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Legal and Regulatory Landscape for **Fintechs** in Tanzania.

Presenter : **Sunday Ndamugoba**
Head of Intellectual Property & Tech Dept.
ABC Attorneys





Sunday Ndamugoba

LLB (TZ), PGDLP (TZ), CPIR (TZ), LLM(UK)

- Managing Counsel of ABC Attorneys
- The Head of the Intellectual Property and Technology Department.
- Advocate of the High Court of Zanzibar
- Advocate of the High Court of Tanzania.
- Chairman IP Committee East Africa Law Society.
- Coordinator - CLE Committee Zanzibar Law Society
- Governing Council Member- Zanzibar Law Society.
- Vice Chair-TPSF Board Committee- Policy, Advocacy&Local Content
- Accredited Arbitrator and Mediator.
- UK Chattered Trademark Attorney.
- Investments &Local Content advisor

Our Practices

Our Niche

Intellectual Property

Technology

Startups

Finance

Litigation

Investments

Corporate

Commercial

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Meet Our IP & TechTeam



Sunday Ndamugoba
Head of Department



Margreth Somme
Lawyer



Angela Malando
Lawyer

Our Journey

ABC Attorneys®



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22

Team Members

4

Offices: Dodoma, Dar es Salaam, Arusha, Zanzibar

10

Years in Operations

10TH
ANNIVERSARY

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"ABC provides a timely and efficient service to clients with respect to trademark filings....."

**WORLD TRADEMARK
REVIEW 2023**

- RECOMMENDED LAWFIRM 2023
- RECOMMENDED ATTORNEYS 2023

WTR

1000

The World's
Leading Trademark
Professionals
2023





FinTech, Defined

FinTech are technologies, tools, or platforms that assist and improve financial transactions and services.

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A brief history of FinTech

Arner, Douglas. "The Evolution of Fintech: A New Post-Crisis Paradigm?"
By Douglas W. Arner, Janos Nathan Barberis, Ross P. Buckley :: SSRN."
Social Science Research Network, 1 Oct. 2015,
papers.ssrn.com/sol3/papers.cfm?abstract_id=2676553. Accessed 5
Apr 2021.

1838

The electric telegraph was introduced for the first time.

1950

Diner's Club released the first universal credit card.

1982

The world was introduced to TradePlus, the online brokerage platform.

2007

M-Pesa introduced in Kenya by Vodafone for Safaricom
The first version of Bitcoin was released (2009)

2013

Google was first launched, followed by Apple Pay in 2014.

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Without FinTech

- Banks have singular control over the world's wealth.
- Transactions are laborious and time-consuming.
- Tracking transactions are limited and incomplete.

With FinTech

- People have more control and access over their money.
- Transactions are instant and easy.
- All financial transactions can have easy documentation.

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**FinTech:
Risks & Rewards**

Risks in FinTech

What to look out for and refine



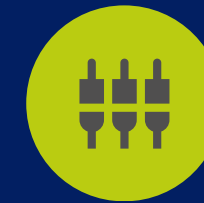
Poor Security

FinTech companies are always at high risk against cyber attacks.



Poor Literacy

Users need to be educated on finances and technology to make the most out of FinTech tools.



Poor Adaptability

Technologies in FinTech drastically change every year. Institutions that are not quick to adapt will be left behind.

Tanzania Fintechs

According to the UNCDF Report, there are 33 Fintech startups are operating in Tanzania, however, the number may change with time.

Tanzania fintech start-up landscape - UNCDF and Sahara Ventures Report, 2021



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SOME OF THE FINTECHS WE HAVE WORKED WITH ON THE LICENSING SIDE OF THINGS



