the Exchange Control Act were exposed by some mobile money platforms that were used as conduits for illegal foreign currency dealings and money laundering activities in Zimbabwe in 2020.⁶⁹ In the *Ecocash* case, it was submitted that some individuals created multiple mobile money agent accounts that were used to channel money from bank accounts to purchase foreign currency on the unofficial market in Zimbabwe.⁷⁰ It is further submitted that about two billion Zimbabwean dollars was illicitly moved from bank accounts to unlicensed foreign currency dealers through mobile money platforms such as Ecocash, Onemoney and Telecash in 2020.⁷¹ Thus, the poor regulation of digital financial services and financial products under the Exchange Control Act has sometimes fuelled financial crimes such as money laundering activities in Zimbabwe.⁷² In this regard, the *Ecocash* case is a case in point on how the poor regulation of digital financial services and financial products could give rise to illicit financial crimes in any countries.

5.1.5 The regulation of digital financial services under the Money Laundering and Proceeds of Crime Act (MLPC Act) in Zimbabwe

The MLPC Act seeks to, *inter alia*, combat the abuse of the financial system and to identify, trace, freeze, seize and confiscate proceeds of money laundering and terrorist financing activities in Zimbabwe.⁷³ Although the MLPC Act does not expressly provide for digital financial services, its provisions may be

⁶⁶ See section 6 of the RBZ Act; M.D. Tuba, 'The Regulation of Electronic Money Institutions in the SADC Region: Some Lessons from the EU', *Potchefstroom Electronic Law Journal* (2014), p. 2270.

⁶⁷ Section 2(2)(a) and (h) of the Exchange Control Act.

⁶⁸ Section 2 of the Exchange Control Act.

⁶⁹ *Ecocash Zimbabwe v Reserve Bank of Zimbabwe*, HH 333-20 HC3007/20) ZWHC 333 (*Ecocash case*), para, unknown; also see H. Chitimira and M. Ncube, *Potchefstroom Electronic Law Journal* (2021), p. 10.

⁷⁰ *Ecocash case*, para, unknown; H. Chitimira and M. Ncube, *Potchefstroom Electronic Law Journal* (2021), p. 10.

⁷¹ *Ecocash case*, para, unknown; H. Chitimira and M. Ncube, *Potchefstroom Electronic Law Journal* (2021), p. 10.

⁷² See *Ecocash case*, para, unknown; H. Chitimira and M. Ncube, *Potchefstroom Electronic Law Journal* (2021), p. 10.

⁷³ See the long title of the MLPC Act.

indirectly applied to deal with such services in Zimbabwe.⁷⁴ The MLPC Act seeks to, *inter alia*, promote financial integrity of the Zimbabwean financial sector. However, it remains to be seen whether the provisions of this Act could be effectively enforced to promote the use of digital financial services and fintech innovation in Zimbabwe. Currently, it appears that the provisions of the MLPC Act are not stringent enough to combat money laundering and terrorist financing activities involving digital financial services in the Zimbabwean financial markets and financial institutions.⁷⁵ For instance, digital financial services providers such as Ecocash, OneWallet and *Skwama* were reportedly exempted from applying strict know your customer (KYC) and customer due diligence (CDD) requirements on their customers to avoid impeding their growth.⁷⁶ A strict application of KYC and CDD requirements could potentially discourage the vulnerable, poor, and low-income earners who may not have the required identity documents from accessing financial services and financial products.⁷⁷ The absence of simplified KYC and CDD measures in the MLPC Act could give rise to the vulnerable, poor, and low-income earners resorting to unregulated informal financial channels which are susceptible money laundering and terrorist financing activities.⁷⁸ In light of this, the MLPC Act should be amended to enact adequate provisions for simplified KYC and CDD measures to promote the use of digital financial services and fintech products in Zimbabwe.

5.1.6 The regulation of digital financial services under the Banking Regulations 2020

The Banking Regulations 2020 represents the closest step policymakers have taken to regulate digital financial services in Zimbabwe. The Banking Regulations 2020 adopts the same definition of mobile banking provided in Banking Act.⁷⁹ In addition, the Banking Regulations 2020 defines mobile money wallet as an account which is on the mobile money service provider's network with the funds

⁷⁴ Section 2 of the MLPC Act.

