Fintech Regulation in Kenya

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01 Introduction

What is Catalyst Fund?

Catalyst Fund is an **inclusive fintech accelerator** that supports early-stage startups building solutions for underserved communities, and develops innovation ecosystems in emerging markets. Catalyst Fund is managed by BFA Global and supported by UKaid and JP Morgan Chase & Co.

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What is the Cambridge Centre for Alternative Finance?

The Cambridge Centre for Alternative Finance at the University of Cambridge Judge Business School is dedicated to the study of technology-enabled and innovative instruments, channels, and systems emerging outside of traditional finance. It is driven by its mission to “create and transfer knowledge addressing emergent gaps in the financial sector that supports evidence-based decision-making.”

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Why **this deck?**

The Cambridge Centre for Alternative Finance (CCAF) and BFA Global have produced this deck to support fintech startups working in Kenya, and those seeking to enter the Kenyan fintech market.

This deck provides **an overview of Kenya's regulatory regime** as it relates to the fintech verticals of:

- ❑ Banking
- ❑ Credit
- ❑ Insurance
- ❑ Payments
- ❑ Investment

The deck also offers recommendations as to how startups can best engage with regulators, and tools to help them do so.

How to **use this deck**

This deck is organized into 4 main sections:

- ❑ Country and regulatory environment
- ❑ Tips on engaging with regulators
- ❑ Specific regulations per fintech vertical
- ❑ Resources for startups

The first two and last sections of this deck are of general interest to all fintech startups. The regulations section is segmented into different legal categories based on use cases, and not all categories may be relevant for a particular business model.

Companies can map their business model(s) to the relevant legal categories on slide 10. Following this mapping, they can focus solely on specific parts of the "regulations section" that are relevant to their business model(s).

In using this deck, please note the disclaimer on slide 2.
Note: the exchange rate applied is 1 KES/0.009 USD -- current at 26 November 2020.

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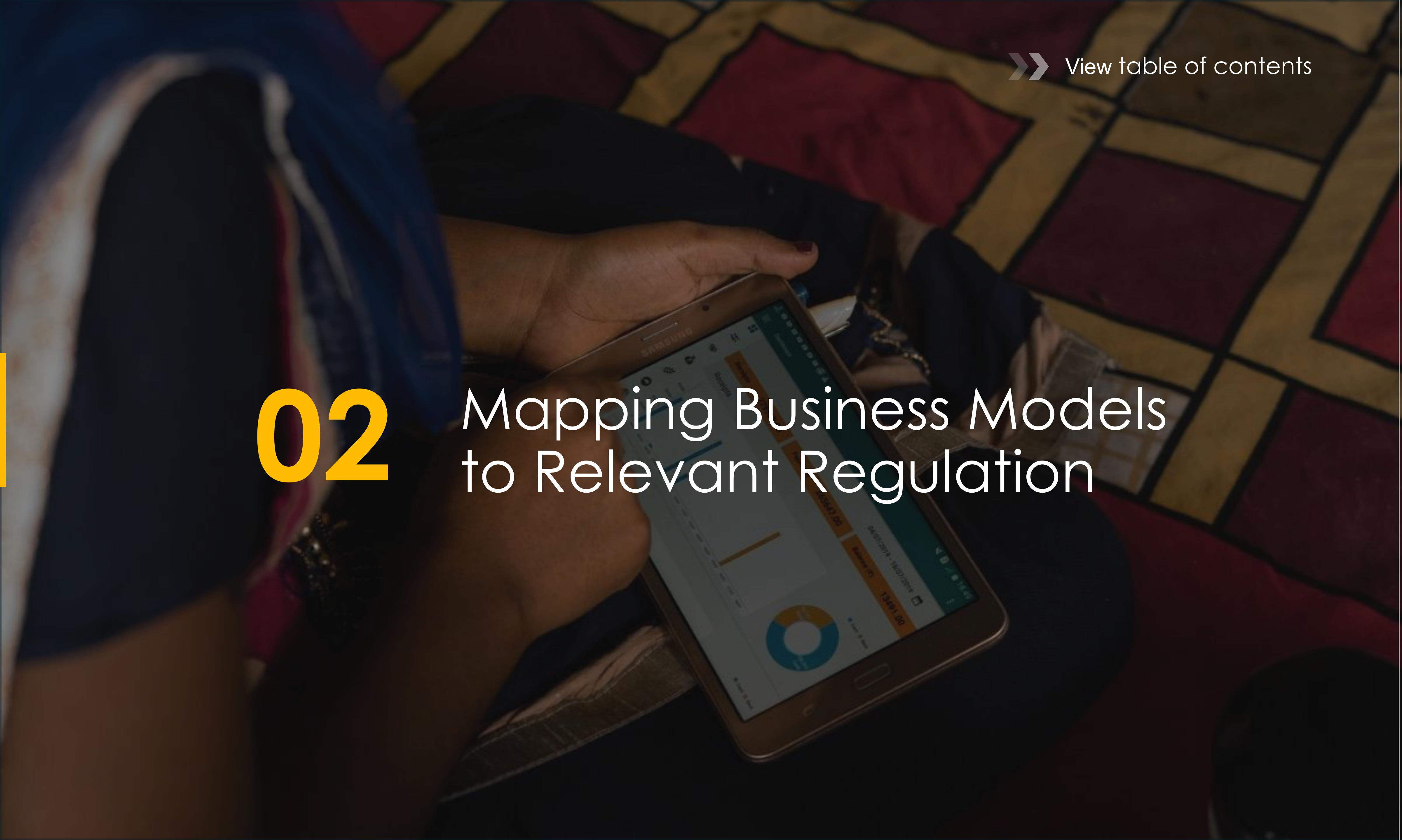


02 Mapping Business Models to Relevant Regulation

Mapping business models to **relevant legal categories**

Business Model	Legal Category													
	Banking	Payments	Credit	Insurance	Investments	Data	Consumer protection	AML / KYC	Economic crimes	Cybersecurity	Competition	Telecom regulation	Taxation	FX
Digital payments & remittance*		●				●	●	●	●	●	●	If model incorporates comm. services	If mobile phone-based financial transaction	If transfer across borders
Digital lending			●			●	●	●	●	●	●	“	“	“
Digital savings	●					●	●	●	●	●	●	“	“	“
Digital investment					●	●	●	●	●	●	●	“	“	“
Digital insurance				●		●	●	●	●	●	●	“	“	“
Digital capital raising**			●		●	●	●	●	●	●	●	“	“	“
Personal financial management	●	●	●		●	●	●	●	●	●	●	“	“	“
Ecommerce & DFS platforms	●	●	●	●		●	●	●	●	●	●	“	“	“

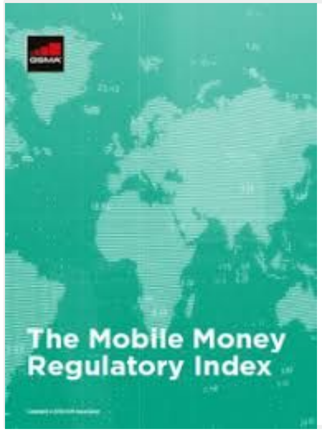
**includes mobile wallets/ e-money, payment initiation & mobile POS*
***includes P2P lending and equity crowdfunding*

03 Kenya's Current Regulatory Environment

Kenya ranks 3rd in sub-Saharan Africa for ease of doing business

The World Bank's Doing Business rankings ranks Kenya as **56th worldwide**, making it the **third in Sub-Saharan Africa** in terms of ease of doing business:

- Kenya ranks highly for the ease of getting credit
- Positive reforms are noted regarding paying tax;
- Difficult areas include cross-border trading and starting a business



The GSMA Regulatory Index gives Kenya an overall score of **85.5 out of 100**:

- Kenya scores highly on regulations relating to: authorization (100) consumer protection (100) and transaction limits (100)
- The regulatory approach scores lower on less enabling regulation regarding infrastructure, investment environment, (57) and Know Your Customer (32).

Sources: The World Bank's Doing Business 2020, The GSMA 2019 Regulatory Index.

Moderate enabling environment for financial inclusion and high corruption perceptions

The Economist Intelligence Unit Global Microscope 2019 ranked Kenya joint **22nd out of 55 countries**, and 4th in sub-Saharan Africa.

- Kenya was above average regarding infrastructure, stability, and government and policy support; key strengths included market entry, and ongoing requirements.
- Kenya was below average regarding consumer protection and products; weakness included credit portfolios for middle and low income customers.

Transparency International ranked Kenya as **124th out of 180** on their 2020 Corruption Perceptions Index.

Although an improvement from previous years, Kenya's score of 31/100 was slightly lower than the regional average of 32/100 for sub-Saharan Africa.

Sources: The Economist Intelligence Unit Global Microscope 2019, 2019 Corruption Perceptions Index

High phone penetration with low levels of savings and borrowing from formal financial institutions present opportunities for fintech

According to the World Bank's 2017 Global Findex report:

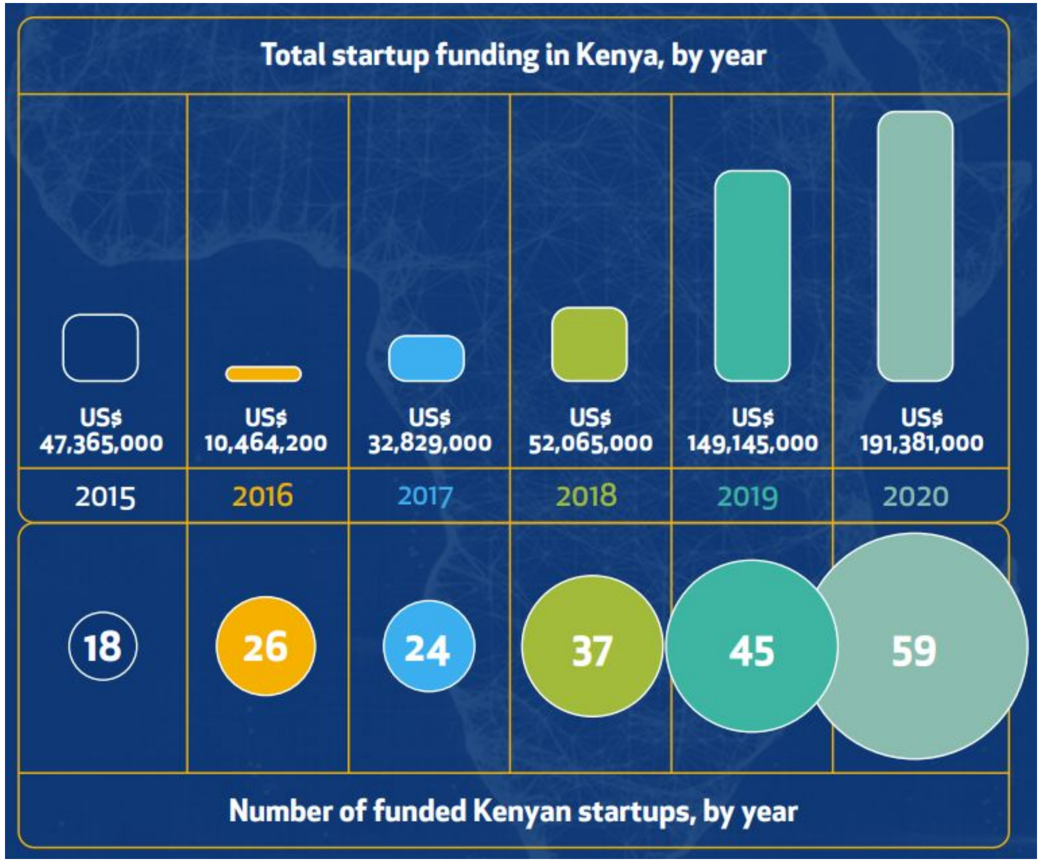
- 72.9% of Kenyans over the age of 15 had a mobile money account.
- Overall access to accounts is at 81.6% of all adults.
- 59% of Kenyans over the age of 15 had sent or received domestic remittances through an account.
- 70.3% reported having saved any money, with 26.8% having been made savings in a financial institution.
- Although 64.4% had borrowed any money, only 19% had borrowed from a financial institution, suggesting a greater frequency in informal borrowing.

