

FINTECH

THE TAXATION OF FINANCIAL TECHNOLOGY IN AFRICA



**TAX JUSTICE
NETWORK
AFRICA**

**THE TAXATION OF
FINANCIAL TECHNOLOGY
IN AFRICA**

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ABSTRACT

About 1.7 billion adults remain unbanked and almost all the unbanked adults live in developing countries (Global Findex Database 2017). This gap has been filled by mobile phones and the internet that have created new opportunities for providing financial services to the unbanked. Consequently, 58% (765 million) of sub-Saharan Africans now have registered mobile accounts (Mauritius Africa FinTech Hub), which they use as payment, lending and remittances platforms. The development of mobile phones from simple text messaging and provision of mobile money accounts to the creation of apps through which access to credit, cross border transfers, remittances, and issuance of digital currency is facilitated has transformed the structure of the financial industry in Africa. The use of technology for the provision of financial services has changed the way Africans store, save, borrow, invest, move, spend and protect money (Skan, Dickerson and Gagliardi 2016). Gallup data collected by McKinsey & Company in 2014 on 44 nations in sub-Saharan Africa showed that an average of 54% of adults utilised FinTech to make payments totalling approximately 5 billion transactions annually.

The total volume of these flows was estimated at \$760 billion (of which 50-60% of the transaction were in cash). If a conservative estimate of revenues at 2% of volume is applied, it would result in annual revenues of about \$6.6 billion from electronic payments alone. It is now estimated that the FinTech industry in Africa by 2022 will contribute between \$200 million to \$3 billion in revenues annually. This demonstrates that the correlation between FinTech and revenue mobilisation is quite strong. It thus becomes necessary to understand whether and how FinTech in Africa is taxed. This working paper discusses two interrelated themes: the regulation and subsequent taxation of FinTech. It is argued that the domestic and international regulatory framework within which FinTech operates guides its tax architecture. Whether it is then advisable to adopt a common African approach to the regulation and taxation of FinTech or to advocate for individual African nations to enact bespoke FinTech laws is the core aim that this working paper sets out to discuss.

Keywords: Africa, Asia, FinTech, International Collaboration, Latin America, Regulation, Taxation.

58%

Sub-Saharan Africans now have registered mobile accounts

54%

Adults utilised FinTech to make payments

\$760

The total estimated volume of these flows

\$3B

The total estimated by FinTech revenues annually

1.0

INTRODUCTION



The financial technology industry is expected to have a major impact on sub-Saharan Africa. By 2022, the FinTech industry will contribute \$150 billion annually.



*Financial Sector
Deepening Africa
Report 2018*

1.1 Defining FinTech

FinTech represents the combination of the words finance and technology. It is the resulting combination between the financial and technology sectors and relates to the whole plethora of technology that is used in finance to facilitate trade, corporate business or interaction and services provided to the retail consumer. FinTech has been given various definitions.

McAuley broadly defines FinTech as ‘an economic industry composed of companies that use technology to make financial systems more efficient’.¹ The Financial Stability Board also broadly portrays FinTech as a ‘technologically enabled financial innovation that could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services’.² Lee and Teo provide a somewhat narrow definition referring to FinTech as ‘innovative financial services or products delivered via new technology’.³ Taking a similar approach, Philippon explains that ‘FinTech covers digital innovations and technology enabled business model innovations in the financial sector’.⁴

These definitions taken together present FinTech as a form of integration of technology into the area of local and transnational financial services.⁵ Taken in the African context, FinTech as the working paper shall show, describes tech-enabled products and services that improve or disrupt traditional banking and financial services. The latter therefore is the definition adopted by the working paper to address the tax aspect of FinTech.



A technologically enabled financial innovation that could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services.

1.2 FinTech Features

The definitions previously discussed pinpoint towards the following specific distinguishing features of FinTech.

1. McAuley, D. 2015. *What is FinTech? Wharton FinTech.*
2. Financial Stability Board. 2017. “Financial Stability Implications from FinTech: Supervisory and Regulatory issues that Merit Authorities’ Attention.”
3. Lee D, Chuen K & Teo, E. 2015. *Emergence of FinTech and the LASIC Principles*, 3 J. Fin. Perspectives: FINTECH 2, 4.
4. Philippon, T. 2016. *The FinTech Opportunity 2.*
5. Definition coined by the author.

One, that it is technology based hence its different nature and speed of innovation. Movement of money through tech enabled platforms requires a similar tech based regulatory framework that can help government identify and monitor electronic/digital based transactions for tax purposes where applicable.

Two, it has resulted in disintermediation and disruption of traditional methods of delivery of financial services. The existing laws that are based on traditional brick and mortar companies will therefore not suffice to regulate tech based financial services. Tax laws targeted towards revenue sourced from residence and physical presence become ineffective to tax revenue earned through FinTech use.

Three, it has led to the convergence of various industries (creating a horizontal economy thereby making it impossible to ring-fence FinTech as a separate and independent sector). Separate laws regulating different sectors and specific tax laws directed towards specific sectors are not useful following the advent of FinTech that has resulted in partnerships and collaborations amongst these different sectors. For example, online lending platforms providing access to credit are not subject to tax laws because such platforms are not regulated under banking laws' provision on taxing interest.

Four, it is borderless, having the ability to cross national boundaries with ease. Without a regulatory framework that seeks out automatic exchange of information, real time data capture on cross border transactions or online VAT remittance, capturing tax data becomes complex.

Taken together, these FinTech features have resulted in a financial, technological and legal reality that has led to the disruption of the traditional ways and methods of doing business and in the collection of revenue following its new business models. FinTech does not fit easily into the existing legal and regulatory framework. It challenges the regulators to produce appropriate responses.⁶ Such responses can take the form of either national law making or international collaboration in securing the tax base.

Given its cross border characteristic, it may then be prudent to advocate for a global regulatory framework for FinTech on VAT. As it will be shown next, Africa's regulatory framework for FinTech is mixed. It either appears as standalone (particularly, where regulatory sandboxes have been established) or is consumed as part of the existing legal regime relevant to a specific sector that the FinTech has disrupted (for example, as part of banking laws). The regulatory framework also comes too late with widely differing approaches across jurisdictions.



Movement of money through tech enabled platforms requires a similar tech based regulatory framework.



Online lending platforms providing access to credit are not subject to tax laws because such platforms are not regulated under banking laws' provision on taxing interest.



FinTech features have resulted in a financial, technological and legal reality that has led to the disruption of the traditional ways and methods of doing business and in the collection of revenue following its new business models.

6. Didenko, A. 2018. *Regulating FinTech: Lessons from Africa*. 19 *San Diego Int'l L.J.* 311.

Regulation is also dependent on sufficient local demand to elicit a legal response and subsequently, to impose taxation. Across Africa, FinTech start-ups are offering bill payments, mobile, online and wallet payment solutions; lending including crowdfunding, peer lending and loan comparison platforms; international money transfers and to some extent blockchain based services devoid of a specific legal, tax and regulatory framework.

In the absence of law and regulation specifically dealing with these transactions, defining the tax base for FinTech and its related activities becomes quite complex. For the purpose of taxation, FinTech is then categorised either as a company or a financial institution.

Arguably, the laws governing the taxation of these entities then also apply to FinTech start-ups. Should there be a common position to the taxation of FinTech for Africa? Or should each African country enact a specific set of laws targeted towards the regulation and taxation of FinTech? Generally, how should Africa approach the taxation of FinTech in light of its features? The answers to these questions are the central focus of this working paper.

1.3 Scope and Structure

A comprehensive analysis and discussion of all the African policies, laws, and administrative responses to FinTech and its taxation in a single working paper would be unrealistic. Therefore, this working paper focuses on selected African countries that are leading jurisdictions in terms of FinTech development: Cote d'Ivoire, Egypt, Ghana, Kenya, Nigeria and South Africa. Reference is also made to Malawi, Senegal and Uganda to show how FinTech is also regulated in least developed countries (LDC).⁷ Information from Mauritius and Zimbabwe are also utilised.

Addressing the tax aspect of the FinTech sector in these countries is also analysed. In addition, the role of international collaboration in addressing FinTech regulation and taxation is examined because of its cross border nature and implications. The objectives here are thus threefold: one, the extent to which FinTech has penetrated the African market and the policy, legal, and administrative responses that have been elicited. Two, to identify the types of challenges faced by regulators in addressing FinTech and its development. Three, to examine the continental tax treatment afforded to FinTech and international collaboration in harmonising and mitigating tax challenges.

The research relied on in this working paper results out of a doctrinal inquiry into the laws of the selected African countries and is based on the analysis of existing literature on the subject,



FinTech start-ups are offering bill payments, mobile, online and wallet payment solutions.



Examine the continental tax treatment afforded to FinTech and international collaboration in harmonising and mitigating tax challenges.

7. UN. 2018. "List of Least Developed Countries." Available at: https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/lcd_list.pdf (Accessed on October 2019).

as well as discussions with participants and stakeholders in the FinTech space who attended the 7th Pan African Conference on Illicit Financial Flows and Taxation held in Nairobi, Kenya between 1-3 October 2019.⁸ The working paper is informed by the most recent developments in the area of FinTech taxation in Africa and across the Global South. Consequently, it also adopts the comparative case study approach by examining the similarities and differences in regulating and taxing FinTech between Latin America, Asia and Africa. In light of the objectives set out above, the remainder of this working paper is structured as follows.

Section 2 starts with an overview of the concept of FinTech and FinTech specific regulation in the selected countries. This examination will inform the key positions to be adopted by the Tax Justice Network Africa (TJNA) and other CSOs in advocating for either a common approach to the taxation of FinTech or identify a common set of benchmarks for each African state to consider in broadening its tax base following FinTech disruption.

Section 3 compares FinTech specific regulation beyond the African continent, particularly focused around Asia and Latin America as part of the Global South nexus. It is hoped that this comparative analysis will draw out best practices that can inform the approach African states can also consider in regulating and consequently taxing FinTech firms.

Section 4 outlines the main underlying challenges resulting from FinTech evolution and adaptation. It is important to understand whether FinTech related activities can result in tax abuses. The section thus contains a more detailed discussion on FinTech taxation and also looks into international collaboration in mitigating any resulting tax challenges.

Section 5 contains the conclusion and recommendations. The conclusion presents some general observations from the conducted research on the regulation and taxation of FinTech. It also makes recommendations to elicit advocacy on what the African position on the taxation of FinTech ought to be.

