



Regulation of Agent Banking In Ethiopia

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Declaration

I, the undersigned, declare that this thesis is my original work and has not been submitted in any other University and all materials used in this thesis have been duly acknowledged.

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Acronyms

AML/CFT: Anti Money Laundering/Counter for Terrorism

CBE: Commercial Bank of Ethiopia

CBN: Central Bank of Nigeria

CDD: Customer due diligence

FI: Financial Institution

MNOs: Mobile Network Operators

NBE: National Bank of Ethiopia

NGO: Nongovernmental Organization

UAD: Use Agent Directive

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CHAPTER ONE: PROPOSAL OF THE RESEARCH

1. Background of the study

As a result of introduction of technology, countries are now compelled to use financial services other than the well-established banking institutions. Apparently, the advent of modern technologies has significantly changed the banking sectors. Thanks to technological improvements, the delivery of banking products and services are now becoming simpler and more efficient than ever. It is believed that technologies have been used by banks to provide services as they lower costs and boosts productivity. Additionally, it makes it possible for the bank to reach the unbanked people through a variety of distribution methods and uses it as a competitive advantage to maintain and improve their service. Thus, agency banking is one of the distribution channels that are mostly focused on accessibility to the unbanked population. The banking sector has started offering its services through additional channels such as automatic teller machine (ATM) and point of sale (POS) terminal, in addition to services from its physical branches. Following this, other distribution channels have been created as a result of the growth of mobile technology.

“Agent banking means providing limited scale banking and financial services to the underserved population through engaged agents under a valid agency agreement, rather than a teller/cashier”¹

Instead of a branch teller, the owner or an employee of the retail establishment handles the transaction and enables customers to deposit, withdraw, and transfer monies, pay their bills, check the balance of their accounts, and receive government benefits or direct deposits from their employers. A banking concept known as agent banking involves banks providing financial services through non-bank agents including pharmacies, grocery stores, retail stores, and post

¹https://www.agranibank.org/index.php/home/agent_banking/History-of-Agent-Banking Accessed on March 2, 2020 at 10:00 a.m.

offices.²In other words, Agent banking refers to a situation in which authorized institutions engage third parts to provide certain financial services on their behalf. The major goal is to give the underprivileged and underserved people, who typically reside in remote locations outside of the standard banking networks, a secure alternative delivery route for banking services.³In addition, it aims to offer official banking services to the unbanked including to traditionally underserved population. Through their agents the formal banking industry may aid the underserved unbanked community.

The delivery of banking services thorough agent banking has several advantages both to the banks and to the customers. As far as the bank is concerned, it decreases operating and setup expenses. Moreover, it bridge the gap between the banked and the unbanked population thus making banking services readily available to rural residents through the provision of cost-effective banking services.⁴ The delivery of such banking services through an agent is being implemented in different countries such as Kenya, Nigeria, Bangladesh, kingdom of Saudi Arabia, Latin America, and Uganda.⁵The rapid growth in information communication technology (ICT) in developing the economies has triggered new innovations like agency banking in all sectors.⁶ Following the swift development in technology, the financial environment has been changed globally that has lead to inflexible competition among the players and the banking industry. This in turn has bring about intensified competition amongst the

² Nabila Nisha,"Agent Banking and Financial Inclusion: The case of Bangladesh " volume 11 International Journal of Asian Business and Information management page 128,2021

³ Quarterly Report On Agent Banking: January-March 2021 Financial Inclusion Department Bangladesh Bank Head Office,Dhaka

https://www.bb.org.bd/pub/quarterly/agent_banking/agent_banking_0321.pdfhttps://www.bb.org.bd/pub/quarterly/agent_banking/agent_banking_0321.pdf accessed on January 19,2023 at 10:00 a. m page 1

⁴ Mohammad Monirul: Present Scenario of Agent Banking in Bangladesh:Agent Banking pdf Accessed on January 18,2022 page 1

⁵ Christian Rodriguez, Julia Conrad, et. al.,A New Banking Model For Africa: Lessons on digitization from four years of operations. (Unpublished Longitudinal study) International Finance Corporation World Bank Group <file:///C:/Users/SOLO/Desktop/all%20materiaals%20on%20agent%20banking/Longitudinal+study+New+Banking+Model+for+Africa+final.pdf> Accessed on Jan.11/2023 at 8:00 p.m. page 44

⁶ Ibid

banking industry pushing banks towards becoming more innovative in terms of ATM, mobile banking, credit banking, women account, children account and the agent banking.⁷ Different countries have different regulations as far as agent banking is concerned.

In the case of Ethiopia the first regulatory frame work for introducing agent banking is the National Payment System Proclamation no.718/2011 article 10(5) which stipulates that the National Bank may issue a directive to prescribe the criteria for being an agent of operator and issues of payment instrument. Based on this proclamation, the National Bank of Ethiopia (NBE) being the regulatory body of financial sector, has adopted agency and mobile banking directive no, FIS/01/2012. After this directive the NBE issued New Use Agent Directive No. FIS/02/2020(UAD). The objective for which NBE issued the directive was to improve financial inclusion and increase the unbanked population's access to the financial system, especially in rural locations that are far from where banking services are situated.

In this research, the term agency does not refer to the traditional agency which regulates the relationship between an agent and principal which is regulated by civil code under Ethiopian law. However, the relationship between the agent and the bank is regulated by special law meant to serve this particular purpose. In other words, in the agent banking the relationship between principal and agent is not only governed by normal agency law rather it has special law and special regulating body. For instance, in the traditional legal sense of agency, the principal assigns its agent by its own full consent through contractual agreement, where as in agent banking even if the relationship between the agent & principal is contractual; the principal consent alone is not sufficient unless it gets central bank approval.⁸

As to the classification of agent banking, there are two agent banking models: bank-led model and non-bank-led model.⁹ Based on their regulation, countries could adopt either bank-based or

⁷ Id page 181

⁸ National Bank of Ethiopia: The Use of Agent Directive No. FIS/02/2020 article 4(1)

⁹ Dorine Ayume "The Role Of Agency Banking In Enhancing Financial Sector Deepening In Emerging Markets"21 European Journal of Business and Management 2013 <https://www.iiste.org..accessed> on Jan 2,2022 at 10:a.m (page 27)

⁹https://www.agranibank.org/index.php/home/agent_banking/History-of-Agent-Banking Accessed on March 2 ,20120 at 10:00 a.m

non-bank-based model. Among the countries who have implemented agent banking, for instance, Kenya adopted non-bank-based model which are specially lunched by Mobile Network Operators (MNO) through M-PESA¹⁰ which was the first model and also famous worldwide.¹¹

An agent in the agent banking system can be legal entity or an individual depending on the laws of a country. It is important to note that in every transaction, the agent has commission and the amount of benefit could be determined by the contract to be signed between the agent and principal. The principal can be bank, microfinance and other institution depending on the laws of countries. There are three stakeholders in the agent banking arrangements: vis-à-vis the banks themselves, banking agents and the customers' three of them benefit from the agent banking network model. Through this network banks will be able to expand their customer base by broadening new customers who were previously out of their reach.

