

Assessment of Legal Challenges Relating to E-Banking in Financial Institutions

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Abstract: This research was carried out to assess legal challenges relating to E-Banking in financial institutions: A study of Commercial banks in Dodoma, Tanzania. This research was worth exploring since there is a high rise of E-Banking service users and the users are not aware of the legal implication of such services which in turn is the biggest challenge to E-Banking services. The objective of this research was to explore the challenges brought by the E-Banking system in relation to the Legal system in Tanzania by focusing specifically on legal risks that a customer is likely to face in e-banking, also the insecurity phenomenon associated with E-banking. Data gathering was done through: Interview, Questionnaire and literature review. The sample of the study consisted of 100 respondents. Respondents were randomly selected from the streets who are commercial bank customers. The findings show that there are network problems, no governing laws/policies on e-banking, e-banking charges are high, authentication issues, losses in case of mistaken payment and no refund in case of an incomplete transaction.

Keywords: E-banking, Legal Challenges, Banking Channels, Risk

1. Introduction

Technology facilitated service delivery, have the potential to benefit customers, employees and management alike. Customers can be offered additional or extended services, greater convenience and control, potentially more reliable information delivery, access to data and support services that may not have been otherwise available and the ability to conduct transactions in such a way that does not necessitate the customer visiting the service organization.

Over the last decade, most of the banks completed the transformation to technology-driven organizations. Moving from a manual, scale-constrained environment to a global presence with automated systems and processes, it is difficult to envisage the adverse scenario the sector was in the era before the reforms, when a simple deposit or withdrawal of cash would require a day. ATMs, mobile banking and online bill payments facilities to vendors and utility service providers almost obviated the need for customers to visit a branch.

Technology has been implemented successfully in the

delivery of many services as an aid to the front-line employee who interacts with the customer. Not so long ago, accessing our own money was about setting aside a couple of hours, getting to the bank before closing time, standing in one queue to get a token and then in another to collect the cash.

In an effort to liberalize the banking sector, the Banking and Financial Institution Act, 1991 was introduced to provide the legal framework for banking operations in Tanzania that will grant authorization of financial institutions to receive money on current account subject to withdraw by cheque. As a result of the Act, the entry of new banks has enhanced financial competition resulting in some improvement of the quality and quantity of the financial services offered. Some commercial banks in Tanzania are NMB bank, CRDB, NBC, Akiba Commercial Bank, Diamond Trust Bank, Standard Chartered Bank, and many more.

This research study deals with only three commercial Banks located in Dodoma, which are CRDB, NMB and NBC

1.1. Legal Issues in E-Banking

Despite the ages of deregulations of laws governing

banking business from the 1990s to the year 2010, the set of laws such as Bank of Tanzania Act (The Bank of Tanzania Act, 2006), the Banking and Financial Institutions Act (The Banking and Financial Institution Act, 2006;) The Bills of Exchange Act (The Bills of Exchange Act, 2006), the Law of Contract Act (The Law of Contract Act, [Cap 335 R.E 2002] and the recently 2010, Electronic and Postal Communication Act (Electronic and Postal Communication Act, 2010), in which one would expect the laws to cater on matters related to electronic transactions, no single provision in the laws, which specifically regulates electronic banking in Tanzania. For a further elaboration the provision of section 6 of the Bank of Tanzania Act, for example, does not expressly provide for electronic banking regulation [1].

Tanzania laws do not cover online contracts. The Contract Act, Cap 345 R.E. 2002 does not provide a room for an “agreement” concluded between parties either partly or wholly by means of data messages. The laws of the country recognize written contracts and duly signed or authenticated before a witness. Electronic Banking operates automatically according to a set of instructions and without supervision. In situations like this, the acceptance is not clearly defined unless there is a law that clearly specifies the situation. The major problems examined are the ascertainment of the online contract terms and the other party in the contract with the focus to consent (*consensus ad idem*) requirements and capacity to enter into a contract.

1.2. Literature Review

The study presents a general overview on issues in electronic banking [2]. He laments that there are two other important sources of legal risk to customers. First, there can be uncertainty; about which legislation applies to electronic banking transactions; the legislation of the jurisdiction in which the (virtual) bank is licensed or in which the services are offered. This is especially true when electronic banking has a cross-border nature where different legislations might conflict with each other. And secondly as a consequence of this, also enforcement can be difficult. Moreover, enforcement of certain emerging areas of law is uncertain, for example, laws related to electronic contracts and digital signatures.