LAWS REGULATING FINTECH

1. THE BANK OF TANZANIA ACT, 2006, ACT NO 5 OF 2006.
2. THE NATIONAL PAYMENT SYSTEM ACT, 2015;
3. THE PAYMENT SYSTEM (ELECTRONIC MONEY) REGULATIONS, 2015;
4. THE PAYMENT SYSTEMS (LICENSING AND APPROVAL) REGULATIONS, 2015
5. ELECTRONIC AND POSTAL COMMUNICATIONS ACT, CHAPTER 306 OF THE LAWS OF TANZANIA
6. THE TANZANIA COMMUNICATIONS REGULATORY AUTHORITY ACT, CHAPTER 172 OF THE LAWS OF TANZANIA.
7. THE ELECTRONIC AND POSTAL COMMUNICATIONS (LICENSING)(AMENDMENT) REGULATIONS, 2022
8. THE ELECTRONIC AND POSTAL COMMUNICATIONS (CONSUMER PROTECTION) REGULATIONS, 2018
9. THE PREVENTION OF TERRORISM ACT, 2002
10. INCOME TAX ACT
11. THE PREVENTION OF TERRORISM (GENERAL) REGULATIONS, 2022
12. THE CYBERCRIMES ACT, 2015.
13. ANTI-CORRUPTION AND ECONOMIC CRIMES ACT
14. THE COMPANIES ACT, CAP 212
15. FOREIGN EXCHANGE ACT, 1992 [CAP 217 R.E. 2002].
16. THE FOREIGN EXCHANGE REGULATIONS, 2022, G.N. 294 OF 2022.
17. THE PREVENTION OF TERRORISM (GENERAL) (AMENDMENTS) REGULATIONS, 2023 - [FEBRUARY 2023]
18. THE ANTI-MONEY LAUNDERING (ELECTRONIC FUNDS TRANSFER AND CASH TRANSACTIONS REPORTING) REGULATIONS, 2019.
19. THE ANTI-MONEY LAUNDERING (CROSS BORDER DECLARATION OF CURRENCY
20. ANTI-MONEY LAUNDERING ACT, CAP. 423 OF 2006 - FOR TANZANIA MAINLAND (AMLA)
21. THE ANTI MONEY LAUNDERING PROCEEDS OF CRIME (AMMENDMENT, REGULATIONS, 2023 - [JANUARY, 2023]
22. PROCEEDS OF CRIME ACT, CAP. 256, 1991 - FOR TANZANIA MAINLAND (POCA)
23. ECONOMIC AND ORGANIZED CRIME CONTROL ACT, CAP. 200
24. THE PERSONAL DATA PROTECTION ACT 2022, ACT NO. 11 OF 2022
25. PERSONAL DATA PROTECTION (COLLECTION AND PROCESSING OF PERSONAL DATA) REGULATIONS

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Opening a Fintech Company in Tanzania.

- Certificate of Incorporation- (Mindful of the initial Capital)
- Tax Identification Number (Be mindful of the Timeline)
- Business Licence (Be mindful of the categories)
- Other Compliances (OSHA,FIRE,NSSF,WCF)
- **Regulatory Compliance (BOT,TCRA etc for PSP and MFI)**
- Work & Resident Permits for Foreigners
- Open a Bank Accounts
- Partnerships with Banks and Institutions.
- Registration of IP Assets (Trademarks,Patents,Copyright)



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Regulatory Threshold

New emerging FinTech companies often have limited track records regarding their business (e.g. risk management, liquidity and profitability) and difficulty identifying their obligations (e.g. applicable regulations or licences).

For regulators, these early-stage companies represent a limited prudential & consumer risk. However, exponential company growth can create “risk blind spots”. Additionally, frequent failures or fraud can impact market or investor confidence.



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The Bank of Tanzania (BOT)

is the regulator of the financial sector in Tanzania

Financial sector supervision

Bank of Tanzania (the Bank) is mandated to license, regulate and supervise banks and financial institutions comprising commercial banks, microfinance banks, community banks, development finance banks, financial leasing companies, mortgage financing companies, microfinance service providers, credit reference bureaux, bureau de changes and representative offices of foreign banks.