It is apparent that the provision of banking services through an agent has an advantage to the principal (i.e. FI), agent, and the customer). When viewed from the perspective of the FI/principal, having banking agents would undoubtedly increase revenues while reducing costs needed for infrastructure and manpower costs to open more physical bank branches. The banking agents are benefited as they generate additional income, including sales from additional walk-in customers. From the side of the customers, this allows them to interact with a bank and would remain bank partner. Such relationship between the customers and the bank will benefit the previously under banked customers to have easy access to a financial institution at their disposal.¹² Apart from reducing time needed for traveling, it also offers cheaper transaction fees. In doing so, the agents benefit as they may offer consumers in far-off places a wider range of specialized goods and services on behalf of the banks. Clients benefit from having easy access to reputable financial service providers, while banks benefit from having more customers.

¹⁰Journal of Economic and Sustainable development www.iiste.org ISSN 2222-1700 (Paper) ISSN 2222-2855 Vol.6, No.23, 2015 (Online) Accessed on November 12,2020 at 10:00 a.m. page 89

¹¹ M-PESA is a platform that offers retail financial services via mobile phone to Kenyans, especially those in underserved rural area <https://www.worldbank.org/en/news/feature/2018/10/03/what-kenya-s-mobile-money-success-could-mean-for-the-arab-world> accessed on April 17, 2023 7:00 p.m

¹² Mutie Juliet Mwende:" Investigation on Importance of Agency Baking in Provision of Banking Services in Kenya" 5 International Journal of Scientific and Research ,2015 page [1ijsrp-p4624.pdf](#) accessed on November 20,2021 at 10:00 a.m

Moreover, when seen from the developing countries perspective agent banking serves as a tool for increasing financial inclusion.¹³

As far as Ethiopia is concerned, as it is revealed on the web page of NBE that the banking industry is a rapidly growing sector. Indeed, the government of Ethiopia allowed the establishment of private banks and insurance companies in 1994. The Ethiopian banking sector is currently comprised of a central bank (The National Bank of Ethiopia or NBE), one state owned development bank, and government owned commercial bank and private banks. Interestingly, the total number of banks significantly increased from number 18 to 30 (thirty) for the last many years.¹⁴ It is years ago since financial sector in Ethiopia had partially been liberalized as well as been privatized for domestic investors. However, the industry has been off-limits to foreign investors for a while, with the exception of authorizing the opening of foreign bank representatives; the recent openness for investment by foreigners of Ethiopian origin.¹⁵ The services delivery of those banks have been advanced that, bank customers that were forced to stand in line to get financial services are now performing it from anywhere at any time because of the multi-channel service outlets they get. The other advantages are that funds are transferred electronically between financial institutions and individual accounts, and between individual accounts using mobile banking and agent banking service.¹⁶ The rapidly growing banking industry in Ethiopia has shed light for banks to be competitive in the services they are delivering. For the transfer of money, banks have started giving services through ATM, mobile banking, E birr, telebirr, women, and children account. Ethiopia has also issued a directive in order to regulate this agency banking through UAD. Although Ethiopia tries to

¹³Gibson, Evan, *et.al* Regulating Digital Financial Services Agents in Developing Countries to Promoted Financial Inclusion; [https://heinonline.org/HOL/SearchVolumeSOLR?input=\(research%20on%20regulation%20of%20agent%20banking%20in%20other%20countries%20like%20kenya\)&div=6&handle=hein.journals/sjls2015&collection=journals](https://heinonline.org/HOL/SearchVolumeSOLR?input=(research%20on%20regulation%20of%20agent%20banking%20in%20other%20countries%20like%20kenya)&div=6&handle=hein.journals/sjls2015&collection=journals) accessed on April 26, 2022 at 10:00 a.m page 28

¹⁴ National Bank of Ethiopia web page. <https://nbe.gov.et/>

¹⁵Foreign nationals of Ethiopian origin were legally allowed to invest in banking sector in 2019 by Banking (Amendment) Proclamation No.1159/2019

¹⁶Afework Gugsu, (2015), Assessment of Adoption of Agency Banking Innovation in Ethiopia: Barriers and Drivers, A Thesis submitted to Addis Ababa University College Of Business & Economics, Addis Ababa, Ethiopia(as cited in the research paper done by Teshome Girma for graduate study on the Challenges and opportunity of Agent Banking In Ethiopia page 17

enact agent banking directive, still the researcher of this paper believes that the existing laws does not seem adequate and thus, tries to assess the adequacy of existing agent banking laws in regulating agent banking in Ethiopia through literature review, administer questionnaires and interviews employee (working on agent banking) of selected banks.

2. Statement of the problem

Thanks to the modern kind of banking known as agent banking nowadays opens new avenues that allow individuals to no longer need to physically visit a bank to do/perform banking activities. Agent banking is operationally defined as a type of branchless banking in which a bank contracts with an agent (often a retail establishment) to carry out financial services on bank's behalf. Although agent banking isn't widely used in Ethiopia, the service has already been started in few banks and microfinance organizations following the national payments system proclamation No. 718/2011, which is the first regulatory framework for the introduction of agent banking, enacted by Ethiopia. This newly enacted decree addresses matters pertaining to electronic financial transfers, contract terms and conditions, processes for resolving disputes, consumer protection, the admissibility of electronic evidence, and institutions and enforcement measures. The NBE has released Mobile and Agent Banking Directive (No FIS/01/012) in order to expedite a certain section of this proclamation. Even though these laws introduced the system, they lack not only adequacy in recognizing and addressing agent banking systems but also insufficient to provide strong customer protection. Following the directive No.FIS/01/12, the NBE has enacted the New Use Agent directive No.FIS/02/2020 which is presumed to fill some of the gaps that the previous agent banking directive bears with respect to customer protection and non-exclusivity.