8. *The participants interviewed were from: AFRODAD, Ghana Revenue Authority, Malawi Revenue Authority, Kenya Revenue Authority, Friedrich Ebert Stiftung, University of Nairobi, University of Brazil, Civil Society officers from Cote d'Ivoire, Uganda and Senegal.*

2.0

FINTECH IN AFRICA: THE ECONOMIC REALITY AND FINTECH SPECIFIC REGULATION



No space has quite the potential impact of the FinTech space when it comes to impact and profits in Africa, with start-ups operating such platforms able to significantly address the major issue of financial exclusion on the continent and thus promote development in all sorts of other areas.

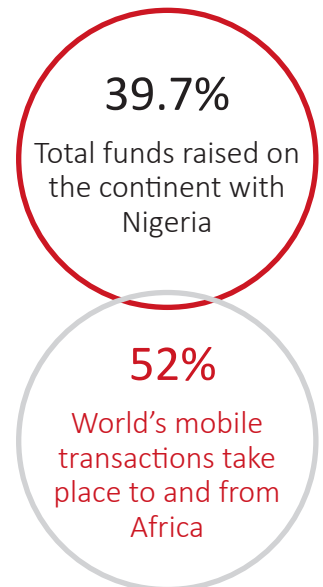
Tom Jackson, Disrupt Africa Co-Founder

2.1 The Economic Reality

According to the 2019 report by Disrupt Africa, the African continent is home to 491 FinTech start-ups.⁹ FinTech, in another report,¹⁰ has been confirmed as the most popular sector among investors attracting 39.7% of total funds raised on the continent with Nigeria featuring as the premier investment destination followed by South Africa and then Kenya.¹¹ According to statistics provided by the Mauritius Africa FinTech Hub only 0.4% of the global FinTech investment is directed towards Africa.¹² A 2018 report by Disrupt Africa revealed that 200 out of the 491 African based FinTech start-ups raised US\$334.5 million towards investments.¹³ Even if this amount supposedly represents 0.4% of total investments, it is substantial enough to consider regulatory implications.

Further statistics provided by the Mauritius Africa FinTech Hub also suggest that FinTech is set to grow to US\$3 billion from US\$ 200 million in sub-Saharan Africa by 2020. Such financial acceleration can be justified from the fact that 52% of the world's mobile transactions take place to and from Africa and 58% of the world's mobile money accounts are registered in sub-Saharan Africa.¹⁴ Again, these statistics are indicative of the need to now consider domestic tax implications.

The continent holds great promise for the development of FinTech as it has one of the world's largest unbanked populations with access to smart phones.¹⁵ Sub-Saharan Africa, according to the IMF is the only region in the world where close to 10% of GDP in transactions occur through mobile money. This compares with just 7% of GDP in



9. *The Finnovating for Africa. 2019.* "Reimagining the African financial services landscape report." Disrupt Africa.
10. *African Tech Start-Ups Funding Report. 2018.* Disrupt Africa.
11. *In Nigeria, 58 FinTech start-ups raised a total of US\$94,912,000 and 40 such start-ups in South Africa raised US\$59,971,000.* <https://mauritiusfintech.org/> (Accessed on October 2019)
12. *African Tech Start-Ups Funding Report 2018.* Disrupt Africa.
13. *https://mauritiusfintech.org/* (Accessed on October 2019).
14. *Dhir, L. 2018. "An Overview of Africa Alternative Lending. Lending Times."* Available at: <https://lending-times.com/2018/01/23/an-overview-of-african-alternative-lending/> (Accessed on October 2019).

Asia and less than 2% of GDP in other regions.¹⁶ Hence the emerging FinTech trends on the continent are concentrated around security, mobile payments and online remittances. The challenge, therefore, is for the continent to leverage this success in mobile money.

Africa is thus positioned to generate domestic sources of revenue as a result of the emerging FinTech boom. But first Africa must address the perennial demands of fast innovation against the slower pace of regulation, which in turn shall greatly clarify whether the current tax framework reflects the new trends in finance following digitalisation, and if not, then the type of tax framework to be adopted.

2.2 FinTech Regulation

FinTech in Africa developed as a mobile based money transfer technology. This we can refer to as Phase 1. Accordingly, African policies and laws were drafted to respond to the disruption caused to the banking sector by FinTech companies engaged in payment and lending services. Such laws did not take the form of a separate and distinct law on FinTech. They were simple amendments to the banking laws to permit the entry and operation of FinTech companies within the African markets.¹⁷ As such, guidelines and directives by central banks were issued on the recognition, licensing and regulation of FinTech companies that disrupted the traditional banking industry (for example M-Pesa¹⁸ in Kenya).

Phase 2 in FinTech development resulted in the introduction of Bitcoins and its associated blockchain technology, which have now also entered the African market and have further broadened the understanding of FinTech. The definition adopted for the purposes of this working paper under section 1.1. aptly captures this phase. As a tech-enabled device providing products and services that improve or disrupt traditional banking services, Fintech in Africa is becoming the modern financial system. Unfortunately, there is no comprehensive policy at domestic, regional or continental level addressing these emerging aspects of FinTech in Africa.

Consequently, these start-ups are operating relatively tax free with less government interference. Policy, law and administrative responses remain confined to regulating and taxing FinTech as a mobile based money transfer technology.¹⁹ While still at a nascent



FinTech development resulted in the introduction of Bitcoins and its associated blockchain technology

16. IMF. 2019. "FinTech in Sub Saharan African Countries. A Game Changer?" No. 19/04. Available at: <https://blogs.imf.org/2019/02/14/fintech-in-sub-saharan-africa-a-potential-game-changer/> (Accessed on October 2019).
17. Oladeji, O. 2018. "African FinTech Start-ups Are Revolutionising Banking." Synced. <https://medium.com/syncedreview/african-fintech-startups-are-revolutionizing-banking-b726a1b4ccfe>; see also: IMF. 2019. "FinTech in Sub Saharan African Countries. A Game Changer?" No. 19/04.
18. M-Pesa (M for Mobile, Pesa means money in Swahili) is a mobile phone based money transfer system launched in 2007 in Kenya and has expanded to Tanzania, Lesotho, Mozambique, Ghana, Albania, Romania and India.
19. Example: Kenya imposing transaction costs on using Mpesa for facilitating payments.

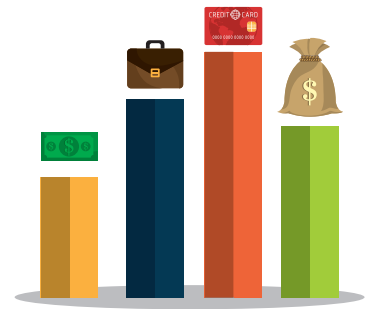
stage of regulation, Africa, however, has begun reconsidering its legal response to go beyond regulating mobile payments and collection of incidental taxes to capturing regulation of bitcoins, smart contracts and digital transactions. Contouring FinTech’s tax parameters however, remains a work in progress (see Section 4) and this is where the TJNA and other CSOs can lead in charting the way forward based on the recommendations made later in this working paper (see Section 5).

To the extent permissible in terms of infrastructure and access to information and telecommunication technologies in Africa, FinTech has transformed all aspects of the delivery of core functions of the financial sector such as settling payments, facilitation of borrowing and saving, risk sharing, and allocating capital. As a result, FinTech has triggered deep changes to the existing African market structure and traditional financial market infrastructure for the provision of these services.²⁰ It has digitalised the current financial infrastructure in Africa which has typically revolved around three tiers.

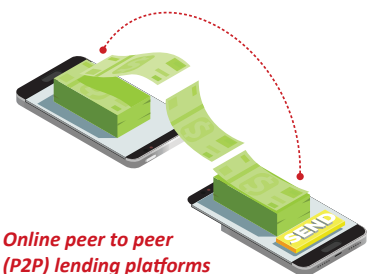
First, incumbent banks, serving retail, commercial, and wholesale customers. Second, insurance and pension providers. Third, money, foreign exchange, and capital markets all of which are underpinned by payment system providers and other financial market providers, as well as central banks and regulators.²¹ FinTech has additionally extended financial access to those previously excluded by conventional banks and financial institutions; such as the unbanked population, the poor and the informal sector labourers (largely comprised of women’s), thereby capturing the neglected areas of the African economic market.²²

Not only has FinTech added novelty to the existing financing instruments and processes such as online peer to peer (P2P) lending platforms, crowdfunding and e-commerce,²³ it has provided women and the youth with access to finance critical for their economic development. It has facilitated financial access for women involved in small scale businesses and the informal sector. A recent study has also confirmed that FinTech has bolstered women socio-economic status.²⁴ Because this working paper limits itself to inquiring into the administrative aspects of FinTech (regulation and tax), it does not stray beyond its limits to address gender concerns.

FinTech in Africa is seen either as a sector, an industry, a technology, a business or a set of activities. The approach taken to understand and identify FinTech determines its specific policy, law and administrative



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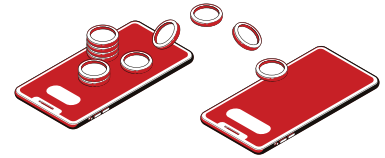


Online peer to peer (P2P) lending platforms

20. Didenko, A. 2018. *Regulating FinTech: Lessons from Africa*. 19 *San Diego Int’l L.J.* 311.
 21. IMF. 2019. “FinTech in Sub Saharan African Countries. A Game Changer?” No. 19/04, p.2.
 22. *Ibid.*
 23. FINTREK. 2018. “Exploring New Frontiers in FinTech Investments in East Africa.” *intellecap* <https://www.intellecap.com/wp-content/themes/intellecap/pdf/FINTREK-2018.pdf> (Accessed on October 2019).
 24. Buvinic, M and Jaluka T. 2018. *Mindful Saving: Exploring the Power of Savings for Women*, Centre for Global Development.

response in Africa. FinTech as a concept has not been uniformly understood across Africa. This is due to its fast paced developments as a result of digitalisation, globalisation and financial liberalisation across the continent whose infrastructure and legal system cannot cope with and support the changes in the financial services sector.

As a result, FinTech specific regulation is limited to clarifying the existing law as it applies in the context of new technologies, such as by adding new definitions like ‘business to consumer (B2C)’, explaining the legal status of the new concepts (such as crowdfunding, P2P lending, distributed ledger transactions) or determining which regulators are authorised to address the new FinTech business models, applications, processes or products. Let’s see some examples of how FinTech is regulated in Africa in order to identify any resultant impact on the tax structure.