Insight2impact (2019 study) found that:

- Consumers in Kenya accessed most platforms via web browsers or smartphone apps, and only 1% accessed these platforms through USSD on feature phones.
- A key challenge (and related opportunity) for platforms was that over 70% of the population lived in rural areas.
- 72.4% of the population had a basic and/or feature phone in 2018, while 27.6% owned a smartphone.

Sources: The World Bank's 2017 Findex, Insight2Impact 2019 Study

Regulation lags behind the fast growth of tech innovation in Kenya



Source: Disrupt Africa African Tech Startups Funding Report

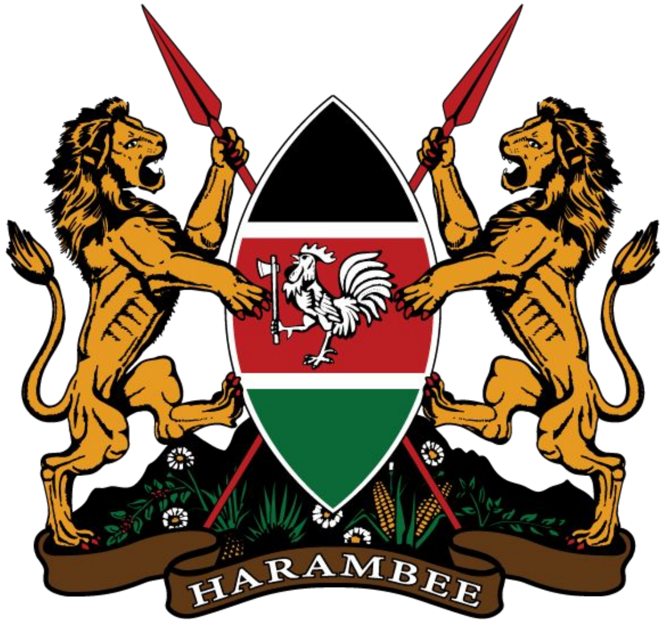
# of deals >$1M has increased from 3 in 2016 to **22 in 2020**

$29M was the largest investment in 2020 to Twiga Foods, an agritech company in Kenya.

Not all new, innovative fintech models are regulated, and new regulations are continually released, so engagement with regulators is crucial for success.

Spotlight on Kenya’s **regulators**

- The **Central Bank of Kenya (CBK)** is the primary regulator governing financial services and formulates financial policies.
- The **Communications Authority of Kenya (CA)** is the regulator for Kenya’s communications sector. It is empowered to license and supervise to telecommunications operators and service providers to ensure ongoing compliance with legal requirements.
- The **Ministry of Information, Communications and Technology** is keen to explore opportunities in the fintech space. Through this Ministry, the government established a taskforce to explore how Kenya can leverage blockchain and IoT technology.
- The **Competition Authority of Kenya (CAK)** has good working relationships with specific sector regulators, such as the CBK, for cooperation in investigating and prosecuting anti-competitive practices (e.g., in 2016, Competition Authority issued a directive to all digital financial services to disclose the cost of transactions prior to consumers running the transactions on their devices). However, the Competition Authority’s economy-wide mandate can result in lower capacity to focus on digital financial services.



Sources: Fintech Regulation in Kenya, CAK Annual Report 2016-2017, Emerging Digital Technologies for Kenya Exploration & Analysis, FSDK Digital Credit Audit Report, About CA

Regulatory approach to fintech in Kenya

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Mobile Money: Central Bank of Kenya's "Test and Learn" Approach

This is exemplified by CBK's issuance of a 'letter of no objection' to the MNO Safaricom Ltd. to develop the M-Pesa mobile money service. A "consultative" and "proportionate" approach, the CBK wishes to ensure that the regulatory demands firms are subjected to are proportionate to the risks posed by the innovation. A specific payments framework was later introduced.

Concerns On Certain Fintech Models

Although there are no specific fintech products prohibited in Kenya, the regulators have expressed concern regarding digital credit and virtual currencies.

Kenya's Regulators Open to Innovation

The CBK has stated that it is open to emerging technologies and will be guided by the philosophy of maximising opportunities while minimising risk.

The Capital Markets Authority (CMA) has introduced a regulatory sandbox, linked to the promotion of financial inclusion.

Sources: Ignacio Mas and Amolo Ng'weno, 'Three Keys to M-PESA's Success: Branding, Channel Management and Pricing' (2010) 4(4) *Journal of Payments Strategy & Systems* 352.; Enabling Mobile Money Transfer: The Central Bank of Kenya's Treatment of M-Pesa, CBK, *Banking Supervision Annual Report* (2017),
Fintech Regulation in Kenya

Kenya's regulators in **practice**

The **regulatory approach** is often developed in response to emerging technology advancements, and by reviewing other jurisdictions' approaches to regulating fintech. Policies have generally been cautiously receptive of technology advancements.

COMMUNICATIONS AUTHORITY OF KENYA

A Word on Licensing

Fintechs are required to determine the legal and regulatory provisions that govern their specific activities and comply with these individually. This is further complicated due to regulation in Kenya being institutionally based rather than by, for example, activity. Consequently, **multiple licenses may be needed**. For example, licenses may be required both the CBK and the Communications Authority to launch a mobile money product, and additional licenses from the CMA and the Insurance Regulatory Authority (IRA) for securities and insurance products respectively.

Regulatory Barriers (as perceived by firms)

- Lack of understanding of technology
- Long licensing processes
- A letter of no objection, while a useful tool to get products to market, is seen as granting less protection than authorization.
- There may be some lack of clarity with respect to regulatory jurisdiction. For example, although mobile money is regulated by both the Competition Authority and CBK, there is some uncertainty regarding specific remits.

Sources: Enabling Mobile Money Transfer: The Central Bank of Kenya's Treatment of M-Pesa, Fintech Regulation in Kenya, FSDK Digital Credit Audit Report,

Strengths **in Kenya's regulatory environment**

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Strengths

1. The Kenyan regulators are generally supportive and encouraging of innovation and fintech, particularly with the objective of promoting financial inclusion. This is reflected in the adoption of initiatives such as regulatory sandboxes, as referenced in the slides on the CMA.

2. Historically there has been an approach of 'test and learn' by regulators, as reflected by the letter of "no objection" issued by CBK and Communications Authority to Safaricom in the early days of M-Pesa, and the recent sandbox initiatives. The National Payment System Act and Regulations were enacted thereafter to provide a formal framework for the regulation of payments systems and Payment Service Providers.

3. There is some regulatory coordination among Kenyan regulators. This is important given that fintech spans multiple financial regulators.

*Some of these challenges may be partially addressed by intergovernmental regional organizations such as the East Africa Community (EAC), where Kenya is a member. The EAC established a Financial Sector Development and Regionalization Project to facilitate financial sector integration among partner states. This includes the harmonization of financial laws and regulations, and integration of financial market infrastructure.

Sources: Regulatory Sandboxes and Financial Inclusion, The Financial Markets Conduct Bill (2018)

Challenges **in Kenya's regulatory environment**

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Challenges

1 **Regulatory overlap** due to a plurality of regulatory authorities operating in the finance sector. There have been attempts at regulatory consolidation e.g., explored via the Financial Markets Conduct Bill 2018 that proposed the establishment of a Financial Markets Conduct Authority.

2 **Fragmentation in the finance legal framework.** Lack of uniformity in rule application as fintech solutions are offered by different entities who traverse a variety of regulatory frameworks.

3 **Legal and regulatory gaps**

- No tailored approach/framework for fintech regulation. This is problematic as the finance framework does not adequately address peculiarities of fintech.

- Unregulated initiatives - this may arise as a result of limited regulatory scope, whereby a product/service may not be overtly prohibited, resulting in the issuance of regulatory warnings, like certain categories of digital credit such as those offered via online apps.

- Regulatory approach - an entity/ institution-based approach as opposed to an activity-based approach poses challenges to the regulation of certain categories of fintech activity e.g., digital credit

- Cross border regulatory challenges - the borderlessness of digital technology introduces additional complexity as it creates regulatory barriers that artificially limit cross-border application of innovations. International cooperation among sandboxes is one solution. Kenya has been enthusiastic about the adoption of memoranda of understanding to foster international cooperation to promote fintech. Other related challenges include the inability of e-money issuers to undertake international remittances unless under a partnership model, and the absence of cross-border payments interoperability.*

- Resource constraints - regulators in Kenya may have limited financial and human resources to engage with the wide spectrum of fintech products and services

Sources: Regulatory Sandboxes and Financial Inclusion, The Financial Markets Conduct Bill (2018)

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04 How to Engage with Regulators

How can startups **effectively engage with regulators?**

Do your research

Review requirements before approaching the relevant regulator(s) and arm yourself with specific questions. Consider which laws and regulations might apply to you. Note that these may be broader than just financial regulation, and may include topics such as data protection, cyber security, company structure, labor law, tax, or others. It is easier to build requirements into your product and company procedures from the start, rather than add them later. Consider future regulatory developments that may impact your company as it grows, or other pathways to taking products to market, such as through partnerships.

Engage with the regulator early

The financial regulators in Kenya are generally supportive and encouraging of innovation in financial services and want to support innovators. There are a number of mechanisms and tools in place to facilitate a dialogue. If you engage early, you have the best chance to familiarize them with your company and products/services. This will enable them to provide informal guidance and clarification regarding your regulatory requirements as your company grows and regulations change over time.

Think like a regulator

Consider the regulators' objectives because these guide their priorities. Meet their requirements by giving them all the information they need to answer your questions, or to grant you a license. Be mindful of regulators' timelines and build this into your business plan. They won't be able to speed up your application just because your investors want it. Remember, the more prepared you are, the quicker you will get a license, and the fewer hurdles you will encounter further on in your journey.