Even if the directive has tried to fill the gaps that the previous directive has, the UAD has still certain gaps. The fact that agent banking aimed to reach the unbanked population cost effectively, most of agents in Ethiopia are concentrated in cities with already are accessible with financial institutions. The gaps regarding the provision dealing within what or at what distance or kilo meters that the bank or the financial institution could conduct agent banking remain obscure. The failure of the directive to provide clarity for agent banking priority could result in the concentration of agent banking to a given area where branch banks exist. Besides, with the

requirement to be an agent the directive stipulates that the FI can conduct agent banking services through agent. However, the directive fails to provide clarity on how FI could recruit agent and this could lead to the arbitrarily selection of agents by the FI. The directive provides that any person who is engaged in any commercial activity could qualify to be an agent.. However, the directive fails to provide the minimum capital that the agent needs to have in order to qualify. This means that laws regulating agent banking has to provide the capital limit that the agent is required to have in order to enter into agent banking services. As to the mode of business, the directive stipulates that the agent opens electronic account in order to conduct agent banking services; however, the directive fails to provide whether the agent can provide for the insurance or not. As the agent is acting on behalf of the bank or financial institution, the directive doesn't provide how the relationship between the agent and the bank is regulated. One type of agent recognized by the directive is super-agent; however, the directive fails to provide the responsibility of super-agent and bank. In addition, under the directive, the liability of the agent or the bank to the customer is not well addressed which could lead customer to lose their confidence on service provided by the agent. In order customers build trust and confidence on the services provided by the agent, the directive has to provide who is liable to the customer. Apart from this, the UAD fails to provide how the relationship between the bank and customer is regulated. With this scenario, this study is initiated to assess the adequacy of the directive towards the regulation of agent banking in Ethiopia.

3. Research questions

- What are the legal gaps that exist with respect to requirements to be an agent under the New Use Agent directive?
- What are the legal gaps that exist in the regulation of the relationship between the bank and the agent?
- How does the law regulate the relationship between the agent and the bank customer, and what are the liabilities of the bank to the agent or customer?

4. Objectives

4.1 General objective

To explore adequacy of regulation of agent banking the requirements to be an agent under the New Use Agent Directive and law that governs the relationship among the bank, agent and the customers in Ethiopia.

4.2 Specific objectives

- To explore what legal gaps exists with respect to the requirements to be an agent under the New Use Agent Directive.
- To explore legal gaps that exist in the regulation of the relationship between the Bank and the Agent
- To explore how the law regulates the relationship between the Agent and the bank customer, and the liabilities of the agent to the customer of the Bank, and the relationship between the bank and customer is assessed

5. Research methodology

In this research, the researcher used qualitative research method and both primary sources, and secondary sources were used. The primary sources include different proclamations and Directives issued by the National Bank of Ethiopia and the regulation of different selected countries like Bangladesh, Kenya, Nigeria, Uganda, and the Kingdom of Saudi Arabia. The secondary sources were internet sources, Journals and research papers related with agent banking. Structured interview questions are prepared for employees working on agent banking in the NBE, Abyssinia Bank, Awash Bank, Buna Bank, CBE, Cooperative Bank of Oromia, Dashen Bank and Lions Bank. In-depth interview was conducted with Ethio Telecom employee working on tele birr with bank managers, concerned employee working at NBE and concerned employee of banks who implemented agent banking The premises where agents delivering agent banking services were visited. The researcher also inspected some documents portraying how commission is fixed for an agent at the Dashen bank is attached with this research paper. The banks were selected based on purposive sampling methods that have implemented agent

banking services. Accordingly, the researcher visited to the different banks and Ethio Telecom and systematically analyzed the questionnaires and the interviews.

6. Organization of the study

In order to achieve the purpose for which the paper is articulated, the paper is organized in five chapters. The first chapter deals with the research proposal consists of background of the study, statement of the problem, research questions, objectives of the study, general and specific objectives of the study, research methodology, organization of the paper, scope of the study, limitation of the study and relevancy of the study.

The second chapter explored overview of agent banking which will enable the readers to grasp concepts of agent banking, why agent banking, models of agent banking, and regulation and experiences of agent banking in other countries are discussed.

Under third chapter, regulation of agent banking in Ethiopia is addressed and the requirements to be an agent, mode of business conducts of an agent, geographical restrictions, agent exclusivity, and agent recruitment are discussed. Under chapter four, regulation of relationship between the agent, bank, and customer with respect to formation of the agency contract, responsibility of agent, and liability of the bank to the agent or the customer are discussed. Moreover, under this chapter supervision by bank and National Bank of Ethiopia are addressed.

Under chapter five, conclusion and recommendation are included. Selected references cited in this research are cited and questionnaires are attached.

7. Scope of the study

Agent banking is one of the financial services that different countries widely use. Although it has a wide concept, the focus of this research paper is made to the regulation of agent banking in Ethiopia under UAD directive No.FIS.02/2010. Though there are many countries which adopted agent banking regulation, in this research paper reference is made to few selected countries which have adopted agent banking and includes Kenya, Nigeria, Bangladeshi, Uganda, and the Kingdom of Saudi Arabia.

8. Relevancy of the study

In recent years, unprecedented developments have been seen especially in the area of technology and the way marketing and business are taking place in Ethiopia. In support of those changes and developments, new directives, regulation and laws have been made in the business sector including banks to advance business deal/transaction. However, little and/or no studies have been done in Ethiopia to explore whether gap(s) exist in UAD with regards to requirements to be an agent, relationship between the bank and the agent, liability of the agent or bank to the customer, and relationship between the bank and the customer. Apart from the points mentioned above, the creation of awareness to banks, customers and other stakeholder about the concept, importance, challenges and law governing agent banking is timely and paramount important. Thus, this study is of great relevancy in addressing the contemporary business deal in Ethiopia and also in identifying the gap(s) that may exist as far as agent banking is concerned.

9. Limitation of the study

Although bank industry is rapidly growing in different countries at different rates including in Ethiopia, the agent banking is a new phenomenon appearing at its infant stage. Therefore, there is scarcity of materials that may hamper the researcher to make an in-depth review and assessment in the area of agent banking system. As part of the mitigation strategy, the researcher used internet and other relevant sources in order to meet the objectives of this study. Moreover, the number of agent that the FI can have is not limited by directive as FI can have as many numbers of agents as it wishes to have and hence the researcher is unable to reach all these agents. The other difficulty that the researcher faced is that respondents were less committed to provide the right information at the right time to the level that the researcher wishes to collect.