The study [3] has discussed extensively on Information Communication Technology in Tanzania. As regards to electronic banking, he is of the view that there is a lack of certainty on electronic banking in Tanzania and possibly the region of East Africa Community whereby electronic banking is growing explosively. As a result of inappropriate legal framework electronic banking may expose a customer to legal risks on questions of privacy, cyber crimes and other related electronic financial result. The current legal framework for financial and other related transactions does not suit electronic transactions hence a barrier to e-commerce development.

The study [4] has undertaken a study “Internet Banking-Some of the Contemporary Issues” According to him, technology has made a tremendous impact in banking. ‘Anywhere, anytime banking’ have become a reality. Also, it

has thrown new challenges in the banking sector and new issues started cropping up which is going to pose certain problems in the near future.

The study [5] has passed a strong discussion on electronic Transactions and the law of evidence in Tanzania, and have stressed that the current legal system does not adequately address the impact of ICT on rules of evidence in Tanzania. The writers have found that the banking sector has made remarkable progress in the deployment of ICT by introducing electronic banking, but despite such progress a fully fledged deployment of the benefit of ICT in Tanzania has not yet been reached.

Security is rated as the most important issue of online banking. There is a dual requirement to protect customers’ privacy and protect against fraud. The Digital signature is a precautionary measure to prevent malpractices and tampering the information. It is a form of enhanced authentication [6].

The vulnerability of the e-banking platforms to new and more sophisticated threats makes the situation even more dangerous. Efforts have however been made continuously to ensure that the various e-banking platforms are better secured from these threats [7].

There is no any single strategy that covers all the different dangers threatening the E-Banking platforms. On the contrary, focusing on a multi-layer protection approach is the best alternative for system security and for protection of consumers’ interests, including a mix of different factors that allow: Implementing complementary protection for the end-user’s station; communicating the occurrence of potential transactions frauds to the end-user; shielding the authentication process from malicious activities that can affect the end user’s station, providing user-to-site authentication strategies which allow the end-user to verify that the connection is indeed established with the correct site.

The study [8] discussed electronic banking as part of electronic commerce due to the fact that electronic banking enhances consumer confidence in electronic commerce.

Some customers are reluctant to use E-banking because of the security risks posed by cyber fraud. Apart from the benefits that have been brought by mobile banking, it is indisputable that this technology has simplified theft online with less risk [5].

Security concerns and lack of awareness stand out as the reasons for non-adoption of internet banking by Australian customers [9].

1.3. Research Gap

The substantive part of the law in Tanzania does not regulate electronic banking as a result; there is a need for new laws. Inexistence of clear provisions in these laws appear to be contrary to the country policy on information communication and technologies which identifies the need for legislative instruments on privacy, security, cybercrime, ethical and moral conduct and encryption

1.4. Methodology

Design: The research design for this study follows a series

of logical steps from the stated hypotheses and the research questions to data collection, analysis and interpretation in a coherent way that gives relevance to the research purpose and the meaning to this study

1.5. Research problem

The relevance of electronic banking services has been steadily growing with ICT's contributing to such diverse sectors as education, banking, health and agriculture. The technology development manages to change the style we live, communicate, work, learn do research, buy and purchase receive and send money and how we entertain ourselves.

Electronic Banking reduces workload on banks and enables banks to improve customer services, the latter has served as a relief to bankers in providing services to its customers, instead of having all individuals in the bank for inquiry or deposit of cheques, customers can now discharge all these duties through electronic banking. [1]

Most of the rural areas in Tanzania are not connected with banking infrastructure, therefore, people are supposed to travel many kilometers to get banking services, but the introduction of the e banking through the use of mobile phone money transactions helps those people in rural areas to access financial services easily compared to the past. Currently the four active mobile phone companies which provide financial services are: Vodacom Tanzania (M-Pesa), Tigo (Tigo-Pesa), Airtel (Airtel Money) and Zantel (EasyPesa).

Lack of a fully operational, legal and regulatory framework jeopardizes the security of consumers. Electronic banking customers face the same risk like traditional customers under physical world. No wonder offline offenses such as trespassing, embezzlement, malicious destructions and vandalism committed against offline customers can be committed to E-banking customers and related customers (e-commerce) mobile banking include malicious codes, phishing (deception), hacking, cyber-vandalism, spoofing, denial of service attacks, sniffing and so forth.