Thinking like a regulator also demands considering broader policy goals. In the Kenyan financial market, financial inclusion is a key priority which has determined the fintech initiatives regulators are willing to support.

Ask other founders about their experiences with regulators to understand how you can best prepare and align to their priorities.

Engaging with the **Capital Markets Authority**

The CMA encourages firms to approach them at an early stage. There are a **number of channels through which fintechs may engage** with the CMA:

1. Firms can call, email, or send a letter to the CMA
2. For general enquiries or other applications, firms can contact corporate approvals departments: see CMA website for telephone contact details
3. There is a regulatory sandbox for testing ideas where there is no current legislation:
    - There is a dedicated email address for sandbox: src@cma.or.ke
        - Emails go to the sandbox review committee
    - The policy guidance note on the regulatory sandbox is available on the CMA website and includes a simplified checklist of items that firms are required to put together
    - There is an application fee of approximately $100
2. The CMA have a referral process so that where an innovation falls within the remit of multiple regulators, they direct firms to the established contact persons at the other regulators (including CBK, IRA and RBA)
    - A joint Financial Sector regulators forum has been formed to promote regulatory coordination

Engaging with the **Capital Markets Authority (cont.)**

Where there is existing regulation firms are advised to apply for the relevant **license**. The "regulatory framework" section of the CMA website contains information on requirements, including with respect to licensing applications. There is a fees schedule in the licensing regulations for guidance.

The CMA emphasises an underlying philosophy of **offering support**, including through a dedicated team to help firms navigate the regulatory process.

The CMA supports an **'open door' policy**, and emphasises their market development mandate. For an idea to generate interest and gain regulatory support, it must deepen the capital market and add value.

The CMA encourages fintechs to consider **capital and financial resources** at an early stage as this can be a barrier to entry for small providers and startups.

The CMA are also interested in **creating opportunities for firms** like through facilitating partnerships. Additionally, where fintechs would like to test their innovations, the regulator is ready and willing to work with them through the sandbox. Alternatively, where there is an existing legal framework, the CMA may guide firms through avenues such as licensing.

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05 Relevant Regulations

5.1 Banking regulations

Banking: **General overview**

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Main regulator:
Central Bank of Kenya (CBK) has the statutory objective of "promoting financial stability through maintenance of a well-function, banking system" as per the Central Bank of Kenya Act (Cap 491)

Key regulation:
The Banking Act (2015), which sets out licensing requirements

Scope:
Banking business is defined as 'the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice.'*

Compliance obligations:
The Kenya Banking Sector Charter comprises compliance standards for institutions (including banks, and microfinance banks) in respect to the conduct of their business in Kenya, setting out requirements on fairness, transparency, financial literacy, and financial access.

Fintechs that fall into the category of banks or microfinance institutions are required to submit:

- their plans regarding compliance with the Charter to the CBK, which employs the plan to monitor firm compliance (Section 5).
- quarterly reports on the Charter's implementation on a quarterly basis (Section 6).

*Banking business also includes "the accepting from members of the public of money on current account and payment on and acceptance of cheques; the employing of money held on deposit or on current account, or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money." (See Section 2 of Banking Act)

Sources: The Central Bank of Kenya Act (Cap 491) (as amended), CBK Website, The Banking Act 2015, The Kenyan Banking Sector Charter

Banking: **Financial institution licensing**

Who:
Applies to a commercial bank, mortgage finance company, or a non-bank financial institution.

How much:
Application currently costs KES 5,000 ($45).

Capital requirements:
Minimum capital requirements that apply can be found in Schedule 2 of the Banking Act (2015). As these often change, the CBK website should be consulted.

How:

- The CBK has step by step guidelines on how to apply and in what order to submit the relevant documentation.
- Before submitting an application, firms should contact the CBK to arrange a preliminary meeting.
- Once the CBK has approved a firm name (needed for the use of the words 'bank' or 'finance'), an application is made to the Register of Companies for incorporation as an LLC.

Sources: The Banking Act 2015, The A-Z of Licensing A Commercial Bank

Banking: **Financial institution licensing (cont.)**

How:

- A number of documents are required to be submitted (laid out in steps 4-11 of the guidelines), including a feasibility study, which details the future operations and development of the business and proposed organization structure.
- CBK will vet senior persons, including the director, chief executive officer and deputy, chief operating officer, chief financial officer, secretary to the board of directors, treasurer, chief internal auditor, or manager, and significant shareholders to ensure that they are fit and proper to manage or control the institution (based on criteria prescribed in the First Schedule of Banking Act).
- If a firm meets the requirements for the license, the CBK will grant an approval in principle. The applicant can then arrange premises, systems, and recruitment, and, after a successful inspection by the CBK and payment of the annual licensing fees, they would be granted a full license to operate.

Sources: The Banking Act 2015, The A-Z of Licensing A Commercial Bank

Banking: **Agent Banking guidelines**

Criteria:

The CBK Agent Banking guidelines ("Agent Guidelines") spell out the minimum requirements to be fulfilled for engagement in agent banking, including provisions on settlement of transactions and technology (Part VII), consumer protection (Part IX), and risk management (Section 3.8).

How:

- Agent Banking requires prior approval by the CBK.
- The application for approval is preceded by the institution undertaking a suitability assessment (Section 2.7).
- The Agent Guidelines detail provisions relating to agency contracts (Part IV), such as qualification criteria, mandatory contract provisions, and permissible and prohibited activities. Contracts between institutions and their agents are required to be non-exclusive (Section 4.2)
- The Agent Guidelines also spell out responsibilities of institutions (Part V), with the general emphasis being that Institutions are ultimately responsible and liable for the actions or omissions of their agents.

Sources: [CBK Agent Banking Guidelines]

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Banking: **Deposit insurance**

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Key regulation:

- The Kenya Deposit Insurance Act (2012) provides for the establishment of a deposit insurance system and for the receivership and liquidation of deposit taking institutions.

Institution obligations:

- CBK licensed institutions are required to contribute a specified annual amount to the Deposit Insurance Fund, at prescribed times.
- In deciding the amounts, the Kenya Deposit Insurance Corporation (KDIC) considers the risk profile of an institution. KDIC sends every institution a notice specifying the amount and the payment period, which is payable within twenty-one days following the service of the notice. The contribution to the Fund will not be less than KES 300,000 ($2,730), nor exceed 0.4 % of the average of the institution's total deposit liabilities during the period of twelve months prior to the date of the notice served.

Customer protection:

- Customer deposits placed with an institution are insured by KDIC. The maximum amount payable to a customer as a protected deposit will not exceed KES 100,000 ($910) or such higher amount as KDIC may from time to time determine.

Sources: Kenya Deposit Insurance Act (2012)

Banking: **Savings and Credit Cooperatives (SACCOs) regulatory overview**

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Main regulator:

The SACCO Societies Regulatory Authority (SASRA) licenses and regulates deposit taking SACCOs.

Key regulation:

The SACCO Societies Act (2008) (the "Act") & SACCO Societies (Deposit Taking Sacco Business) Regulations (2010)

Licensing requirements for deposit taking SACCOs:

An application in prescribed form (Part II of the Act), and to submit the following documents/information:

- Copy of the certificate of registration and the by-laws of the SACCO society
- Evidence that the SACCO meets the minimum capital requirements prescribed in the 2nd Schedule
- Information relating to the place of business, indicating the head office and branches
- The prescribed fees
- A report by the SACCO, covering the objectives of the Sacco business; membership and share capital; organizational structure and management.

Compliance obligations for non-deposit taking SACCOs:

Non-deposit taking SACCOs are registered under the Commissioner for Cooperative development as mandated under the Cooperative Societies Act (1997). Registration requirements are detailed under Part III of the Act.

Sources: The SACCO Societies Act (2008) and SACCO Societies (Deposit Taking Sacco Business) Regulations (2010), the Cooperative Societies Act (1997), SACCO Licensing Forms.

Banking: **Types of SACCOs**

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	Non-Deposit Taking SACCO (NDTS)*	Specified Non-Deposit Taking SACCO (SNDTS)	Non-Withdrawable Deposit Taking SACCO (NWDTS)	Withdrawable Deposit Taking SACCO (WDTS)
Regulator	Ministry of Industrialization, Trade, and Enterprise; overseen by SASRA at KES 100M AUM	SASRA	SASRA	SASRA
Overview	Basic savings and credit products	Basic savings and credit products for "specified business," including virtual/digital SACCOS: SACCO mobilizes membership and subscription to its share capital through digital or other electronic payment platforms	Basic 'banking' services (demand deposits, credit, payments); members must give notice of withdrawal based on a specified notice period	Basic 'banking' services (demand deposits, credit, payments); members must give notice of withdrawal based on a specified notice period
Capital requirement	10% of total liabilities	5,000,000 KES	10,000,000 KES	10,000,000 KES
Major differentiator	Core business is determined bylaws but can only be saving or credit and must be approved by the commissioner of cooperatives.	SACCOs that are "specified businesses," including mobilizing deposits virtually or serving foreigners, must be regulated by SASRA.	Although deposit taking is authorized, members must give notice of withdrawal based on a specified notice period	Deposit taking is authorized and no withdrawal notice is required.

Banking: **Specified Non-Deposit Taking SACCOs, including virtual/digital SACCOs**

Scope

The Sacco Societies (Non-Deposit Taking Business) Regulations 2020 were passed in 2020 and took effect in January 2021. They established a new category of non-deposit taking SACCOs called **"specified non-deposit taking business."** The Regulations apply to the following categories of non-deposit taking business (Section 4(1)-

- non-deposit taking business in which total non-withdrawable deposits from members is equal to or exceeds KSH 100 million;
- non-deposit taking business in which the SACCO mobilizes membership and subscription to its share capital through digital or other electronic payment platforms **(virtual or digital SACCOs);** or
- non-deposit taking business in which SACCO mobilizes membership and subscription to its share capital from persons who are ordinarily resident outside Kenya (Diaspora SACCOs).

Non-deposit taking SACCOs that want to undertake specified non-deposit taking business are required to obtain authorization in writing from SASRA (Section 4(2)).

Authorization Requirements

The Regulations prescribe requirements for authorization in Part II:

- Applicants are to make an application as prescribed in Form 1A of the First Schedule, and to submit the following documents/information alongside the application:
  - completed "fit and proper test" form as prescribed in Form 1B of First Schedule.
  - copy of the certificate of registration and the by-laws of the Sacco society.
  - a three-year business plan and feasibility study of the SACCO society
  - certified extract of minutes of the general meeting resolution authorizing the SACCO society to carry on specified non-deposit taking business
  - evidence that the SACCO society meets the minimum capital requirements
  - non-refundable application fees

Requirements relating to minimum capital are prescribed in Section 11 of the Regulations.

Sources: Sacco Societies (Non-Deposit Taking Business) Regulations 2020, Guidance note on operationalization of Non-DT Sacco Regulations

5.2 Payments

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Payments: **General overview**

Main regulator:

Central Bank of Kenya (CBK) has a mandate to oversee all payment systems and payment service providers (PSPs) with the aim of ensuring the safety and efficiency of the National Payment System.

