

Enhancing Depositor Protection in the Mobile Money Banking Sector in Sub-Saharan African Developing Economies – a case for Ring-fencing?

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Abstract

This paper analyses the need for enhanced statutory depositor protection in the mobile money/mobile banking sectors, upon banking and corporate insolvency in Sub-Saharan African (SSA) developing economies. The universal banking model, and the concepts of deposit insurance schemes, or deposit guarantee (as is commonly known in the UK/EU) are analysed, their advantages in streamlining depositor protection, and the would be impact in Sub-Saharan African developing economies' mobile banking sectors are explored. The concepts of ring-fencing and structural separation as conceptual tools that could enhance depositor protection on banking and corporate insolvency in SSA developing economies are examined.

Introduction

Mobile money is a mobile-based financial service that provides access to low-cost financial services for consumers that are either unserved or excluded from the banking system due to insufficient banking infrastructure.¹ Mobile money services can be approached as a solution to at least two major problems within a banking and/or financial economy. First, it can be approached as a solution to the cost of banking services and second, as a solution to the proximity to banking infrastructure, especially in developing economies.² In most cases, adoption of mobile money services is highest in countries with poor access to the formal banking services sector.³

According to the World Bank, Sub-Saharan African developing economies⁴ have the largest number of unbanked adult consumers of mobile money services in the world, recorded at

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¹ D. S. Evans, and A. Pirchio “An Empirical Examination of Why Mobile Money Schemes Ignite in Some Developing Countries but Flounder in Most” (2015) 3 (4) *Review of Network Economics* 397–451.

² B. Maurer, “AFTERWORD: Mobile Money, Money Magic, Purse Limits and Pins: Tracing Monetary Pragmatics” (2011) 4 (3) *Journal of Cultural Economy*, 349–359.

³ M. D. Peruta, “Adoption of mobile money and financial inclusion: a macroeconomic approach through cluster analysis” (2018) 27 (2) *Economics of Innovation and New Technology*, 154-173.

⁴ Hereafter, (SSA Developing Economies).

around 400 million in year 2020.⁵ However, in most of these SSA developing economies, there are either, no formal statutory/legislative provisions and supplementary regulations governing and regulating mobile money services on insolvency, or where present, they are light-touch, rather than comprehensive, on the protection of depositors on the insolvency of the mobile money/banking network provider, partner company or affiliated bank/financial institution.⁶

Regulation and supervision of banking and financial sectors in a majority of SSA developing economies is mandated to national central banks. Since the turn of the millennium, central banks, with the help of their national legislative organs have been enacting legislation and adopting policies that are premised on a paradigm shift from traditional banking to digital banking and electronic financial access via mobile money banking.⁷

This paradigm shift may be driven by risks and technicalities associated with traditional banking highlighted over the years. For instance, traditional banking involves varied stages of verification, high volumes of paperwork, and still susceptible to risks such as fraud, forgeries and money laundering.⁸ However, digital banking, especially electronic (e-payments) via mobile money lessens these traditional banking risks as payments/transactions are easier to verify, are recorded in real time, and traceable via data interchange.⁹

In Kenya, the central bank reported that consumer access to formal financial services driven by mobile money banking grew from 26.7 percent in 2006 to 82.9 percent in 2019, and up to 83.7 percent in 2021 due to COVID19-induced cashless measures.¹⁰ Rwanda has also put measures in place to revert to a cashless economy by end of year 2024, courtesy of the National Payments Systems Strategy. This is part of a five-pillar commitment of the National Bank of Rwanda and the Ministry of Finance and Economic Planning to encourage the use of electronic

⁵ World Bank, *Africa's Pulse: Assessing the economic impact of COVID-19 and policy responses in sub-Saharan Africa*. (World Bank, Washington DC, 2020) <<https://olc.worldbank.org/content/africas-pulse-assessing-economic-impact-covid-19-and-policy-responses-sub-saharan-africa>> (accessed 15 August 2022).

⁶ M. Klein, and C. Mayer, "Mobile banking and financial inclusion: The regulatory lessons", *World Bank Policy Research Working Paper* No. 5664. (The World Bank, Washington DC, 2011) <<https://www.worldbank.org/en/topic/financialinclusion/overview>> (accessed 28 July 2022).

⁷ J. G. Blechman, "Mobile credit in Kenya and Tanzania: Emerging regulatory challenges in consumer protection, credit reporting and use of customer transactional data" (2016) 17 *African Journal of Information and Communication*, 61, 88; G. Robb and T. Vilakazi, "Mobile Payments Markets in Kenya, Tanzania and Zimbabwe: A Comparative Study of Competitive Dynamics and Outcomes" (2016) 17 *African Journal of Information and Communication*, 9 – 37.

⁸ Kline and Mayer (n 6).

⁹ Mercy Muendo, "Uganda takes another step on e-payments path: five things you should know", *The Conversation*, (London, United Kingdom, 22 February, 2022) <<https://theconversation.com/uganda-takes-another-step-on-e-payments-path-five-things-you-should-know-175605>> (accessed 11 July 2022).

¹⁰ Central Bank of Kenya, *2021 FinAccess Household Survey Report*, (Nairobi, Kenya, December 2021), <[2064908903_2021_FinAccess_Survey_Report_Launched_15_Dec_2021.pdf](https://www.centralbankofkenya.or.ke/2064908903_2021_FinAccess_Survey_Report_Launched_15_Dec_2021.pdf)> (accessed 05 August 2022).

payments by all residents of Rwanda by year 2024, underpinning a stronghold on mobile money and digital banking.¹¹

In 2015, Tanzania enacted the National Payment Systems Act, 2015,¹² the Payment System Licensing and Approval Regulations, 2015 and the Electronic Money Regulations, 2015, to support the transition to digital banking.¹³ The National Payments Systems Act 2015 and the complimentary Regulations mandate for the legal separation of mobile money services from telecommunications services, and the prohibition of exclusivity of the providers' agent networks as measures to improve the regulation and governance of the mobile banking sector and enhance consumer protection.¹⁴ Uganda also enacted the National Payment systems Act 2020,¹⁵ the National Payments Systems (Agents) Regulations 2021¹⁶ and the National Payments Systems (Sandbox) Regulations 2021¹⁷ as measures to enhance electronic/mobile banking services as an avenue to a cashless economy. (These regulations and the NPSA 2021 will be broadly explored below under Uganda as a case study).