CHAPTER TWO: OVERVIEW OF AGENT BANKING REGULATIONS IN DIFFERENT COUNTRIES

2.1 Concepts of agent banking

In terms of the notion, a banking agent is any retail or postal business employed by a financial institution or a mobile network provider to process customers' "transactions". In agent banking, a retailer's owner or employee provides the services rather than a branch teller. Those services delivered by agent banking include handling the transaction and enabling customers to deposit, withdraw, and transfer monies, pay their bills, check the balance of their accounts, and receive government benefits or direct deposits from their employers. Among others, Pharmacy, supermarket, convenience store, lottery outlet and post office are some examples of banking agents. In agent banking there are two words which includes agent and bank.

In modern times, technological advancement like computer and telecommunications drastically altered how banks operated and allowed them to expand geographically and in size. In recent decades, through various banking methods including internet banking, mobile banking, agent banking, and the development of banking that expanded from the unbanked population, technology innovation made the financial services industry more accessible to it.¹⁷ When seen historically the agent concept of representation first appeared around the end of the 12th century, but it wasn't until the 19th century that its rules were codified and made prominent in order to encourage economic progress. Following this, commercial transactions were highly developed in terms of volume, and business activities were broadly diffused over much of the world, particularly in Europe. Because of this, the numerous sectors in which they were applied began to codify and collect the rules of agency.¹⁸ The need for having an agent on behalf of someone can thus be justified from different perspective which include:¹⁹

- The need to overcome time and space restriction for transaction demands the presence of agent banking. For instance, if a person wants to undertake different transaction being in different place such a person cannot perform this transaction in as far as s/he is in

¹⁷ Ibid

¹⁸ Law of agency, Am. J: comp. law vol.6 (1957) pp.165

¹⁹ Ibid

different place and his/her wish is to undertake different transaction necessitating the importance of such a person to perform transaction that supplement banking activities.

- The other rationale behind agent is the need to overcome knowledge and skill constraints. Undertaking certain activities may require skill and knowledge. However a person who lacks skill and knowledge to perform this activity can perform this through an agent,
- The need to represent legal person

When we come to branchless banking, agency banking is a component that enables financial organizations to provide financial services outside of the typical brick and mortar bank facilities. These days, agent banking is common in many countries: Kenya, Nigeria, Uganda and kingdom of Saudi Arabia and so many other countries. In Ethiopia, banks are becoming more innovative and delivering banking services through different channels like ATM, POS Machine, mobile devices and recent development through agent banking. The development of such facilities in Ethiopia enables individuals to get banking services without their physical presence in a bank. At this junction, the most important thing is to differentiate between the agent that has been recognized by Ethiopian civil code and agent banking. The Ethiopian civil code defines agency under article 2199:“*Agency is a contract whereby a person, the agent, agrees with another person to the principal to represent him and to perform on his behalf one or several legally binding acts.*”

Agency under civil code is the agreement to be made between the agent and the principal. In order for the agent to undertake its agency activity on behalf the principal, it is only the consent of principal that is required. On the other hand, in the case of an agent banking the principal consent alone is not enough to undertake agent banking services. Rather, FI who wishes to undertake agent banking services has to go through process of application that demands approval by the NBE.²⁰This means that unless the FI got an approval from the NBE, it won't be able to undertake agent banking services. In the case of an agent under the civil code, there are two types of recognized agencies called general agency and special agency.²¹The general agency confers upon the agent authority to perform acts of management while the special agency confers

²⁰ Supra Note 8 article 4(1)

²¹ Civil Code of Ethiopia 1960 Negareti Gazeta No.1/1960 article 2203 and 2205

upon the agent the authority to perform acts other than acts of management. For the agent to alienate or mortgage real estate, invest capitals, sign bills of exchange, effect a settlement, consent to arbitration, make donation, bring or defend an action needs the principal's authority. In the case of agent banking activities that the agent is supposed to undertake is permissive activity only. The UAD stipulates the activities that the agent could undertake as well as what the agent is prohibited from performing.²² Among the activities that the agent can perform include opening of an electronic account, cash in and cash out service, cash disbursement of loan approved by a bank or microfinance institution and repayment of loans in cash. On other hand, the agent is prohibited from undertaking the following activities: granting loans, making check transactions, making transactions in foreign currency, charging customers directly, providing cash advances, and offering any type of guarantee in favor of any customer. Moreover, agents are often forbidden to charge any fee beyond the principals' prescribed fees. In as far as agent is concerned, the principal can give authority for the agent to perform any acts of management or acts which needs special authority. In the case of agent banking, the agent has the authority to perform those permissible activities mentioned under the UAD that the agent can perform. More importantly, the services that are given by an agent in the case of banking services is limited by location²³ unlike under the civil code in which no geographical limitation is imposed on the agent. Although there exists difference between agents recognized under the civil code and agent banking, they have common feature in that both perform their acts on behalf of the principal.

²² Supra Note 8 article 12 and 14 permissive Activities opening of an electronic account, cash in and cash out service, cash disbursement of loan approved by a bank or microfinance institution and repayment of loans in cash, payment of bills and services., salaries, social benefits any other domestic payments, local money transfers, over the counter transactions, balance inquiries, collection of documents in relation to account opening, loan application, credit and debit card application, including customer due diligence for anti-money laundering (AML) or counter-financing terrorism (CFT) purposes, collection of obligation via debit and credit cards. While on other hand the agent is prohibited from undertaking activities which include granting loans, making check transactions, making transactions in foreign currency, charging customers directly, providing cash advances, and offering any type of guarantee in favor of any customer charging customers directly, providing cash advances, and offering any type of guarantee in favor of any customer

²³ Ibid

2.2. Why agent banking

Nowadays, the banking industries prefer the use of agents over that of opening many branches which could be justified through different reasons. Among others, reduction in operation cost, increase in customer outreach and revenue, and customer satisfaction is some of the benefits of having agent banking system. However, the traditional banking system is known for having higher cost of operation, in opening branches, hiring bankers to reach large number of customers. Agent banking as a modern banking service avoids such costs of operation through using agents. Studies have shown that agent banking systems are up to three times cheaper to operate than branches because agent banking minimizes fixed costs by leveraging existing retail outlets and reducing the need for financial service providers to invest in their own infrastructure.²⁴ Although agent banking incurs higher variable costs from commissions to agents and communications, fixed costs per transaction for branches are significantly higher than agents' commission.²⁵ Apart from this agent banking also offers benefit of outreaching customer than the traditional system. It is aimed to support agent and microfinance banking services for unbanked and underserved communities, by offering financial services to its customer segment through a mobile application or other methods available.²⁶ In Ethiopian context, agent banking helps to reach the larger rural population very easily with least cost and accessibility of the banking service will also be granted in those areas. In the same pattern, agent banking also secures higher revenue through accessing large number of populations. By bringing the channel closer to the client, agent transaction platforms may also benefit from additional revenue associated with transactions acquired by the agent, such as person-to-person transactions and bill payments. Although customers can conduct these transactions in a branch, proximity may increase their willingness to pay for these services and increase the number of transactions conducted through the channel.²⁷ Moreover, on the other hand, increase customer satisfaction, agency banking functions enabling customers to pay their

²⁴ Clara Veniard, How Agent Banking changes the Economics of Small Accounts 2010 ,global savings forum,Bill& Melinda Gates Foundation P.2

²⁵Ibid

²⁶Elizabeth Mungai, 'Factors Influencing the Adoption of Agent Banking by Commercial Banks in Kenya' 2016, United States International University p. 12

²⁷ Ibid

bills, inquire about an account balance or receive government benefits or a direct benefit from their employer. It also helps bank customers to make payment of rent and allows withdrawals and transfer of funds leading to improved customer satisfaction.²⁸

2.3 Models of agent banking

There are different models of agent banking that could be classified into two major categories as bank- led model, non-bank led model.