The Laws in Tanzania seem not to provide for specific Electronic banking transactions as a result, there poses great financial risks to Financial Institutions. There are several legal challenges that occur to both the banks and the consumers respectively posed by such position of the law lacking specific legislations.

However, while electronic banking is taking place the law has been slow in protecting customers in electronic banking. In addition, our laws have not incorporated tools of effecting electronic transactions. The existing laws facilitate paper based transactions, which apparently are not applicable to technological changes that are currently taking place in Tanzania.

Although, E-banking provides many opportunities for the banks, it is also the case that the current banking services provided through Internet are limited due to security concerns, complexity and technological problems [9-10].

2. General Objective

The objective of this study is to explore the challenges brought by the E-Banking system in relation to the Legal system in Tanzania.

2.1. Scope of The study

The study was conducted in 2016 – 2017 second quarter of Dodoma Municipal on commercial banks which are found in town. The Researcher collected data from the relevant bank customers and staff to facilitate completion of the research.

2.2. Significance of The study

This study will significantly benefit various groups which are either direct users of E-banking or indirect users of E-Banking.

The study findings are intended to open an eye for financial institutions/banks as to what the legal system lacks in supporting the whole system of Electronic Banking.

There is a need of a contract based relationship between the bank and customer in E-banking the contractual relationship must be under the prescriptions of the law and not only at the will of the bank in relationship with its customers, hence this research is to provide for this gap.

The research will act as a base for the government when formulating policy and law relating to electronic banking. The findings will make a significant contribution to the existing literature on legal issues in E-banking.

3. Theoretical Framework

A theory is a collection of concepts which together provide an understanding of how a phenomenon is built up and how it can be classified and used reviews. [11]

3.1. The Innovation Diffusion Theory

Innovation Diffusion Theory (IDT), formulated by Everett M. Rogers in 1962, is the pioneering theory that laid down the primary foundation for the future of innovation diffusion research [12].

Rogers describes the diffusion of innovation as “the process by which an innovation is communicated through certain channels over time among the members of a social system. It is a special type of communication in that the messages are concerned with new ideas.” It was grounded in theories of economics, sociology and communication and a synthesis of adoption- diffusion literature across disciplines, IDT identified five characteristics of an innovation that

Influences its adoption: relative advantage, compatibility, complexity, trial ability.

3.2. The Theory of Reasoned action

The Theory of Reasoned Action (TRA), proposed [12] is a well-established social, psychological model, which assumes that individuals are usually rational and will consider the implications of their actions prior to deciding whether or not

to perform a given behavior [13] they later defined it with empirical evidence to support its validity and reliability.

The study [14] applied and extended the original TRA by adding network quality attributes (security, user-friendliness, transaction speed, and information quality) as antecedents of attitude towards the use of IB. They concluded that although the addition of extra variables does not improve the explanatory power of the original TRA, it did increase the explanatory power of attitude and behavioral intention.

3.3. The Theory of Planned Behavior (TPB)

Icek Ajzen in 1985 proposed the Theory of Planned Behavior (TPB) that expanded the boundary conditions of TRA to deal with behaviors over which individuals have incomplete volitional control by introducing *Perceived Behavioral Control* (PBC) as an additional determinant of intentions and behavior.

The Theory of Planned Behavior (TPB) is one of the most widely used models in explaining and predicting individual Behavioral Intention (BI) and acceptance of Information Technology (IT). TPB is an attitude-intention-behavior model, which posits that an individual's behavior is determined by perceived behavioral control and intention. [15]

3.4. Technology Acceptance Model (TAM)

Technology Acceptance Model (TAM), proposed by Fred Davis in 1989 and based on TRA, was one of the first research models to study how an individual's perceptions about, the usefulness, ease of use, and attitude towards the use of a specific technology affects its eventual use (Davis, 1989). *Perceived Usefulness* (PU) refers to an individual's perception that using IB would enhance his or her performance, whereas *Perceived Ease of Use* (PEOU) is the perception that using IB would be free of effort [16]. PU and PEOU mediate the effects of external variables, such as training and technology characteristics, on behavioral intention and use. PU is influenced by PEOU because, other things being equal, the easier it is to use a technology, the more useful it can be. TAM also suggests that the direct effect of PEOU on behavioral intention is significant only in the early stages of use [14].