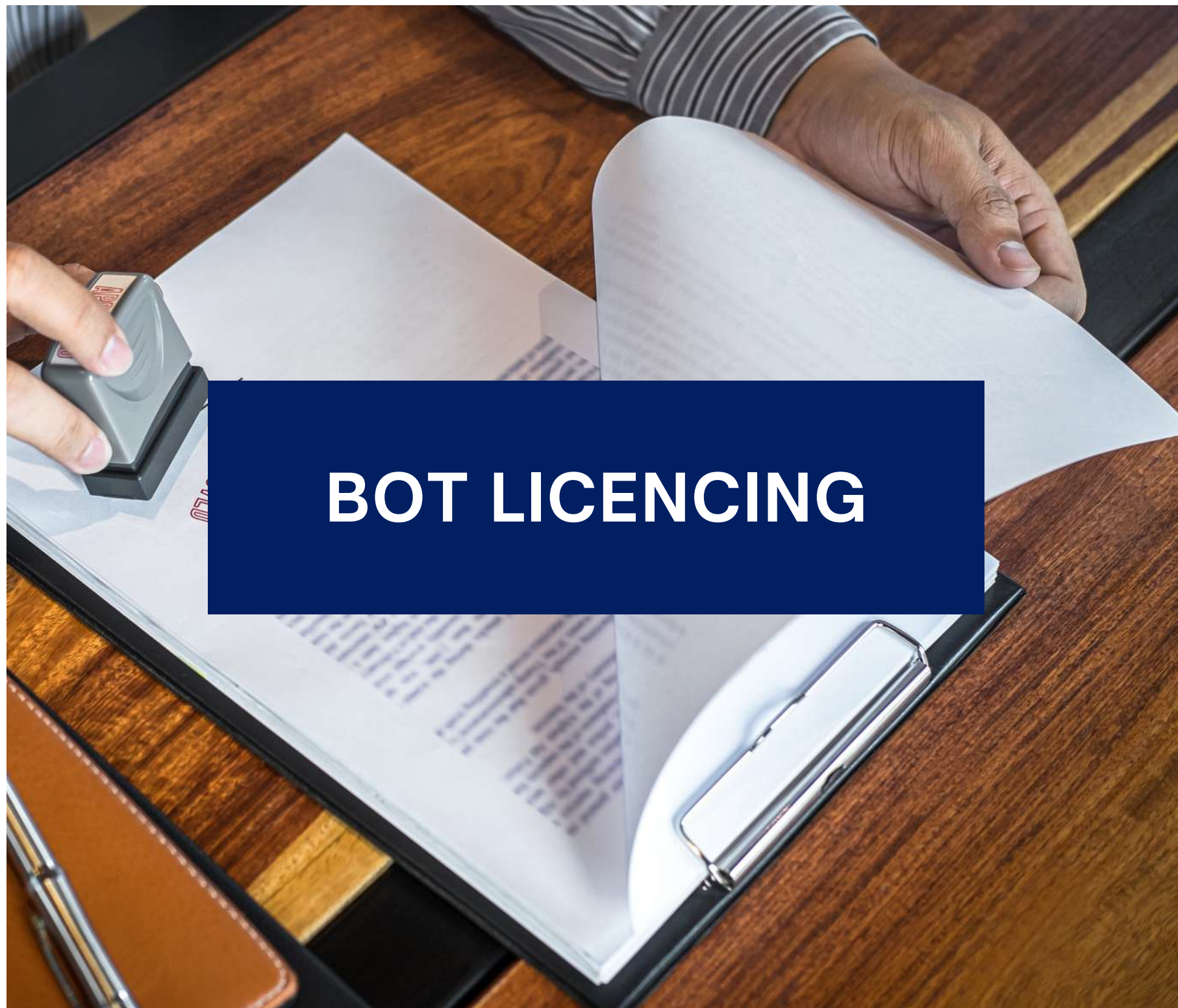
Payments and Settlements

The Bank of Tanzania is empowered by the National Payment Systems (NPS) Act 2015 and the Bank of Tanzania Act 2006 to regulate to regulate and supervise the payment systems services and products offered by both banks and non-bank institutions in Tanzania.

Licencing Approvals

The licensing and approval requirements by the BOT is provided for under the Payment Systems (Licensing and Approval) Regulations, 2015 and the Payment Systems (Electronic Money) Regulations, 2015.