2.3.1 Bank-led Model

Under this model, the bank develops the financial products and services but distributed them through retail agents who could handle all or most customer interaction. The retail agent renders service which would have been rendered by branch-based teller.²⁹ In this model, there is a direct contractual relationship between the principal, the bank and its customers. In this case, the power of the agent is limited to providing service to customers as it's ordered by the bank and thus customer-account relationship rests with the bank.

2.3.2 Non Bank-led Model

Contrary to the above the model, customers don't deal with a bank, nor they maintain a bank account, rather customer's deal with a firm which is either a mobile network operator or prepared card issuer. Customers exchange their cash for e-money stored in virtual e-money account which is not linked to a bank account in the individual's name.³⁰ Unlike the case of bank-led model, the non-bank-led model needs special regulation since services providers may not be regulated by regulations that apply to banks, besides it may not guaranty adequate protection for customers, and it may lead to money laundering. For the fact that this model operates outside the bank unlike that of bank-led model, it should be regulated properly.³¹

2.4 The experiences of agent banking regulations in different countries

Different countries have adopted agent banking as a new banking system. Moreover, many developing countries in Africa and Latin America want to utilize it in order to reach large

²⁸ Id page 16

²⁹Assessment Factor Determining the Performance of Bank Led Agent Bank Business, p. 13

³⁰ Ibid

³¹ Ibid

number of clients at the lowest possible cost. Under the next section, an attempt will be made to evaluate how other countries regulate their agent banking.

2.4.1 Regulation of agent banking in Kenya

The guideline for agent banking in Kenya has set three major purposes. First, to provide for agent banking as a delivery channel for offering banking services in a cost-effective manner. Secondly, to outline activities which can be carried out by an agent and to provide a framework for offering agent banking services. Third, to serve as a set of minimum standards of data and network security, customer protection and risk management to be adhered to in the conduct of agent banking business.³² The guideline also intended to increase financial services outreach and to promote financial inclusion to the un-banked and under-banked population without risking the safety and soundness of the banking system; and, encourage institutions to use agents in the provision of banking services to reduce the cost of financial services and to foster financial inclusion, reach and depth.³³

2.4.1.1 Requirements and approval processes

Every institution seeking to conduct banking business through an agent shall apply and obtain the prior written approval of the Central Bank before commencing agent banking business. In general, the approval of applications for agent banking business by the Central Bank shall be carried out in two phases as provided in this guideline and will include agent network approval, and specific agent approval.³⁴

2.4.1.1.1 Agent network approval

An agent network approval is made when the institution intends to engage in agent banking business.³⁵ Any applicant who want to engage in agent banking should present, proposed number of agents and agent due diligence policy and procedures, service to be provided by agents, draft agency contract, risk assessment report and operational policies and procedures.³⁶ Where the

³²Central Bank of Kenya, 'Guideline on Agent Banking - Cbk/Pg/15' Bank Supervision Department, Nairobi Art.1.5 (Kenyan guideline)

³³ Ibid

³⁴ Id article 2.1

³⁵ Id article 2.2

³⁶ Id article 2.3

central bank is satisfied that all application requirements have been met by an institution, the central bank may, within thirty days from the date of submission of the complete application, approve the application with or without conditions and communicate its approval to the institution in writing.³⁷ On the other hand, in situations when the central bank declines to approve the application or any part thereof, this shall be done within thirty days from the date of submission of the complete application communicate its refusal to the institution in writing and shall state the reasons for its refusal.

2.4.1.1.2 Specific agent approval

Unlike the case of agent network approval, specific agent approval is made on annual bases and institutions should claim approval for each agent they are going to appoint. The application shall, among others, include, the names of the proposed agents, physical locations, GPS co-ordinates, postal addresses and telephone numbers of the proposed, description of the commercial activities that the proposed agents have been carrying on for the last eighteen months immediately preceding the date of the application, and any variation in the terms and conditions of the standard contract which is specific to a particular agent. Based on this, the central bank could either grant or refuse approval within one month.³⁸

2.4.1.2. Agent banking agreement

The guideline puts some mandatory provisions which shall be included under the agency contract. The contract among others has to include, responsibility of institutions for acts and omission of agent, services to be rendered by agents, rights and liabilities, measures to mitigate risks i.e. limits customer transactions, cash management, cash security, security of agent premises and insurance policies, AML/CFT requirements, prohibition from charging the customer any fees, business hours of the agent, limits on cash holding by the agent, technical description of electronic devices and remuneration for the agent.³⁹ In addition to stipulation of the parties as to termination, the law has provided certain criteria for the termination of agency contract. The termination could happen when the agent's principal commercial activity has ceased, is guilty of a criminal offence involving fraud, dishonesty or other financial impropriety,

³⁷Id article 2.5

³⁸Id article 2.6

³⁹ Id 4.5

death and/or winding up of the agent, failure to hold or renew a valid business license, violates any provision of this guideline etc.⁴⁰

2.4.1.2 Agent eligibility and due diligence

To become an agent, an entity intending to be appointed as an agent shall possess a business license or permit for a lawful commercial activity for at least eighteen months immediately preceding the date of the application. Otherwise, an entity may not be eligible to be appointed as an agent in case an entity carry out of agent banking business that contravene any written law, the parent statute, memorandum and articles of association or other constitutive document or objects of the entity.⁴¹ However, any entity which is faith-based or not-for-profit, a non-governmental organization, an educational institution, forex bureau or any other entity which, under any applicable law is not allowed to carry on profit-making business shall not engage in agent banking business.⁴²

