AGENT BANKING IN UGANDA

A REVIEW OF THE OPPORTUNITIES & CHALLENGES

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1.0 INTRODUCTION

According to Section 3(a) of the Financial Institutions Act as amended in 2016, agent banking means the conduct by a person of financial institution business on behalf of a financial institution as may be approved by the Central Bank.

Agent banking is hinged on the Agency Principal relationship. Agency is a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions.

This relationship is legally recognized in Uganda under the Contracts Act, 2010. An agent is defined under the Contracts Act as a person employed by a principal to do acts for the principal or to represent the principal in dealing with a third party; and the principal is defined as a person who employs an agent to do any act for him or her or to represent him or her in dealing with a third person.

Therefore, an agency relationship exists when one or more persons (principals) engage another person (agent) to perform some service on behalf of the principal, which involves delegating some decision-making authority to the agent.

Under the agent banking model, a financial institution contracts a third party, usually a retail outlet to perform some functions on its behalf, these include: cash deposit and cash withdrawal, payment services including bill payments, money transfers, facilitating disbursement and repayment of loans, receipt and forwarding of documents in relation to loans and leases, payment of retirement and social benefits, account balance enquiry,provision of account statements and any other permitted products.

The principal usually offers remuneration in this case in the form of commissions which are based on the volume and value of transactions the agent would have executed.

The agent banking model also borrows from the marketing theory of distribution channels. A distribution channel is a means by which businesses get their products to their consumers. Therefore, agent banking represents a distribution channel which makes it possible for financial institutions to bring their services closer to the people.

1.1 BACKGROUND OF AGENT BANKING IN UGANDA

The Ugandan parliament passed an amendment to the Financial Institutions Act of 2004 in January 2016. This amendment allows banks to offer agent banking services in the country with the objective of financial inclusion at the forefront. As such, banks in Uganda have now adopted the agent banking model.

The central bank of Uganda in a bid to operationalize the Financial Institutions Amendment Act, 2016 and protect consumers passed the Financial Institutions (Agent Banking) Regulations, 2017.

Prior to the 2016 amendment of the Financial Institutions Act, the main distribution channel for banks was through their branches and Automated Teller Machines (ATM) networks. However, these proved inadequate upon the arrival of mobile money which without a doubt revolutionized the provision of financial services in Uganda. Furthermore, mobile money had grown to also start taking on services previously considered the preserve of financial institutions. This posed a threat to financial institutions that were afraid of being edged out of business hence the adoption of agent banking as a panacea.

1.2 OPPORTUNITIES OF AGENT BANKING

The Agent banking model hopes to enhance access to financial services by allowing small businesses to operate as satellite branches for financial institutions. Based on early experiences in other jurisdictions, agent banking has a large contribution to make towards financial inclusiveness in developing countries because it provides convenience, greater accessibility, it is time saving, it is compatible with past technology experience, easy to use, relatively cheap, has improved service quality and satisfactory personal experience with other banking technologies.

1.3 CHALLENGES ASSOCIATED WITH AGENT BANKING

Agent banking however is not without its fair share of challenges. Mwangi and Mwangi report that the level of liquidity that bank agents maintain influences the use of agency banks in a sense that in most cases agents do not always maintain enough cash demanded by customers and this discourages repeat business.

They also highlight that lack of security, malfunctioning equipment and errors also discourage the uptake of agent banking. Network problems also deter the use of agent banks by customers as they sometimes suffer from connectivity problems.

These challenges can be summarized as operational; technological; legal and reputational.

1.3.1 Operational challenges; these include the loss of customer assets and records, data entry errors, poor cash management by the agent resulting in the agent not being able to meet customer withdrawals, and failure by the agent to resolve or forward customer complaints to the bank.

1.3.2 Technical challenges; these arise where there is system or hardware failures which can cause a lack of service availability and informational loss.
1.3.3 Legal challenges; these may occur when customers sue a bank as a result of actions of the agent.

In order to appreciate the problems associated with agent banking, one has to keenly look at the mobile money challenges in Uganda. Most of the challenges faced by mobile money agents today without a doubt plague bank agents since both models operate similar systems. These challenges include but are not limited to fraud, personal security of agents arising from robberies that endanger their lives, lack of support from network operators, theft and poor connectivity. So how does the Central Bank protect the consumers and avoid the repetition of the challenges faced by the Mobile Money Service providers and agents?

1.4 SAFEGUARDS

1.4.1 Operational safeguards

The use of a non-bank employee to effect transactions on behalf of the bank poses risks such as agent fraud and theft. The agent may also charge customers unauthorized fees or offer unprofessional services to customers such as requiring customers to purchase certain goods and services to obtain other services.

In order to protect the consumers, the Regulations provide for due diligence in agent selection, they further provide that agents should have at their locations written notices stating that no charges or fees are levied, and that fees are not directly charged to customers. In addition, the law provides that persons who offer financial services on behalf of a financial institution should have valid agency agreements with the financial institution. In order to entrench the safeguards, the central bank makes it mandatory for the financial institutions to comply with the regulations, or face suspension or any other penalties.
This mitigates the potential operational challenges that may arise.

1.4.2 Technical safeguards

Terrible user experiences of bank customers paint a likely scenario for agent banking. Other than unstable networks and to some extent the high interest rates, all other pain points are directly linked to the inner workings of the bank. As such they require internal strategies to resolve.

Therefore banks must address key pain points such as high charges, fraudsters, unstable network and untrustworthy agents in their agency banking system.

