Private sector Position on the National Payment Systems Bill, 2019 presented to the Committee on Finance, Planning and Economic Development, Parliament of the Republic of Uganda

Presented

By

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A paper prepared with consultations from Safe Boda, Uganda Forex Exchange Association Fintech Association of Uganda and Pay Way Uganda Limited

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A. Introduction/ Appreciation:

Private sector Foundation Uganda (PSFU) is the apex body of the private sector in Uganda with a mandate of sustaining dialogue with Government on improving the business environment, business development support and capacity building. Our membership which is composed of over 260 business associations, corporate members and associates, is organized into 11 sectors[1] which mirrors the productive sectors in the economy.

PSFU appreciates the Parliament through the Parliamentary committee on Finance Planning and Economic Development for continuously according the private sector the opportunity to engage on various issues including the National Payment Systems Bill, 2019. This paper has therefore been developed through consultations from the members of the private sector.

B. General Comments:

1) **Objects of the National Payment System Bill:**

The objective of the Bill is to regulate payment systems; to provide for the safely and efficiency of payment systems; to provide for the functions' of the central bank in relation to payment systems; to prescribe the rules governing the oversight and protection of payment systems; to provide labor financial collateral arrangements; to regulate payment Service providers; to regulate issuance of electronic money; to provide for the oversight of payment instruments and labor other related matters. The need to have a legal framework that promotes the industry as well as regulates the conducts of the much dynamic and globalized sector cannot be over emphasized. <u>This bill is therefore a welcome idea to support investments in this ecosystem.</u>

2) **Supportive legal framework for Sand box:**

Sand box is required ecosystem that the various innovations require for testing and growing the various initiatives. The proposed bill creates a conducive legal regime that is required to promote the innovations to blossom. This again is much appreciated.

[1] Agriculture, manufacturing, Tourism, Oil, Gas and Minerals, ICT, construction, Trade and commerce, Financial services, transport and logistics, Professional services and skills, education and health sectors

The paper basically captures the sections in the bill where the private sector has specific concerns however, generally, the bill is fairly representative of the private sector interests.

3) Development of regulations:

Unlike other legal frameworks, this industry is highly flexible since it is technology driven. Development of various regulations required to support this law needs to be flexible with an option of review and update at least bi annually.

C. Specific Private Sector concerns on the Bill:

No.	Issue/Item	What the bill proposes	Implications	Proposals
1.	Functions of the central bank	Section 5(4) of the bill proposes that the central bank **MAY** in the performance of its functions under this section consult with such stake holders as the central bank shall consider appropriate.	This does not mandate the central bank to consult the private sector and other players while enforcement of this law. Consequently, enforcement is likely to be affected due to lack of stakeholder buy in which affects the entire sector.	Change the section to read: "the central bank **SHALL** in the performance of its functions under this section consult with such stake holders as the central bank shall consider appropriate" Create a section which establishes a national payment systems committee with its roles and is at least composed of 40% members of the private sector[2] and co-chaired by the private sector. This will help in implementation especially developing regulations and enforce them.
2.	Establishment of a regulatory sandbox framework'	section 16 (l) of the bill proposes that the central bank **MAY** establish a regulatory sandbox framework labor purposes of governing the manner in which a person may obtain limited access to the payment system ecosystem to test innovative financial products or services without obtaining a license under this Act.	A regulatory framework is required to support the innovations under the sand box system. Central Bank needs to establish this framework to support the innovation testing. The way the section is written does not regard the regulatory framework required for sand box at mandatory level. This might be missed while implementation.	Change the section to read: "the central bank **SHALL** establish a regulatory sandbox framework labor purposes of governing the manner in which a person may obtain limited access to the payment system ecosystem to test innovative financial products or services without obtaining a license under this Act.

[2]Private sector members could include: Private Sector Foundation Uganda, Uganda Bankers Association, Aitel, MTN, Safe Boda and Pay way

				This will ensure that the framework for sand box is established.
3.	Customer due diligence requirements.	Section 59(2) of the bill proposes that the minimum customer due diligence requirements under subsection (1), shall be prescribed by regulations.	This statement is a little ambiguous especially on the minimum requirements for due diligence. The regulations needs to capture a clear minimum requirements for due diligence that will not stifle the industry but will also be enforceable.	Develop regulations that will consider minimum requirements as a telephone contact for the customer.
4.	Penalties and Offences	There is no specific section for offenses and penalties in the bill. These are scattered in various sections	This can create confusion when it comes to enforcement of the bill	Create a section to capture penalties and offenses and consolidate them
5.	Trust Accounts	Section 49 (4) of the bill proposes that Interest earned on a trust account or special account referred to in section 49 and 51 of this Act respectively) shall be credited to an interest account opened for that purpose in the financial institution or microfinance deposit taking institution in which the trust account or special account is held and shall be distributed for the benefit of the consumers as determined by the central bank	The payment system provider transacts virtual money from the depositor but for this to happen, the electronic money provider must have put aside money to facilitate this. Unlike in the banking industry, where deposits are made to the banks and then later lend out to clients, in Fintech, clients only use virtual money and the electronic money issuer transacts with his/ her our investment. Therefore the distribution of the earned interest to consumers is not justified because the investment belongs to the electronic money provider.	Reconsider this section to indicate that the interest earned will stay with the electronic money issuer as a benefit for the investment and business conducted.

6.	Establishment of a subsidiary legal entity	Section 48 of the bill proposes that, a payment service provider, other than an entity solely established to issue electronic money, a financial institution or micro deposit taking institution, intends to issue electronic money shall establish a subsidiary legal entity for that purpose.	This section is well appreciated in principle however the way how this section was drafted is not clear. It does not indicate that the new subsidiary entity will be treated as a company on its own. This might bring challenges while implementing.	Consider re drafting this section to indicate that the new subsidiary entity will be treated as a new entity on its own.

Conclusion:

Generally, the bill captures the interest of the private sector in regulating this sector. Caution must however be put on the development of regulations in a way that is flexible and supports the development of the industry. More consultation and engagement from the business community is highly required in this bill.