On the other hand, institutions have an obligation to prepare clear, efficient and thorough Agent Due Diligence procedures to mitigate risks. The Agent Due Diligence procedures shall at a minimum contain methods of identifying potential agents, initial due diligence and regular due diligence checks to be performed at specified intervals and a list of early warning signals and corrective actions to ensure proactive agent management. In the same pattern, the Agent Due Diligence procedures shall clearly specify the roles and responsibilities of various functions in the institution about agent management and it shall also ensure that proper AML/CFT monitoring processes exist for agent banking.⁴³

2.4.1.3 Management of agent banking

The institution shall be responsible for developing and implementing agent banking strategy and for establishing an effective management oversight over agent banking services which

⁴⁰ Id 4.6

⁴¹ Under the definition part agent defined as ‘an entity’ and art 4.2 stipulates entities that could run agent banking, and it includes, Limited liability companies, Sole proprietorships, Partnerships, Societies, Cooperative societies, State corporations, Trusts, Public entities, and any other entity which the Central Bank may prescribe

⁴² Id article 4.2

⁴³ Id 5.5

encompasses the review and approval of key aspects of the institution's security control programs and processes, security control policies and infrastructure and comprehensive process for managing risks associated with reliance on third parties.⁴⁴ The institution shall ensure that the scope and coverage of its internal audit function is expanded to be commensurate with the increased complexity and risks inherent in agent banking activities and that the audit department is appropriately staffed with personnel having sufficient technical expertise to perform the expected role. It shall be incumbent upon the institution to take steps to ensure that it has updated and modified where necessary, its existing risk management policies and processes to cover its current or planned agent banking services.⁴⁵ The integration of agent banking applications with the main banking systems shall require an integrated risk management approach for all banking activities. The institution shall provide agents with sufficient training to enable the agents adequately perform the operations and provide the services agreed upon, including training relating to the proper identification of customers, customer service, and confidentiality of the information, cash security, record keeping and financial education.⁴⁶

2.4.1.4. Risk management

There might be different risks in operating agent banking business i.e. operational risk, legal risk, liquidity risk, reputation risk and credit risk. Consequently, institutions are expected to give due care for the various agent activities. Product programs, procedure manuals and customer limit structures should be devised keeping in mind the implications for operational and liquidity risks for agents. In the same fashion, the institution shall be responsible for putting in place appropriate product and operations manuals, accounting procedures and systems and for designing necessary forms/stationary to be used by the agent and shall assign persons to adequately monitor and control agent banking operations on an ongoing basis.⁴⁷

⁴⁴Id 5.2

⁴⁵Ibid

⁴⁶ Ibid

⁴⁷ Id 5.3

2.4.2. Regulation of agent banking in Nigeria

The agent banking guideline for the regulation of agent banking and agent banking relationships in Nigeria under its preamble detects that the guideline is issued for the maintenance of adequate and reasonable financial service to the public. And it also aimed at providing minimum standards and requirements, provide cost effective agent banking services and to enhance financial inclusion.⁴⁸

2.4.2.1 Application and approval requirements

Any financial institution that wishes to engage in agent banking shall apply for approval to the central bank of Nigeria (CBN)'. The application shall clearly state the extent of agent banking activities and responsibilities of the relevant parties.⁴⁹ The application for agent banking, among others, should be accompanied by board approval, strategy of the financial institution, qualification criteria's for agents, agent banking contract and risk management etc.⁵⁰ With respect to the agent structure, though the responsibility of selection of agent's rests on the FI, the structure should be either super-agent/ sub-agent or sole-agent structure.⁵¹ Within each agent category, the FIs shall clearly state the agent structure adopted. In addition, any structure adopted shall contain, among others, name(s) of agent(s), location(s) of activities, terms of engagement, itemizing all commercial activities that the agent is currently engaged in and all proposed responsibilities.⁵² The guideline empowers CBN to monitor the FI and agent relationship on annual basis in ascertaining whether they act in line with the guideline and regulation. Yet, the law dictates that the monitoring mechanism of super-agent treated in different manner in view of the probable higher risk, liquidity management and consequences of failure. In the case of super-agents, the CBN shall require full disclosure on persons or entities that control more than 10% or more of the share capital or has powers to exercise significant influence over the management.⁵³

⁴⁸Central Bank of Nigeria, 'Guidelines for The Regulation of Agent Banking and Agent Banking Relationships in Nigeria' 2013, preamble (Nigerian guideline)

⁴⁹Ibid

⁵⁰ Id objective

⁵¹ Id 2.1

⁵²Ibid

⁵³ Id 2.5

2.4.2.2 Agent banker agreement

Every agent banking contract shall contain reference to the FIs full liability with respect to customers, and it shall specify the obligation of both the FI and the agent. The principal can use a third party (e.g. a network manager) to manage its agent network. However, all agents sign ups must be approved by the principal. FIs shall itemize all activities that the agent shall be conducting on its behalf or limitations on any such activities i.e. account opening, deposit withdrawal, fund transfer service and bill payment.⁵⁴ The guideline has stated many issues which should be incorporated under their contractual agreement. Among others, the parties shall state responsibilities of payment of expenses, provision of infrastructure for third party providers of services⁵⁵, amount of remuneration for agents, agent business hours, and the responsibility of the FIs for the actions of their agents should clearly be stated under the contractual terms.

On the other hand, regarding security, the agreement shall state measures to mitigate risks i.e. limits on customer transaction, cash management, cash security, security of agent premises and insurance policies. These obligations also extend to keep records and setting limits on cash holding by agent and limits on individual customer withdrawal and lodgment.

2.4.2.3. Agents' eligibility and due diligence

The guideline provides couple of eligibility requirements for agents. Firstly, the entity must have been in legitimate commercial activity for at least twelve (12) months immediately preceding the date of the application to become an agent and the business must be a going concern.⁵⁶ Secondly, an entity shall not be eligible for appointment as an agent if the carrying out of agent banking business by the entity shall contravene any written law, regulation or the objects of the entity. Thirdly, the entity should not be faith based or nonprofit and/or non-governmental organization. Fourthly, the entity should be either be limited liability companies, sole proprietorships, partnerships, cooperative societies, public entities or trusts.⁵⁷ The FIs in addition to ascertaining agent's eligibility shall make an assessment as to moral and professional suitability. FIs shall

⁵⁴Id article 3

⁵⁵ Ibid definition part.