This paper analyses the need for enhanced statutory depositor protection in the mobile money/digital banking sectors, upon banking and corporate insolvency in Sub-Saharan African developing economies. The universal banking model, and the concepts of deposit insurance schemes, or deposit guarantee (as is commonly known in the UK/EU) are analysed, their advantages in streamlining the depositor protection, and the would be impact in SSA developing economies' digital banking/mobile money sectors are explored. The concepts of ring-fencing and structural separation as conceptual tools that could enhance depositor protection on banking and corporate insolvency the SSA developing economies are examined.

¹¹ National Bank of Rwanda, *Rwanda Payment System Strategy: Towards a cashless Rwanda 2018-2024*, (Kigali, Rwanda, 31 December 2017) <<https://www.mfw4a.org/publication/rwanda-payment-system-strategy-towards-cashless-rwanda-2018-2024>> (accessed 10 August 2022).

¹² National Payment Systems Act, 2015 (Act 4 of 2015).

¹³ J. G. Blechman, "Mobile credit in Kenya and Tanzania: Emerging regulatory challenges in consumer protection, credit reporting and use of customer transactional data" (2016) 17 *African Journal of Information and Communication*, 61, 88.

¹⁴ G. Robb and T. Vilakazi, "Mobile Payments Markets in Kenya, Tanzania and Zimbabwe: A Comparative Study of Competitive Dynamics and Outcomes" (2016) 17 *African Journal of Information and Communication*, 9 – 37.

¹⁵ Act No.15 of 2020. (Hereafter, NPSA 2020).

¹⁶ SI No.19 of 2021. Mandated under s. 17 (4) and 72, NPSA, (2020). (Hereafter NPSA Regulations, (2021)).

¹⁷ SI No.20 of 2021. A "sandbox" means a temporary experiment of innovative financial products, services, business models or delivery mechanisms in the payment systems ecosystem.

The concept of deposit protection /deposit guarantee– a general overview

The concept of deposit insurance/deposit guarantee can be traced to the United States of America (USA) from as early as 1829.¹⁸ However, the key events in the rapid development of deposit insurance/guarantee in the USA were the impact of the 1929 Wall Street crash and the aftermath of the cessation of banking operations across the USA on 3 March 1933 that led to failures of over 9,000 banks. This left the USA's financial system on the verge of collapse.¹⁹

The knock-on effect of the bank failures and the eminent collapse of the financial system prompted Congressional legislative intervention that led to the enactment of the Banking Act of 1933.²⁰ The 1933 Act provided for the establishment of the Federal Deposit Insurance Corporation (FDIC)²¹ and the federal system for the protection of deposits. These initiatives ensured that all deposit-taking banks were subject to assessment and supervision by the FDIC. Banks were also required to pay half their assessment to the FDIC with the rest due upon request. As a result, customer deposits were protected up to USD 2,500.²²

Since the 1990s, the amount of deposit protected has evolved/increased as mandated in federal legislation and is subject to statutory limits. For example, as of 31 August 2022, the FDIC guarantees deposits of up to \$250,000 per person, per bank, courtesy of the Dodd–Frank Wall Street Reform and Consumer Protection Act 2010.²³ The introduction of the deposit insurance system was therefore, heralded for restoring confidence not only in the banks and financial system at large, but also, in customers who felt confident that their deposits in an insured bank were safe, even when that bank experienced financial difficulties.

¹⁸ F. K. Pesek, *The First Fifty Years – A History of the FDIC 1933-1983* (Federal Deposit Insurance Corporation, Washington DC, 1984), Ch.2.

¹⁹ *Ibid*, Ch.3.

²⁰ Banking Act of 1933, (Pub. L. 73-66, 48 Stat. 162) (Hereafter, the 1933 Act).

²¹ The FDIC is an independent agency created by the US Congress whose main role is to maintain stability and public confidence in the US financial system, insuring customer deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable and managing the resolution of failed banks. See generally; <<https://www.fdic.gov/>>.

²² See further: Sandra Booyen, “Deposit Insurance in Singapore: why have it, who gets it, how does it work?” (2013) *Singapore Journal of Legal Studies* 76, 90; Rosa Lastra, *International Financial and Monetary Law* (2nd edn, Oxford University Press, Oxford 2015) particularly, para 10.66 (on the role of deposit insurance in bank defaults); A. Campbell and P. Moffatt, “Protecting Bank Depositors after Cyprus” (2013) 1 NIBLeJ 4; Christian Hofmann, “The Role of Deposit Insurance in Bank Resolution” (2020) 6, *Journal of Financial Regulation*, 148–158, on the historical development and adoption of the deposit protection both in the US and other jurisdictions.

²³ Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010, (Pub. L. 111–203, 124 Stat. 1376–2223), s.335. This statute is famously known as the (Dodd-Frank Act).