⁷⁵ J. Guild, *Asian Journal of Public Affairs* (2017), p. 4; also see N. Mugarura, 'The Use of Mobile phones in Changing the Banking Regulatory Landscape in Africa', *African Journal of International and Comparative Law* (2019), p. 312.

⁷⁶ H.A. Ahmed, C. Green and F. Jiang, 'Mobile Money, Financial inclusion and Development: A Review with Reference to African Experience', *Journal of Economic Surveys* (2020), p. 765; C. Chibango, *The International Journal of Humanities & Social Studies* (2014), p. 65.

⁷⁷ H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), p. 18; also see T. Lyman, L. De Koker, C.M. Meier and M. Kerse, *Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion* (Consultative Group to Assist the Poor, Washington DC, USA, 2019), p. 7; C. Alexandre and Eisenhart, 'Mobile Money as an Engine of Financial Inclusion and Lynchpin of Financial Integrity', *Washington Journal of Law, Technology & Arts* (2013), p. 299.

⁷⁸ T. Lyman, *et al Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion*, p. 10; C. Alexandre and L. Eisenhart, *Washington Journal of Law, Technology & Arts* (2013), p. 299.

⁷⁹ Section 2 of the Banking Regulation 2020; also see section 2 of the Banking Act.

held in the mobile money provider's trust bank account in Zimbabwe.⁸⁰ In this regard, it is argued that mobile money wallet is the equivalent of a bank account. Although the Banking Regulations 2020 do not expressly mention digital financial service providers such as MNOs, it defines a money transmission provider as any person who owns a payment system that facilitates transmission of funds from one person to the other in Zimbabwe.⁸¹ In this regard, we argue that MNOs should be considered as money transmission providers in Zimbabwe. Furthermore, the Banking Regulations 2020 requires digital financial services providers to open trust bank accounts that are used for the safekeeping of consumers' funds in Zimbabwe.⁸² The trust accounts give regulators such as the RBZ the leverage to monitor activities of digital financial service providers to maintain financial markets integrity in Zimbabwe.⁸³ The Banking Regulations 2020 requires the RBZ to levy reasonable transaction charges for mobile money services in Zimbabwe.⁸⁴ It appears that this provision seeks to curtail profiteering and overpricing of digital financial services in Zimbabwe. The costs of digital financial services should be kept low to enable the vulnerable, poor, and low-income earners to access such services cheaply and conveniently.

5.2 The regulation of digital financial services in South Africa

Like the position in Zimbabwe, there is no specific statute that expressly regulates digital financial services in South Africa.⁸⁵ However, this status quo has not curtailed or prohibited the operation and use of digital financial services and other fintech products in South Africa. Accordingly, the current financial statutory framework applicable to the regulation of digital financial services such as the South African Reserve Bank Act 89 of 1990 (SARB Act),⁸⁶ the POCA,⁸⁷ the National Payment System Act,⁸⁸ the FICA,⁸⁹ and the FSR Act,⁹⁰ is scrutinised below.

⁸⁰ Section 2 of the Banking Regulations 2020.

⁸¹ See section 2 of the Banking Regulations 2020.

⁸² Section 4(3) and (4) of the Banking Regulations 2020.

⁸³ N.S. Ndung'u, *A Digital Financial Services Revolution in Kenya: The M-Pesa Case Study* (African Economic Research Consortium, Nairobi, Kenya, 2021), p. 11; M.W. Buku and M.W. Meredith, 'Safaricom and M-Pesa in Kenya: Financial Inclusion and Financial Integrity', *Washington Journal of Law, Technology & Arts* (2013), p. 379.

⁸⁴ Section 5(1) of the Banking Regulations 2020.

⁸⁵ H. Chitimira and P.T. Magau, *Potchefstroom Electronic Law Journal* (2021), p. 4; H. Chitimira and M. Ncube, *Acta Universitatis Danubius Juridica* (2020), p. 25; M.D. Tuba, 'The Technology-Neutral Approach and Electronic Money Regulation in the EU: Identifying the Promises and Challenges for Future regulation in South Africa', *Comparative and International Law Journal of Southern Africa* (2014), p. 387.

⁸⁶ See sections 2-38 of the SARB Act.

⁸⁷ Section 48 of the POCA.

⁸⁸ Section 2 of the National Payment Systems Act.

⁸⁹ Sections 20-21H of the FICA.

⁹⁰ Sections 57(b) and 58 of the FSR Act.