⁵⁶ Id 4.1

⁵⁷ Ibid

assess the moral, business and professional suitability of the sole proprietor or partners proposed to be appointed as agents. In the case of a corporate entity, the FI shall assess the moral, business and professional suitability of the chief executive officer responsible for agent banking operations of an entity.⁵⁸ The FI shall also institute clear, well documented Agent Due Diligence policies and procedures. Minimum contents shall include methods of identifying potential agents, initial due diligence, and regular due diligence checks to be performed at specified intervals and check list of early warning signals and corrective actions to ensure proactive agent management.⁵⁹ Roles/responsibilities of functions/departments within the FI with regards to agent management shall be clearly specified in the Agent Due Diligence procedures and ensure that agents are well established, reputable and have the confidence of the market.

2.4.2.4 Management of agent banking

The FI shall make a clear, informed and documented decision on the use of agents for rendering banking services to its customers. Development of an appropriate agent banking contract and appointment of eligible agents based on set out criteria. In the same pattern, the FI shall be wholly responsible and liable for all actions or omissions of its agent. This responsibility shall extend to actions of the agent even if not authorized in the contract so long as they relate to agent banking services or matters connected therewith.⁶⁰ The FI shall ensure the expansion of the scope of the bank's internal audit function to address the increased complexity and risks inherent in agent banking activities and ensure appropriate staffing of the audit department with personnel possessing the right skills.⁶¹ Similarly, it shall also take steps to update and modify, where necessary, its existing risk management policies and practices to cover current or planned agent banking services and integrate agent banking applications with the main banking systems so as to achieve an integrated risk management approach for all banking activities.⁶²

⁵⁸ Id article 5.2

⁵⁹ Id article 5.3

⁶⁰ Id article 6.1

⁶¹ Ibid

⁶² Ibid

2.4.2.5. Risk management

FIs are responsible for monitoring and supervising the activities of their agents and shall have information on the numbers and volumes of transactions carried out for each type of service provided by each agent. Moreover, the FIs shall monitor effective compliance with set limits and establish other prudential measures in each case.⁶³ FIs shall also implement measures to control operating risks, including having clause(s) in the contract establishing the liabilities of the agent. Periodic physical visits by institution's staff or authorized persons shall be necessary to ensure that agents operate strictly within the requirements of the law, guidelines and the contract.⁶⁴ Furthermore, FIs shall pay special attention to credit risk, operational risk, legal risk, liquidity risk, reputation risk and compliance with rules for combating money laundering and financing terrorism. In addition, FIs shall conduct due assessment of agent's credit worthiness and set limit structures for agent's various activities commensurate with this assessment. Documents pertinent to product programs, procedure manuals and customer transaction limits shall be devised keeping in mind implications for operational and liquidity risks for agents. Apart from this, wireless or electronic banking related risks as well as information and data security risks shall be managed by the FI in a prudent manner.⁶⁵ The law provides that the FI shall ensure customer due diligence through know your customer requirements, daily transactions limits, minimum IT security requirements and authentication of each customer's transactions. Taken together, employing this and other mechanisms the FI shall ensure that the customers don't involve in money laundering or financing of terrorism activities and to implement this, the FIs have to train their agents on anti-money laundering (AML) and combating of financing of terrorism (CFT) requirements.⁶⁶

⁶³ Id 13

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Ibid

CHAPTER THREE: AN OVERVIEW OF THE REGULATION OF AGENT BANKING IN ETHIOPIA UNDER UAD

3.1.Introduction

In this chapter, the law and data collected from key informant interviewees and the gaps that exist under UAD with respect to who qualify to be an agent, the requirements to be an agent, the geographical restrictions, agent exclusivity and the use of third party (outsourcing), mode of business operation, and procedures towards agent recruitment will be analyzed.

As in other countries, Ethiopia has directive in place that governs the operation of agent banking in order to regulate its activities in the country. Thus, NBE has issued the UAD for the regulation of agent banking and under this section the law in charge of regulating agent banking will be discussed.

3.2. Types of entities that can be agents

Before discussing who qualify to be an agent under UAD, it is important to see different approaches that different countries follow to decide on who can be an agent. Indeed, rules on who can be an agent vary from country to country and no ‘one size fit all’ rule works to answer who can be an agent. Different countries use different approach on who can be an agent. Many countries allow a broad range of people and organizations to act as agents for banks. On the premise of legal form, some countries restrict the pool of candidates. For example, India permits a wide variety of eligible agents, such as certain non-profits, post offices, kirana shop⁶⁷ owners⁶⁸, retired teachers, and most recently, for profit companies, including mobile network operators (MNOs). Explicitly excluded, however, are the largest microfinance institutions (MFIs) registered as non-bank finance companies. Country like Kenya follows different approach, requiring agents to be for-profit actors and disallowing non-profit entities (like nongovernment organizations [NGOs], educational institutions, and religious institution or faith-based organizations). In the case of Nigeria a legal person that is not for profit, such as a non-governmental organization (NGO) or an educational institution, is not permitted to operate an

⁶⁷ Kirana shops are the traditional, sole-proprietorship “mom and pop” shops popular in India; they account for a large percentage of India’s retail market

⁶⁸ Focus note NO.68 March 2011 Michael Tarazi and Paul Breloff

agent banking business, despite the fact that the country's agent banking regulation specifies a wide range of organizations that may serve as agents.⁶⁹ A country like Brazil, permits any legal entity to act as an agent, but prevents individuals from doing so.⁷⁰ Justification for excluding NGOs from serving as an agent is that serving as an agent could steer NGOs away from their social objectives. However, a country like India does not count for profit organization is that profit businesses have the propensity to take advantage of poor customer.⁷¹ Even though it is practically challenging to stop people from functioning as agents in Brazil, the regulator believed that doing so would reduce fraud, make supervision easier, and boost consumer trust. The presence of actors who may be the most promising agents due to their existing network of retail locations and their ability to handle decentralized operations may accidentally be restricted by these variable constraints, despite the fact that they may be reasonably motivated. Older prohibitions have been loosened in some countries as global experience has grown. For instance, the Reserve Bank of India initially prohibited agents from working with for-profit organizations, post offices, and cooperatives and such restriction made the introduction of branchless banking difficult. However, a change made in 2009 gave small business owners and other players an advantageous position to be eligible. An agency models number of agent banking cases have resulted from modifications that were made in 2009 and 2010 that further extended eligibility to the majority for-profit organizations. The current trend indicates that regulators are easing the requirements for agent eligibility as they recognize that overly strict regulations may contradict with the objective of financial inclusion. In accordance with Colombia's 2006 decree on banking, for example, any type of legal entity, including savings and credit cooperatives, is entitled to act as an agent.⁷² As far as who can be an agent in the context of Ethiopia is concerned, the directive allows for businesses to be persons which are natural or juristic personality. What the directive clearly provides for is that a person engaged in any commercial activity can be an agent.⁷³ Accordingly, it can be deduced that person who conduct profit making activities are not prohibited from becoming an agent since anyone who conduct commercial activity could be eligible to be an agent. Pursuant to organization of civil society proclamation no.1113/2019,

⁶⁹ Technical note :Mehmet kerse and Partick Meager, February ,2020,page 4

⁷⁰ Ibid

⁷¹ Id page 3

⁷² Ibid

⁷³Supra note 8 article 6(7)

NGOs and non-profit organizations are prohibited from conducting commercial activity in Ethiopia and they are, therefore, prohibited from being an agent alike the approaches that Kenyan uses.