By the late 19th century, this ideology/concept, of depositor protection, was adopted by several sovereign states worldwide including in Europe,²⁴ and in some African countries. On the African continent, by the turn of the millennium, several countries had adopted deposit protection measures, including Nigeria in 1988, Kenya in 1988, Tanzania and Uganda in 1994, and Zimbabwe in 2003 among other countries.²⁵

The role of deposit protection/guarantee

The role of deposit protection/guarantee schemes in enhancing public confidence in the financial system and the overall stability of the financial system was highlighted by the Basel Committee on Banking Supervision (BCBS) Core Principles for Effective Banking Supervision published in 2006.²⁶ These Core principles were further complemented by the 2008 BCBS and the International Association of Deposit Insurers (IADI) Core Principles for Effective Deposit Insurance Systems,²⁷ which were drafted as a collaboration between BCBS and IADI.²⁸ These Core Principles provide approaches for governments and policymakers to adopt in devising/drafting laws and policies on depositor protection as they are reflective of, and designed to be adaptable to a broader range of country circumstances, settings and structures.²⁹

The key advantage of deposit guarantee/deposit insurance schemes is that if implemented efficiently within the banking system, they boost confidence in the financial system as a whole. Depositors are assured that their deposits are protected to a certain limit even where the receiving bank/financial institution experiences financial difficulties, or eventual liquidation proceedings. This is because, it is common practice during insolvency/liquidation proceedings that once the protected deposit limit under the deposit guarantee schemes is reached, surplus

²⁴ For example, the UK adopted and implemented its first deposit protection scheme in 1979 through the Banking Act 1979 in response to the banking crisis of 1973–1975, to extend the Bank of England's regulatory powers over banks and to provide protection for bank depositors. See particularly, Banking Act 1979, Part II, sections 21 – 33, on the deposit protection scheme; Sandra Booysen, “Deposit Insurance in Singapore: why have it, who gets it, how does it work?” (2013) *Singapore Journal of Legal Studies* 76, 90.

²⁵ Demirgüç-Kunt, et al, “Deposit Insurance around the World: A Comprehensive Database” *World Bank Policy Research Working Paper 3628*, (The World Bank, Washington, DC 2005). <<https://openknowledge.worldbank.org/handle/10986/8226?locale-attribute=fr>> (accessed 05 August 2022).

²⁶ BCBS, *Core Principles for Effective Banking Supervision* (Bank for International Settlements, Basel, 2006). (Hereafter, “*The Basil Core Principles*”).

²⁷ BCBS and IADI, *The Core Principles for Effective Deposit Insurance Systems* (Bank for International Settlements, Basel, 2009). (Hereafter, “*Core Principles*”).

²⁸ IADI was established in 2002 with a mission to contribute to the enhancement of deposit insurance effectiveness by promoting guidance and international cooperation. See generally, <<https://www.iadi.org/en/>> (accessed 10 August 2022).

²⁹ Core Principles, Introduction, at p. 1.

deposits in customer accounts are “pooled” into available funds for the liquidator/receiver to meet other creditor interests/debts.³⁰

This is especially, where other provisions, such as government/public intervention initiatives like bail-outs are insufficient to meet all creditor interests/debts. Therefore, the availability of deposit guarantee/insurance schemes enhances the confidence and stability in the financial systems as depositors would be guaranteed at least, a minimal return as the protected/insured deposit is secure, and not available to the liquidator, where the bank goes into liquidation proceedings due to financial failures.³¹

However, questions remain unanswered as to whether deposit guarantee schemes would provide a panacea to enhancing depositor protection in developing economies, especially within Sub-Saharan Africa. The key concern and central to this article, is that, although some SSA developing economies have adopted deposit protection measures, this is mainly within the traditional banking system. Yet, the emergence of digital banking in these countries, especially, mobile money banking and the transition to cashless economies through digital banking have left mobile money banking customers/depositors without, albeit light-touch formal legislative protection on the insolvency of the mobile banking network provider, partner company, or bank/financial institution.³²

Mobile money banking services in SSA developing economies are mainly provided by a registered mobile network provider. For a mobile network provider to be fully registered and provide mobile money/mobile banking services, it has to partner with a commercial bank that creates an escrow account on behalf of the mobile banking provider that mirrors the customer mobile money deposits. In Uganda, for example, prior to the passage of the National Payments Systems Act 2020, big mobile network operators had set up partnerships with large commercial banks that provided escrow accounts. Airtel Uganda had partnered with Citibank and Standard

³⁰ P. Moffatt and A. Campbell, “UK depositor protection in the aftermath of the banking crisis” (2010) *Journal of International Banking Law and Regulation*, 25 (10), pp. 486-49; Booysen, (n 22); Hofmann (n 22).

³¹ A. Campbell and P. Moffatt, “Large scale bank insolvencies and the challenges ahead” in: M. Haentjens and B. Wessels, eds., *Research handbook on crisis management in the banking sector*, (Cheltenham: Edward Elgar, 2015), pp. 55-80.

³² E. Sitbon, “Addressing competition bottlenecks in digital financial ecosystems” (2015) 9(3) *Journal of Payments Strategy & Systems*, 351-365; Macmillan, et al, ‘The “evolution” of regulation in Uganda’s mobile money sector’ (2016) 17 *African Journal of Information and Communication*, 89-110.

Chartered Bank; MTN Uganda with Stanbic Bank; Orange Uganda with Standard Chartered Bank; and Uganda Telecom with DFCUN Bank and PostBank.³³

In Tanzania, a licenced payment systems provider or electronic money issuer, such as a bank, financial institution or mobile network provider is required to open and operate a special account or a trust account to deal with customer deposits.³⁴ The same provider is also required to establish a separate legal entity in a form of a trust to manage the trust account, whose corporate structure and management has to be approved by the central bank.³⁵ Powers and functions of the Central Bank of Tanzania in relation to payment systems are set out under Part II of the National Payments Systems Act, 2015, s.4. These include *inter alia*, granting of licences to participants and providers of payment systems, regulate, supervise, investigate and oversee the operation of payments systems, participate in inert-bank clearing and settlements among other powers.³⁶

In the next section, Uganda as an SSA developing economy is analysed as a case study to further highlight the need for enhanced depositor protection in the mobile banking and financial sectors, and how measures, such as ring-fencing, may be used to enhance depositor protection in this jurisdiction and other SSA developing economies. This will then set context for recommendation of ring-fencing as a tool that can enhance formal depositor protection in the mobile banking sector on insolvency if adopted by SSA developing economies.