FinTech specific regulation is limited to clarifying the existing law as it applies in the context of new technologies, such as by adding new definitions like ‘business to consumer (B2C)’, explaining the legal status of the new concepts.

2.2.1 Kenya

In Kenya, the machinations with one of the most popular electronic money transfer product; M-Pesa, prompted the tightening of existing banking rules and formulation of a new law (National Payment Systems Act of 2011) and regulations (E-Money Regulation, 2013) setting the threshold on the amount of deposits and withdrawals made using M-Pesa, directing the requirement to maintain liquid assets equal to the amount of outstanding e-money issued and prohibition against investing the deposits made on individual accounts.

In Kenya, regulatory measures aimed at FinTech businesses do not take the form of a standalone statute. Instead, the Kenyan Parliament tries to adjust the existing legal framework to address the peculiarities of FinTech.²⁵ This usually involves tackling FinTech on a product by product basis. Similar is the approach in Cote d’Ivoire, Egypt, Ghana, Malawi, Nigeria, Senegal, South Africa and Uganda.



M-Pesa, prompted the tightening of existing banking rules and formulation of a new law.

It is important to note here that despite these approaches, a regulatory sandbox for FinTech start-ups has already been established in Kenya and four start-ups have been admitted to it. Egypt, Nigeria and South Africa are also in the process of introducing their regulatory sandboxes. The regulations put in place do not provide for specific tax provisions. These provisions are set out separately under separate legislation over time. For example, the imposition of transaction costs under the Finance Act when paying over the M-Pesa platform.

The key point to be deduced from here is that Kenya maintains

25. Information received from an officer at the Kenya Revenue Authority.

a separate framework for regulating and taxing FinTech firms. Regulation itself is fragmented between the Central Bank of Kenya, Communications Authority of Kenya and the Capital Markets Authority and is reflected in various different acts of parliament. A regulatory sandbox has also been set up in Kenya and four start-ups have already been admitted to it. It may be prudent for the civil society organisations (CSOs) to consider collaboration with the regulator in overseeing the start-up structures so as to advice on potential indicators, such as transfer mispricing risks, that may actually lead to the erosion of the tax base.

2.2.2 Egypt

According to the IMF, Egypt has updated its mobile payment regulations to provide legal clarity for nonbank payment service providers.²⁶ In 2016, the Central Bank of Egypt provided new regulations for payments completed through a smartphone to allow users to transfer money and pay bills online, thereby regulating FinTech through the use of a bank-led model. Again, similar to the Kenyan approach, FinTech regulation and taxation are dealt with separately. In 2017, a National Payment Council was founded to encourage FinTech development and to increase cashless services within the country.

Consequently, mobile payments in Egypt continue to operate on a bank-led model and mobile network operators since FinTech innovation in Egypt focuses more on payments and to some degree lending. There is no uniform regulatory framework for non-banking financial services.²⁷ Instead, a patchwork of legal regulations applies to different services and service providers, such as, FinTech platforms (e.g. Fawry) providing microfinance services, will be subject to the Microfinance Law (Law No. 141 of 2014 and the Financial Regulatory Authority Regulations No. 141 of 2014, 172 of 2014 and 173 of 2017, those providing insurance will be subject to Law No. 10 of 1981 and its executive regulations, as amended by Law No.118 of 2008, and the Financial Regulatory Authority Regulations No. 122 of 2015, and 729 of 2016, 730 of 2016 and 805 of 2016. In 2019, the Central Bank of Egypt introduced the Financial Technology Application Lab (sandbox) to pave the way for faster and easier access to new financial solutions and embed compliance within the FinTech ecosystem at an early stage.²⁸ This sandbox will provide Egypt with the opportunity to allow FinTech start-ups to develop innovations under observation and consequently, inform the kind of activities that can form the tax base.



Central Bank of Egypt provided new regulations for payments completed through a smartphone to allow users to transfer money and pay bills online.



A patchwork of legal regulations applies to different services and service providers, such as, FinTech platforms (e.g. Fawry) providing microfinance services.

26. IMF. 2019. "FinTech: The Experience So Far." Press Release No. 19/255. Washington DC.

27. Information gathered from a CSO based in Cairo.

28. <https://fintech.cbe.org.eg/home/sandbox?en>

2.2.3 Ghana

FinTech in Ghana is not limited to payment platforms and systems. Like in Kenya, Ghana's regulatory framework for FinTech permits deposit holding into a receiver/beneficiary's mobile money account. In 2019, Ghana enacted the Payment Systems and Settlement Act (Act 987) to provide an enabling regulatory regime for digital payments. Pursuant to this legislation, FinTech firms no longer have to rely on banks like in Egypt to offer their products and services. Instead, they can seek for a direct license from the Bank of Ghana. The licensing requirements are based on Ghana's banking law. FinTech as a result is regulated as a banking industry. Quite different to the approach employed by Kenya.

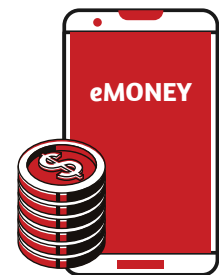


Ghana enacted the Payment Systems and Settlement Act (Act 987) to provide an enabling regulatory regime for digital payments.

2.2.4 Cote d'Ivoire

Cote d'Ivoire leads in the West African region in terms of providing an enabling platform for FinTech, particularly in the use of mobile money. However, it faces a number of challenges in reaching its potential in providing digital financial services. This is because of the policies adopted by the West African Economic and Monetary Union (WAEMU) of which Cote d'Ivoire is a member state. The country cannot make regulations that are not consistent and in harmony with its neighbours.

Also, because WAEMU's central bank (Banque Centrale des Etats de l'Afrique de l'Ouest- BCEAO) exercises exclusive authority over the money supply within the region and is the primary authority for the regulation and supervision of financial institutions, payment systems and digital finance.²⁹ Hence, any legal or policy matters in Cote d'Ivoire must pay close attention to the rules laid down by WAEMU. FinTech providing e-money services in Cote d'Ivoire are regulated under BCEAO's instruction no. 008-05-2015 as well as the banking and microfinance laws (instruction no. 011-12/2010/RB). Such companies must also meet separate standards on corporate governance and related matters (e.g. fit and proper standards, internal controls) to obtain a license. E-money FinTech providers cannot provide savings or credit services. They also cannot issue e-money as credit and pay interest on the e-money float.³⁰



FinTech providing e-money services in Cote d'Ivoire are regulated under BCEAO's instruction no. 008-05-2015 as well as the banking and microfinance laws (instruction no. 011-12/2010/RB).

When it comes to a common African approach towards the regulation and subsequent taxation of FinTech, west African states are in a position to collaborate towards a uniform and

29. Meagher, P. 2017. "Regulatory Framework for Digital Financial Services in Cote d'Ivoire". Working Paper. Washington DC: CGAP
30. Article 5, BCEAO's instruction no. 008-05-2015.

harmonised approach as a result of their integration. This may pose a problem should a continental approach be advocated for that contradicts existing WAEMU regulations. Perhaps then a regional approach (CEN-SAD, COMESA, EAC, ECCAS, ECOWAS, SADC) to regulating and taxing FinTech would be more prudent than a continental stand.

2.2.5 Malawi

The financial system in Malawi is relatively small, underdeveloped and dominated by a few financial institutions who offer a limited range of services. Cash is the dominant mode of payment. The impact of FinTech companies in Malawi is limited due to the low level of computerisation and ICT infrastructure available in the country.³¹

Currently, FinTech in Malawi is regulated by the Payment Systems Act, Payment Systems (E-Money) Regulations 2019, Directive on Interoperability and a Directive on the Operation and Authorisation of Digital Financial Services.³² The banking, microfinance, communications and capital markets sectors all contain internal divisions on the regulation and supervision of digital finance services. Coordination of the regulatory polices of each sector that impact FinTech companies is led by the Reserve Bank of Malawi (RBM),³³ the Ministry of Finance, and regulators from the following sectors: telecommunications, competition, consumer protection, and anti-money laundering and countering the financing of terrorism.³⁴

These coordinated efforts support Malawi's move towards establishing a regulatory framework for FinTech. This approach employed by Malawi, though fragmented is seen as a best practice to ensure consistent and coordinated regulation since it allows for drawing upon the relative strengths of different regulatory agencies reflecting their area of expertise in developing coordinated regulation. This however, can lead to problems such as disproportionate regulation or regulatory arbitrage. Thus, in thinking of a move towards a common African position on regulation of FinTech, consideration must be given to the need to continue the practice of fragmented regulation or adopt bespoke legislation centred on FinTech.



FinTech in Malawi is regulated by the Payment Systems Act, Payment Systems (E-Money) Regulations 2019.

“
Consideration must be given to the need to continue the practice of fragmented regulation or adopt bespoke legislation centred on FinTech.
”

31. Interview with an officer from the Malawi Revenue Authority.

32. Reserve Bank of Malawi. <https://www.rbm.mw/PaymentSystems/>

33. The Payment System in Malawi. <https://www.bis.org/cpmi/paysys/malawi.pdf>

34. Buckley, R, Greenacre, J and Malady, L. 2015. *The Regulation of Mobile Money in Malawi*. Washington University Global Studies Law Review, vol 14 (3): 435-496.

2.2.6 Nigeria

There is no FinTech specific statute in force in Nigeria. There are, however, various laws and guidelines that regulate FinTech, such as the Electronic Transactions Act 2015; Guidelines on Operations of Electronic Payment Channels in Nigeria, 2016; Guidelines on Transaction Switching in Nigeria, 2016; Guidelines on Mobile Money Services in Nigeria; Guidelines on International Mobile Money Remittance in Nigeria; Regulation for Bill Payments in Nigeria, 2018; Regulation for Direct Debit Scheme in Nigeria; Exposure Draft of New CBN Licensing Regime for Payment Service Providers; Guidelines on Operations of Electronic Payment Channels in Nigeria and Regulatory Framework for the Use of Unstructured Supplementary Service Data (USSD) for Financial Services in Nigeria.

Following this, the Central Bank of Nigeria's regulatory framework allows for two models of mobile financial services; bank-led and non-bank-led. It however, excludes mobile network operators from providing mobile financial services directly to their customer base. Instead, mobile operators are only able to offer a mobile financial platform by hosting a third party government approved provider on their telecom infrastructure but are unable to share in this revenue stream.³⁵ Further, the private sector in Nigeria has gone a step ahead by incorporating the FinTech Association of Nigeria; a self-regulatory, not for profit and non-political organisation.