3.5. The Uncitral Model Law and Commonwealth Model Law

Provides for functional equivalence thus where the law requires a signature of a person, that requirement is met in relation to a data message if an electronic signature is used that is as reliable as was appropriate for the purpose for the data message was generated or communicated.

In light of all of the above which circumstance, including any relevant agreement. It is believed that these Model Laws will assist states in reforming and enhancing their legislations that are on paper method and come up with uniform laws that allow the use of alternatives to paper based methods of transactions, communication and storage of information at a

national and international level. [17].

4. Research Approach

This study used a quantitative based approach in assessing legal challenges that are related to E-banking in banking institutions. A case study, which includes E-banking users from different commercial banks in Dodoma, is the basis for this quantitative approach.

Table 1. Data collection instruments.

SN	INSTRUMENT	TYPE OF DATA	SOURCE
1	Interview	Primary	E-bank Users
2	Questionnaire	Primary	E-Bank Users
3	Documents	Secondary	Published journals through internet

Source: Researcher's idea (2016)

The study sample consisted all the 3 commercial banks in Dodoma (CRDB, NMB & NBC). All the commercial banks are located in Dodoma the Capital city of Tanzania; hence it was imperative to focus on these banks as they generally reflect technologies.

A total of 100 active customers from selected commercial banks were involved in the study. The researcher used both simple random bases in choosing his customers.

Data analysis

The process of data analysis was done according to the data collected from the respondents and the findings answer the research questions and the objectives respectively.

5. Discussion

5.1. Demographic Characteristics of Respondents

Responses of males were more (56.38%) as compared to female who were 43.62%, this might be in a cycle with the global trend which shows that more males utilize these E-banking services in banks compared to females. This implies that the perceived risk on internet use is higher among female customer compared to male customers.

During the data collection period age of the respondents was put into consideration in order to get information from different age groups. The age of respondents was grouped in the age groups with the range of 10 years, which is 18-28 years, the age between 29-39 years, 40-50 years and the age above 50 years.

The education level of the respondents who uses E-banking services was categorized into four: primary Education, Secondary Education, Graduate and Postgraduate. The findings show that 34 respondents which make (36.17%) had attained higher education and also 27 respondents which make (28.72%) had attained higher education. A total number of 18 respondents which makes (19.15%) had attained secondary level education and 15 respondents which make (15.96%) had attained primary level education. On the other hand the involvement in E-banking was associated with

level of education in that respondents who had higher education were involved in internet banking compared to other respondents.

5.2. Time of Holding any Account

Table 2. Time of holding any account.

Time of holding any account	Frequency	Percentage (%)
Less than a year	-	-
1-3 years	22	23.404
3-5 years	30	31.915
Over five years	42	44.681
Please specify	-	-
Total	94	100

Source: Field data, 2016

5.3. The Frequency with Which Customer Operates with Their Account

Table 3. The Frequency with which customer operates with their account.

Rate of operation	Frequency	Percentage
At least once in a week	23	24.468
At least once in a month	46	48.936
At least once in a period of three months	25	26.596
Total	94	100

Source: Field data, 2016

5.4. Users on Various Channels

Table 4. Users on Various Channels.

Item	Frequency	Percentage (%)
Mobile/Sim banking	36	38
ATM	92	98
Internet banking	15	16
Smart Card/ Visa card	13	14
Total responses	94	100

Source: Field data, 2016

5.7. The Customer Perspective, If Tanzanians Laws are Capable to Regulate Cyber Crimes Offences

Table 8. The Customer perspective, if Tanzanians laws are capable to regulate cybercrimes and other related offences.

The Customer perspective, if Tanzanians laws are capable to regulate cybercrimes and other related offences.	Frequency	Percentage%
YES	86	91
NO	8	9
Total responses	94	100

Source: Field data, 2016

Table 9. If there are any regulations, policies or guidelines on adoption of E-banking in Tanzania.

If there are any regulations, policies or guidelines on adoption of E-banking in Tanzania	Frequency	Percentage%
YES	71	75
NO	20	21
Total response	94	100

Source: Field data, 2016

Table 5. Awareness on E-Banking services.

Item	Frequency	Percentage%
Yes	68	72.34
No	26	27.66
Total Responses	94	100

Source: Field data, 2016

5.5. Which Customer Services are Offered by Your Bank

Table 6. Which customer services are offered by your bank.