BOT LICENCING

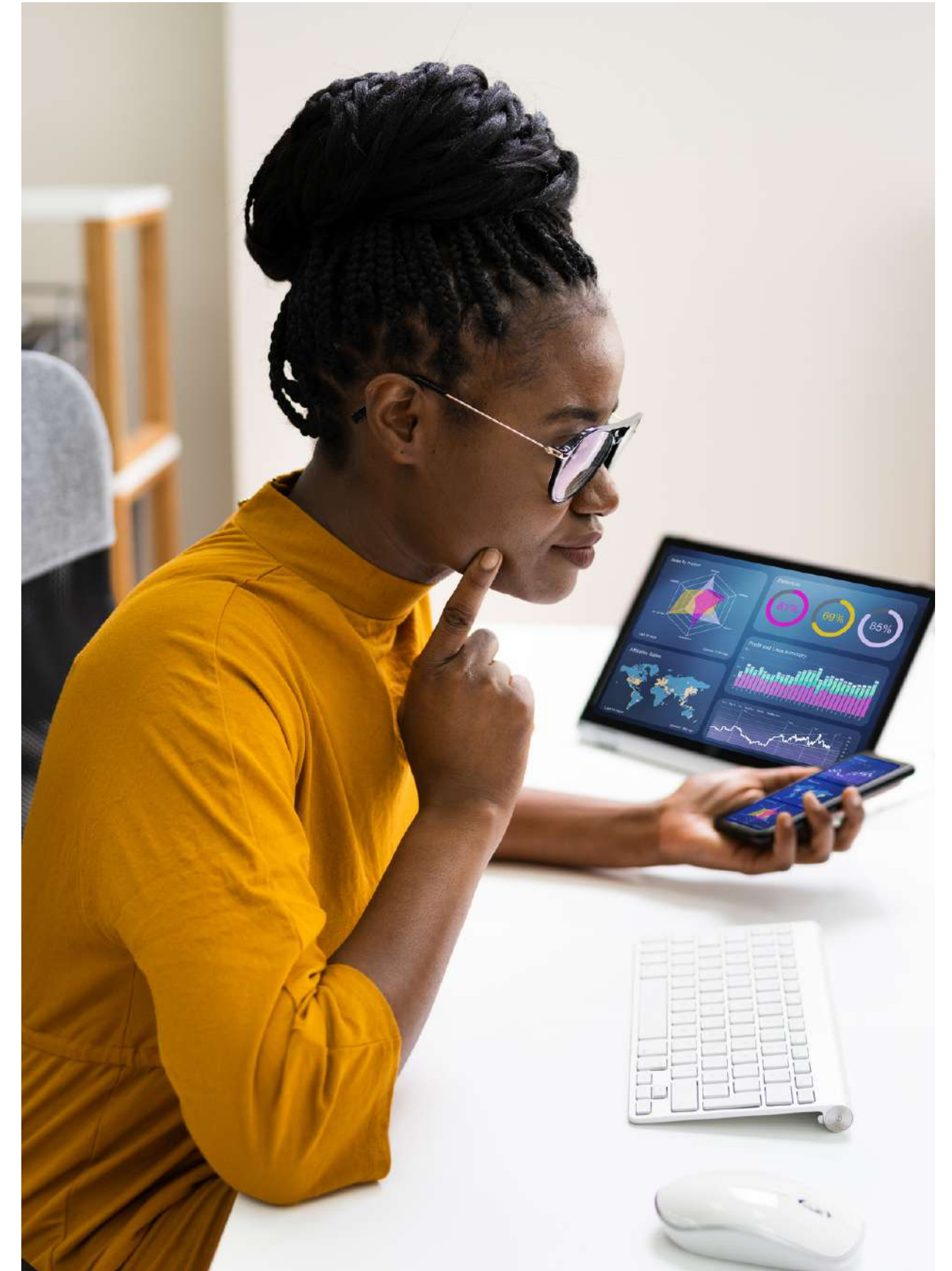
BOT LICENCING

The institutions which are non-banks or non-financial institutions shall apply for Licenses while banks and financial institutions shall apply for approval. The three licenses and approval are;

- (i) **The payment system license** (A payment service provider (PSP) is a third-party company that allows businesses to accept electronic payments. They act as intermediaries between those who make payments, i.e. consumers, and those who accept them, i.e. retailers.),
- (ii) **The payment instrument license** (More products) and
- (iii) **The Electronic money license**. (Establish a trust- Not Granted Anymore last Azam Pay)

PSP LICENCING THE PROCESS (BOT)

1. A meeting is set under **e-mikutano** for the applicants to explain the workings of their system on outbound and inbound flow processes.
2. Submit Documents to BOT (For review) including receipt of the fees (Tsh 1Million).
3. Response from BOT
4. An online Interview meeting to clarify any issues.
5. Re-submission of documents.
6. Communication from BOT (within 30 days) order of payment of 12 Million upon approval.
7. Grant of the Licence.
8. Apply for APPLICATION SERVICES LICENSE (ASL) TCRA.



BANK OF TANZANIA

PAYMENT SYSTEM PROVIDER LICENSE REQUIREMENTS IN TANZANIA(PSP) LICENCE

If the Fintech company provides banking services or electronic payment services, it must obtain a license from the BOT .

REQUIREMENTS:

1. Fill in the application form (Form A);
2. Attach the accompanying documents prescribed under regulation 6 of the Licensing Regulations; which includes:
 - (a) Memorandum and Articles of Association;
 - (b) copy of Certificate of Incorporation;
 - (b) copy of Certificate of Incorporation;
 - (c) an original letter from the Registrar of companies
 - (d) reference letters from two individuals who are not relatives vouching for the good moral
 - (e) a duly filled Fit and Proper Person Form B, for shareholders, directors and senior manager as set out in the Second Schedule to these Regulations;
 - (f) source of funds with supporting documents for the proposed business as set out in Form
 - (g) certified copy of certificates of paid up capital or audited financial statements


BANK OF TANZANIA

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- (h) certified copy of certificates of paid up capital or audited financial statements;
- (i) certified copy of tax identification number for a new company and copy of tax clearance certificate for a going concern;
- (j) certified copy of a valid network services and or application services licence from Tanzania Communications Regulatory Authority;
- (k) proof of payment of a non-refundable application fee provided in the first schedule to regulations;
- (l) documented procedures and policies for detecting and reporting incidences of money laundering in line with anti-money laundering and combating the financing of terrorism laws;
- (m) governance arrangements including internal controls, risks management, accounting procedures, administrative controls, operational risks management with disaster recovery plans and business continuity arrangements, that demonstrates that the arrangements, control and procedures are appropriate, sound and adequate;
- (n) documented organization arrangements for the intended use of agents and merchants;

SAMPLE PSP LICENCE

LICENCE NO: NBPSL No. _____


BANK OF TANZANIA
NATIONAL PAYMENT SYSTEMS ACT, 2015
PAYMENT SYSTEM LICENCE


[Issued under Regulation 7 (7) and 9 (1) of Payments System Licensing and Approval Regulations, 2015]

THIS LICENCE IS GRANTED TO: _____

.....
DAR ES SALAAM, TANZANIA
.....
of

by the Bank of Tanzania to provide Payment System Services in Mainland Tanzania as well as Tanzania Zanzibar. The Payment System Provider is hereby required to encode and quote the above Payment Systems Licence number in all correspondences.