The Association's role is to connect key FinTech stakeholders globally, accelerate continuous growth of the industry and advocate on key elements that make up FinTech in Nigeria; finance, trade, insurance, agriculture, education, health and marketing. The Association has so far collaborated with the Central Bank of Nigeria, National Insurance Commission, National Assembly, Capital Market Committee, Securities and Exchange Committee, Nigerian Stock Exchange and the Judiciary in proposing regulations.³⁶ The Nigerian led FinTech regulation is as much as it is fragmented at government level, regulation has become collaborative since the establishment of the Association.

A similar approach for the MENA region is also a work in progress with the setting up of the MENA FinTech Association,³⁷ which seeks to unite organisations and stakeholders from across the FinTech community, to advocate for their interests, foster collaboration, and the development of industry standards. While the Nigerian approach is limited to its domestic context,



Mobile operators are only able to offer a mobile financial platform by hosting a third party government approved provider on their telecom infrastructure but are unable to share in this revenue stream.



The Nigerian led FinTech regulation is as much as it is fragmented at government level, regulation has become collaborative since the establishment of the Association.

35. USAID. 2018. *The Digital Financial Services Landscape in Nigeria: Enabling Market Conditions for Pay As You Go*. SOLAR.

36. <https://fintechng.org/>

37. <https://www.mena-fintech.org/>

the MENA FinTech Association incorporates collaboration at a regional level. We are already seeing collaboration patterns in the regulation of FinTech as a cross between government and the private sector. *Would a continental association of a similar kind be the best way forward for a common approach to the regulation and taxation of FinTech?*

2.2.7 Senegal

Senegal's economy relies heavily on remittances, which is one of the drivers of the growth of its FinTech sector.³⁸ Like Cote d'Ivoire, Senegal is also limited in terms of regulating FinTech domestically. Its legal, financial and tax regulations must align with BCEAO, Directorate of Money and Credit (DMC), Regulatory Authority for Telecommunications and Posts (ARTP), Directorate of Micro Finance (DMF), Agency of Information of the State (ADIE) etc. Further, banks in Senegal have a monopoly on providing credit and making public offerings thereby excluding FinTech companies providing crowdfunding platforms.³⁹

In November 2018, Senegal signed a new Decree to digitize all government transactions processed by its public administrations. This innovative legal framework clarifies the conditions under which payment service providers can bid and win a digitization contract with the government of Senegal.⁴⁰ A continental approach towards the regulation of FinTech in this context would be futile noting the differences in various countries competition policies. Crowdfunding in other countries is not within the monopoly framework of banks. A common position therefore on crowdfunding at the continental level may as a result be moot.

“
Would a continental association of a similar kind be the best way forward for a common approach to the regulation and taxation of FinTech?
”

2.2.8 South Africa

Four specific bodies regulate FinTech in South Africa. These are the South African Reserve Bank (SARB) under the National Payment System Act 1998; Financial Sector Conduct Authority (FSCA) under the Financial Advisory and Intermediary Services Act 2002; National Credit Regulator (NCR) under the National Credit Act 2005⁴¹ and the Financial Intelligence Centre (FIC). The payments industry has been the major driver of FinTech growth in South Africa hence regulation is focused around consumer

38. Odunowo, O. 2018. "Senegal and its Growing FinTech Industry." TechCabal.

39. UNCDF. 2019. Six Development Challenges for FinTech in Senegal. Available at: <https://mm4p.uncdf.org/article/2906/six-development-challenges-for-fintech-in-senegal> (Accessed on October 2019).

40. Decree of MEFP regulating payments by electronic means of public expenses and receipts (L'arrêté portant règlement par voie électronique des dépenses et recettes de l'administration publique) adopted on 6 November 2018.

41. Credit/lending activities are regulated regardless of the means used to provide the credit. The NCA is broad enough to regulate any form of lending, regardless of the underlying platform used. For example, although crowdfunding is not specifically regulated, certain crowdfunding activities may require registration as a credit provider. These activities include where funds collected from the crowdfunding venture are on-lent to the market with interest, fees or other charges levied on the capital lent, to generate a return to investors

protection, data protection, cybersecurity and anti-money laundering and financial crime.

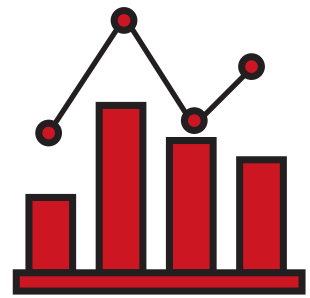
Further, the South African Reserve Bank (SARB) recently set up a FinTech unit designed to assess the emergence and regulatory implications of FinTech as well as to monitor the FinTech sector and its effect on traditional banking methods. The government also launched FinTech programme to strategically review the emergence of FinTech and assess the related user cases to enable policymakers to formulate a legal framework for the new, digital era in finances.⁴² South Africa’s financial regulators do not regulate specific technologies but rather focus on activities within financial services such as deposits, lending, advisory services, payments, etc.

As such regulators are monitoring new technologies to understand the way in which they may impact the underlying economic activities and will change or adapt regulations when deemed necessary. Similar to approaches seen in Kenya, Malawi, Nigeria etc FinTech firms are subject to multiple bodies of legislation overseen by a number of different bodies. These regulatory overlaps are driven by a lack of clarity regarding how new FinTech business models – such as P2P lending, crowdfunding – fit into the existing regulatory framework.⁴³ For example, the National Credit Act governs all lending activities. All credit providers therefore must be registered. This Act was amended to include any entity that lends regardless of the value or quantity of loans provided.

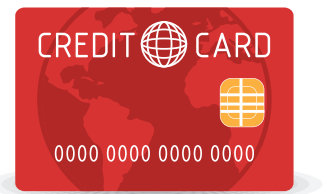
Going by this, individual lenders on P2P platforms also then become subject to this law. This creates a heavy administrative burden for P2P platforms in registering each individual.⁴⁴ In seeking to recommend a common African position or stand-alone proposals for FinTech, the South African approach shows the need to enact specific laws targeted solely towards separate FinTech related activities. As such a bespoke law on P2P lending, crowdfunding etc would be ideal. A uniform law can be deliberated upon at regional levels.

2.2.9 Uganda

The growth of FinTech in Uganda is as a result of the companies partnering with banks, mobile network operators, and savings and credit cooperatives (SACCOs). Regulation in Uganda is broadly conducted along sectoral lines. Distinct financial sector regulators regulate and supervise FinTech such as the Bank



The government also launched FinTech programme to strategically review the emergence of FinTech.



All credit providers therefore must be registered.

42. Geral, D et al. 2018. “FinTech in South Africa: Overview.” Thomas Reuters: Practical Law.

43. Centre of Excellence in Financial Services. (n.d.). The impact of the 4th industrial revolution on the South African financial services market. Available at: <https://www.genesis-analytics.com/uploads/downloads/COEFS-TheimpactofthefourthindustrialrevolutiononfinancialservicesinSouthAfrica-final-1-FR.pdf> (Accessed on November 2019).

44. Timm. 2017. Consumer lending has dropped to ‘almost zero’ under new regulation. www.ventureburn.com

of Uganda, Capital Markets Authority, Insurance Regulatory Authority, Uganda Microfinance Regulatory Authority, the Financial Intelligence Unit, Uganda Communications Commission, National Information Technology Authority among others.⁴⁵ The approach to financial regulation in Uganda is typically rules-based, which follows a set of detailed rules that governs the behaviour of financial service providers and what they should do. This contrasts with the principles-based approach that a number of European markets have adopted, which defines a set of desired outcomes and provides more flexibility for financial services providers to decide how they should achieve these. The Ugandan approach to FinTech regulation resonates previous discussions subjecting FinTech regulation to multiple bodies of legislation overseen by a number of different bodies.

2.3 Emerging African Trends

Across Africa similar trends in regulating FinTech are identifiable; that is, several separate laws relating to FinTech activities with oversight from multiple governmental bodies. FinTech regulation is fragmented. The Nigerian collaborative approach following the Nigerian FinTech Association and the regulatory sandbox established by Kenya however, provides room to shift the aspect of regulation away from the umbrella of multiple bodies to the making of distinct and standalone laws. It is important to also note that the socio-economic realities (poor infrastructure, limited ICT coverage, low levels of financial literacy) will also impact the transition towards this shift. Advocacy on FinTech literacy is therefore crucial.

45. UKAID. 2018. "Fintech in Uganda. Implications for Regulation". Cambridge Centre for Alternative Finance. https://www.jbs.cam.ac.uk/fileadmin/user_upload/research/centres/alternative-finance/downloads/2018-ccaf-fsd-fintech-in-uganda.pdf

3.0

COMPARATIVE ASSESSMENT OF FINTECH SPECIFIC REGULATION BEYOND AFRICA

“ It is thus conceivable to propose for Africa as a whole or through regional blocs the importance of providing FinTech firms with preferential treatment through tax incentives or exemptions for a variety of reasons. ”

Now that we have seen how specific African countries approach FinTech regulation, this section looks at regulation from the Asian and Latin American perspectives with the objective of identifying best practices towards framing a potential proposal for a common African position. A comparative assessment of FinTech specific regulations beyond Africa indicates that regulation fulfils different roles in other parts of the Global South.

First it takes a prudential role, focusing on systemic risks and threats to the wider economy and protecting consumers (e.g., Argentina, Brazil, Colombia, El Salvador, Mexico, Peru, Uruguay). Kenya, Malawi, Nigeria, South Africa, and Uganda have also enacted legislation under consumer protection laws as well as Know Your Customer (KYC) rules following the Financial Action Task Force (FATF) Recommendations.

Second, regulation is utilised to promote FinTech, either by eliminating artificial barriers for entry, or by establishing a preferential regime for FinTech businesses (e.g., China, Singapore, Malaysia).⁴⁶ In the latter case, regulators act as facilitators and develop various techniques, like regulatory sandboxes, to foster the development of the FinTech sector.⁴⁷ Further such promotion is driven by two different objectives: the need to increase market competition,⁴⁸ or the desire to achieve greater levels of financial inclusion.⁴⁹ Tech hubs have been established in Africa with the aim of facilitating innovation, research and development,⁵⁰ but Egypt, Kenya, Nigeria and South Africa have gone a step ahead to establish regulatory sandboxes with the aim of establishing a preferential



Development of the FinTech sector's one objective is the need to increase market competition.