Mobile money banking in Uganda – a case study on depositor protection

Mobile Money services were introduced in Uganda in 2009 and the service has since grown rapidly. By year 2015, there were 21.1 million registered mobile money users in the country and by the end of year 2020, more than 80 percent of adult Ugandans had a mobile money account.³⁷ It is now the norm that having a mobile money account is one of the standard measures and/or indicators of financial inclusion in the country.³⁸

³³ D. Okwii, “Almost everyone agrees, Airtel Uganda is leading the mobile money innovation train” *Dignited*. (Online, 9 March 2015). <<https://www.dignited.com/12624/airtel-uganda-is-leading-the-mobile-money-uganda-innovation-train/>> (accessed 12 August 2022).

³⁴ s.33 (1) National Payments Systems Act 2015, Tanzania.

³⁵ *Ibid*.

³⁶ Generally, see, s.4(1) National Payments Systems Act 2015 of Tanzania.

³⁷ Hamdan et al, “Mobile Money, Financial Inclusion, and Unmet Opportunities. Evidence from Uganda” (2021) *Journal of Development Studies*, 1, 21.

³⁸ Demirgüç-Kunt et al, “The Global Findex Database 2017: Measuring financial inclusion and opportunities to expand access to and use of financial services” (2020) *World Bank Economic Review*, 34.

Uganda's financial sector has indeed been transformed and revolutionised by mobile money services as banking and financial services have been extended to individual customers and Micro, Small and Medium Sized Enterprises (SMEs) in the informal sector which was largely unbanked.³⁹ The steady increase in the adoption of mobile money services therefore, highlights the potential of mobile money as a tool to counter banking exclusion in this developing economy.⁴⁰

However, until 2020, there had been no formal legislation and supplementary regulations/rules governing and regulating mobile money services in Uganda, let alone, the treatment of depositor interests on the insolvency of mobile money banking service providers. In 2013, the central bank of Uganda had issued procedural Guidelines on the operation of mobile money in the country.⁴¹ Among the key aspects in the Guidelines, was the requirement on mobile money operators, mostly telecom companies to set up partnerships with licensed commercial banks and/or deposit taking financial institutions to facilitate financial transactions.

However, these Guidelines were less effective as they were only prescriptive of what was expected of mobile money operators/providers and corresponding telecom companies but did not have statutory/legislative force to impose either, statutory or regulatory sanctions for non-compliance.⁴² Another concern was the difference in the regulation and supervision of banks and deposit-taking institutions and mobile money providers. While the latter is under the supervision and regulation by the Uganda Communications Commission,⁴³ the former is under the supervision of the central bank of Uganda.⁴⁴ There was therefore a need to reconcile supervisory and regulatory agencies to safeguard consumers, service providers and at the same time, the financial sector as a whole.

³⁹ K. Donovan, "Mobile Money for Financial Inclusion" (2012) 61 *Information and Communications for Development*, 61–73.

⁴⁰ Okello et al, "Mobile Money and Financial Inclusion in Sub-Saharan Africa: the Moderating Role of Social Networks" (2018) 19 (3) *Journal of African Business*, 361-384.

⁴¹ Bank of Uganda, *Mobile Money Guidelines*, (2013), <https://www.bou.or.ug/bou/bouwebsite/bouwebsitecontent/acts/other_acts_regulations/Mobile-Money-Guidelines-2013.pdf> (accessed 12 August 2022).

⁴² Macmillan, et al, 'The "evolution" of regulation in Uganda's mobile money sector' (2016) 17 *The African Journal of Information and Communication*, 89-110.

⁴³ Uganda Communications Commission (UCC) is the Ugandan government agency established under the Uganda Communications Act 2013 to regulate the communications sector, which includes telecommunications, broadcasting, radio communication, postal communications, data communication and infrastructure. See generally; <<https://www.ucc.co.ug/>>

⁴⁴ The central bank of Uganda has the mandate to supervise and regulate all operations of commercial and financial institutions in the country. These institutions include but not limited to commercial banks, credit institutions, micro finance deposit taking institutions (MDIs) and forex bureaus. <<https://www.bou.or.ug/bou/bouwebsite/Supervision/>> (accessed 10 July 2022).

Therefore, in July 2020, the National Payment Systems Act 2020,⁴⁵ was enacted and took effect on 4th September 2020. In addition, the National Payments Systems (Agents) Regulations 2021⁴⁶ and the National Payments Systems (Sandbox) Regulations 2021 were enacted to supplement the 2020 Act.⁴⁷ Courtesy of the NPSA (2020), and the supplementary (2021) Regulations, the central bank is mandated with the sole responsibility of regulating and supervising mobile money services in Uganda’s financial sector to ensure safety and efficiency.⁴⁸

However, neither the NPSA (2020), nor the supplementary NPSA Regulations (2021) mention or prescribe provisions for the protection of customer deposits on their mobile money accounts on the insolvency or liquidation proceedings of the holding mobile money network or partner bank/financial institution. The objectives of the NPSA (2020) under s.3 are also silent on this issue.⁴⁹

Deposit protection in Uganda – The deposit protection fund

The subject of deposit protection is currently under the auspices of the Deposit Protection Fund of Uganda (DPF). The DPF was established and registered as a separate legal entity courtesy of the Financial Institutions (Amendment) Act, 2016.⁵⁰ The main objective of the DPF is to foster public confidence in the financial system through the protection of depositors in banks and financial institutions under the regulation of the central bank.⁵¹ The DPF is funded by premiums charged to every licensed bank and deposit-taking financial institutions in the country.

However, prior to its incorporation as a separate legal entity in 2017, deposit protection in Uganda was undertaken by the central bank between 1994 – 2017. A special department within the central bank had been set up to oversee to deposit protection/insurance following the collapse of Teefe Bank in 1993. With no formal deposit insurance scheme on the collapse of

⁴⁵ Act No.15 of 2020. (NPSA, (2020)).

⁴⁶ SI No.19 of 2021. Mandated under s. 17 (4) and 72, NPS Act, (2020). (NPSA Regulations, (2021)).