This licence is issued subject to the provisions of National Payment Systems Act, 2015 and the conditions set forth in our letter reference No. This license is for five years from **16th January 2023** to **15th January 2028** and it is subject to renewal upon expiry in accordance with the provisions of the National Payment Systems Act, 2015.

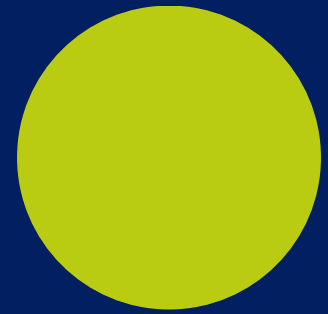
 **SEAL**

.....
GOVERNOR

Other Regulatory Bodies Includes

The Tanzania Communication Regulatory Authority (TCRA) - regulates telecommunications, broadcasting and postal services to provide for the allocation and management of the radio spectrum, covering electronic technologies and other information and communication technology (ICT) applications in Tanzania.

Note: Vodacom (a telecommunications provider) is regulated by the TCRA, but M-Pesa Limited (the mobile money service linked to Vodacom) is regulated by the Bank of Tanzania.



“Application Services” means the reselling of electronic communication services to end users;

General

- Transmittal letter to the DG
- Photocopy of receipt for application fees
- Certified copy of the certificate of Incorporation
- Certified copy of the Company's Memorandum and Articles of Association
- Company Profile
- Certified copy of Tax Clearance Certificate
- Certified copy of Tax Identification Number (TIN) Certificate

Business Plan with the following

- Manuals, brochures, and technical specifications
- Network rollout plan (coverage, customer base projections, construction plan, radiofrequency)
- Network configurations
- Service to be offered
- Costing structure
- Service Pricing
- Customer care strategy (quality of services)
- Five years Projected financial statement, cash flow and balance
- Financing plan
- Capital Investment Ratio (Equity: Debt)
- Human resource development strategy

REQUIREMENTS FOR APPLICATION SERVICES LICENSE (ASL) FROM TCRA

Other Regulatory Bodies Includes

- The Social Security Regulatory Authority (SSRA) regulates social security funds and pension schemes
- The Tanzania Insurance Regulatory Authority (TIRA) regulates the insurance industry
- The Capital Markets and Security Authority (CMSA) is responsible for the promotion, development and regulation of capital markets and securities in Tanzania

Normally these requires the submission of an application, business plan, and other supporting documents.

THE PERSONAL DATA PROTECTION ACT NO. 11 OF 2022 (THE ACT) WAS PASSED ON 1ST NOVEMBER 2022 AND BECAME OPERATIONAL ON THE 1ST OF MAY 2023.

Fintech companies that process personal data must COMPLY with the ACT. According to Section 4 of the Act, data collectors and processors shall ensure that personal information:

- Is processed lawfully, fairly and transparently;
- Is collected for a specified legitimate purpose and not processed for any other purpose;
- Is sufficient for the purpose of processing in accordance with the intended purpose;
- Is correct and where necessary improved by taking all necessary measures to ensure
- that the incorrect information is deleted and replaced without delay;
- Is stored in a manner which allows identification of the data subject for a period not exceeding that which is necessary;
- Is collected in accordance with the rights of the data subject;
- Is processed in a manner that will safeguard its security; and
- Is not transferred outside the United Republic of Tanzania contrary to the provisions of the Act.

**PERSONAL
DATA
PROTECTION**

- (a) monitor the implementation of this Law for collectors and processors;
- (b) to register collectors and processors in accordance with this Act;
- (c) receive, investigate, and process complaints about alleged violations of the protection of personal information and people's privacy;
- (d) investigate and take action against anything that the Commission deems to affect the protection of personal information and privacy of people;
- (e) provide education to the public as appropriate for the purpose of implementing this Act;
- (f) conducting research and monitoring the development of technology related to information processing;
- (g) establish a cooperation mechanism with the authorities of other countries that manage the protection of personal information and advise the Government on various issues related to the implementation of this Law; and
- (h) to carry out other duties of the Commission for the better implementation of the provisions of this Law.