46. Brummer C & Gorfine, D. 2014. "FinTech: Building a 21st-Century Regulator's Toolkit". Milken Institute Center For Financial Markets 4–6.

47. Zetzsche D. et. al. 2017. *Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation*, 23 *Fordham J. Corp. Fin. L.* 31.

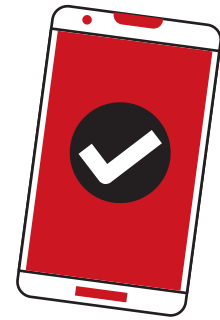
48. *Promoting Competition*, FIN. CONDUCT AUTH. (Dec. 11, 2017).

49. Curry, T. 2016. *Comptroller of the Currency, Address at Georgetown University Law Center: Special Purpose National Bank Charters for Fintech Companies*, *GEO. U. L. CTR.* 3–4.

50. Bayen, M. 2018. *Africa: a look at the 442 active tech hubs of the continent*. Available at: <https://www.gsma.com/mobilefordevelopment/blog-2/africa-a-look-at-the-442-active-tech-hubs-of-the-continent/> (Accessed on November 2019).

regime for FinTech through observation before enactment of laws. This augurs well in ensuring transparency in the conduct of business by the FinTech firms.

Third, taxation is determined in accordance with the approach taken. In China, Malaysia and Singapore for example where FinTech promotion is considered as the underlying regulatory objective, regulators carefully consider whether FinTech businesses might require some form of preferential treatment to make new products and solutions more attractive, at least to a certain extent. This is important since FinTech solutions can be developed by both incumbent financial institutions and start-ups. Payment systems have been an early target of FinTech firms in Africa in terms of mobile payments, real-time payments and digital currencies. Mobile payments are not subject to any preferential tax treatment as transactions costs are passed on to the customer. Similarly, use of banking apps to make payments attracts excise duties (for example in Kenya). Such imposition of tax is only made possible as a result of regulation already in place for mobile network operators and banking institutions.



Mobile payments are not subject to any preferential tax treatment as transactions costs are passed on to the customer.

Of use for Africa in charting a common position towards a resilient regulatory approach for FinTech is to consider the approach in China, Malaysia and Singapore for smaller FinTech companies where it is not uncommon to subject them to lower regulatory requirements.⁵¹ The rationale for this varies from the intention to avoid overburdening companies without the resources to maintain a dedicated compliance team to the limited need for consumer protection due to their smaller customer base (and the corresponding lower overall impact on the market).

It is thus conceivable to propose for Africa as a whole or through regional blocs the importance of providing FinTech firms with preferential treatment through tax incentives or exemptions for a variety of reasons. For example, in certain regions, the local demand for financial services may be insufficient to keep the new technologies profitable. It would thus fall to African regulators to both identify the areas or technologies where the new developments are desirable and to devise measures to promote them. Similarly, special rules for FinTech businesses may be established when the existing financial services regulation offers no flexibility and requires start-ups to obtain a full banking license to offer a new product. Moving to Latin America, Mexico is the



Special rules for FinTech businesses may be established when the existing financial services regulation offers no flexibility and requires start-ups to obtain a full banking license to offer a new product.

51. Lee, G. 2018. China's fintech companies are exporting AI and big data to Asia's 'laggard' banking markets. *South China Morning Post*; Fong, V. 2018. What Are Malaysia's Top 5 Banks Doing About Fintech? *FINTECHNEWS*; Yu, E. 2017. Singapore puts fintech in spotlight with AI investment, global partnerships. *ZDNet*.

only country in that region to enact a specific law on FinTech. A very different approach towards what we have seen in Africa (multiple laws and regulators). In Mexico, the Financial Technology Institutions Law was passed in 2018 with the intention of providing legal certainty to Mexico's FinTech companies. This law regulates their organisation and operation, while also bringing the activities performed by FinTech companies under the regulatory purview of the Mexican Banking and Securities Commission (CNBV) and Mexico's Central Bank (Banxico), with the main goal of protecting investors and solicitors, providing stability to the financial system and preventing money laundering activities.

FinTech companies in Mexico must obtain a licence from CNBV, Banxico and the Ministry of Finance. In order to be eligible to obtain such licence under current rules, FinTech companies must be incorporated as Mexican corporations and specifically include in their bylaws that their business purpose is to perform any of the activities regulated under the FinTech law. Mexico's FinTech law regulates two types of FinTech companies: crowdfunding institutions and electronic payment companies. The FinTech Law only recognises three categories of crowdfunding activities that can be performed through licensed FinTech companies:

(i) debt crowdfunding (also known as P2P lending); (ii) equity crowdfunding; and (iii) profit sharing crowdfunding. This seems to leave other types of crowdfunding (e.g. donation-based, reward-based or cryptocurrency-based) in a regulatory grey area.

Earlier, an observation was made under 2.2.8 (South Africa) that it may be prudent for Africa to develop distinct and separate laws for different FinTech activities either at a continental, regional or domestic level. The Mexican approach shows the possibility of enacting such a law at country level, which may serve well for African states outside WAEMU.

Other than Mexico, no other Latin American country has a specific comprehensive law for regulating FinTech. Key regulatory developments however, have been made piecemeal. Albeit different to the African approach, FinTech regulation is subject to specific laws focused on a particular FinTech related activity. This is analogous to the approach recommended under section 2.2.8 (South Africa). Let's look at a few examples from Latin America for guidance on enacting laws targeted towards separate financial services.⁵²

“

FinTech companies must be incorporated as Mexican corporations and specifically include in their bylaws that their business purpose is to perform any of the activities regulated under the FinTech law.”



The Mexican approach shows the possibility of enacting such a law at country level, which may serve well for African states outside WAEMU.

52. Berkmen, K et al. 2019. "Fintech in Latin America and the Caribbean: Stocktaking." IMF Working Paper WP/19/71.

1. In Argentina, the Entrepreneurship Act was enacted in 2006 to regulate equity crowdfunding and create legal faculties for the National Securities Commission to rule and provide oversight on activities.
2. In Brazil, the Central Bank of Brazil in 2018 established a new regulatory framework that allows Fintech firms to provide direct credit services (e.g. P2P), without intermediary banks.
3. Colombia enacted Law 1734, which allows the establishment of specialized electronic deposit and payment companies to promote a digital transaction environment; and amendments to the Sole Decree on the Finance Sector (Decree 2555), originally issued in 2010. In 2018, Colombia issued regulatory rules for crowdfunding. Decree 3157 defines crowdfunding as an activity in which more than one contributor is in contact with recipients, raising funds in their own name. Colombian entities offering crowdfunding services must be incorporated as sole purpose stock corporations authorized by the Superintendence of Finance (Superintendencia Financiera), stock exchanges, or trading systems. Fund-raisers must act on their own behalf for their own benefit. Also, funds must be used for productive investment projects.
4. El Salvador in 2015 enacted the Financial Inclusion Law. The law introduced the concept of an e-money provider, aimed at making financial services more accessible for lower income populations.
5. In Peru, e-money law was passed in 2013. It regulated electronic money payment agreements. The authorities are considering regulations on crowdfunding and the introduction of a regulatory sandbox.
6. In 2018, the Central Bank of Uruguay approved Circular No. 2307 to regulate the activity of P2P platform companies.



Central Bank of Brazil in 2018 established a new regulatory framework that allows Fintech firms to provide direct credit services (e.g. P2P), without intermediary banks.

It seems that Latin America regulates FinTech as an industry, within the existing regulatory framework but dependent on specific laws geared towards specific FinTech related activities. To some extent, this is similar to the African approach in so far as regulation of mobile payments is concerned. For the other FinTech activities, Africa has adopted a reactive outlook and responds through the application of overlapping laws, as a result of the dispersed nature of FinTech businesses.

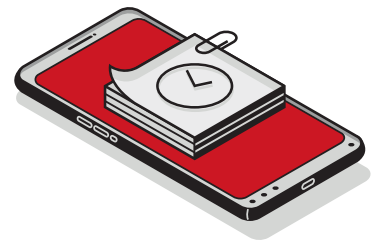


The African region has become a leader in mobile money resulting in a radical change in the delivery of financial services and significant gains in financial inclusion.

The payments industry is the indisputable flagship sector of FinTech in Africa as compared to Asia and Latin America.⁵³ The

53. Yermack, D. 2018. *FinTech in Sub Saharan Africa: What Has Worked Well, and What Hasn't*. Paper Presented at the June 2018 African Economic Research Consortium plenary session on "Innovation and Incubation for Africa's Transformation". Available at: http://www.aercafricaevents.org/wp-content/uploads/2018/05/Mauritius-paper_Yermack.pdf (Accessed on October 2019).

key point is that the African region has become a leader in mobile money resulting in a radical change in the delivery of financial services and significant gains in financial inclusion. However, initial differences in regulatory approaches to new mobile money services offered by mobile network operators led to noticeable regional differences, which have narrowed over time.



Initial differences in regulatory approaches to new mobile money services offered by mobile network operators led to noticeable regional differences, which have narrowed over time.

East Africa has maintained an overall lead including in attracting FinTech investments. Southern and Central Africa have seen increases in delivery of financial services through digital channels, but there is significant room for further gains. Despite their varied starting points, priorities, and capabilities, countries in West Africa are ready to take advantage of digital technologies.

Regulatory responses in many countries have been more reactive to the rapid pace of change in the sector and much work remains to be done with regards to adjusting their legislation, as needed, to facilitate orderly digital payments and to adjust to the new challenges coming with digital finance including for competition, AML/CFT, cybersecurity, consumer protection and data privacy issues.⁵⁴ The task for CSOs in either advocating for a common position on the regulation of FinTech in Africa, or developing a set of benchmarks within which African governments make regulatory decisions must also be based around these key themes (other than taxation).

Asia, on the other hand ‘has made significant advances in nearly every aspect of FinTech, although there is heterogeneity within the region. FinTech use has expanded beyond payments to include lending, insurance, and investment; adopting a wide range of technologies based on consumer needs, level of development, regulatory stance, and existing financial and technological infrastructure.

Asian tech giants (e.g., in Bangladesh, China, Indonesia) have become important providers of financial services, putting competitive pressures on traditional financial institutions. Policymakers are trying to catch up with the rapid pace of FinTech development, while ensuring that FinTech risks are well understood and mitigated. Some FinTech products have raised significant consumer and investment protection issues, as well as financial stability and integrity concerns (particularly in crypto-assets and P2P lending).