5.2.1 The regulation of digital financial services under the SARB Act in South Africa

The SARB Act provides that the South African Reserve Bank (SARB) has two primary functions. Firstly, it is obliged to protect the value of the South African currency in the interest of a balanced and sustainable economic development.⁹¹ Secondly, it is further required to protect and maintain financial stability in South Africa.⁹² Additional functions include, *inter alia*, the issuing of banknotes and coins, and the supervision of monetary circulation in South Africa.⁹³ Although the SARB Act does not expressly mention digital financial services, the SARB has wide powers to develop rules and procedures that guide the establishment, conduct, monitoring, regulation, and supervision of the payment, clearing and/or settlement systems in South Africa.⁹⁴ Moreover, digital financial services are a type of payment system whose operations fall within the regulatory ambit of the SARB. Nonetheless, the SARB Act should be amended to expressly provide for the regulation of digital financial services and the role of the SARB in respect thereof.

5.2.2 The regulation of digital financial services under the National Payment Systems Act in South Africa

The National Payment System Act provides that the SARB should establish, operate, oversee, and regulate the South African payment, clearing and settlement systems.⁹⁵ However, the Act does not expressly provide for digital financial services as participants in the South African national payment systems.⁹⁶ Digital financial services are also not listed in the payment, clearing or settlement systems in South Africa.⁹⁷ Despite these flaws, the SARB has the power to recognise a payment system operating in South Africa.⁹⁸ It follows that the SARB has the legal authority to bar unrecognised participants from the national payment systems in South Africa.⁹⁹ Moreover, the National Payment Systems Act provides that the SARB can access any information that relates to the payment system in South Africa.¹⁰⁰ In this regard, all participants in the payment system are obliged to furnish information when requested to do so by the SARB. However, no provision in the National Payment Systems Act directly and expressly deal with digital financial services.

⁹¹ Section 3(1) of the SARB Act.

⁹² Section 3(2) of the SARB Act.

⁹³ Sections 10, 11 and 14 of the SARB Act; H. Chitimira and M. Ncube, *Acta Universitatis Danubius Juridica* (2020), p. 29.

⁹⁴ Section 10(1)(c)(i) of the SARB Act; V. Lawack, 'Mobile Money, Financial Inclusion and Financial Integrity: The South African Case', *Washington Journal of Law, Technology & Arts* (2013), p. 325.

⁹⁵ Section 2 of the National Payment Systems Act; V. Lawack, *Washington Journal of Law, Technology & Arts* (2013), p. 325.

⁹⁶ Section 1 of the National Payment Systems Act.

⁹⁷ Section 1 of the National Payment Systems Act.

⁹⁸ Section 3(1) & (2) read with section 10(1)(c) of the National Payment Systems Act.

⁹⁹ Section 3(4) & (5) of the National Payment Systems Act.

¹⁰⁰ Section 10 of the National Payment Systems Act.

5.2.3 The regulation of digital financial services under the POCA in South Africa

The POCA seeks to, *inter alia*, combat organised crime, money laundering, prohibit racketeering and criminalise related activities.¹⁰¹ The POCA provides criminal sanction to persons who engage in money laundering activities such as conversion or transfer, concealment or disguise, possession and acquisition of property which is, or which forms part of the proceeds of crime.¹⁰² It is also a criminal offence for any person to assist another person to benefit from the proceeds of unlawful activities or acquire, possess, or use the proceeds of unlawful activities.¹⁰³ Money laundering is a very serious crime in South Africa as convicted persons could either pay a fine of up to R100 million or get imprisoned for up to 30 years.¹⁰⁴ The POCA does not expressly mention digital financial services. Nonetheless, this status quo does not preclude fintech innovations and digital financial services providers from conducting their businesses in accordance with existing legislation in South Africa.

5.2.4 The regulation of digital financial services under the FICA in South Africa

The FICA requires financial institutions to establish and verify the identity of their clients for KYC and CDD purposes in South Africa.¹⁰⁵ In this regard, financial institutions should keep records of all transactions and report suspicious transactions of their clients.¹⁰⁶ De Koker argues that identifying financial consumers using identity documents (IDs) or passports may not be enough to have comprehensive profiles that may assist in detecting suspicious financial activities in the financial markets and financial institutes.¹⁰⁷ The source of financial consumers' funds should be timeously ascertained to ensure that the money is not or part of criminal proceeds.¹⁰⁸ Moreover, financial institutions in South Africa can only render

¹⁰¹ See the long title of the POCA; V. Lawack, *Washington Journal of Law, Technology & Arts* (2013), p. 330.