REGISTRATION OF DATA COLLECTORS AND PROCESSORS

- Section 14 of the Act provides a strict requirement for any person who intends to collect or process data in Tanzania to be registered by the Commission. Registration is initiated through an application made to the Commission which will either accept or reject the application. Upon acceptance, the Commission will issue a certificate of registration.
- An issued certificate of registration shall be valid for a period of **five (5) years** from the date of issuance. The Act directs that all applications for renewal be made **three months** before the expiry of the registration period. The Act further provides a leeway for the Commission to cancel an issued certificate of registration.

Regulations

- The Personal Data Protection (Collection and Processing of Personal Data) Regulations, GN No. 349 of 2023.
- The Personal Data Protection (Complaints Handling Procedure) Regulations, GN No 350 of 2023.

COMPLAINTS

According to Section 39 of the Act,

1. a person may **file a complaint** against a data collector or processor who has violated the principles of personal data protection. Please note that such complaints are submitted to the Commission.
2. The Commission will initiate a **confidential investigation** where satisfied that there are fundamental reasons to investigate. Such investigation will be conducted and concluded within 90 days, however, under certain circumstances, the Commission may extend such period.
3. Where it is determined that there has been a violation in the provisions of the Act, the Commission may issue an **enforcement notice** directing the respective person to remedy such violation within a certain period.
4. Furthermore, the Commission may issue a **notice of penalty** where the respective party has failed to remedy the violation within the given period.

FINES

The Personal Data Protection Act No. 11 of 2022

- The maximum penalty that can be issued by the Commission in a penalty notice in relation to the violation of the provisions of this Act, is **one hundred million shillings** which is equivalent to **fifty thousand United States Dollars**.
- A person found to have committed an offense under the section shall be liable-(a) if it is an **individual**, to pay a fine of not less than one hundred thousand shillings (**TZS 100,000 approximately USD 44**) and not more than **twenty million shillings (TZS 20,000,000 (approximately USD 8,700)** or imprisonment for a period not exceeding **ten years** or both; and
- (b) if it is a company or organization, to pay a fine of not less than **one million shillings (TZS 1,000,000 (approximately USD 440)**and not more than **five billion shillings(TZS 5,000,000,000 approximately USD 2,127,700)**.

GENERAL PUNISHMENT

The Personal Data Protection Act No. 11 of 2022

- Any person who violates the provisions of the Act commits an offense and where there is no specific punishment specified when convicted, he will be liable to pay a fine of not less than one hundred thousand shillings (TZS 100,000 approximately USD 44) and not more than five million shillings (TZS 5,000,000 approximately USD 2,300) or imprisonment not exceeding five years or both.
- After a person has been convicted of any offense under the Act, the court may order the seizure of his equipment containing personal information involved in the commission of the offense.
- The collector or processor who caused harm to the subject of the information due to the violation of the provisions of this Law to pay **compensation** to the subject of the information.
- **Appeal** of the Commission decision is to the High Court.
-
- It is essential for organizations to implement a data protection framework that provides guidance on the protection of personal information. The framework will help an organization to ensure that all data stored in their servers are protected and reasonably used. It is key to have a **data controller** within your organization and make sure that all the processes and requirements of the Act are met.



OTHER REGULATORY BODIES

FINANCIAL INTELLIGENCE UNIT (FIU)

Fintech should register a reporting person with the FIU for purposes of anti-money laundering and countering the financing of terrorism (AML/CFT) regulations.

CONSUMER PROTECTION (FCC)

The Fair Competition Commission (FCC) established by virtue of section 62(1) of the Fair Competition Act, No. 8 of 2003 (FCA) with the aim of amongst others protecting consumer from unfair and misleading market conduct

THE PREVENTION AND COMBATING OF CORRUPTION BUREAU PCCB

Fintechs are to make sure they are not prone to bribes and corruptions means used in their platforms

REGULATORY SANDBOXES (BOT)

Bank of Tanzania (Fintech Regulatory Sandbox) Regulations, 2023

The main objectives of these regulations, as stated in Regulation 4, are:

- Enabling the testing and deployment of fintech innovations in a live environment within specified parameters and timeframes.
- Increasing the potential for innovative business models that enhance financial deepening and inclusion.
- Ensuring appropriate consumer protection safeguards for innovative products and services.
- Defining the roles and responsibilities of parties involved in sandbox operations.
- Enabling the Bank of Tanzania to collect information to improve existing legal and regulatory frameworks for innovative financial solutions.
- Assisting fintech innovators in transitioning from the relaxed sandbox environment to the regulated environment.