Key regulation:

The National Payment System Act (NPSA 2011) and Regulations (NPSR 2014), which set out licensing requirements

Scope:

The services in scope include:

- sending, receiving, storing or processing payments, or provision of other services in relation to payment services through any electronic system;
- ownership, possession operation, management or control of a public switched network for the provision of payment services; or
- the processing or storage of data on behalf of such payment service providers or users of such payment services.

Sources: The Central Bank of Kenya Act (Cap 491) (as amended), The National Payment System Act (2011) and Regulations (2014)

Payments: **Acquiring a payments license**

Who: Applies to all providers of services in scope set out in the slide "Payments: general overview"

How much: Different application requirements, depending on the license acquired. For electronic retail PSPs:

- Application fee: KES 5,000 ($45)
- Authorization fee: KES 100,000 ($910)

Capital requirements: Core capital is KES 5,000,000 ($45,496) for electronic retail PSPs (depends on license acquired)

How: An application for authorization is required to be sent to the CBK, accompanied by:

- Registration documents, details of services to be provided
- A business plan, including an indicative budget for the first three years
- A description of governance and control structures, including any use of agents
- A current tax compliance certificate

If the applicant is a mobile PSP, application also requires certified copies of:

- Their license from the Communications Authority
- Their management agreement where a custodial trust relationship exists with the mobile payment service provider

If authorized, a firm is required to commence business within six months.

Sources: The National Payment System Act (2011) and Regulations (2014)

Payments: **Licensing for small e-money issuers**

Who: PSPs who are authorized to issue e-money ("EMIs"). The NPSR provides for a category of EMI called "small EMI" for those who issue e-money on a small scale, which have special application criteria.

How much - for small EMIs:

- Application fee: KES 5,000 ($45)
- Authorization fee: KES 100,000 ($910)

Capital requirements:
Core capital is KES 1,000,000 ($9,098) for small EMI

Differences with other PSPs:

- Small EMI applicants may be exempted from complying with several provisions detailed under NPSR regulation 46(2)
- EMIs who do not fall into the definition of "Institutions"* are prohibited from engaging in lending or investment activities

*NPSA section 2 defines an "institution" as a bank, mortgage finance company or a financial institution as defined in the Banking Act (Cap. 488) or a microfinance bank business as defined in the Microfinance Act, 2006 (No. 19 of 2006) or any other body which the Minister may, in consultation with the Central Bank, declare, by notice in the Gazette, to be an institution for the purposes of this Act."

Sources: The National Payment System Act (2011) and Regulations (2014)

Payments: **PSPs and appointing agents**

PSPs are permitted to appoint agents to act on their behalf through an agency agreement, however agents remain liable to their customers for the conduct of their agents (NPSR, Regulation 14).

Agent services in scope:
Sending, receiving, and processing payments

Requirements:
PSPs who appoint agents are required to maintain records pertaining to the agents (Section 19), exercise due diligence and undertake a suitability assessment (Section 20)

Exclusivity:
Agent exclusivity is not permitted

Sources: [The National Payment System Regulations (2014)]

Payments: **Safeguarding customer funds**

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Trust Fund:

- The NPSR (2014) requires PSPs to establish a trust and ensure all customer monies are held in a trust fund.
- These monies are required to be placed in multiple trust accounts with commercial banks or Government of Kenya securities.

Deposit Insurance:

- The Kenya Deposit Insurance Act (2012) provides that the deposits that are held in trust by a trustee for beneficiaries (e-money customers) are considered separate from a deposit by that trustee with the "Institution" on the customers' own behalf, and separate from any deposit held in trust by another trustee for the beneficiaries in the Institution. Deposit insurers are permitted to insure these trust accounts.
- As with bank deposits, the e-customer deposit placed with an Institution are insured by KDIC, and the maximum amount payable to a customer is a protected deposit up to KES100,000 ($910).

Small EMIs:

- Small EMI may be exempted from complying with provisions on setting up of a Trust. See the NPSR Regulation 46(2) for a list of the exempt clauses, including section 25 which stipulates the requirements regarding trusts for PSPs.

Sources: The National Payment System Regulations (2014), Kenya Deposit Insurance Act (2012)

Payments: **Becoming a money remittance operator**

Key regulation:

Money Remittance Regulations (2013) provide for the licensing and regulation of a money remittance operator (MRO) to deal in inbound and outbound international money transfer transactions

Scope:

- Companies who are permitted to provide inward & outbound international remittances
- "A money remittance business shall not engage in any other business other than as authorized by the Bank" - thus PSPs must set up a separate subsidiary
- Permitted and prohibited activities are set out in Part IV

How:

- The regulations detail provisions relating to the establishment and licensing of MROs (Part II)
- To provide money remittance services, a firm must be incorporated as a limited liability company and obtain business name approval prior to incorporation*
- The firm must obtain an MRO license
- The guidelines prescribe license application fees (Regulation 5) and core capital (Regulation 10)
- Banks and MFIs are exempt from getting a MRO license
- MROs can provide services via an agent (Regulation 25)

*This name is required to include either the words "money-remittance" or "money transfer" as a brand (trading) name.

Sources: Money Remittance Regulations (2013)

Payments: **Becoming a money remittance operator (cont.)**

Obligations

- As part of the customer protection requirements, MROs are required to make specified written disclosures to customers including that they are not a deposit taking or lending institution, and that customers are not subject to deposit protection (Regulation 38).
- All Forex inflows and outflows must done through bank accounts so no wallet to wallet remittances

Payments: **Other requirements of PSPs**

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Customer disclosures:

PSPs are required to make the following specified disclosures to customers (as set out in NPSR Regulation 35):

- A clear description of services, prominently displayed at points of services ("POS" - the definition of POS encompasses head office and branches, agent outlets, and websites)
- Give prior notice to customers in the event of material changes to terms, conditions and charges
- Display PSP's name together with telephone number or other contact details at POS
- Information on how customers can access the PSP's customer care system

Interoperability

- The NPSR (Regulation 21) requires PSPs to use systems that are capable of becoming interoperable with both national and international payment systems

Sources: The National Payment System Regulations (2014)

5.3 Credit

Credit: **Financial institutions**

- The provisions relating to the licensing of and applications for banks (deposit taking institutions) discussed in slides on "Banking: Financial Institution Licensing" also apply to their credit business.
- The CBK Prudential Guidelines on Consumer Protection restricts "Institutions" from lending recklessly or negligently and additionally provides guidelines for prudent lending.
- As of November 2019, there is no longer an interest rate cap for banks and financial institutions. This was removed with the enactment of the Finance Act 2019.

Sources: [The CBK Prudential Guidelines 2013/ Guidelines on Consumer Protection](), [Kenya scraps its bank lending cap and grants the IMF its wish]()

Credit: **Treatment of digital credit**

Regulatory treatment of digital credit **varies by business model:**

- Digital credit providers are not defined as financial institutions under the Banking Act.
- Where a digital credit provider does not take deposits, but instead lends their own funds against their balance sheet, they may not be licensed or regulated.
- A CBK license is required only where funds used for lending constitute deposits held from members of the public.
- Some may be categorized as credit-only MFIs and operate on this basis.
- Where a digital credit lenders leverages mobile money platforms/services, this may fall under the National Payments Systems (NPS) Act.

Regulatory intervention

- To address challenges relating to the proliferation of unlicensed and unregulated financial services and products, six regulators issued in 2018 a joint public notice highlighting the risk of unregulated mobile lenders. Following the notice, the government warned the public against dealing with digital credit providers
- In April 2020, the CBK banned unregulated digital and credit-only lenders from submitting names of loan defaulters for blacklisting at the Credit Reference Bureaus (CRB). This also introduced a minimum threshold of KES1,000 ($9)for negative credit information that is submitted to CRBs by lenders.
- The CBK has announced plans to implement further regulations on digital credit, including provisions governing the interest rates charged for digital lenders' loans and requiring prior approval of the launch new products or the increase of interest rates by online lenders.

Sources: CBK Press Release on Credit Bureaus, The Central Bank of Kenya Amendment Bill 2020, FSDK Digital Credit Audit Report, Regulators Cautions Public against Mobile Loan Providers, Central Bank of Kenya Set to Regulate Digital Borrowing Platforms

Credit: **Microfinance banks and businesses**

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Key regulation:

The Microfinance Act (2006) provides a regulatory and supervisory framework for microfinance banks and specified non-deposit taking microfinance business

Licensing process: Licensing requirements are in Section 5 of the Microfinance Act.

- The application is required to be made to the CBK in prescribed form, together with the submission of:
  - Company incorporation documents
  - Verified official notification of registered place of business
  - Proposed place of operation, including head office and branches
  - A feasibility study
  - Evidence that the firm can meet capital requirements outlined in the Schedule
  - Prescribed fees (see Schedule II of the Microfinance Regulations, 2008)
- The CBK issues a license if satisfied that requirements have been met.

Credit-only MFIs: Although the Ministry of Finance is empowered to issue regulations for credit-only Microfinance Institutions (MFIs) under the Microfinance Act, credit-only MFIs still have not been regulated.

Pipeline: A proposed revised law would enable the regulation of all categories of MFIs and impose similar rules for all credit providers. The CBK invited comments in May 2019 but there have been no further updates on this.

Sources: Microfinance Act 2006, Draft Microfinance Bill 2019, Invitation to Comment on Draft Microfinance Bill 2019, Microfinance (Deposit Taking Microfinance Institutions) Regulations, 2008.

Credit: **Credit Bureaus**

- The **Credit Reference Bureau Regulations (2013)** (issued by the CBK) provide for the exchange of negative information between Credit Reference Bureaus (CRBs), such as Credit Info and Metropol, and institutions to whom the regulations apply.
- Negative or adverse information is defined as adverse information relating to a customer and includes non-performing loans and credit defaults or late payments.*
- Institutions licensed under the Banking Act are additionally required to share positive information, which is defined as "any information on performing loan or other credit."
- Non-banks are required to share negative information and in addition are permitted to (voluntarily) share positive information with prior written customer consent.
- Information exchange between CRBs and third parties, including government agencies, public entities, and other credit information providers is also permitted.
- For third party credit information providers, the provision of customer information to CRBs is subject to obtaining prior written customer consent.