¹⁰² Section 4 of the POCA.

¹⁰³ Sections 5 and 6 of the POCA.

¹⁰⁴ Section 8(1) of the POCA.

¹⁰⁵ Sections 21, 22 and 22A of the FICA; L. De Koker, 'Money Laundering Control and Suppression of Financing of Terrorism: Some Thoughts on the Impact of Customer Due Diligence Measures on Financial Exclusion', *Journal of Financial Crime* (2006), pp. 41-42.

¹⁰⁶ Section 29 of FICA; M. Kersop and S. Du Toit, 'Anti-Money Laundering Regulations and the Effective use of Mobile Money in South Africa Part 1', *Potchefstroom Electronic Law Journal* (2015), p. 1626; L. De Koker, *Journal of Financial Crime* (2006), p. 43.

¹⁰⁷ L. De Koker, *Journal of Financial Crime* (2006), p. 42; L. De Koker, 'Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001', *Journal of South African Law* (2004), pp. 723-724; V. Lawack, *Washington Journal of Law, Technology & Arts* (2013), p. 335.

¹⁰⁸ See L. De Koker, *Journal of Financial Crime* (2006), p. 42; L. De Koker, *Journal of South African Law* (2004), pp. 723-724.

services to their clients after satisfying all customer identity verification (CIV) requirements.¹⁰⁹ Nevertheless, the FICA does not make direct reference to digital financial services. Furthermore, the FICA's onerous CDD and KYC standards are not consistently enforced by the Financial Intelligence Centre (FIC) and other financial institutions in South Africa.¹¹⁰ Consequently, many of the individuals who cannot meet the KYC and CDD requirements end up resorting to unsafe and unregulated informal financial services in South Africa.

5.2.5 The regulation of digital financial services under the FSR Act in South Africa

The FSR Act established the Prudential Authority (PA)¹¹¹ and the Financial Sector Conduct Authority.¹¹² The PA and the FSCA's regulatory duties include supervising financial institutions, promoting financial stability, promoting financial education, and protecting financial consumers in South Africa. The PA and the FSCA are obliged to regulate financial institutions in a way that enhances financial inclusion in South Africa.¹¹³ The FSCA has a duty to promote the efficiency and integrity of the South African financial markets.¹¹⁴ It is also expected to promote fair treatment of financial customers by financial institutions, provide financial education programs and promote financial literacy to empower financial consumers to make sound financial decisions in South Africa.¹¹⁵ In this regard, the FSCA supervises the conduct of financial institutions in collaboration with the SARB, the Financial Stability Oversight Committee, the PA, the National Credit Regulator, and the FIC.¹¹⁶ However, the FSR Act does not expressly provide for the regulation and use of digital financial services in South Africa. Thus, the FSCA and the PA do not have clearly defined responsibilities regarding to the regulation of digital financial services and fintech products in South Africa.¹¹⁷ Therefore, policymakers should carefully amend the FSR Act so that it provides for the regulation, adoption, and use of digital financial services and fintech products in South Africa.¹¹⁸ The FSCA and the PA should have specific duties regarding the regulation and use digital financial services in South Africa.

¹⁰⁹ Sections 20A-45 of the FICA; H. Chitimira and S. Munedzi, *Journal of Comparative Law in Africa* (2021), p. 52.

¹¹⁰ L. De Koker, 'The FATF's Customer Identification Framework: Fit for Purpose?', *Journal of Money laundering Control* (2014), p. 285; H. Chitimira and P.T. Magau, *Potchefstroom Electronic Law Journal* (2021), pp. 15-16.

¹¹¹ Sections 32-55 of the FSR Act.

¹¹² See sections 56-72 of the FSR Act.

¹¹³ Section 34(1)(e) of the FSR Act.

¹¹⁴ Section 57 of the FSR Act.

¹¹⁵ Section 57 of the FSR Act.

¹¹⁶ Section 58 of the FSR Act.

¹¹⁷ Sections 56-58 of the FSR Act.

¹¹⁸ Section 33 of the FSR Act.