⁴⁷ SI No. 20 of 2021. A “sandbox” means a temporary experiment of innovative financial products, services, business models or delivery mechanisms in the payment systems ecosystem.

⁴⁸ NPSA, (2020), s.4(1)- (4).

⁴⁹ These are set out under, NPSA, (2020), S.3(a)- (g).

⁵⁰ Hereafter, FIA 2016. This is an Act that amended the Financial Institutions Act, 2004, to provide among other services; Islamic banking; agent banking; special access to the credit reference bureau by other accredited credit providers and service providers; to reform the deposit protection fund; and for related purposes. See, FIA 2016, (Preamble) and Part XII, ss.108 – 111 on the deposit protection fund.

⁵¹ Generally, see; <<https://dpf.or.ug/>> (accessed 18 July 2022).

Teefe Bank, the central bank had to meet depositor claims out of its own funds.⁵² Following the collapse and attempted resolution of subsequent local banks during the late 1990s and early 2000s, the need for an effective deposit insurance framework/model was urgently highlighted that led to the incorporation of the current DPF in 2017.

During the financial year 2020 – 2021, Uganda’s Deposit Protection Fund’s total assets were recorded at Ush.1 trillion (equiv. \$282.95 million) and total income received from banks and other deposit-taking institutions was recorded at Ush.177 billion (equiv. \$50 million). In addition, there was a massive increase in customer deposit accounts in the financial year 2020 -2021 as over 16 million more deposits were made by bank depositors.⁵³

Prior to the outbreak of the global COVID19 pandemic in 2019, the Ugandan government, through the Minister for Finance increased the insured/guaranteed deposit limit to 10 million shillings from 3 million shillings, which is the current limit as of 30 August 2022.⁵⁴ The Minister further reiterated that the decision for the increase in the protected deposit limit was premised on the changing financial environment, inflation, exchange rate and growth of deposits in the banks.⁵⁵ According to *then* governor of the central bank of Uganda, the higher threshold of 10 million shillings was likely to enhance public confidence and encourage greater customer deposits, and potential to expand the funds available for financial intermediation by the banking sector.⁵⁶

Depositor protection following NPSA (2020)

Mobile money users may deposit large amounts of money on their mobile money accounts and this money can stay on their accounts for months or even years. In essence, mobile money accounts have been swapped for traditional bank accounts in most areas of the country, especially, in the rural areas where bank branch presence is relatively low.⁵⁷ As a result, other

⁵² M. Brownbridge, “Financial Distress in local banks in Kenya, Nigeria, Uganda and Zambia: Causes and Implications for Regulatory Policy” (1998) 16 *Development Policy Review*, 173, 188.

⁵³ B. Busuulwa, “Deposit Protection Fund assets hit \$280m” *The East African* (Kampala, Uganda, 22 February 2022) <<https://www.theeastafrican.co.ke/tea/business/deposit-protection-fund-assets-hit-280m-3725646>> (accessed 20 August 2022).

⁵⁴ See; “Customers Bank deposits now protected up to UGX 10m” *The Independent* (Kampala, Uganda, 10 September 2019) <<https://www.independent.co.ug/customers-bank-deposits-now-protected-up-to-ugx-10m/%3E>> (accessed 20 August 2022).

⁵⁵ Ibid.

⁵⁶ Emmanuel Mutebile, “Why Deposit Insurance?” *International Association of Deposit Insurers – Africa Regional Committee Conference*, (September 16 – 19, 2019, Kampala, Uganda) <<https://www.bis.org/review/r191007m.pdf>> (accessed 10 August 2022).

⁵⁷ Macmillan, et al, “The ‘evolution’ of regulation in Uganda’s mobile money sector” (2016) 17 *African Journal of Information and Communication*, 89-110.

products, such as unsecured/non-collateralised fixed sum loans are offered to mobile money account holders, on terms and durations determined by the holding companies. This raises questions on how interest can be paid to customers on their deposit and how safe are their deposits upon the financial difficulties/insolvency of these holding companies, among other questions.

The central bank as the new regulator of mobile money services and the financial sector at large, is expected to ensure that depositor savings on mobile money accounts earn some interest for the depositor. Section 49(6) of the NPSA (2020) and Regulation 14 of the NPS Regulations, (2021) provide for interest to be paid to e-value mobile money account holders. However, a liberalised interest rate system in which lending rates are market-determined operates in Uganda. Therefore, different lending structures and risks and credit-worthiness assessment structures would mean that interest rates may not be the same across the financial sector which may be another forum for depositor exploitation.⁵⁸

Nevertheless, the biggest question and at the heart of this paper is: how safe is the customer deposits on mobile money accounts on the insolvency or eventual liquidation of either the mobile phone network provider, the subsidiaries of the mobile network providers, or the corresponding/partner bank/deposit taking institution as the NPSA (2020) and NPS Regulations 2021 are not clear on these lines?

To safeguard depositor interests, NPSA (2020) sets in place measures to ensure that depositors are protected in cases of financial crimes or insolvency of the service providers. For instance, a payment service provider, other than a financial institution or deposit-taking institution is required to establish a subsidiary legal entity, which in turn must be licenced by the central bank for the purposes of issuing electronic money services.⁵⁹ The established subsidiary must then open a trust account in a bank, financial institution or deposit taking institution to facilitate electronic money services.⁶⁰

This is to safeguard customers and their deposits on events, such as insolvency, as the balances on the trust account or special account cannot be attached, assigned or transferred for the purposes of satisfying any debts or claims.⁶¹ Under s.4 (1), NPSA (2020), the central bank shall

⁵⁸ Anon Reporter, “What does separation of mobile money from telecoms mean?” *The Independent*, (Kampala, Uganda, 24 May 2021) <<https://www.independent.co.ug/what-does-separation-of-mobile-money-from-telecoms-mean/>> (accessed 15 July 2022).

⁵⁹ NPSA (2020), s.48(1) – (2).

⁶⁰ NPSA (2020), s.49.