*The regulation provides a list of examples of types of negative information (Regulation 2)

Sources: The Credit Reference Bureau Regulations 2013

5.4 Insurance

Insurance: **Licensing overview and requirements**

Key regulation: The Insurance Act (1987, as amended) read together with the Insurance Regulations 1986 (as amended) provide that insurance business can only be conducted by registered persons

Main regulator: Insurance Regulatory Authority (IRA)

Licensing process:

- Licensing requirements and fees vary, depending on whether registration is as an insurer, a broker, an agent, or other insurance service provider.
- Applicants are required to have sufficient paid up share capital, as specified in the Insurance Act — this is currently KES 150 million ($1,362,755) for Long-Term Insurance business, and KES 300 million ($2,725,910) for General Insurance.
- Applications to be an insurer (including microinsurer) cost KES150,000 ($1,363).
- Applicants are required to fill out the form and submit various documents, including:
  - A feasibility study report
  - Specimen proposal and policy forms for the insurer's proposed business
  - The proposed contract documents with their insurance agents and brokers
- Application is renewable annually

Sources: The Insurance Act (1987 as amended), Licensing requirements insurer, Licensing requirements broker, Licensing requirements agent

Insurance: **Other requirements**

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- Registered persons are required to have a Principal Officer, who must meet educational/professional qualifications requirements:
  - For brokers, the Principal Officer should have “a degree or a diploma in insurance from a recognized institution” and “five years’ experience in insurance business.”
  - For agents, “the applicant or its Principal Officer must have passed or been exempted from Certificate of Proficiency (COP) examination for Insurance Agents.”
  - For the category of other service providers the Principal Officer is required to have “the knowledge and experience necessary to act as a service provider.”
  - For sub-categories such as motor assessors and insurance investigators “the applicant must have passed or been excepted from COP examination.”
- Directors, managers, and employees of insurers are restricted from concurrently holding similar positions at another insurer, bank, or financial institution
- The Insurance Act prescribes additional requirements around the use of deposits (Part IV), management and governance of insurers (Part VII), how customers should be treated (Part VIII) and reinsurance (Part XIV)
- Returns are required to be prepared on an annual basis at the end of each financial year on specific templates; these can be submitted online via the IRA ERS Portal
- The IRA has also issued various guidelines on different topics for insurers and agents

Sources: The Insurance Act (1987 as amended), Insurance Regulations 1986,Licensing requirements insurer, Licensing requirements broker, Licensing requirements agent, Returns template, IRA ERS Portal, Agent Registration Requirements, Insurer Guidelines

Insurance: **Microinsurance**

Key regulation:
The Insurance (Microinsurance regulations) (2020) prescribe rules relating to microinsurance contracts, and other rules around the regulation of microinsurance

Licensing process:

- The registration requirements for microinsurance are mostly the same as those of mainstream insurers, as detailed under the Insurance Act
- Exceptions relate to the capital and reserving regime and operational requirements
- Applicants for a microinsurance license are required to have a minimum paid up capital of KES 50 million ($454,229) or Risk Based Capital as determined by the IRA

Obligations:

- The Insurance (Microinsurance regulations) (2020) include provisions on product approval, appointment of microinsurance intermediaries, rules on commissions and fees and reporting requirements
- Microinsurers are required to use the word ‘microinsurance’ in their registered name

Sources: The Insurance (Microinsurance regulations) (2020)

5.5 Investment

Investment: **Licensing process & regulatory sandbox**

Key regulation: the Capitals Markets Act (2000, as amended) stipulates provisions relating to the public offering of securities (Part IVA), and asset backed securities (Part IVB). The undertaking of any securities business requires a license, including central depositories.*

Main regulator: The Capital Markets Authority (CMA)

Licensing process:

- Firms are required to complete specific forms available on the CMA website and include information on aspects such as capital structure, shareholders, directors, detailed information on the Chief Executive and key personnel
- Application fees are KES 2,500 ($23)
- Applicants must including company incorporation and capital requirements "as the Authority may prescribe" (Section 29)
- There is a circular detailing application processing timelines to guide applicants
- In issuing the license, the CMA applies specified suitability criteria (Section 24A)

Regulatory Sandbox:

- It allows for the live testing of products, services, and solutions which fall outside the existing framework, and that have the potential to strengthen Kenya's capital markets
- A guidance note provides applicants with further details on areas such as eligibility criteria, application checklist, and application fees (see Section 6 of this deck for more details)

*The Central Depositories Act (2000, as amended) restricts the establishment of a central depository to persons who have obtained prior regulatory approval. For more information on licensing criteria see Part II of The Central Depositories Act.

Sources: Capital Markets Act (2000), Template License Application, Application for a Central Depository, Circular Application Processing Timelines, The Central Depositories Act, 2000 (as amended) , Regulatory Sandbox Policy Guidance Note

Investment: **Virtual and crypto assets**

The CMA would be the best first point of contact while waiting for more clarity on the regulation of virtual assets:

- In December 2015, the CBK issued a public notice cautioning the public against holding and trading in virtual currencies
- Although not overtly prohibited, the notice described virtual currencies as "unregulated" and as "not issued or guaranteed by any government or central bank" and "not legal tender in Kenya"
- However, the High Court of Kenya ruled in September 2019 that cryptocurrencies are securities under the jurisdiction of the Capital Market Authority

Sources: Banking Circular on Virtual Currencies, Wiseman Talent Ventures vs Capital Markets Authority

Investment: **P2P lending & equity crowdfunding**

- There are currently no bespoke P2P or equity crowdfunding regulations in Kenya.
- The CBK can use its macro-prudential authority under section 4A of the CBK Act to authorise new alternative finance models to operate in the absence of strict governing legislation. In using this power, the CBK may issue a letter of no objection or a letter of comfort to a party seeking to operate a new crowdfunding model.
- The CMA can issue a letter confirming that a crowdfunding model does not need to be regulated under the Capital Markets Act.
- For example, in October 2020, the CMA issued a "no objection" letter to Pezesha Africa Limited to operate its debt-based crowdfunding platform in the Kenyan capital markets. This followed a successful one-year testing in CMA's regulatory sandbox between July 2019 and July 2020.

Sources: The Central Bank of Kenya Act (Cap 491) (as amended), Capital Markets Act (2000), CMA Gives Nod to Pezesha's Crowdfunding Platform

5.6 Other policy and regulatory considerations

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5.6.1 —
Data protection

Data protection: **National provisions**

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Key Laws: Constitution of Kenya & The Data Protection Act (2019) – modelled on the EU's GDPR

Main provisions:

- **Constitution of Kenya** guarantees the right to privacy for every citizen. This right includes the right not to have information relating to a person's private life unnecessarily revealed or required, or the privacy of one's communications infringed.
- **Data Protection Act** sets out restrictions on how personally identifiable data obtained by firms and government entities can be handled, stored and shared, as well as details of the role of the Data Commissioner. Data controllers and processors must be registered, but implementation details of the Act have yet to be released (as of Jan 2021). The first Data Commissioner was appointed and took office on 16 November 2020.

On cross border transfers:

- Part VI of the Data Protection Act stipulates provisions on cross border transfers and data localization requirements.
- Cross border transfers are contingent on data controllers and processors evidencing to the Data Commissioner that appropriate safeguards are in place to ensure the security and protection of personal data. Safeguards include providing proof that jurisdictions where data is to be transferred have commensurate data protection laws, and the transfer is necessary e.g., as part of a contractual performance.
- The Cabinet Secretary may specify that certain types of data processing can only be done through a server or data centre located in Kenya.

Sources: Data Protection Act (2019), GDPR, Constitution of Kenya, Welcoming The Appointment of Kenya's First Data Commissioner

Data protection: **Sectoral provisions**

There are also data protection provisions in sector specific financial service regulation that apply to specific types of financial service providers

PSPs:

- National Payment System Regulations requires that PSPs, their agents, and cash merchants, keep customer data collected in connection with the services they provide confidential (Regulation 42).
- The CBK is empowered to suspend or revoke a PSPs license where it fails to protect confidentiality of the data that it collects.

Institutions:

- CBK's Prudential Guidelines on Consumer Protection requires "Institutions" to protect consumer's personal and financial information through the establishment of appropriate control and protection mechanisms. These mechanisms must define the purpose of data collection, processing, and disclosure to third parties, as well as customer rights, such as informed data sharing.

Telecom licensees:

- The Kenya Information and Communications (Consumer Protection) Regulations 2010 provides for a customer's right to personal privacy and protection against unauthorized use of personal information (Regulation 3(1)(d)).
- Licensees are required to keep subscriber information confidential and are prohibited from monitoring/disclosing this information or allowing others to do so (Regulation 15).

Central depositories:

- The Central Depositories Act (2000) prescribes secrecy obligations (Part VI).

Sources: National Payment System Regulations 2014, CBK's Prudential Guidelines on Consumer Protection, The Kenya Information and Communications (Consumer Protection) Regulations 2010, The Central Depositories Act (2000)

Data sharing: **Open banking**

- There are currently no prescribed requirements for open banking.
- The recent released draft of "Kenya National Payments System Vision and Strategy, 2021 – 2025" contains some provisions on open API frameworks, and suggests that CBK may mandate data portability in financial services as well as facilitate the development of an industry wide standard for open APIs (sections 5.4.3 and 5.5.1). However, this draft is up for public consultation and the final version may be substantially different.
- Firms interested in introducing initiatives in this area should check with their regulator.

Sources: [Draft Kenya National Payments System Vision and Strategy, 2021 – 2025]

5.6.2 — Consumer protection

Consumer protection: **National provisions**

Key Laws: Constitution of Kenya, Consumer Protection Act (2012), The Access to Information Act (2016)

Main provisions:

- Article 46 of the **Constitution of Kenya** specifies consumers right to:
  - Goods and services of reasonable quality
  - The information necessary for them to gain full benefit from such goods and services
  - Compensation in case of loss or injury emerging from defects with goods or services
- The **Consumer Protection Act** contains further obligations on providers, including:
  - Confidentiality
  - Provisions relating to the performance of credit agreements* and agreements executed over the Internet
  - Disclosures to be made for remote agreements
- The **Access to Information Act** (2016) was enacted to implement Article 35 of the Constitution. It provides that every citizen has the right to access information held by public entities and private bodies (Section 3 and 4, and Part II more generally). Fintechs will need to ensure they provide information requested pursuant to the Act.

* Not all credit agreements are covered by the Consumer Protection Act. Part VII of CP Act applies only to supplier credit arrangements where a supplier extends fixed credit to a consumer to assist the consumer in obtaining goods or services, other than credit or a loan of money from the supplier.