Regulatory responses facilitate orderly digital payments and to adjust to the new challenges coming with digital finance including for competition, AML/CFT, cybersecurity, consumer protection and data privacy issues.

54. IMF. 2019. FINTECH: THE EXPERIENCE SO FAR. Available at: <http://pubdocs.worldbank.org/en/361051561641115477/pdf/Fintech-executive-summary.pdf> (Accessed on October 2019).

Regulators are using mechanisms such as FinTech units and regulatory sandboxes, and some regulators have been testing RegTech/SupTech applications (e.g., Malaysia and the Philippines). Some countries have issued regulations on digital lending (e.g., Indonesia, Malaysia, the Philippines, Singapore, and Thailand) and equity crowdfunding (e.g., Malaysia, Singapore, and Thailand).

Similarly, the government of India via India Stack and the Jan Dhan-Aadhaar-Mobile Trinity, is supporting the digitization of payments, amending Know Your Customer (KYC) requirements, and customers digital onboarding, and enabling automated access to data from various digitized government systems in the country'.⁵⁵ The Asian focus remains broadly on regulation with limited attention towards taxation.

55. Narain, A. 2019. *Fintech – The global experience and emerging issues*. Keynote address delivered at the high Level Conference on the Bali Fintech Agenda. Available at: http://www.bankofbotswana.bw/assets/uploaded/BALI%20FINTECH%20AGENDA%20KEY%20NOTE%20ADDRESS%20BY%20THE%20DEPUTY%20DIRECTOR,%20MONETARY%20AND%20CAPITAL%20MARKETS%20DEPARTMENT,%20IMF_1.pdf (Accessed on October 2019).

4.0

FINTECH TAXATION, RESULTANT CHALLENGES AND INTERNATIONAL COLLABORATION

“ *The simple answer is that taxation depends on the approach adopted by each country. The majority of African states studied do not tax crowdfunding platforms.* ”

4.1 Taxing FinTech

So, is FinTech taxed in Africa? FinTech is emerging as an engine of growth and technological enabler that fosters financial inclusion and economic development in Africa.⁵⁶ It is positioning itself as a source for revenue mobilisation as a result of transactions and interactions across the new business models being developed that generate income and profits.

Accordingly, it is estimated by the Financial Sector Deepening Africa Report that by 2022, the FinTech sector will contribute \$150 billion annually.⁵⁷ Separately, in 2015 donation based crowdfunding generated US\$31.4 million in revenue while P2P business lending accounted for US\$16 million. Equity based crowdfunding totalled US\$4 million while reward based crowdfunding generated US\$8.5 million. How much of the revenue thus collected was subject to tax?

The simple answer is that taxation depends on the approach adopted by each country. The majority of African states studied do not tax crowdfunding platforms. Perhaps then, the principle of fairness in tax would demand the imposition of taxes over funds received through equity crowdfunding platforms.

This may well be a point of reflection for CSOs in advocating for a fair and inclusive tax system. Currently, in Africa and in particular Cote d'Ivoire, Egypt, Ghana, Kenya, Malawi, Nigeria, Senegal, South Africa and Uganda charging transaction costs play a huge role in the taxation of FinTech related activities and services. These costs are incurred in using:

1. Mobile money at the point of sale – when using mobile wallets, and smart phones at the cash register, and
2. Mobile payment platforms – to send money from consumers to merchants or from P2P via mobile devices.

US\$31.4M

Generated in 2015
donation based
crowdfunding.

US\$4M

Equity based
crowdfunding
in total.

56. Yermack, D. 2018. *FinTech in Sub Saharan Africa: What Has Worked Well, and What Hasn't*. The National Bureau of Economic Research, Working Paper No. 25007.

57. <https://www.fsdafrica.org/>

Sometimes VAT is also incurred through;

1. Direct carrier billing – when paying digital merchants by adding items to the user’s phone bill, and
2. Closed loop mobile payment – for example in Kenya, using the Carrefour Kenya App as a mobile store specific credit card.

Earlier in section 1.2, an argument for a global VAT regulatory framework for FinTech was made. This may be a good starting point towards taxing cross border FinTech activities since there is currently no comprehensive cross border VAT policy in Africa.⁵⁸ TJNA and other CSOs could consider investing in preparing a draft road map on the content of this cross border VAT policy especially in light of the fact that different African countries apply different criteria for determining the VAT treatment of digital financial services. For example:⁵⁹

1. In Egypt, normal VAT rules apply to the provision of digital services. Communication services through cellular phone networks is taxed at 14%.
2. In Kenya, South Africa and Uganda, financial services are exempt from VAT.
3. In Nigeria, the VAT Act does not make specific provision on digital financial services.

The question of whether cross border VAT applies to FinTech related services therefore becomes complex because they are rendered between counterparties established in different jurisdictions with different legal and tax regimes which information is not processed at the point of cross border sale and payment.

Direction is therefore needed in harmonising VAT either at the continental level or within regional groups. The Tax Justice Network Africa can begin by putting together stakeholders to deliberate on this. Other than VAT, the excise tax has also been introduced on FinTech services. Benin, Kenya, Rwanda, Tanzania, Uganda, South Africa, Zambia and Zimbabwe have all introduced excise tax on mobile transfers.⁶⁰

Kenya has introduced and reworked taxes on goods such as mobile phones, computer hardware, software, and, more recently, retail financial transactions. The most recent adjustments in taxation in the Kenyan Finance Act 2018 increased the excise tax on money transfer services by banks from 10 percent to 20 percent, on



Closed loop mobile payment.



Direction is therefore needed in harmonising VAT either at the continental level or within regional groups.

58. Information gathered at PAC 2019 from an officer at the Kenya Revenue Authority.

59. Ernst and Young. 2018. *Worldwide VAT, GST and Sales Tax Guide*. Available at: https://www.ey.com/Publication/vwLUAssets/EY_Worldwide_VAT,_GST_and_Sales_Tax_Guide_2018/%24File/Worldwide%20VAT,%20GST%20and%20Sales%20Tax%20Guide%202018.pdf (Accessed on October 2019).

60. See: Benin’s 218 Decree 341-25 of July of 2018; Tanzania’s *Electronic Postal Communications (online content) Regulations, 2018*; Zambia’s *PRESS STATEMENT BY THE CHIEF GOVERNMENT SPOKESPERSON ON THE DECISIONS MADE BY CABINET AT THE 12TH CABINET MEETING HELD AT STATE HOUSE ON MONDAY, 12TH AUGUST, 2018* <https://www.lusakatimes.com/2018/08/13/zambia-slaps-a-30-ngwee-a-day-tariff-on-internet-phone-calls/>

telephone services (airtime) from 10 percent to 15 percent, on mobile phone-based financial transactions from 10 percent to 12 percent and introduced a 15 percent excise tax on internet data services and fixed-line telephone services.⁶¹

In Nigeria, digital/virtual currencies are being taxed either as income or as capital gains.⁶² No other African state taxes digital/virtual currencies.

Mauritius through its Finance Act of 2019 introduced 'tax holidays' for FinTech companies engaged in the operation of e-commerce or P2P lending platforms.⁶³

Zimbabwe pursuant to its Finance Act No. 1 of 2019 also introduced measures providing for the taxation of non-resident e-commerce platforms. The Zimbabwean law provides that any amount received by or on behalf of an e-commerce platform domiciled outside Zimbabwe (from persons resident in Zimbabwe) will be deemed to be income from a source within Zimbabwe. Accordingly, it will be subject to tax at a rate of 5% if the revenue exceeds a threshold amount of USD 500,000 per annum.⁶⁴

In Cote d'Ivoire and Senegal, FinTech companies are exempt from VAT on the purchase of IT equipment.⁶⁵

In Egypt, FinTech companies are subject to remitting 14% VAT.⁶⁶

Generally, however, FinTech firms as new entrants into the provision of credit through the P2P and other crowdfunding platforms, however, remain untaxed in East Africa and South Africa.⁶⁷

African states are yet to issue regulations that would provide guidance in connection with the taxation of FinTech companies. The CSOs can aid this process by developing an infographic map of various African countries in which FinTech is active to establish what the trends are so that tax deliberations can thereafter follow. In the absence of regulations, for example on bitcoins and equity based crowdlending, FinTech companies assess and analyse their



61. *Ndung'u, N. 2019. Taxing mobile phone transactions in Africa. Lessons from Kenya. Policy Brief: Africa Growth Initiative.*
62. *Olumekor, T. 2018. Nigeria: Bitcoin Currency Transactions: Benefits Of Blockchain Technology? Mondaq. <http://www.mondaq.com/Nigeria/x/712980/Financial+Services/BITCOIN+CURRENCY+TRANSACTIONS+BENEFITS+OF+BLOCKCHAIN+TECHNOLOGY>*
63. *KPMG. 2019. Mauritius: tax measures enacted in Finance Act 2019. <https://home.kpmg/us/en/home/insights/2019/07/tnf-mauritius-tax-measures-finance-act-2019.html>*
64. *KPMG. 2019. Zimbabwe: Taxation of non-resident e-commerce platforms, satellite broadcasting services. <https://home.kpmg/us/en/home/insights/2019/09/tnf-zimbabwe-taxation-non-resident-e-commerce-platforms-satellite-broadcasting-services.html>*
65. *Council of Ministers, Order No. 2015-503 of 8 July 2015.*
66. *Think Marketing. 2018. Ecommerce platforms in Egypt will have to charge and remit VAT tax. <https://thinkmarketingmagazine.com/ecommerce-platforms-in-egypt-will-have-to-charge-and-remit-vat/>*
67. *Cambridge Centre for Alternative Finance. 2017. Crowdfunding in East Africa: Regulation and Policy for Market Development.*

transactions and apply the basic taxation principles and procedures to comply with their tax obligations. Like any corporation, FinTech companies are subject to regular income tax based on net taxable income at the rate prescribed by each state.

Considering that the FinTech industry in Africa is in its infancy, a minimum corporate income tax has not been contemplated. Considering that some FinTech companies may register as branches or subsidiaries of foreign FinTech companies, they may also, based on the bilateral agreements between the consenting states, be subject to dividend withholding tax.

