Regulatory Framework for Mobile Financial Services

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International regulatory frameworks have not yet established a specific supervisory regime for mobile financial services, and national regulators are generally reluctant to intervene in a promising business for less developed countries and, in particular, rural and remote areas. Designing the regulatory and supervisory regime depends less on the use of mobile telephony to undertake banking transactions than on the targeted banking activity, such as deposit taking or brokerage. Nevertheless, regulators and supervisors in both the finance and the telecommunication sector should be aware of several distinctive features in mobile banking.

Since the regulatory regime for rendering financial services is regularly more elaborated and encompasses more stringent structural and behavioural 'guidelines' than the legal framework in the telecommunications sector, the key question concerns the possible application of banking law on a mobile financial services provider. Very commonly, the competent financial market authority is entitled to specify the scope of banking business executed by a financial institution and to issue banking licenses as a condition to enter the financial services market and to carry out a regulated activity. Whether mobile financial services and their providers are considered as being subject to banking regulation thus depends on the determination of what constitutes a banking activity on the one hand and on the definition of banks on the other hand. The core principle in banking law is expressed in the notion that only banks are authorized to publicly take deposits and grant credits; correspondingly, depositor protection is an important aspect of banking regulation.

As far as the offering of mobile financial services is concerned, the question must be answered whether the execution of mobile financial services is so close to banking activity (and the provider in fact act in a bank-like manner) that compliance with banking law is a matter of public interest. Two different settings can be distinguished:

(1) If a mobile operator charges customers through their phone bill in the process of collecting a payment for a provider of goods or services, the mobile operator acts as a mere intermediary. The operator takes the risk inherent in the particular transaction as far as the aspect of proper execution is concerned; furthermore, remuneration may depend on a scheme of sharing a part of the gain with the content provider. However, the key function of the mobile operator is to make

the financial transaction between the provider of goods or services and the customer possible without being directly involved in the deposit-taking business.

(2) If the mobile operator creates prepaid accounts to facilitate the execution of payments, the activity typically implies a certain deposit-taking function. The mobile operator's risk is not any more limited to the proper execution of the particular transactions, but it bears certain counterparty risks with regard to its customers' ability to meet their financial obligations. The use of prepaid accounts as such does not necessarily constitute a banking business; however, a grey area begins as soon as high amounts are deposited on such an account for longer periods or if it is used for investment purposes. A mobile operator also acts in a bank-like manner if it pays the customers interest on their accounts or reinvests the money received in other businesses or capital markets. Under such circumstances, the activities of mobile operators resemble banking activities, and the balance sheet of the operator may begin to look similar to a bank's balance sheet.

Obviously, a clear and easily applicable demarcation line between sheer intermediary services of mobile operators and a deposit-taking function does not exist, even though it would be desirable with regard to avoiding legal uncertainty. In particular in the developing world, mobile-money schemes have developed outside the regulated banking sector, which is only unproblematic as long as mobile-money schemes limit the balances they raise and do not pay interest when these balances are used like savings accounts. Nevertheless, problems might occur in the case of irregularities, such as financial fraud, or bankruptcy of the mobile financial services provider. In the latter case, customers would certainly call for depositor protection, which could only be made available under an established financial supervisory system.

At any rate, regulators should seek to avoid that financial institutions try to associate with mobile operators as a means of circumventing the stringent banking regulations.The recent financial crisis has demonstrated (like many of its predecessors) that the emergence of a shadow banking system—executing bank-like functions without being subject to banking regulation and supervision—has the potential to destabilize the entire financial industry in case of market disruptions. However, it may be difficult for banking regulators to capture on their own the novel use of mobile devices to execute financial services in an appropriate way. At least with regard to the technical issues, banking regulators clearly rely on the knowledge of the telecommunication regulators.

Therefore, the establishment and institutionalisation of co-operation and information sharing between the telecommunications regulator, supervising the provision of value-added services by a mobile operator, and the banking regulator, supervising the deposit-taking business of a provider, will be essential for effective supervision of mobile financial services providers in the near future. The legal framework of mobile financial services should encompass an inter- related regulatory approach which recognises the distinctive features of telecommunications and financial services requirements. For instance, the consumer identification process in mobile financial services should be more formal than for buying a Subscriber Identity Module card (SIM card) but less rigorous than for opening a bank account.

The development of mobile financial services is not yet being reflected in the regulatory framework at the global level, nor has it been given due consideration in the ongoing international discussions on regulatory reforms of the financial system. It is to be expected that India—as a technologically advanced country with large rural areas—has both economic and political interests in advancing the business of mobile financial services that may help under- pin India's position as an emerging financial market.