Sources: Constitution of Kenya, Consumer Protection Act (2012), The Access to Information Act (2016)

Consumer protection: **Sectoral provisions**

There are consumer protection provisions in sectoral regulation that apply to specific financial service providers:

PSPs:

- National Payment System Act & Regulations include consumer protection provisions, such as on misleading advertisements (Sec. 29 NPS Act)

Institutions:

- CBK's Prudential Guidelines on Consumer Protection
- Banking Act contains consumer protection provisions, including a restriction on the imposition of charges on savings, seven day call, or fixed deposit accounts (Section 16A), and limits on interest recoverable in the event of customer default (Sec. 44A)

Telecom licensees:

- The Kenya Information and Communications (Consumer Protection) Regulations 2010 include consumer protection provisions, i.e., customers have the right to receive clear and complete information about rates, terms, and conditions for products and services from telecom providers (Reg 3)

Insurers:

- The Insurance Act contains consumer protection provisions i.e., a dispute resolution for consumers (Sec. 204A) and establishes a fund to compensate policyholders for insurance firm collapse (Sec 179)

Capital Markets Authority (CMA) licensees:

- The Capital Markets Authority Act stipulates the protection of investor interests (Sec 11) and establishes a fund to compensate investors where a CMA licensee fails (Sec 18)

Sources: National Payment Systems Act 2011, National Payment System Regulations 2014, CBK's Prudential Guidelines on Consumer Protection, The Kenya Information and Communications (Consumer Protection) Regulations 2010, the Banking Act, The Insurance Act, 1987 (as amended), The Capital Markets Authority Act

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5.6.3 —

Anti-money laundering (AML)/know your customer (KYC)

AML/KYC: **Key laws & main provisions**

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Key Laws:
The Proceeds of Crime and Anti Money Laundering Act (2009, as amended)(POCAMLA), Proceeds of Crime and Anti Money Laundering Regulations (2013), Prevention of Terrorism Act (2012), & The National Payments Systems Regulations (2014)

Main provisions:

- The **Terrorism Act** stipulates that entities must monitor products and services for possible use in aiding and supporting terrorist activities
- The **POCAMLA** and **related Regulations:**
  - Categorize financial Institutions as reporting Institutions, who are obligated to put measures in place to combat money laundering and register with the Financial Reporting Centre (FRC)
  - Impose AML obligations such as monitoring and reporting to the FRC (Section 44), verification of customer identity (Section 45), maintaining customer records (Section 46), and the maintenance of internal reporting procedures (Section 47)
- The **National Payments Systems Regulations** provides for AML measures for PSPs and their agents, including cash merchants, who are also required to comply with the Proceeds of Crime and Anti-Money Laundering Act (2009) and the Prevention of Terrorism Act (2012)
- The CMA has also issued **Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets**

Sources: The Proceeds of Crime and Anti Money Laundering Act (2009, as amended), Proceeds of Crime and Anti Money Laundering Regulations, 2013, Prevention of Terrorism Act, 2012, National Payment System Regulations 2014, Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets

AML/KYC: **Customer due diligence requirements**

- Customer Due Diligence (CDD) requirements for institutions licensed under the Banking Act are contained in the **CBK Prudential Guidelines on AML/CFT** (Part V).
- The Guidelines prescribe Know Your Customer (KYC) requirements, processes for customer identification and verification, situations that call for enhanced due diligence and applicable measures, transactions monitoring and reporting, and record keeping.
- **At a minimum the mandatory KYC requirements for an individual are:**
    - A birth certificate
    - Passport
    - National identity card
    - Drivers license
- Additional due diligence measures that may be used to verify the identity of the customer include: a) Address of current residence verified by a referee, a utility bill; b) Verified employment and/or source(s) of income; and c) Where applicable, written confirmation from customer's prior bank attesting to customer's identity and history of account relationship (bank referee).
- The **POCAMLA and Regulations** do not provide for simplified CDD nor overtly provide a tiered approach to KYC. However, given that firms such as mobile money providers are permitted to incorporate additional KYC information incrementally, a risk-based approach may be inferred.
- A number of providers employ remote (i.e., non face-to-face) CDD by mobile phone like M-Shwari

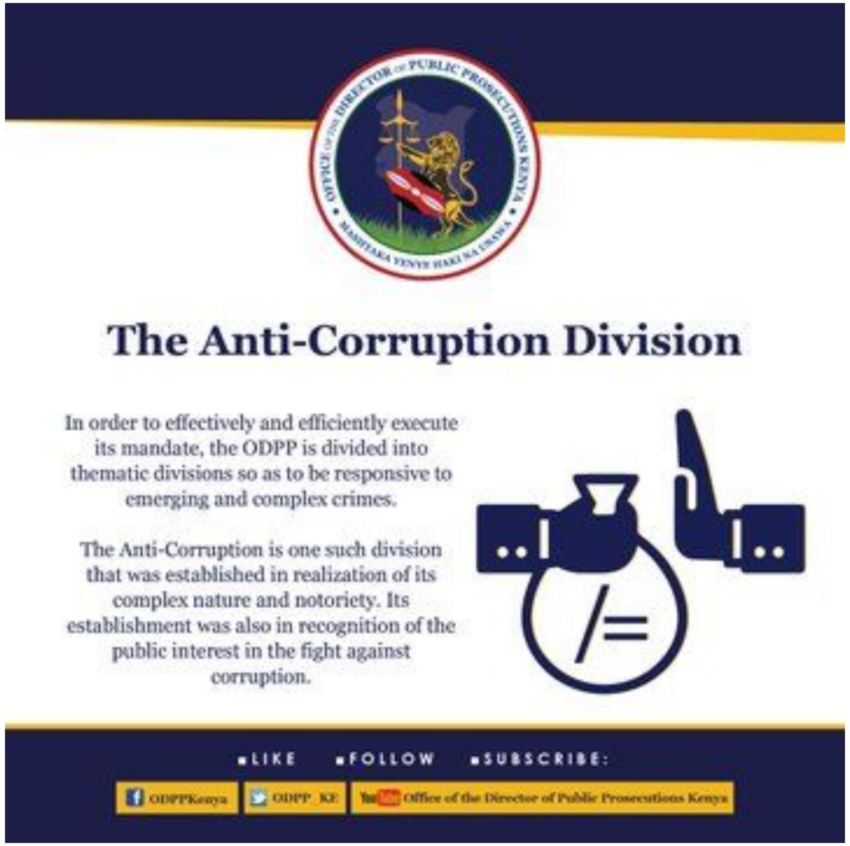
Sources: Prudential Guidelines For Institutions Licensed Under the Banking Act, GSMA Proportional risk-based AML/CFT regimes for mobile money

5.6.4 —

Other economic crimes

Other economic crimes: **Relevant legislation**

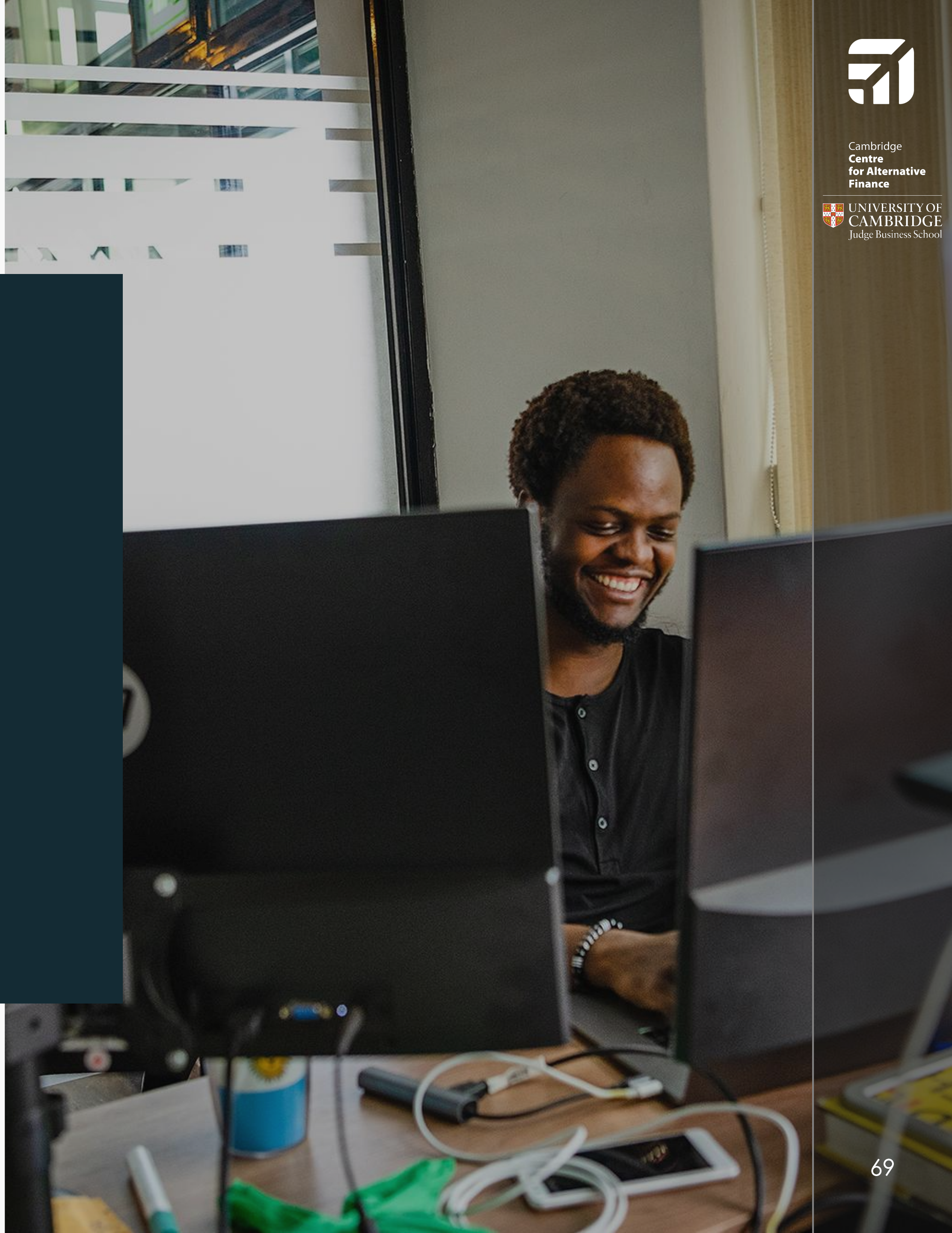
- The Anti-Corruption and Economic Crimes Act (2003, as amended) provides for the prevention, investigation, and punishment of corruption, economic crime, and related offences. See particularly Part IV on investigation, and Part V on offences and penalties.
- The Bribery Act (2016) stipulates provisions relating to prevention, investigation, and penalties for bribery. The applicability of the Act includes both public and private entities and is therefore relevant to fintech providers and are obliged to take steps to prevent bribery by establishing procedures proportionate to their size, scale, and operations (Section 9).



Sources: [Anti-corruption and Economic Crimes Act (2003, as amended)](), [Bribery Act (2016)]().

5.6.5 —

Cybersecurity



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Cybersecurity: **Relevant legislation**

National legislation:

- The Computer Misuse and Cybercrimes Act (2018) stipulates several key objectives including protecting the confidentiality, integrity, and availability of computer systems, programs, and data (Section 3(c)), and facilitating the prevention, detection, investigation, prosecution, and punishment of cybercrimes (Section 3(e)).
- The Act also prescribes several offences, and penalties for non-compliance under Part III. Examples of offences include unauthorized access, interference, disclosure of passwords and access codes, and interception of electronic messages or money transfers. Firms are obliged to put in place adequate cybersecurity measures to ensure adherence.