BOT SANDBOX PROCESS



BOT Invites applicants

1



BOT Acknowledges within 5 days

3



Start of the sandbox cohorts

5



Submit

2

application in thirty (30) days



notification of evaluation results. Within (45) days

4

solution risk profile indicating potential risks, causes, effects, and control measures, as well as supporting documents that substantiate the information provided in the application form

KEY PROVISIONS- BOT SANDBOX

- commence testing within one (1) month
- sandbox is limited to nine (9) months from the receipt of the letter of acceptance
- Upon completion of the testing period, the Bank will decide whether to allow the financial solution to be introduced in the market.
- participants to submit interim reports to the Bank every two (2) months,
- A final report must be submitted within thirty (30) days after the testing period
- the Bank may take administrative action against the defaulter, which can include non-participation in the sandbox for a period of two (2) years, publication of offender names, or reprimands.



REGULATORY SANDBOXES

TANZANIA COMMUNICATIONS REGULATORY AUTHORITY (TCRA)

- TCRA promotes innovation in ICT and other communication sub-sectors.
- TCRA is currently implementing what is known as a **‘technological sandbox’** programme, in which we provide communication resources free of charge to ICT/digital innovators (start-ups) of all age groups to test their ICT innovations. These resources include numbers, short codes, Tanzania (.dot tz) domains and radio frequencies. These can be used for three months from the time of assignment and assignees can request an extension. This programme is implemented in collaboration with the National Commission for Science and Technology (COSTECH).

Challenges in Tanzania's regulatory environment



- **Regulatory overlap** - due to a plurality of regulatory authorities operating in the finance sector. There should be attempts at regulatory consolidation.
- **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.
- **Legal and regulatory gaps** - No tailored approach/framework for fintech regulation.
- **Cross-border regulatory challenges** - the borderlessness of digital technology introduces additional complexity as it creates regulatory barriers that artificially limit the cross-border application of innovations. International cooperation among sandboxes is one solution also Digital Trade Protocol-AFCTA.
- **Resource constraints** - regulators in Tanzania may have limited financial and human resources to engage with the wide spectrum of fintech products and services

FinTech: What's Next?

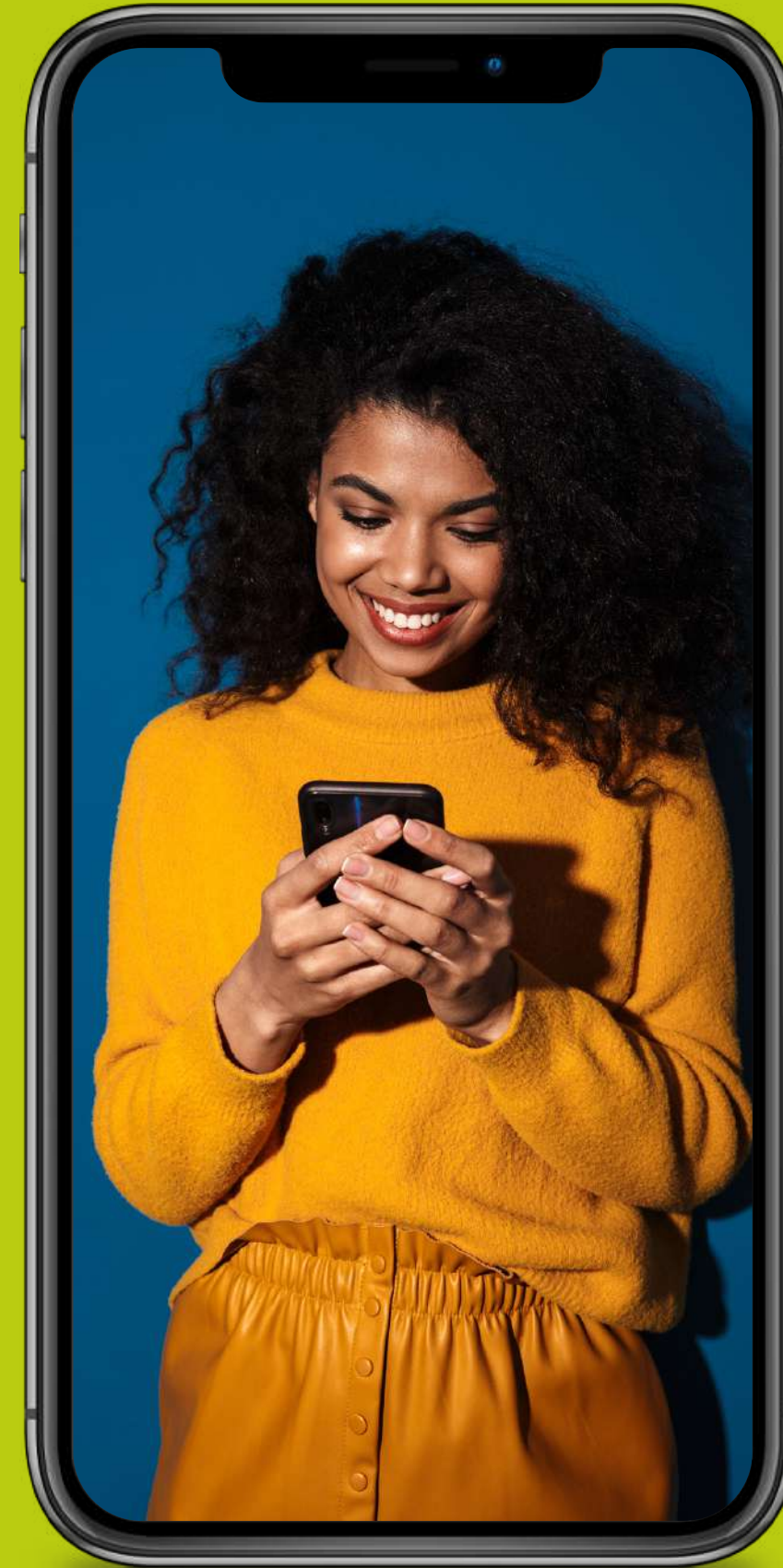
Emerging technologies today will be everyday tools in the future.