6. The adoption of central bank digital currencies in Zimbabwe and South Africa

As outlined above, digital currencies are part of innovative financial developments in the payment systems of many countries that are employed to promote the use of electronic or virtual versions of official and/or traditional currencies.¹¹⁹ Several countries globally are exploring or in the formative stages of experimenting with central bank digital currencies.¹²⁰ Unlike the often-volatile crypto currencies and bitcoin, the central bank digital currencies discussed in this article are issued and managed by the central banks.¹²¹ Therefore, regulating central bank digital currencies should be significantly easier compared to crypto currencies and bitcoin. Central bank digital currencies signal a departure from heavy reliance on bank notes and coins towards electronic money, possibly leading to a cashless society. A cashless society refers to a situation where individuals within a country use more of electronic money than bank notes and coins.¹²² Digital financial services such as mobile money are contributing significantly to the utilisation of cashless transactions in many countries including Zimbabwe. Owing to a moribund currency, many people use electronic payment and transfer services in Zimbabwe instead of carrying huge swathes of dollars. Thus, people have generally shifted to the digital form of the currency and the missing link is perhaps that financial authorities are taking long to formalise the use of a digital dollar in Zimbabwe.

Since the outbreak of the covid-19 pandemic, there was a general call by health experts across the world to encourage cashless payments as they were considered hygienic, safe, and convenient when compared to cash.¹²³ The use of cashless transactions was seen as a measure to combat the possible transmission of the covid-19 virus through the exchange of cash.¹²⁴ In addition to convenience, the

¹¹⁹ M. Klein, J. Gross & P. Sandner, 'The Digital Euro and the Role of DLT for Central Bank Digital Currencies', *Frankfurt School of Finance & Management GmbH, FSBC Working Paper* (2020), pp. 2-6; J.E. Glass, 'What is Digital Currency?', *The Journal of the Franklin Pierce Center for Intellectual Property* (2017), pp. 481-482.

¹²⁰ M. Klein, J. Gross & P. Sandner, *Frankfurt School of Finance & Management GmbH, FSBC Working Paper* (2020), pp. 2-3; H. Fuje, S. Quayyum and F Quttarra, *More African Central Banks are exploring Digital Currencies* <https://blogs.imf.org/2022/06/23/more-african-central-banks-are-exploring-digital-currencies/>, accessed 9 August 2022.

¹²¹ M. Klein, J. Gross & P. Sandner, *Frankfurt School of Finance & Management GmbH, FSBC Working Paper*, (2020), pp. 7-8; H. Fuje, S. Quayyum and F Quttarra, *More African Central Banks are exploring Digital Currencies* (2022), p. unknown.

¹²² N. Arvidsson, *Building a Cashless Society: The Swedish Route to the Future of Cash Payments* (Springer Nature, Switzerland 2019), pp. 64-65; L. Lu, 'Decoding Alipay: Mobile Payments, a Cashless Society and Regulatory Challenges', *Butterworths Journal of International Banking and Financial Law* (2018), p. 41.

¹²³ N. Arvidsson, *Building a Cashless Society: The Swedish Route to the Future of Cash Payments*, p. 64-65; L. Lu, *Butterworths Journal of International Banking and Financial Law* (2018), p. 41.

¹²⁴ H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), p. 21; also see T. Kasradze, 'Challenges Facing Financial Inclusion Due to the Covid-19 Pandemic', *European Journal of Marketing and Economics* (2020), p. 70; R.J. Mann, 'Driver for Contactless Payments' (2020), p. 177.

use of digital currencies could promote financial inclusion for the vulnerable, poor, and low-income earners who do not have easy access to banks but have mobile money accounts. Digital currencies could also reduce incidents of cash heists in countries such as Zimbabwe and South Africa.

Although Zimbabwe and South Africa have not officially adopted digital currencies, their central banks are at different levels of exploring the feasibility of adopting digital currencies. For example, South Africa is steaming ahead with the idea of a digital currency through its initiative known as Project Khokha, while Zimbabwe is still at a research stage.¹²⁵ In this regard, the SARB is in the process of testing the feasibility of a digital currency that is used by financial institutions to manage interbank transfers.¹²⁶ In addition, the SARB is part of a cross-border digital currency project with central banks in Australia, Malaysia, and Singapore.¹²⁷ On the other hand, Zimbabwe has not taken a clear stance except that the RBZ is still researching on whether to adopt a digital currency.¹²⁸ Thus, the adoption of digital currencies can be described as work-in-progress in South Africa while Zimbabwe is still considering its policy position on the matter.