The regulations stress the need to put in place adequate and secure technological infrastructure capable of processing all transactions in real time, and also provide for a two-factor authentication and generate a standard easily identifiable copy

system receipt or acknowledgement with the name of the financial institution, unique identification number of the agent who processed the transaction and a unique transaction reference number.

1.4.3 Legal safeguards

Legal challenges can arise in circumstances of liability. For example the agent may become negligent by not checking the bank notes they receive for deposits and in the process accept fake notes. This may result in losses for the financial institution if the agency contract is silent on who should bear the losses. It is for this reason that most agency contracts try to induce optimal behaviour from agents by rendering them liable for all losses due to negligence on their part.

The central bank however provides that a financial institution is liable for the actions or omissions of its agent relating to agent banking. However, an agent shall be liable for any acts or omissions of its outlet. This seems to limit the liability of the principal in the principal agent relationship which gives rise to the question of what liabilities shall the financial institutions bear and against whom can the consumers enforce their rights?

1.5 COMPARATIVE ANALYSIS

In order to truly appreciate the agent banking legal regime in Uganda, it is imperative to juxtapose it with another jurisdiction specifically Kenya which has had agent banking in force since 2010.

Pursuant to Section 33(4) of the Banking Act, the Central Bank of Kenya issued guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

The Guideline is intended to; increase financial services outreach and to promote financial inclusion to the unbanked and under-banked population without risking the safety and soundness of the banking system; and encourage institutions to use agents in the provision of banking services so as to reduce the cost of financial services and to foster financial inclusion, reach and depth.

It is imperative to note that the Guideline provides that the financial Institutions shall pay special attention to credit risk, operational risk, legal risk, liquidity risk, reputation risk and compliance with rules for combating money laundering and financing of terrorism. Therefore, the Guideline encourages banks to put in place appropriate product and operations manuals, accounting procedures and systems for designing necessary forms/stationary to be used by the agents. However, how protected are Kenyan consumers from these risks?

1.5.1 Operational safeguards

In order to protect consumers from operational challenges, the Guideline makes it mandatory for every contract between an institution and an agent to specify that the agent shall at all times ensure safe-keeping of all relevant records or have them shifted to the institution at regular pre-specified intervals for safe-keeping.

The Guideline also provides that the Institutions shall publish an updated list of all their agents in their websites and such other publications as they may deem appropriate. In addition to the updated list, the physical location, GPS co-ordinates, postal address and telephone numbers of the entity and its working hours need to be provided by the financial institution. The publications containing the list of their agents shall be disseminated to all their branches and may also be disseminated to their agents.

These security measures are intended to safeguard consumers from falling prey to unregistered agents.

Whereas the Ugandan regime provides for security measures through a two-factor authentication and generation of a standard easily identifiable copy system receipt or acknowledgement with the name of the financial institution, unique identification number of the agent who processed the transaction and a unique transaction reference number, it fails to provide for GPS that enables security organs like police and bank officials to easily locate agents which the Kenyan system provides.

1.5.2 Technical safeguards

The Guideline provides for the minimum technical requirements for the operating systems of the agent to ensure that agent banking transactions are carried out with devices which are technically compliant. Institutions are required to ensure that such equipment are inter alia able to transmit transaction information in code, carry out electronic transactions on real time basis, allow handling under different user profiles for administration, maintenance and operation, reverse incomplete transactions due to error, system failure, power outage or other defects and process or generate durable transactional documents or receipts.

In addition, the Guideline mandates the financial Institutions to monitor the safety, security and efficiency of the equipment being used to prevent any tampering or manipulation by any person.

With regard to technical safeguards, both the Ugandan and Kenyan legal regime provide similar protective measures as they both provide for the minimum technical safeguards like the transmission of transaction information in code and carrying out of electronic transactions on real time basis. However, the Kenyan system goes further to mandate financial Institutions to monitor the safety, security and efficiency of the equipment being used to prevent any tampering or manipulation by any person.

1.5.3 Legal safeguards

The guideline provides that every contract between an institution and an agent shall contain a provision that the institution is wholly responsible and liable for all actions or omissions of the agent. This responsibility extends to actions of the agent even if not authorized in the contract so long as they relate to banking services or matters connected therewith. This streamlines liability and clearly places liability on the financial institution.

Furthermore, even in the circumstances where a third party service provider is contracted for any of the services, the institution shall remain liable for the agent banking business.

Therefore, whereas the Kenyan Guideline is clear and certain and places liability wholly on the financial institution, in the Ugandan regime, it all depends on the contract between the Financial Institution and the agent.

1.6 CONCLUSION

Whereas the Financial Institutions Act and the Agent Banking Regulations provide the protective gear to propel financial inclusion in the country by way of agent banking, there are clearly many questions over its effectiveness in a country that is yet to fully understand the agent banking regime.

However, it has to be noted that agent banking as a new financial service model has resulted in an increase in cash transactions by banks. This trend is likely to continue because of the launch of a shared agent banking platform by the Uganda Bankers' Association which will allow connectivity between member banks so as to enable agents serve customers of any other member bank in order to minimise duplication of agency networks and maximize points of presence to ensure coverage across the country. This is a step in the right direction considering the fact that agent banking is in competition with mobile money which has managed to penetrate into the furthest regions of this country. It follows from the foregoing that in order for agent banking to accomplish what it set out to achieve, further effort and resources have to be applied in order to give it widespread accessibility.

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