Technology like blockchain and NFTs will be even more refined, impacting financial transactions in the future. More tools to improve ease of access to money and credit will make transactions even more instant than they are now hence a need for regulatory frameworks in support

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Technology has revolutionized personal finance, giving individuals more ease and control over their money.



Security best practices of successful FinTech projects

1

Next-level data protection and encryption & Protection

2

Secure code and architecture

3

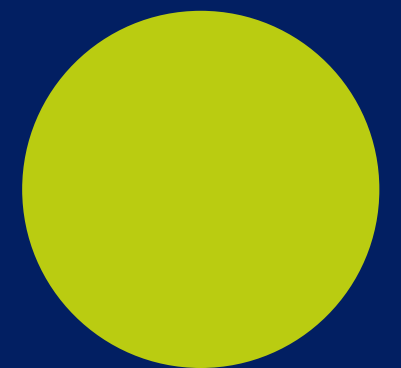
Secure authentication

4

Good mobile encryption

5

Compliance





Last note: What are the best ways to Navigating Legal and Regulatory Challenges for Fintechs?



1. Stay Informed

Keeping up to date with regulatory changes is crucial in ensuring that you are operating your business well within the guidelines.

2. Monitor your business practices

Consistently monitor your business practices to ensure your business is compliant with regulatory changes. Regular internal audits can help businesses identify areas of non-compliance and take corrective actions.

3. Embrace technology solutions

Leveraging technology solutions can help streamline regulatory compliance. Software solutions can help automate and track compliance requirements by providing the necessary insight to manage your compliance obligations. Tools like *Social Mention*, *Evernote*, *RSS Feed Reader*, and *one trust data guidance* are each excellent examples of technology solutions that can help entrepreneurs streamline the monitoring process.

4. Stay compliant!

Navigating legal and regulatory changes can be challenging, but it's fundamental for entrepreneurs to ensure that their businesses are compliant. Remember, compliance is not optional – it's essential to the success of your business.

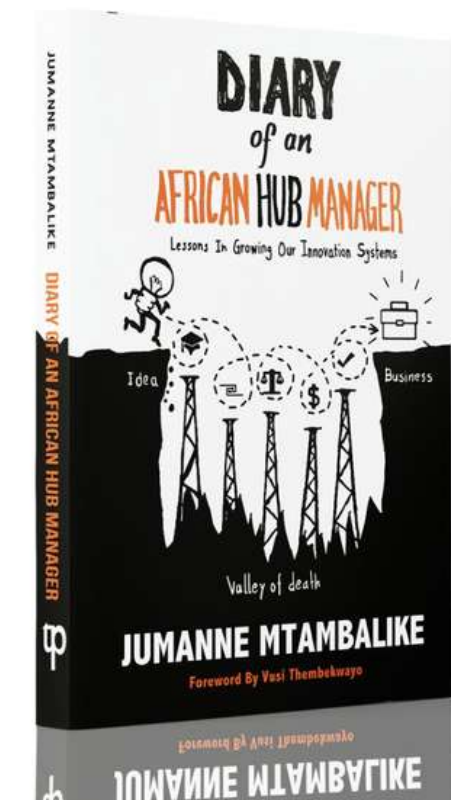
5. Seek professional advice

In the case that you are uncertain about compliance updates and how they will impact your business, consult with legal and regulatory experts.



"Just to be clear, the goal here is not to say things should go unregulated, but to see how we can practically build an enabling environment for innovations to flourish without causing harm."

Jumanne Mtambalike-
DIARY OF AN AFRICAN HUB MANAGER



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**Thank you!
Get in touch:**



We are a diverse and inclusive firm. We welcome people of all colors, genders, and beliefs.

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Dar es Salaam. Dodoma.
Ausha. Zanzibar