⁶¹ NPSA (2020), s.52.

regulate, supervise and oversee the operations of the payment systems in order to ensure their safety and efficiency. Therefore, a person or entity cannot operate a systems payment, mobile money services, et cetera, without a licence issued by the central bank.⁶²

Under s.26, NPSA (2020), every participant in the payment systems, such as a mobile money provider is mandated to open and maintain a settlement account on the books of the central bank or an authorised settlement agent to maintain the minimum depositor balance. Moreover, on the commencement of insolvency proceedings against the licenced provider of systems payments/mobile money services, such insolvency proceedings are held not to have retrospective effect on the rights and obligations of that licenced provider.⁶³

On the commencement of insolvency proceedings, cash deposits or securities transfer orders entered into a payment transfer system prior to the commencement of insolvency proceedings by the service provider are valid, binding and enforceable against the provider, the central bank or appointed insolvency practitioner.⁶⁴ However, despite these provisions in NAPSA (2020), the law remained silent/unclear on the nature of enforcement and to the rights of the depositors to recover their deposits and the amount guaranteed on insolvency, like it is the case with a deposit guarantee scheme under the traditional banking model. In the next section, the concept of ring-fencing is analysed as a model/framework that could be adopted to enhance depositor protection in Uganda and other SSA developing economies.

The concept of ring-fencing

Prior to the global financial crisis of 2007/2008, the universal banking model was the most adopted one by banks and financial institutions globally due to its advantages at the time.⁶⁵ The universal banking model is the system where a bank or financial institutions offers/operates a variety of financial products/services, be it retail, investment or commercial, under the same setting/umbrella.⁶⁶ Therefore, this model is advantageous in a sense that it offers the bank/financial institution, ability to operate its banking and/or financial services, under the

⁶² s.6, NAPSA (2020).

⁶³ s.28(1) NAPSA (2020).

⁶⁴ s.28(3) (a) NAPSA (2020).

⁶⁵ L. Gambacorta and Adrian Van Rixtel, “Structural bank regulation initiatives: approaches and implications” *Bank for International Settlements*, (BIS Working Paper No. 412, of 2013), <<https://www.bis.org/publ/work412.pdf>> (accessed 10 July 2022).

⁶⁶ On this concept, see further: R. DeYoung and G. Torna, “Non-traditional banking activities and bank failures during the financial crisis” (2013) 22(3) *Journal of Financial Intermediation*, 397–421; X. Yang and M. Brei, “The universal bank model: synergy or vulnerability?” (2019) 20 *Journal of Banking Regulation*, 312, 327.

same umbrella. This would enable consumers to easily access different products/services at a single “access point” rather than being referred to different sections/departments for different products/services within the bank.⁶⁷

The universal model also enables a bank to maintain its capital under the same umbrella and on the same balance sheet. This has the inherent advantage that capital and liquidity requirements imposed by national regulators, such as national central banks and international regulatory agencies, such as those under the Basil Committee,⁶⁸ would be easily met. Another advantage is the operational ability by the bank to have a centralised support service/system where both capital and human resources services could be easily sourced, reducing operational and administration costs compared to would be the case under structural and/or branch separation, where each branch/section bears its operational and administration costs and risks.⁶⁹ However, the emergence of the concept of ring-fencing (as discussed below) has presented a new scope within which a “risk-averse financial approach”⁷⁰ may be adopted by banks and financial institutions.

Ring-fencing can be explained/defined as the separation of retail banking provisions from wholesale and investment banking sections of the bank/financial institution in an otherwise a universal banking system. The concept of ring-fencing can be used in many different contexts to denote different approaches/instances. One of the leading academics on this topic – Professor Schwarcz, of Duke University School of Law, USA, is of the view that the term ring-fencing can sometimes be defined inconsistently depending on the context in which it is applied.⁷¹ Professor Schwarcz therefore, defines ring-fencing as a financial regulatory concept concerned with legally deconstructing a firm’s structure in order to achieve an optimal reallocation and reduction of risks.⁷²

Ring-fencing can be approached in two ways. It can be approached from what is categorised as geographical ring-fencing. This is where a banking groups or conglomerate operating in different countries or across borders, takes initiatives to ensure that certain sections/branches

⁶⁷ X. Yang and M. Brei, “The universal bank model: synergy or vulnerability?” (2019) 20 *Journal of Banking Regulation*, 312, 327.

⁶⁸ See for example; BCBS, *Core Principles for Effective Banking Supervision* (2006, Bank for International Settlements, Basel). (Hereafter, “*The Basil Core Principles*”).

⁶⁹ DeYoung and Torna (n 66).

⁷⁰ A risk-averse approach is where a company/individual opts to invest in a product with minimal returns but with known financial risks than going for maximum returns with unknown risks.

⁷¹ Steven L. Schwarcz “Ring-Fencing” (2014) 87 *Southern California Law Review*, 69, 73.

⁷² *Ibid*, at 72.

of the banking group are self-reliant and can minimise financial risks and/or sustain systemic shocks even where other sections/branches of the group fail. However, this type of ring-fencing is more applicable to cross-border banking/financial operations and as such, it is premised on a territorial approach and can be more efficient for cross-border banking problems.⁷³

The other category of ring-fencing is the structural separation approach. This approach involves the separation of the bank/financial institution's functions, such as the separation of the bank's retail section/department that deals with individual depositors and/or small businesses, from the wholesale and investment section/department of the bank. The overall imperative is to reduce financial risks that the retail section of the bank may be exposed to, emanating from other sections/departments of the bank, such as the investment and international banking sections where all banking activities are operated under the same balance sheet.⁷⁴ The question therefore, is how would ring-fencing aid the enhancement of depositor protection in Uganda and other SSA developing economies if adopted? The answer lies in ring-fencing through structural separation as discussed below.