Banking sector:

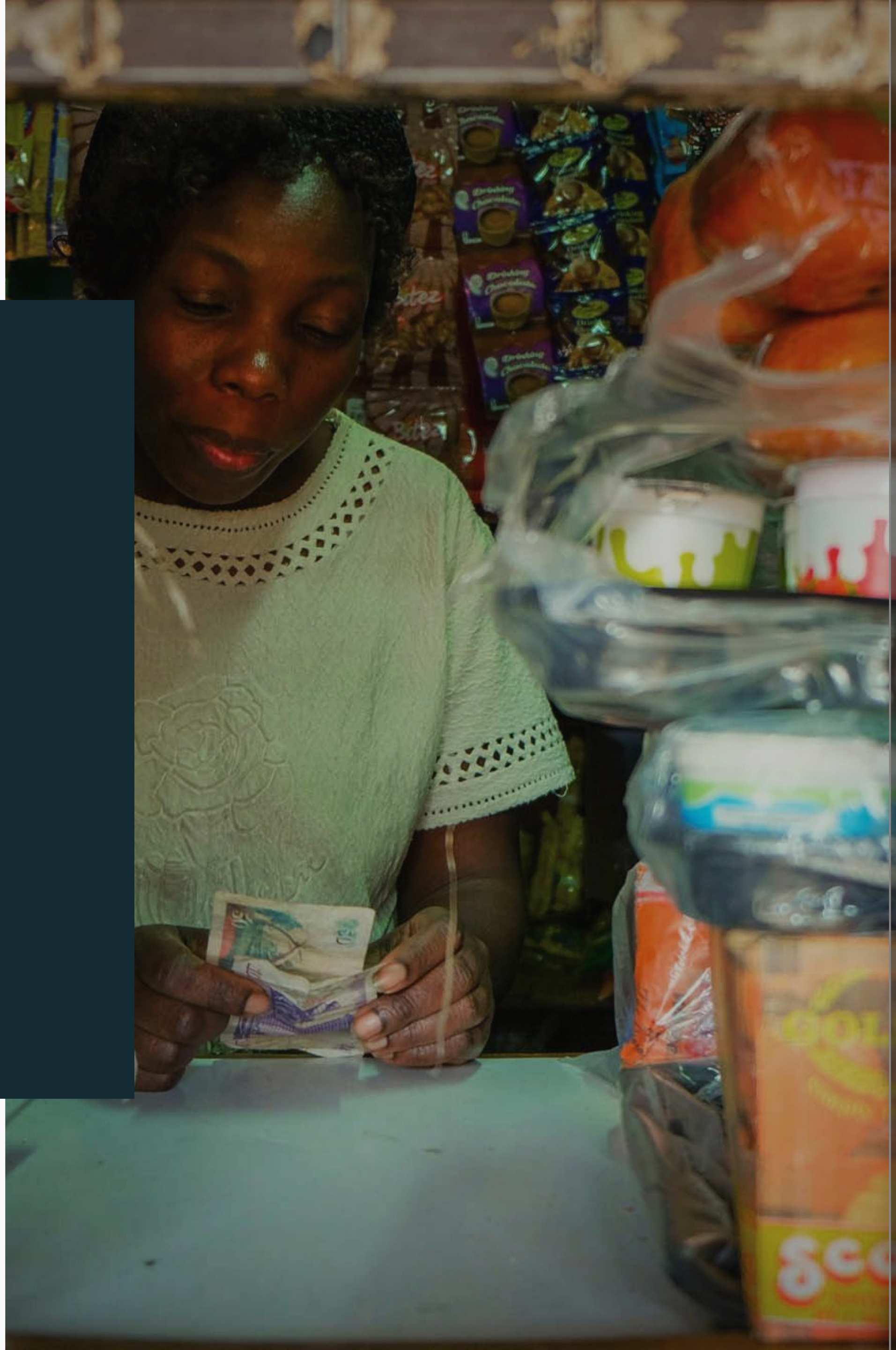
- CBK's note on Cybersecurity for Banking Sector sets out minimum standards with respect to cybersecurity risks for the banking sector.

PSPs:

- Pursuant to the National Payments Systems Act, the CBK has issued guidelines on cybersecurity for PSPs. These detail the minimum requirements to be adopted in the development of effective frameworks for cybersecurity governance and risk management.
- All PSPs are required to review their cybersecurity strategy, policy, and framework annually based on a threat and vulnerability assessment (Part IV).

Sources: The Computer Misuse and Cybercrimes Act (2018), Note on Cybersecurity for Banking Sector, National Payment Systems Act 2011,

5.6.6 — Competition



Competition: **Relevant legislation & competition issues**

Relevant legislation:

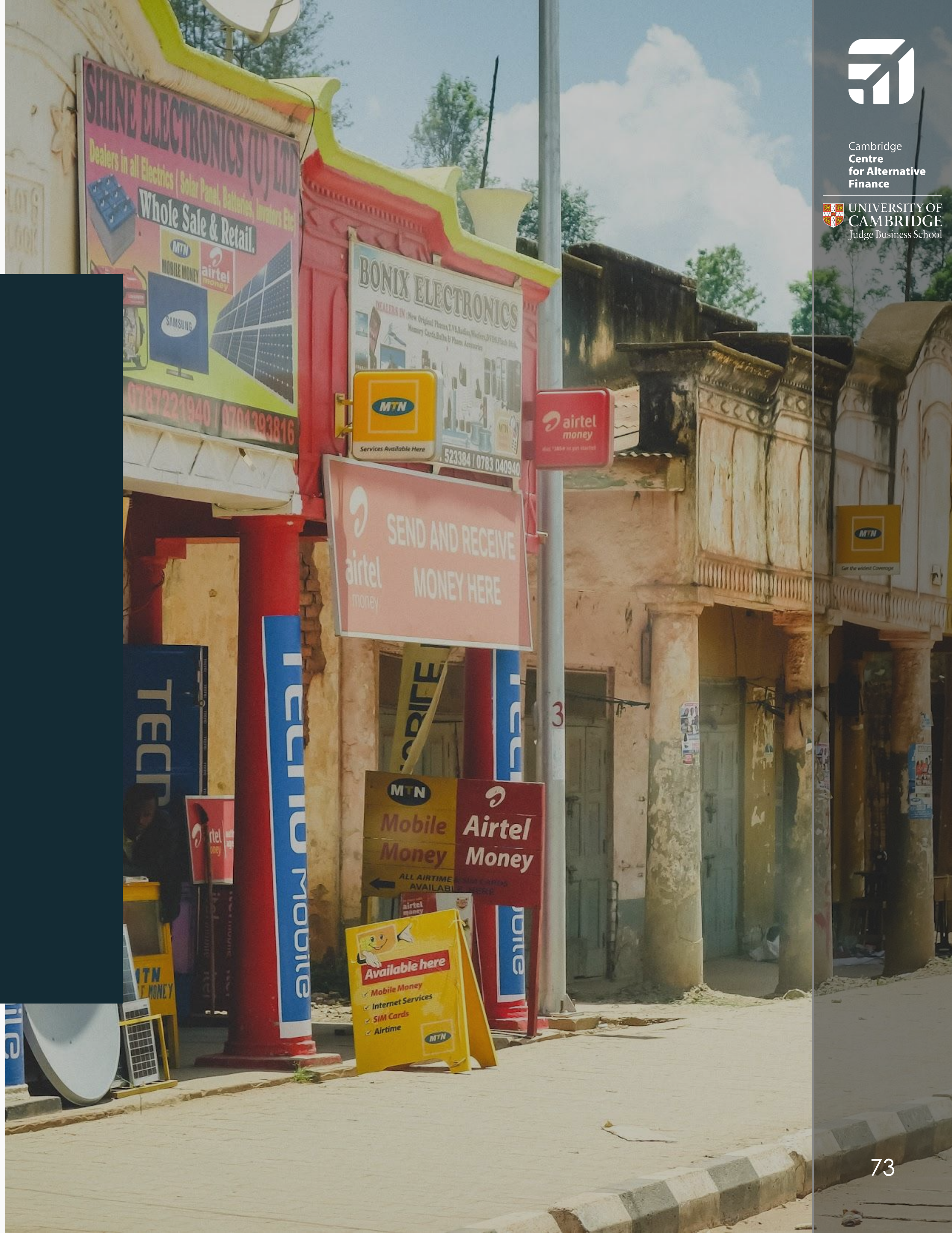
- The Competition Act (2010) established the Competition Authority of Kenya (CAK), which is mandated to provide oversight over market conduct aspects such as price transparency and consumer recourse
- The Competition Act prohibits restrictive practices and "unconscionable business conduct"
- The Communications Authority of Kenya (CA) also has a mandate to ensure "fair competition and equal treatment" and this jurisdiction applies to payment providers who use communication channels to deploy products and services
- The Competition Act prevails in areas of concurrent jurisdiction, and there is a non-statutory MoU between CBK and Competition Authority

Competition issues in mobile financial services:

- These include issues with channel access, transparency, interoperability, regulatory coordination, and data sharing — these may also be present across other fintech sectors
- Several regulatory interventions have been introduced to address competition issues, including a ban on agent exclusivity, and requirements for disclosure of mobile money transaction costs at point of usage

Sources: The Competition Act (2010), CGAP Competition in Mobile Financial Services Lessons from Kenya and Tanzania, National Payment System Regulations 2014, Kenya Ends Hidden Costs for Digital Financial Services, The Kenya Information and Communications Act, 1998, The Kenya Information And Communications (Fair Competition And Equality Of Treatment) Regulations, 2010

5.6.7 —
Telecommunications regulation



Telecommunication regulation: **Licensing**

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Key regulations:

- The Kenya Information and Communications Act (KICA, 1998, as amended) empowers the Communications Authority of Kenya (CA) to license and regulate information and communications services (Section 5)
- The KICA Regulations (2001) also apply
- The Communications Authority has a Unified Licensing Framework (ULF), which is technology and service neutral

Main provisions:

- The Act regulates respective sub-sectors, including telecommunications (Part III), radio communication (Part IV), and broadcasting services (Part IVA)
- The ULF provides the licensing procedures for Network Facilities Providers, Application Service Providers, and Content Service Providers