Nonetheless, no clear statute has been developed to regulate digital currencies in both Zimbabwe and South Africa. Accordingly, policymakers in Zimbabwe and South Africa should work hand in glove with monetary authorities to enact an adequate statute to adequately regulate digital currencies. Delays in adopting digital currencies may hinder business and trade linkages between Zimbabwe and South Africa. This could also delay the full realisation of the African Union (AU)'s Agenda 2063 aspirations of a prosperous continent that shares economic growth, decent jobs, and economic opportunities.¹²⁹

7. Concluding remarks

As discussed above, it could be concluded that digital financial services are contributing to financial inclusion and the revamping of financial markets in Zimbabwe and South Africa. For instance, the innovative fintech products and services are promoting financial inclusion for the vulnerable, poor, and unbanked persons in Zimbabwe and South Africa. The positive effects of digital financial

¹²⁵ H. Fuje, S. Quayyum and F Quttarra, *More African Central Banks are Exploring Digital Currencies* (2022), p. unknown.

¹²⁶ H. Fuje, S. Quayyum and F Quttarra, *More African Central Banks are Exploring Digital Currencies*; M. Klein, J. Gross & P. Sandner, *Frankfurt School of Finance & Management GmbH, FSBC Working Paper* (2020), pp. 11-12.

¹²⁷ H. Fuje, S. Quayyum and F Quttarra, *More African Central Banks are Exploring Digital Currencies*; M. Klein, J. Gross & P. Sandner, *Frankfurt School of Finance & Management GmbH, FSBC Working Paper* (2020), pp. 11-13.

¹²⁸ H. Fuje, S. Quayyum and F Quttarra, *More African Central Banks are exploring Digital Currencies* (2022), p. unknown.

¹²⁹ African Union Commission, *Agenda 2063: The Africa We Want* (Addis Ababa, Ethiopia, 2015), pp. 2-10.

services have been more apparent since the outbreak of the covid-19 pandemic.¹³⁰ In this regard, mobile money provided safe, convenient, and fast cashless transactions at a time when there were fears that cash could transmit covid-19.¹³¹

However, the rapid increase in the adoption and usage of digital financial services has not been met by a corresponding regulatory response from policy makers in Zimbabwe and South Africa. Consequently, the relevant policy makers in South Africa and Zimbabwe should consider changing their regulatory approaches to promote the adoption and use of digital financial services and digital currencies. Moreover, the relevant authorities and policy makers should enact a specific statute that expressly provide for the regulation and use of digital financial services, especially central bank digital currencies in Zimbabwe and South Africa. Alternatively, the relevant current financial statutes in South Africa and Zimbabwe should be carefully amended to include provisions that adequately regulate digital financial services. This could enhance the adoption and use of digital financial services and promote financial inclusion for the poor, vulnerable and low-income earners in Zimbabwe and South Africa.

With regards to the adoption of central bank digital currencies, it is commendable that South Africa is piloting a project to test the feasibility of such currencies. In contrast, Zimbabwe is apparently failing to leverage on the extensive use of mobile money to introduce a digital currency. Although the RBZ is in the process of researching on the possible introduction of a digital currency, the fact that the move is still at conception stage signifies the policy makers' ingrained distrust of fintech. While there are processes to explore the feasibility of central bank digital currencies, due consideration should also be given to the enactment of robust legislation that adequately regulate central bank digital currencies and other digital financial services in both Zimbabwe and South Africa. Thus, we recommend that Zimbabwe and South Africa should consider enacting robust laws to enhance the use of digital financial services such as central bank digital currencies to promote financial inclusion of the poor and low-income earners.

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¹³⁰ H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), p. 21-22; also see M. Buheji, K da Costa Cunha, G. Beka, B. Mavric, Y.L De Souza, S.S. da Costa Silva and T.C. Yein, 'The Extent of Covid-19 Pandemic Socio-Economic Impact on Global Poverty: A global Integrative Multidisciplinary Review', *American Journal of Economics* (2020), pp. 215-216.

¹³¹ H. Chitimira and E. Torerai, *Potchefstroom Electronic Law Journal* (2021), p. 21-22; also see R.J. Mann 'Driver for Contactless Payments' (2020), p. 177; M. Buheji, K. et al, *American Journal of Economics* (2020), pp. 215-216.

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