Ring-fencing through structural separation

According to the Bank for International Settlement (BIS), structural separation would protect commercial banking directly by shielding the bank from losses incurred elsewhere. This separation would provide an indirect form of protection for commercial banking activities by reducing their complexity and size which makes them easier to manage, supervise and resolve, as well as being more transparent to external stakeholders, such as mobile banking depositors.⁷⁵

In addition, structural separation may prevent the aggressive risk-taking culture of investment banking from infecting the more utility-like business of commercial banking which can reduce moral hazards. This would prevent public sector support of protected activities, such as (deposit guarantees and central bank lending) from indirectly subsidising other business activities.⁷⁶ However, the BIS also acknowledges that structural separation reform initiatives are not without challenges. Key amongst these, is the challenge in defining and enforcing the lines that

⁷³ K. D'Hulster and I. Ötke-Robe, "Ring-fencing cross-border banks: an effective supervisory response?" (2015) 16 *Journal of Banking Regulation* 169.

⁷⁴ James Proudman, "Putting up a fence – a speech on the implementation of ring-fencing in the UK" *British Bankers Association*, (London, 16 June 2017), at p.3. <<https://www.bankofengland.co.uk/speech/2017/putting-up-a-fence>> (accessed 08 August 2022).

⁷⁵ Bank for International Settlements (BIS), "The road to a more resilient banking sector" *83rd Annual Report*, (2013), <https://www.bis.org/publ/arpdf/ar2013e.pdf?source=content_type%3Areact%7Cfirst_level_url%3Aarticle%7Csection%3Amain_content%7Cbutton%3Abody_link> (accessed 12 July 2022).

⁷⁶ *Ibid*, at p. 57.

separate commercial and investment banking activities, especially in an increasingly complex financial marketplace.⁷⁷

Professors Campbell and Moffatt are of the view that there may be a case where some activities cannot be compartmentalised easily into “retail bank functions” or “investment bank functions.” This is where for example, a banking/financial service or product has been designed specifically to protect certain consumers. This may for example, be the case with mobile money banking. It may be the case therefore, that retail customers benefit from investment bank activities specifically designed to protect them from risk, through interest rate or currency hedging arrangements.⁷⁸ In light of this point of view, ring-fencing initiatives may be designed to purely protect and safeguard mobile money banking customers from an otherwise universal banking model within financial and banking sectors of SSA developing economies.

The Independent Commission on Banking of the United Kingdom led by Sir John Vickers,⁷⁹ in its published final Report of September 2011, made some recommendation that would address some technicalities with ring-fencing, especially under structural separation.⁸⁰ One of the key recommendations, and very central to this article was that banks should ring-fence retail banking services/activities from investment banking services/activities in order to safeguard against riskier banking activities. In SSA developing economies, mobile money banking can be seen as a riskier banking activity due to lack of formal legislative regime for the protection of depositors on insolvency of the service provider, other than the protection under general corporate insolvency laws.

On this point, the Report recommended two avenues on how structural separation in an efficient ring-fencing model could be implemented. The first step was identifying the activities that should be protected/separated through ring-fencing (deciding where the fence should be placed) and the second was determining the corporate structure – deciding which

⁷⁷ Ibid, at p. 57.

⁷⁸ A. Campbell and P. Moffatt, “Bank insolvency: the introduction of ring-fencing in the UK: an example to be followed?” [2019] 4 *Journal of Business Law*, 241-261, at 244.

⁷⁹ The Independent Commission on Banking (ICB) was established as a United Kingdom government inquiry looking at structural and related non-structural reforms to the UK banking sector to promote financial stability and competition in the aftermath of the 2007-2008 financial crisis. Ring-fencing was one of the key proposals it recommended. <<https://webarchive.nationalarchives.gov.uk/ukgwa/20120827143059/http://bankingcommission.independent.gov.uk//>> (accessed 10 July 2022).

⁸⁰ Independent Commission on Banking, *Final Report Recommendations* (also known as the *Vickers Report* 2013). See, <<https://researchbriefings.files.parliament.uk/documents/SN06171/SN06171.pdf>> (accessed 29 July 2022).

(services/activities should be inside/outside the fence).⁸¹ These activities/services were further categorised into two tenets – mandated services and prohibited services.

Mandated services would be the kind of services that include deposit taking and the provision of overdrafts to, individual customers and small and medium-sized enterprises (SMEs).⁸² The premise is that even the slightest and/or temporary interruption to the provision of such services resulting from the bank's failure would present significant economic costs to these consumers and where such customers are not well equipped to bear the consequences of such interruptions.⁸³ Therefore, these services should only be provided by ring-fenced banks/companies and not all banks/financial institutions within the financial sector.

Prohibited services would be the type that are not integral to the provision of payments services to customers, or the direct intermediation of funds between savers and borrowers within both the financial and the non-financial sector.⁸⁴ Such services would directly increase the exposure of the ring-fenced bank to global financial market risks. In a nutshell, the overall aim of structural separation via ring-fencing would be to isolate essential small-scale/retail banking activities (mandated services) and safeguard them against systemic shocks within the financial system so that these essential services are maintained even where the bank/financial institution experiences financial difficulties/crisis. It is my argument therefore, that mobile money banking in SSA developing economies would benefit from this model of protection.

Benefits of ring-fencing on enhancing depositor protection

Like any other regulatory tool and/or policy framework, ring-fencing may present some challenges if adopted, especially in SSA developing economies where financial know-how, expertise and technologies are in infancy stages compared to other developed jurisdictions like the UK or the US. For example, in the UK, the challenges highlighted by the Financial Stability Board (FSB) Report in 2014 prior to the implementation of ring-fencing in the UK included *inter alia*, the high cost of its introduction and implementation within the financial system, potential interruptions to free-flow of capital within the domestic financial sector and cross-border banking, and potential complications to crisis management and resolvability initiatives

⁸¹ Vickers Report, pp.36, 62.

⁸² Vickers Report, pp. 38, 41.

⁸³ Vickers Report, pp 51, 52.