Beyond Africa, Singapore seeks to promote FinTech companies through the use of its tax system. FinTech firms in the early stages of their business life cycle, as well as companies devoting research and development expenses to new technologies may be entitled to preferential taxation policies. However, these deductions may not apply to mature firms or products. Singapore also uses its tax code to encourage platform lending. It entitles investors to beneficial tax treatment on interest and gains from loans arranged through platform lenders up to a certain amount. The objective being to encourage the growth of peer to peer lending and improving competition in the banking sector by diversifying the available sources of finance.⁶⁸

FinTech taxation in Mexico is complex. Licensed FinTech companies in Mexico operating in the crowdfunding space are facing challenges that relate to being able to set up a corporate structure that allows them to be taxed only on the service fee or commission earned, while also allowing their investors to be taxed according to their specific tax nature, rather than subjecting all investors uniformly to corporate taxes at the level of the FinTech companies and then exposing them to dividend taxes, which can lead to effective tax rates of more than 50% for individuals or foreign investors.⁶⁹

While the FinTech Law does allow licensed crowdfunding companies to act as mandataries of their clients, which could somehow seem to be a solution as the crowdfunding companies would be receiving payments from the solicitors on behalf and for the benefit of the investors and, therefore, should not liable to corporate taxes on such income, this alternative entails many practical difficulties. For instance, solicitors may be required to withhold taxes from payments made to the crowdfunding companies, taking into consideration the nature of each investor,



Singapore also uses its tax code to encourage platform lending.



Licensed FinTech companies in Mexico operating in the crowdfunding space are facing challenges that relate to being able to set up a corporate structure

68. Government of Kenya. *Nairobi International Financial Act, No. 25 of 2017*. Nairobi: Government Printers. Also available on <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NairobiInternationalFinancialActNo25of2017.pdf>

69. Deloitte. 2019. *Applying for government incentives in Singapore*. <https://www2.deloitte.com/content/dam/Deloitte/sg/Documents/tax/sg-tax-applying-for-gov-incentives-in-singapore.pdf>

but have no visibility as to the identity of the investors, while at the same time being burdened with having to issue individualised invoices and withholding certificates to all investors.⁷⁰ A similar problem can be faced when enacting laws to tax crowdfunding platforms in Africa. The Mexican example provides perspective on how to avert a related situation.

Most jurisdictions in Latin America do not have public positions on taxation of FinTech-related activities, and the few that do, rely primarily on existing legal frameworks. There is no comprehensive source for taxation-related information specific to the region. While a detailed tabulation of fiscal positions by jurisdiction is not available, there are general rules for tax treatment of FinTech-related activities applicable to the region, which may as well inform the African position. For instance:

- a. Taxation of P2P activities is generally straightforward, although cross-country specificities exist. For example, under Brazilian regulation, P2P loan companies must act exclusively via electronic platforms, be incorporated as corporations, and have minimum paid-in capital and net worth of BRL 1 million at all times. They may also provide other services, such as credit analysis, loan collection and electronic money issue.⁷¹ In Africa, regulation and policy for P2P are at the very earliest stage of development. Making it a legal requirement for P2P loan companies to be incorporated aids with risk management and also monitoring the volume of transactions engaged in that result in profits upon which tax can later be imposed.
- b. More broadly, tax treatment of P2P activities is based on tax type:
 - i) Direct taxes, where P2P sellers typically register as self-employed businesses and are responsible for self-reporting their income and tax liability to the tax authorities, with all deductions applicable to the self-employed. Typically, exemptions apply: due to irregularity of engagement and small scale of many P2P sellers; on some rental income (typically, if it is below a certain threshold).
 - ii) Indirect taxes. In countries with VAT/GST, these will apply to the provision of goods and services in the P2P economy. Generally, the P2P platform is liable to discharge the tax on services provided by the sellers, although the question of who is liable is disputed by some authorities. Typically, exemptions apply: For businesses operating below a certain threshold of gross income; on long-term



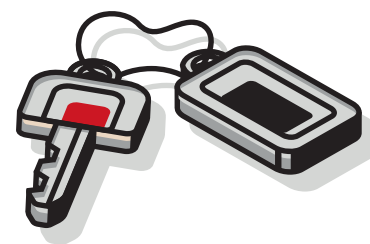
Solicitors may be required to withhold taxes from payments made to the crowdfunding companies, taking into consideration the nature of each investor.

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Making it a legal requirement for P2P loan companies to be incorporated aids with risk management.
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70. Velarde, O., Brave, S and Mueller, R. 2018. “Tax challenges of the crowdfunding ecosystem in Mexico.” ITR. Available at: <https://www.internationaltaxreview.com/article/b1f7n2g8qjrkz7/tax-challenges-of-the-crowdfunding-ecosystem-in-mexico> (Accessed on October 2019).

71. Eid, S. 2018. “FinTech Regulation in Latin America – Mexico.” Medium. Available at: <https://medium.com/@salomneid/fintech-regulation-in-latin-america-6cc32b9aac08> (Accessed on October 2019).

residential rental income. Some countries apply sector-specific taxes that would extend to P2P business operating in the sector. For example, taxes applicable to hotel guests now extend to users in the P2P accommodation-rental sector; taxes targeted at the ridesharing sector, especially in the presence of license fees applicable to traditional taxi drivers.⁷²



For businesses operating below a certain threshold of gross income; on long-term residential rental income.

4.2 International Collaboration

FinTech and its related activities do have the potential to raise taxes for African governments. In a similar vein, FinTech products can be used to facilitate tax fraud, process funds derived from the hidden economy or to mask the origin of funds.

Crowdfunding platforms are susceptible to these phenomena. The issue with regulatory sandboxes if not carefully regulated, monitored and supervised can lead to the creation of tax havens. For example, Jersey has set up a regulatory sandbox to allow certain start-ups to operate ‘without the normal registration requirement and associated costs’.⁷³ The Swiss financial regulator FINMA sought for lax anti-money laundering rules for smaller FinTech firms ‘as part of a drive to boost innovation and shore up the country’s position as a leading money management hub’.⁷⁴

As regulation is overlooked, payments and transactions get easier, fraud, money-laundering, identity theft and illicit financial behaviours get easier too. Malta in 2018 positioned itself as a ‘hotbed for fintech’.⁷⁵ Accordingly, a Maltese FinTech start-up launched the first two-way cryptocurrency ATM in the country allowing holders to buy or sell two digital currencies in real time (promoting secrecy as cryptocurrency transactions are anonymous and have the potential to facilitate money laundering).



Crowdfunding platforms are susceptible to facilitate tax fraud, process funds derived from the hidden economy or to mask the origin of funds.

Accordingly, the need for international collaboration to disconnect FinTech and tax evasion is necessary. Tax justice and data privacy are therefore some of the issues that such collaboration must discuss to ensure a secure, transparent, accurate and immutable way to manage FinTech related activities.

Of concern that may hinder collaboration on the front of data

72. Carrigues Digital. 2018. *Latin America faces fintech regulation*. August 2018; Gupta, S., M. Keen, A. Shah, and G. Verdier. 2017. *Digital Revolutions in Public Finance, Chapter 3: Taxation and the Peer-to-Peer Economy*, International Monetary Fund, Washington, DC.
73. *Virtual currency regulation in Jersey takes effect*. <https://www.ogier.com/publications/virtual-currency-regulation-in-jersey-takes-effect#>
74. Neghaiwi, B. 2018. *Swiss watchdog to propose looser anti-money laundering rules for fintechs*. Reuters.
75. Ogwu, E. 2018. *Moon Zebra Installs First Two-way Bitcoin ATM in Crypto-friendly Malta*. BTCMANAGER. <https://btcmanager.com/moon-zebra-installs-first-two-way-bitcoin-atm-in-crypto-friendly-malta/?q=/moon-zebra-installs-first-two-way-bitcoin-atm-in-crypto-friendly-malta/&>

protection is that the majority of African countries do not have in force data protection laws.⁷⁶ Only 19 African countries have data protection legislation. It was thus recommended during the 7th PAC Conference that these African countries adopt the General Data Protection Regulation in order to secure data that is made available from the continent.

The Financial Stability Board, an international body that monitors and makes recommendations about the global financial system, identified three priorities for international collaboration with relevance for Africa:

1. The need to manage operational risk from third-party service providers,
2. Mitigating cyber-risks, and
3. Monitoring macro-financial risks that could emerge as FinTech activities increase.

With the development of Fintech and the rise of virtual currencies, such as Bitcoin, which do not depend on any issuing institution and have no legal status, cybersecurity is the biggest worry when it comes to financial transactions and services. Mobile money fraud, intrusions, attacks, money laundering and terrorism are the major concerns on the continent and could put Africa in danger. For example, according to the Central Bank of Kenya 37% of mobile transactions are fraudulent compared to 10% when done by traditional banking institution.⁷⁷

The proliferation of FinTech opens up vast horizons and at the same time poses significant challenges in the fight against cyber-fraud and tax evasion. These FinTech platforms, especially crowdfunding sites, can be used to finance activities related to terrorism. In addition, these services, which make it possible to withdraw cash at points of sale using codes exchanged by SMS, present the most important risks in terms of money laundering.

To help global FinTech firms interact with regulators, scale ideas and also create a framework for co-operation between financial services regulators, the Global Financial Innovation Network (GFIN) has been established. Its aim is to create a global regulatory sandbox within which a new framework for cooperation between financial services regulators will be created to provide a more efficient way for FinTech firms to interact with regulators.

Eswatini, Kenya, Mauritius, South Africa are the only members of this network. This has the danger of regulatory capture by non-



Mobile money fraud, intrusions, attacks, money laundering and terrorism are the major concerns on the continent and could put Africa in danger.



76. UNCTAD. 2019. *Data Protection and Privacy Legislation Worldwide*. Available at: https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Data-Protection-Laws.aspx (Accessed on November 2019)

77. UNECA (n.d). *Promoting FinTech start-ups in Africa. Policy Brief*. <https://repository.uneca.org/bitstream/handle/10855/24304/b11886900.pdf?sequence=1>

African states who may impose unfavourable regulations. Thus, the need for more African regulators to join the GFIN as members and NGOs to seek observer status.