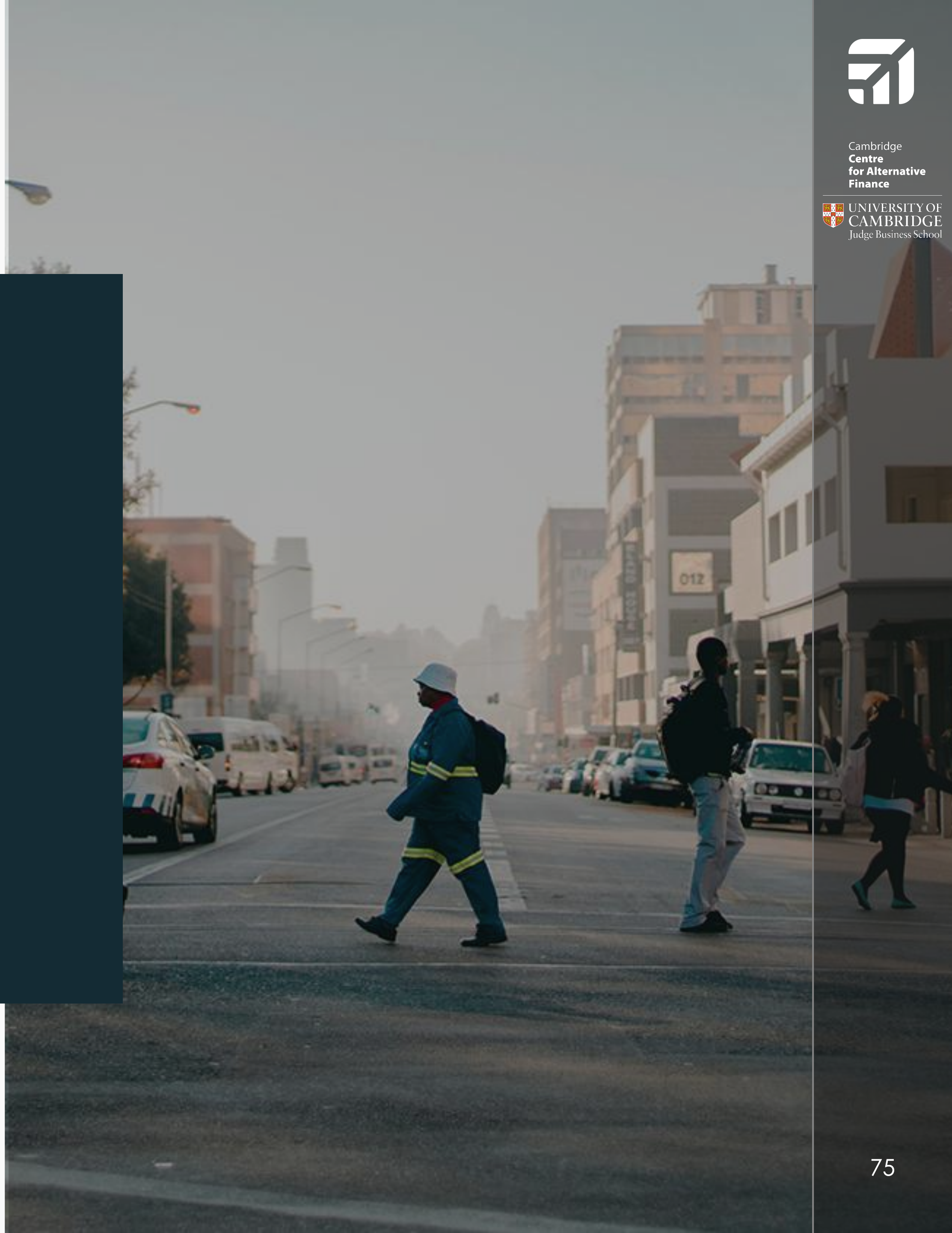
Application to fintech:

- The Communications Authority may license a fintech where its operating model incorporates a technological aspect and the implementation of the innovation requires the fintech business to establish its own telecommunications infrastructure or results in content generation
- In such a cases, the Communications Authority will issue (i) an approval or license, (ii) a letter of no objection, or (iii) confirmation that a firm does not require a telecommunications license

Sources: The Kenya Information and Communications Act (1998, as amended), The KICA regulations (2001), Unified Licensing Framework, The International Comparative Legal Guide to: A practical cross-border insight into Fintech law 2nd Edition Fintech 2018

5.6.8 —

Taxation of financial services



Taxation: **Financial services**

Relevant taxes:

- In 2013, taxes on financial transactions, mobile and computer hardware, and software were introduced in Kenya as well as the wider East Africa region
- For example, the VAT Act of 2013 imposes 16% VAT tax on phone sales
- The Finance Act of 2018 increased excise duties to 15% on airtime, 20% for money transfer by banks /MTOs/ other financial institutions, and to 12% on mobile phone based financial transactions
- The Finance Act of 2018 also introduced a 15% tax on internet data services and fixed-line telephone services, while removing a 2009 exemption on mobile phones

Application to fintech:

- These taxes may impact fintech businesses, and fintechs are encouraged to consult the Kenya Revenue Authority regarding the implications of the measures cited, as well as other requirements that may be relevant for their business model

Sources: The Finance Act of 2018, VAT Act 2013

5.6.9 — Foreign exchange

Forex: **Key regulations & main provisions**

Key regulations:

- Part VI A of the Central Bank of Kenya Act
- Foreign Exchange Guidelines issued by CBK

Main provisions:

- All foreign exchange transactions must be carried out through authorized forex dealers
- Dealers are required to obtain and retain appropriate documents for all transactions above the equivalent of US$ 10,000 — these transactions are required to be reported to the CBK

Sources: [The Central Bank of Kenya Act (Cap 491) (as amended)], [Foreign Exchange Guidelines]

06 What regulations are coming out soon?

Regulatory **pipeline**

Fintech regulator:

- The Financial Markets Conduct Bill (2018) proposed establishing four new bodies to regulate financial matters, including the establishment of a new regulator, the Financial Markets Conduct Authority, to oversee fintech companies. This proposal is currently "on ice."

Legal reforms:

- Finance is one of the key pillars of Kenya's Vision 2030 development plan from 2008. The plan includes the establishment of a proposed Nairobi International Financial Centre Authority (NIFC), which would include various legal and regulatory reforms.

Virtual Annual General Meetings:

- The CMA is currently evaluating regulation which would permit virtual Annual General Meetings - due to Covid-19.

eKYC:

- The CMA is evaluating how to facilitate eKYC. This is currently possible, but firms must apply for a 'Letter of no objection.'

Sources: The Financial Markets Conduct Bill (2018), Vision 2030 Development Plan, Central Bank of Kenya (Amendment) Bill, 2020.

Regulatory **pipeline (cont.)**

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Digital financial services:

- The CBK is pursuing an amendment of the CBK Act through the Central Bank of Kenya (Amendment) Bill, 2020. The main objective of this Bill is to amend the Central Bank of Kenya Act to allow the CBK to regulate the conduct of providers of digital financial products and services, including digital credit.

Sandbox:

- The CMA's regulatory sandbox may prompt the development of new regulatory frameworks or regulations

E-commerce:

- The Insurance Regulatory Authority is developing regulation to govern Technical Service Providers (TSPs), MNOs, and other e-commerce channels

Payments System:

- The CBK recently released a draft of the "Kenya National Payments System Vision and Strategy, 2021 – 2025"
- This draft is up for public consultation and the final version may be substantially different

Sources: Draft Kenya National Payments System Vision and Strategy, 2021 – 2025

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07 Additional Resources for Fintech Companies

Additional **resources available**

Resource	Who provides it?	What is it?	Where can I find out more?
CMA Regulatory Sandbox	Capital Markets Authority	The Sandbox is designed to test products/services that are not clearly addressed under the existing CMA regulatory framework. It allows live testing of regulatory innovations, under somewhat less rigorous regulatory requirements. Sandbox applicants need to be companies incorporated in Kenya, existing licensees of the Authority, or other capital markets regulators. Admission is based on whether firms would offer innovative capital-markets related products, solutions, or services with the potential to deepen Kenya's capital markets following successful exit from the sandbox. Examples of the firms that have been admitted into the CMA sandbox since its launch include those testing: cloud-based analytics platforms, internet based crowdfunding, an issuer of unsecured bonds testing a blockchain-based platform, a firm testing a blockchain-based shareable e-kyc for capital markets intermediaries and investors, and a robo-advisory solution.	Regulatory Sandbox Policy Note 2019 Capital Markets Regulatory Sandbox Infographic CMA website
IRA Regulatory Sandbox ('BimaBox')	Insurance Regulatory Authority	BimaBox provides a regulatory framework for fintechs/insurtechs to test new insurance specific ideas and innovations in the market with real consumers. The IRA oversees tests using a customized regulatory environment, including safeguards for consumers. BimaBox tests are expected to have a clear objective (e.g., reducing costs to consumers) and to be conducted on a small scale for limited duration.	innovationhub@ira.go.ke BimaBox Website BimaBox Guidance Note
IRA Innovation Hub ('Bimalab')	Insurance Regulatory Authority	A platform to collaborate on ground-breaking, innovative insurance products and services.	BimaLab Website

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Kenyan authorities and their mandates

Authority	Objective/ Mandate	Year Formed	Authorising legislation	Business Models - Mandate Applies							
				Digital payments & remittance*	Digital lending	Digital savings	Digital investment	Digital insurance	Digital capital raising**	Personal financial management	Ecommerce & DFS platforms
Competition Authority of Kenya (CAK)	To enforce the [Competition] Act with the objective of enhancing the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing misleading market conduct throughout Kenya	2010	Competition Act, No. 12 of 2010	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Communications Authority of Kenya (CA)	Facilitating the development of the information and communications sectors	1999	Kenya Information and Communication Act (1998), (CAP 411A)	Depending on technology used	Depending on technology used	Depending on technology used	Depending on technology used	Depending on technology used	Depending on technology used	Depending on technology used	Depending on technology used
Central Bank of Kenya (CBK)	i. To formulate and implement Monetary Policy directed to achieving and maintaining stability in the general level of prices ii. To foster the liquidity, solvency and proper functioning of a stable market-based financial system iii. To support the economic policy of the Government including its objectives for growth and employment	1966	Central Bank of Kenya Act, Chapter 491 of the Laws of Kenya (CAP 491	Yes	Depending on entity	Yes			Depending on entity	Depending on business model	Depending on business model

**includes mobile wallets/ e-money, payment initiation & mobile POS **includes P2P lending and equity crowdfunding*

Kenyan authorities and their mandates (cont.)

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Authority	Objective/ Mandate	Year Formed	Authorising legislation	Business Models - Mandate Applies							
				Digital payments & remittance*	Digital lending	Digital savings	Digital investment	Digital insurance	Digital capital raising**	Personal financial management	Ecommerce & DFS platforms
Capital Markets Authority (CMA)	Mandate is supervising, licensing, and monitoring the activities of market intermediaries, including the stock exchange and the central depository and settlement system	1990	Capital Markets Act, (CAP 485A); The Central Depositories Act, (2000)		Depending on investment component	Depending on investment component	Yes		Depending on investment component	If there is an investment component	If there is an investment component
Insurance Regulatory Authority (IRA)	1. Promote consumer education and protection 2. Promote an inclusive, competitive, and stable insurance industry 3. Offer quality customer service	2006	The Insurance Act (Revised February 2020), (CAP 487)					Yes		If there is an insurance component	If there is an insurance component
Retirement Benefits Authority	1. Regulate and supervise the establishment and management of retirement benefits schemes 2. Protect the interests of members and sponsors of retirement benefits sector 3. Promote the development of the retirement benefits sector	1997	Retirement Benefits Act, No. 3 of 1997			Yes	If there is a pensions component			If there is a pensions component	If there is a pensions component

**includes mobile wallets/e-money, payment initiation & mobile POS **includes P2P lending and equity crowdfunding*

Thank **you!**

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