Item	Frequency	Percentage%
Direct Debit	43	46
ATM	94	100
Point of sales (POS) Debit cards, credit cards	47	50
Personal computer banking	45	48
Wireless banking	-	-
Telephone Banking	94	100
Others (Specify)	-	-
Total	94	100

Source: Field data, 2016

5.6. Failure to Fully Adoption of E-banking in Developing Countries

Table 7. Failure to fully adoption of E-banking in developing countries.

Reasons for failure to adopt of E-banking	Frequency	Percentage%
Legal issues/support	76	81
Regulatory issues/support	65	69
Government	55	59
Donors	-	-
Security of the system	84	89
Reliability of the system	-	-
Privacy and trust	90	96
The Risk involved	85	90
Lack of knowledge	43	46
Organization capability	-	-
Total	94	100

Source: Field data, 2016

Table 10. Customers' perceptions risks associated with E-banking.

Customer Suggestions on Risks associated with E-banking	Me An	Rank
There may occur losses in case of mistake in payment	4.03	1
E-banking is associated with transaction charges and therefore expensive	3.11	2
In case of uncompleted transactions service charges may not be refunded	3.01	3
There may occur incomplete due to network problems	4.01	4
Completion of E-banking services may take a long time	3.01	5
E-banking may fail to causing dilemma	3.01	6
E-banking lowers self image	2.01	7
Total mean	3.17	High
Source: Field data, 2016		
Key: Rating scale		
Mean Range	Interpretation	Response Mode
1. 1.0-1.6	Strongly Disagree	Very Low
2. 1.7- 2.2	Disagree	Low
3. 2.3- 2.8	Neutral	Moderate
4. 2.9- 3.4	Agree	High
5. 3.5- 4.0	strongly Agree	Very high

Table 11. Customer Suggestions on the measures and steps to be taken in order to mitigate the risks associated with E-banking.

Measures and steps to be taken to mitigate risks associated with E-banking	Frequency	Percentage %
All enquiry services should be free and in case of transaction failure service charges should be Refunded	92	98
Bank Resolution Process Action is taken in some cases, i.e., monies refunded	84	89
Prompt service by service operators	88	94
Short time cycles in card replacement	68	72
Good electronic Customer awareness banking, accessible, reliable,	76	81
Strengthen network speed/internet stability	93	99
Third part not to have access of personal Information	92	98
Commercial banks should validate each online payment entities for security enhancement to restrict cyber crime (officially authenticate third parties),	65	69
Total responses	94	100

Source: Field data, 2016

6. Conclusion

For risks of incomplete online services/transactions, customers were able to reveal that may occur incomplete transactions due to network problems and E-banking may fail to give the feedback causing dilemma. It has been found also that, sometimes ATMs went offline for a very long time. Also in case of uncompleted transaction service charges may not be refunded customers are likely to count on it as non existence of E-banking.

Confidentiality of the customer is a very important concern in the adoption of e-banking, in this research finding customer information is known to third party accessing of customers' personal information, Customers fear that someone will have unlimited access to their personal financial information. Many customers do not trust this Internet banking services due to insecurity/lack of confidence. Information is transferred via the Internet. Internet banking is, therefore, inherently risky from the viewpoint of insecurity. Further, steps should be taken to develop trust among bank employees, first towards the issues of information security and the chances of fraud.

Cyber criminals misuse the lack of knowledge among users, accessibility of customers account and they use technology loopholes to conduct their crime and cheat the public of its money. They use various means like hacking, fake websites and spam mails, and convey to the customers

for giving banking details.

From the findings it can be concluded that there is insecurities to customers, this means there is no/ lack of confidence as personal information will be known to third parties... There are no reliable internet services as there is a failure/low speed of the internet, and this may give a chance to cyber crimes issues. Lack of knowledge on e-banking is also a problem as not all customers have knowledge one-banking.

It was also revealed that there is the absence of a proper legal and regulatory law for internet banking constitutes which is a major challenge of e-banking. The existing banking laws do not address the security issues of e-banking as a new banking system. The high exposure of the system hackers and other criminally minded persons who could access, retrieve and utilize confidential information from the system where security measures are weak.

The findings also reveal that there are risks which are associated with e banking include; This occurrence of incomplete transactions due to network problems, completion of e-banking transactions may take a long time, e-banking may fail to give the feedback causing dilemma, in case of uncompleted transactions service charges may not be refunded, e-banking is associated with transaction charges and therefore expensive and occurrence of losses in case of mistaken e payments.

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