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THE REGULATORY EVOLUTION OF MOBILE MONEY AND VALUE ADDED SERVICES IN UGANDA



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It may sound cliché ...

for one to state that technology is ever evolving, but it is indeed evolving at perhaps, a much faster pace than it did in the last century. Such changes are creating new services, new industries, new jobs and at the same time, disrupting existing business models and industries and creating an existential threat for many. Most importantly, for purposes of this article, such changes are disrupting the traditional regulatory models and regimes. Such disruptions have left many regulators with the not so easy burden of balancing the need to protect the public interest and at the same time provide an enabling environment for innovation and business progress.

In the case of Uganda and the Mobile Money service, neither the Financial Institutions Act nor the Uganda Communications Act was capable of regulating the service in its form and substance. By its very nature, mobile money was being spearheaded by licensed telecommunications companies with commercial banks as intermediaries. As with many disruptive forms of technological change, innovations often cross traditional industry boundaries. In this case, Bank of Uganda (BOU) and Uganda Communications Commission (UCC), being the key regulators were faced with critical concerns including the need to protect customers' funds in the mobile money platform and ensuring that all transactions carried out on the mobile money platform are traceable and accounts held at the banks are fully auditable.

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Image Source: <https://flashugnews.com/>

As an out-of-the-box strategy on how to deal with the innovation and service, both regulators came up with a strategy that would ultimately ensure that UCC retains oversight over the infrastructure over which mobile money was being carried on while Bank of Uganda retained the supervisory oversight over the money audit trail, especially between the Banks and the final customers. This is the essence of the Bank of Uganda Mobile Money Guidelines of 2013. Unfortunately, as the title indicates, they are only but guidelines and while they have so far helped to steer the service in the right direction, they fall short of the desirable regulatory certainty and enforceability.

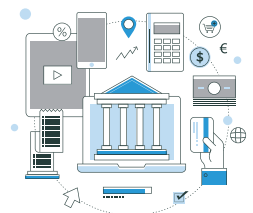
The new regulatory changes

It is to be noted that paragraph 7 (2) of the Bank of Uganda Mobile Money Guidelines recognises that UCC is responsible for licensing and supervision of mobile network operators (MNOs). This licensing and supervision would ensure that telecommunications networks over which mobile money platforms ride on are effective. In that regard, UCC could further take measures to strengthen a competitive market environment.

This coupled with UCC's statutory mandate have given rise to a new Mobile Money regulatory regime under the just signed and gazetted Uganda Communications (Licensing) Regulations, 2019. For context, Mobile Money has historically not been specifically licensed. On the contrary, it was deemed to be a Value Added Service, which could be offered by the licensed Mobile Network Operators. This is no longer the case

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In a much more elaborate and emphatic statement of its regulatory oversight, UCC has been given wide powers in regulation 84 of the Licensing Regulations. It is provided that; “The Commission may, on application by an operator, a provider or subject to Section 6 of the Act on its own motion classify a service as a value added service for purposes of these regulations”.

Regulation 84 (3) defines value added services to include:-

a) Digital financial services including electronic financial non banking services including-

- i) Mobile value added services payment for value, including Mobile money; and
- ii) Transmission for value and receipt for value initiated and terminated on a platform owned by an operator

b) Any aggregation of the value added services referred to in paragraph (a) where the service is sold to a member of the public;

c) Provision of communications channels to third party providers of electronic financial non-banking services including bill payments, purchase of goods and services;

d) Providing any of the services under paragraph (c) to consumers of communication services, including the transfer of value from one stored value account to another; and

e) Other services including the sale of content whether audio, visual, data and broadcast content.



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Image Source: <https://www.pulse.ng>

Take away points

Whereas the Uganda Communications (Licensing) Regulations, 2019 are far reaching and encompass a number of fundamental regulatory changes which affect the broad spectrum of industries, products and services within the communications space, it is not possible to have an exhaustive discussion on all the new provisions. A few things however, are worth noting and these include the following;

- a) Most if not all of the value added services as enumerated herein above, which have previously been offered by unlicensed companies will now be subject to licensing under the Uganda Communications Act and the Licensing Regulations.
- b) More specifically, Mobile money as a service has now been partially regulated in so far as the infrastructure platform on which it is carried out is concerned. As products and services evolve, they can shift from one regulatory category to another. Mobile money is currently straddled between the communications sector and the banking sector. While Bank of Uganda continues to regulate Mobile money through the guidelines, the National Payments Systems Bill, if passed into law, will further strengthen the regulatory space.
- c) As a departure from the current situation, the Commission will have the power to regulate pricing for value added services in order to protect consumers from excessive prices and to prevent unfair competitive services.

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d) As a measure to further protect consumers, there is now a mechanism for the management of unclaimed funds. Under regulation 90, operators shall declare to the Commission any funds that have not been claimed or in respect of which subscriber accounts have been inactive for a period of one year.

The Operator shall, annually, publish the names and telephone numbers of account holders of unclaimed funds. Where the funds (which are to be kept in a separate account with a licensed financial institution) and interest earned remain unclaimed for a period of one year, the funds shall revert to the Commission. This is indeed a good development especially in respect of the estates of deceased persons.

Over all, the regulations are a welcome development and demonstrate the will of UCC to perform its core role of protecting the public interest in relation to the value added services. Unfortunately, as with most of the laws and regulations, the regulations still fall short in so far as regulating technologies, services and products from providers who are not registered or based in Uganda but nonetheless offer similar products or services as the regulated entities in Uganda. That is still one elephant in the regulatory room.

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