Indian Regulatory Framework for mobile financial services

The Reserve Bank of India (India's Central Bank) recognized the potential of the mobile phone as a channel to conduct financial services quite some time back and the first set of guidelines were taken way back in October, 2008. But the Reserve Bank consciously opted for a bank-led model although its approach remains technology neutral. The use of mobile for banking in financial inclusion cannot become a viable proposition on a standalone basis if the purpose is to achieve meaningful financial inclusion. To make it viable and attract volumes, it has to be provided as a package along with other products and services. This can be achieved only by entities that can provide add-on services like emergency and entrepreneurial credit, saving facilities, other products and services such as insurance, besides remittances. This is where a mainstream regulated entity like a bank fits in. Some of these alternatives are being provided by a few NBFCs(non banking financial companies) but their scale and reach are not comparable with banks. They can serve niche markets but are not viable in the long run. But, they indeed will facilitate financial inclusion. So, the Indian model will remain a bank-led model with banks partnering MSPs (mobile service providers) and other entities to achieve the national goal of inclusive growth.

Steps taken by RBI in mobile banking

1) The mobile banking guidelines have been modified in December 2011, to permit banks to facilitate funds transfer both for personal remittances and purchase of goods and services without any ceiling. In other words, banks are now free to decide on the limits, based on their own risk perception. In respect of small value transactions fund transfers up to Rs 5,000/- can be effected through the mobile phone without the need for end-to-end encryption.
2) In order to provide domestic money transfer facility especially to migrant population who do not have access to formal banking channels, domestic money transfer guidelines have been issued in October 2011. Remittance from a bank account for cash pay out to the beneficiary not having a bank account at an ATM/BC[1] outlet has also been facilitated up to Rs 10,000/- per transaction subject to a monthly cap of Rs 25,000/- per beneficiary with the remitting bank obtaining only the full name and address of the beneficiary. Similarly cash pay in facility has been permitted up to Rs 5,000/- per transaction subject to a monthly cap of Rs 25,000/- per remitter for transfer of funds to a bank account. Remitter has to provide only minimum details (name and address). Bank need not take any document or proof of address.
3) Reserve Bank has always been conscious of the need to bring every citizen of the country within the ambit of the banking system. Appreciating the difficulties of banks to viably operate bank branches in every village, RBI had permitted bank's to appoint Business Correspondents (BCs) to address this. On demand from the industry, RBI has also permitted "for profit" companies to be appointed as Business Correspondents, which would enable a healthy fusion of the expertise of banks and the communications and agency network of non-banks, specially the MSPs.
4) E-money or the prepaid payment instruments, whether in the e-wallets, m-wallets, prepaid cards or paper coupons, have been brought under regulation for the first time with the enactment of the Payment and Settlement Systems Act, 2007. The Act itself

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came into force from August 2008 and the first guidelines on e-money were introduced in April 2009, and since then they have been liberalized in a significant way. RBI has allowed issue of prepaid instruments up to Rs.10,000 for exclusive use for purchase of travel tickets without the need for KYC. There are certain statutory requirements under the Prevention of Money Laundering Act which need to be met.

5) As on end-May 2013, 41banks and 22 nonbanks have been authorised to issue prepaid instrument (PPI). In view of the potential of prepaid instruments to enhance the objectives of financial inclusion and also facilitate reduction in cash-based transactions, the Reserve Bank has rationalized the guidelines for issuance of semi-closed PPIs in terms of categories and KYC(know your customer) requirements.

   i) PPIs up to Rs10,000 by accepting minimum details of the customer, amount outstanding at any point of time and total value of reloads in month not to exceed Rs10,000, can be issued only in electronic form;

   ii) PPIs from Rs10,001 to Rs50,000 by accepting any 'officially valid document' defined under rule 2(d) of the Prevention of Money Laundering Act, non-reloadable in nature, can be issued only in an electronic form;

   iii) PPIs up to Rs50,000/- with full KYC, can be reloadable.

   Further, in order to enhance the utility of PPIs, the facility of funds transfer from a PPI to another PPI issued by same entity and/or to any bank account, was enabled for all categories of PPIs.

6) RBI has permitted banks to enable cross border bank account to bank account remittance through the medium of mobile subject to clearance from the local regulator. At the beneficiary end, RBI has enabled loading of funds received from overseas under the Money Transfer Service Scheme (MTSS) scheme on to a prepaid payment instrument issued by a bank, which could include a mobile wallet, to the recipient of the funds.

Mobile Banking Status in India

There has been a surge in the customers registered for mobile banking. The mobile payments in 2012-13 have reached 53.30 million in volume terms and Rs 59.90 billion in value terms. The growth rate in 2012-13 has been 108% in volume and 229% in value terms. The overall share of mobile payments in the payment system, however, is minuscule. Given the huge potential of mobile banking to be game changer, Reserve Bank of India has constituted a Technical Committee on Mobile Banking. The Committee will examine the challenges faced by banks in increasing the usage of mobile banking including the usage of USSD (Unstructured Supplementary Service Data) channel. The Committee will examine various options including the feasibility of using encrypted SMS (short message service) based applications for funds transfer that can run on any type of handset for expansion of mobile banking in the country.