In 2018, the IMF and the World Bank launched the Bali FinTech Agenda aimed at ‘helping member countries to harness the benefits and opportunities of rapid advances in financial technology that are transforming the provision of banking services, while at the same time managing the inherent risks’.⁷⁸ International collaboration and FinTech policy making under this Agenda is envisaged through the IMF and WB helping to ensure a level playing field and to promote innovation, consumer choice, access to high quality FinTech and revenue mobilisation by:

- a. Improving collective surveillance and assisting member states via capacity building.
- b. Encouraging information sharing across the global regulatory community to share knowledge, experience, and best practices to support an effective regulatory framework.
- c. Developing robust infrastructure that addresses data ownership, protection, piracy, cybersecurity, operational and concentration risks, and consumer protection.
- d. Improving the resilience of payment services.
- e. Providing legal clarity and certainty regarding key aspects of FinTech activities by which an enabling legal framework can be fashioned by having clear and predictable legal rules that accommodate technological change, tailored to national circumstances.
- f. Identifying, understanding, assessing and mitigating the risks of criminal misuse of FinTech and by using technologies that strengthen compliance with anti-money laundering and combatting the financing of terrorism.
7. Facilitating the safe entry of new products, activities, and intermediaries.

Other than the GFIN as an international collaborative platform, a continental collaborative platform has also been formed; the Africa FinTech Network. Cote d’Ivoire, Egypt, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda are members of the AFN. AFN is a platform that unites Africa FinTech leaders and stakeholders through their country associations to exchange information and ideas, support creation of innovative technologies and deployment across and beyond Africa. The network also serves as a platform for advocacy and coordinated regulatory interactions.⁷⁹

AFN was formally inaugurated in Lagos, Nigeria in December 2018 during the first Africa FinTech Festival in the presence of Country

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Encouraging information sharing across the global regulatory community to share knowledge, experience, and best practices to support an effective regulatory framework.”

78. IMF. 2018. *The Bali FinTech Agenda: A Blueprint for Successfully Harnessing FinTech’s Opportunities*. Press Release No. 18/388. Washington DC.

79. <https://www.africafintechnetwork.com/>

Heads of IMF, Africa Development Bank, as well as representatives of UK-DFID, UNECA, Afrexim Bank, Ecobank Group and other local and global corporations. Its primary aim is to foster multinational or cross border FinTech policy and regulatory frameworks for Africa and to position itself as a single point of access to create a pan-African financial services sector. Noting the lack of a strong African presence at the GFIN, the AFN can apply to join the organisation as a member so as to give its input on sharing different experiences and approaches on FinTech in Africa.

This working paper asked whether there should there be a common position to the taxation of FinTech for Africa? Or should each African country enact a specific set of laws targeted towards the regulation and taxation of FinTech? Generally, how should Africa approach the taxation of FinTech in light of its features? The answers to these questions were the central focus of this working paper.

It was observed that Africa is positioned to generate domestic sources of revenue as a result of the emerging FinTech boom. It was also observed that Africa must address the perennial demands of fast innovation against the slower pace of regulation, which in turn will greatly clarify whether the current African tax frameworks reflect the new trends in finance following digitalisation, and if not, then the type of tax frameworks to be adopted. Before this discussion is pursued as part of the recommendations of this working paper, it would do good to conclude first by making some observations which can be viewed as general across Africa on its approach to FinTech regulation and taxation.

5.0

CONCLUSION



It is thus conceivable to propose for Africa as a whole or through regional blocs the importance of providing FinTech firms with preferential treatment through tax incentives or exemptions for a variety of reasons.



5.1 General Observations

1. FinTech regulation in Africa is a product of each state's socio-economic context, its current technological development and its response to emerging market developments. These factors may hinder the move towards a common African approach to regulating and taxing FinTech.
2. The African regulatory framework for FinTech is an uneven, fragmented, divergent and overlapping patchwork. The FinTech sector is often regulated by multiple government regulators. Relatedly, this method of regulation impacts the taxation of FinTechs. Sound regulation addresses those FinTech related activities that reconciles the interests of these companies with those of society. A sound taxation system for FinTech would result in the generation of revenues to finance public services that would improve development and aid in meeting other social goals. Without a sound regulatory system, it would be difficult to identify the activities upon which tax can be imposed.
3. In the countries examined, FinTech companies are taxed in accordance with the rules applied to traditional brick and mortar companies, albeit with brief amendments clarifying what activities are subject to tax. Crowdfunding platforms remain outside the tax bracket.
4. The development of FinTech in Africa is not restricted to mobile based money transfer services but has moved to provide P2P, lending and crowdfunding services despite the lack of a consistent policy and law on these developments.
5. International collaboration on FinTech regulation is centred around the anti-money laundering, know your customer and cybersecurity rules.
6. The concept of regulatory sandboxes in Africa for FinTechs is underexplored. With the exception of Egypt, Kenya, Nigeria and South Africa all the other countries examined in this working paper have not provided for a regulatory sandbox. Taxation of FinTech follows the type of regulation the country has in place for FinTech firms. Those countries that provide a regulatory sandbox, also provide tax incentives and exemptions. Those that have no specific FinTech law, FinTech regulation is then informed by a mix of laws that overlap.

7. Latin America and Asia have similar streaks to taxing FinTech as their African counterparts. Either Fintechs are fully taxed, exempted or partially taxed. The exemptions are prevalent in countries that have established regulatory sandboxes. Again, regulatory sandboxes only provide tax incentives to those Fintechs that are admitted to it. Countries that take a wait and see approach to FinTech activities apply similar tax rules for their traditional brick and mortar, physically located companies to FinTech firms as well. A FinTech, hence will be taxed as an ordinary company at full tax rate. Partial tax exemptions are also made for early start ups and those FinTech firms investing in research and development.
8. A cacophony of overlapping laws and tax structure that remains analogue is currently what FinTech faces in Africa.

Next, some recommendations are made.

5.2 Recommendations

5.2.1 Policy level

First, policymakers in the African region must address the perennial race between fast-moving FinTech innovation and the slow pace of regulation. For example, the fact that bitcoins are not regulated should not prevent the revenue authorities from their taxation (this is already being done in Nigeria). Substantial sums of money are also being raised through crowdfunding platforms that are not subject to tax. This ought to be reviewed by the tax authorities and where appropriate an excise tax be imposed. The pooling of experts; academics, tax practitioners, legal professionals, stakeholders within the FinTech sector to advance a memoranda to guide policymakers on FinTech regulation related to bitcoins and crowdfunding platforms will be crucial in moving forward on this recommendation.

Second, there is a need for a comprehensive FinTech specific law instead of the overlapping laws and regulations that currently inform the regulation and taxation of FinTech in Africa. The introduction of regulatory sandboxes could assist in developing a concise and comprehensive regulatory framework by observing and understanding the various nuances under which FinTech companies operate. A regulatory sandbox therefore, provides a structured and controlled environment within which regulations and taxation criteria can be formulated while monitoring how FinTech companies develop their products and services and provide consumer access to them.

Third, the UN Economic Commission of Africa along with the Africa Tax Administration Forum, Tax Justice Network Africa, other CSOs and the Africa FinTech Network to consult and coordinate on the Bali FinTech Agenda proposals in so far as

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Substantial sums of money are also being raised through crowdfunding platforms that are not subject to tax.”

they are context sensitive in mobilising domestic revenue and accordingly submit a joint African position on regulation and taxation of FinTech based on the content discussed in this working paper under sections 2 - 4.

5.2.2 Advocacy Level

In thinking of a move towards a common African position on regulation of FinTech, consideration must be given on whether there is a need to continue the practice of fragmented regulation or adopt bespoke legislation centred on FinTech especially in light of global networks focused on directing regulation. We are already seeing collaboration patterns in the regulation of FinTech as a cross between government and the private sector in Egypt under the MENA FinTech Association, in Cote d'Ivoire, Egypt, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda under the Africa FinTech Network and again at country level in Nigeria through the Nigerian FinTech Association. Would advocating for a continental association of a similar kind be the best way forward for a common approach to the regulation and taxation of FinTech? For this to be met with approval, a common position can arguably be negotiated on individual FinTech related activities, for example on P2P as opposed to a general law on FinTech.

It would not be plausible for instance to agree on a continental based approach to regulating crowdfunding because WAEMU member states unless they divert from the current position have granted banks the monopoly on lending, thereby ousting crowdfunding. A common position therefore on crowdfunding at the continental level may as a result be moot. In seeking to recommend a common African position or standalone proposals for FinTech, we have learned from the South African approach the need to advocate for the enactment of specific laws targeted solely towards separate FinTech related activities. As such making content proposals for a bespoke law on P2P lending, crowdfunding etc would be ideal. A push towards a regional harmonised and uniform law on P2P or crowdfunding is also necessary in going forward. But for this to happen, it is important to first identify what are the barriers⁸⁰ toward getting to a common African approach and second, how to mitigate against those barriers.

The lack of an agreement on the ideal definition of FinTech has resulted in the existing overlapping regulatory framework across multiple laws and regulators. A working definition to be adopted at the continental level may aid in a move towards streamlining regulation and imposing taxation. This

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The lack of an agreement on the ideal definition of FinTech has resulted in the existing overlapping regulatory framework across multiple laws and regulators.”

80. *Regional barriers (WAEMU), conflict, infrastructural development and readiness, fragmented regulation, technology constraints and literacy,*

working paper has proposed a definition (FinTech describes tech-enabled products and services that improve or disrupt traditional banking and financial services) which needs to be subjected to debate and final adoption.

Advocacy should be targeted towards contributing to a successful FinTech ecosystem for Africa. Towards this aim, it is recommended for CSOs to apply to become an observer at the GFIN.

Given FinTech's cross border characteristic, it may be prudent to also advocate for a global regulatory framework on VAT and this can be discussed first at the continental level with ECA, ATAF, TJNA, AFN and later with GFIN. The discussion ought to be around the following key VAT issues:

1. How to determine whether VAT is chargeable on FinTech services?
2. What is the core service that is being provided? Is it a technology product (market data), financial service (crowdfunding) or a mixture of both?
3. Is it a single service or a multiple supply of optional services?
4. Who are the recipients of the service – businesses or individuals – and where are they located?
5. Who is being charged for the service, the recipient or another party?
6. How to add a VAT management feature to apps in Africa?

Finally, what tax implications do blockchain and its practical uses entail need to be explored further. Nigeria is already taxing bitcoins. Bitcoin transactions are also being promoted and facilitated in Kenya, Mauritius and South Africa. The Nigerian experience ought to guide advocacy related to bitcoin taxation in Africa. However, at the moment, this would prove difficult, primarily because many practical uses for blockchain are still in the experimental stages in Africa. In addition to the technology itself, governance frameworks and other legal and regulatory issues will need to be considered before blockchain can be implemented successfully, and it is only after this has occurred that all of the tax issues may become clear.

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