⁸⁴ Vickers Report, pp 52, 53.

in place.⁸⁵ However, the Report also indicated that there had been no specific instances where structural banking reforms being implemented elsewhere had had material adverse impact on their domestic financial systems.⁸⁶

Among the many advantages that ring-fencing may bear on a bank's financial stability and consequential depositor protection is the contention that if adopted and implemented, it can facilitate that bank/financial institution, or mobile money provider to structure and then operate its business affairs on a stand-alone basis. For example, mobile money banking services may be run separately from other banking/financial services/products offered by the bank or network provider. This has an advantage that high risks, financial struggles or failures of other arms of the bank, or other associated/interlinked entities may not adversely impact the mobile money customers or even worse, spreading the knock-on impact which may trigger its own collapse.⁸⁷

Conclusion

One of the key functions of an efficient economic regulatory framework is the prevention of financial market failures within a financial system. This may be achieved through sustainable systemic risk control and/or reductions.⁸⁸ Following the global financial crisis of 2007/08 and the subsequent financial crisis in Cyprus in 2013 most sovereign States, especially the developed ones, such as the UK undertook legislative, policy and procedural efforts to put in place safeguards that could enhance depositor protection and also, detect and/or prevent subsequent financial crises within the banking and financial sectors.⁸⁹ Among the legislative and policy moves undertaken by the UK, was the introduction of ring-fencing provisions for deposit-taking banks and financial institutions through the enactment of the Financial Services (Banking Reform) Act 2013 (FSBRA 2013),⁹⁰ that amended the Financial Services and

⁸⁵ Financial Stability Board, *Structural Banking Reforms: Cross-border consistencies and global financial stability implications - Report to G20 Leaders for the November 2014 Summit*, at pp 1, 2. <https://www.fsb.org/wp-content/uploads/r_141027.pdf%3E> (accessed 05 July 2022).

⁸⁶ Ibid, at pg 2.

⁸⁷ A. Campbell and P. Moffatt, 2016. "Bank insolvency: how can ring-fencing ensure the continuity of banking services in an insolvent banking group?" In: R. Parry and P.J. Omar, eds., *Banking and financial insolvencies: the European regulatory framework: papers from the INSOL Europe Academic Forum Annual Conference*, (Berlin, Germany), 30 September-1 October 2015. (Nottingham: INSOL Europe, 2016), pp. 3-11.

⁸⁸ Steven L. Schwarcz, "Ring-Fencing" (2014) 87 *Southern California Law Review* 69, 84.

⁸⁹ P. Moffatt and A. Campbell, "UK depositor protection in the aftermath of the banking crisis" (2010) *Journal of International Banking Law and Regulation*, 25 (10), pp. 486-49; A. Campbell and P. Moffatt, "Protecting Bank Depositors after Cyprus" (2013) 1 *NIBLeJ* 4.

⁹⁰ Financial Services (Banking Reform) Act 2013, c.33. See particularly, Part 1 of the Act and the insertion of Part 9B on ring-fencing into the Financial Services and Market Act 2000.

Markets Act 2000 (FSBRA 2013)⁹¹ to incorporate the ring-fencing provisions⁹² with effect from January 2019.

In Sub-Saharan African developing economies, the emergence and rapid growth of mobile money /digital banking has further highlighted the need for enhanced depositor protection especially, in the mobile money banking sectors, at a time where financial inclusion is a key step to commanding meaningful lifestyles. In most of these developing economies, mobile money banking has provided a platform for a majority of unbanked adult consumers to access the financial/banking sectors for economic and financial integration.⁹³ However, the absence of formal legislation for the protection of mobile banking depositors on the insolvency of the service provider or partner agencies, threatens the financial/economic integration achieved to date. Although there some provisions in mainstream banking and insolvency laws on the treatment of creditor interests on insolvency, there is lack of formal legislative provisions dedicated to the treatment of customer deposits on the insolvency of the service provider.

In Tanzania for example, on winding-up or placing into judicial or statutory management, of the payment systems provider, such as a bank or mobile network provider, any outstanding payments, or customer deposits due before the coming into force of the insolvency/winding-up order are only binding on the provider's liquidator, judicial or statutory manager.⁹⁴ The main legislation, that is; the National Payments Systems Act 2015, the Payment System Licensing and Approval Regulations, 2015 and the Electronic Money Regulations, 2015 that were enacted to regulate payment systems, such as e-payments and mobile money banking services are silent on the treatment of outstanding customer deposits at the time of winding-up, the priority of payment of the deposits or the amount of such deposits that ought to be safeguarded.

Under s.42, National Payments Systems Act 2015, a payment systems provider is only required to put in place documented failure-to-settle arrangements that prescribe the manner to which payments failures shall be mitigated but again, this provision fails to categorically provide a

⁹¹ Financial Services and Markets Act 2000, c.8.

⁹² Generally, see Part 9B; Chapter 2, sections 2A, 2AB and 2B – on the amendment to Prudential Regulatory Authority (Bank of England)'s functions and general objectives. Particularly, see s.2B(4A) (a) - (d) on ring-fencing, ring-fenced bodies and body corporates that have a ring-fenced body as a member of its group.

⁹³ I. Mbiti, and D. Weil, "Mobile banking: The impact of M-Pesa in Kenya" in S. Edwards, S. Johnson, & D. Weil (eds.), *African successes, Volume III: Modernization and development* (Chicago, University of Chicago Press, 2016) pp. 247-293.

⁹⁴ Generally, see, Part IX, ss.39 - 40 National Payments Systems Act 2015, Tanzania on winding-up, receivership or judicial management of participants in payment systems.

clear-cut strategy on the treatment of customer deposits by the failed service provider. The same approach applies in Uganda where the NAPSA 2020 fails to prescribe a protective regime for customer deposits on the insolvency of the service provider.

It is therefore, the central theme of this paper that ring-fencing through structural separation to protect mobile money banking as a mandated service from the general banking/financial operations of the bank or service provider, will enhance depositor protection on the insolvency of the service provider in SSA developing economies.