The UAD directive of Ethiopia doesn't exhaustively enumerate entities that are eligible to be an agent; instead, the directive stipulates criteria needed to be an agent like conducting a commercial activity and having permanent address.⁷⁴ To express it differently the UAD rather than stating entities that could be an agent it states requirements to be agent which will be addressed under the coming sub title. The UAD only requires that an agent can be someone who is engaged in commercial business, but without stipulating the minimum capital the agent should have as an entry point to be engaged in agent business activity. However, failure to stipulate the minimum capital requirement as the entry point of agent banking services could result in those traders with insufficient capital to enter into agent banking services. For example, the situation exercised in the case of cooperative bank of Oromia has set forth the minimum capital threshold needed to be an agent and the initial deposit of 5000 Ethiopian birr in account is required to be qualified to be an agent.⁷⁵ In the case of commercial bank of Ethiopia⁷⁶ and lions bank as an entry point what the bank takes into consideration the requirements provided under UAD no initial capital requirement that the banks are undertaking.

3.3 Requirements to be an agent under UAD

For a person to conduct agent banking services there are certain requirements that s/he should fulfill. In other words, FI or bank to conduct agent banking services through the agent, the bank must make sure that the agent is the one who is involved in commercial activities and having

⁷⁴ Commercial activity as defined Under commercial Registration and Business Licensing Proclamation No.980/2016 article 2(3): commercial Activity means any activity carries on by a business person as defined under sub article (2) of this article. Sub article 2(2) of the proclamation states that business person means any person who professionally and for gain carries on any of the activities specified in the commercial code or who dispenses services, or who carries on those commercial activities designed as such by law.

⁷⁵ Interview with M.Berket Tadele, Digital Banking support team at Cooperative Bank of Oromia conducted on March30,2023

⁷⁶ Mrs Ababe Niguse ,Digital Business officer at Commercial Bank Of Ethiopia Interviewee made on April 20,2023 at 10:00 a.m.

permanent address.⁷⁷ Although the directive provides that the agent shall be involved in commercial activities, it fails to explicitly describe for how long the agent is supposed to undertake the business activity. Apart from this, the directive doesn't support the capital that the agent is supposed to own to serve the purpose. Moreover, the directive further stipulates that the agent has no criminal records in a matter related to financial or fraud matter⁷⁸. In other words, the directive states that it is only criminal matters related to finance that prohibit someone to not to become an agent. Thus, if someone with any other criminal records that has no relevancy to finance, the directive shall consider the right to become an agent as such matters are outside the finance or fraud. The directive of Bangladesh, for instance, states that a person who is being investigated for any criminal charge is not permitted to be an agent.⁷⁹ During interview, respondents from commercial Bank of Ethiopia⁸⁰ and Ethio telecom said the difficulty of getting criminal records of people from rural/remote areas is a major impediment to implementing this⁸¹

Another point that the FI has to make clear is whether it is a requirement for an agent to have an ongoing business, have integrity and reputation in the community.⁸² The reflection of the researcher on this point is how FI knows whether the agent has integrity and/or reputation in the community before registering the agent and entering into the contract agreement? It is hardly possible to make sure that this potential agent has good reputation and integrity. By an interview conducted with employee of cooperative bank of Oromia the way they assess this is either by themselves or making communication with customer around agent area, historical relationship the agent has with specific branch bank is taken into account.⁸³ The UAD further stipulates that any other matter which negatively or positively impact on the person.⁸⁴ Another point that has to be addressed in the case of Ethiopia is whether foreign nationals/businesses owned by foreign nationals can be agent? No company may perform banking operations in Ethiopia without first

⁷⁷ Supra note 8 article 6(7)

⁷⁸ Id article 6(c)

⁷⁹ Central Bank of Bangladesh: Prudential Guideline of Agent Banking In Bangladesh article 11(6)

⁸⁰ Supra note 76

⁸¹ Mr. Zawudu Gurmu compliance and Risk Management Manger at Ethio tell birr situated at Addis Ababa ,Churchill street Malaka Building 12 floor ;Interviewee made on April 25,2023 at 4:00 p.m

⁸² Supra note 8 article 6 (4)g

⁸³ Supra note 75

⁸⁴ Supra note 8 article 6(4)h

obtaining an approval from the National Bank of Ethiopia. According to the banking licensing proclamation No.592/2019, only company owned by Ethiopian citizens is permitted to perform banking operations. However, banking amendment proclamation No. 1159/2019 article has revised proclamation No. 592/2008 to allow foreign nationals of Ethiopian origin to engage in banking activity. Per the amended proclamation foreign national of Ethiopian origin can take part in banking business upon securing of license from Ethiopian National bank. When we come to agent banking, one the requirement is being a business person and who can fulfill requirements that UAD set forth. . In the case of agent banking the fact that the agent gives services to clients on behalf of FI/bank, the main requirement is, and in addition to being a business person there is no prohibition from being an agent for foreign nationals or businesses owned by foreign nationals.

3.4 Mode of business conducts for an agent

Indeed, for FI to undertake agent banking services, it has to get approval from NBE. In other words, only FI that has got approval from NBE are allowed to engage in agent banking services. In Ethiopia, some of the banks that have implemented agent banking services are Abyssinia Bank, Hibret Bank, Cooperative Bank of Oromia, Commercial Bank of Ethiopia and Dashen Bank. Per UA directive, a person who seeks to be appointed as an agent of a financial institution to perform electronic money related financial service shall open electronic account and deposit a minimum balance determined by financial institution.⁸⁵ Despite the fact that the directive imposes upon the agent to open electronic account and deposit the amount as per the agreement made between the bank and the agent, it doesn't specify the minimum amount that the agent is supposed to have in its electronic account. Interestingly, the mandates to determine this is left to concerned financial institution. According to Ugandan law, for instance, the applicant must open an account with a financial institution that has been granted a central bank license for a period of six consecutive months prior to submitting their application.⁸⁶ In this regard, the agent is limited to deliver cash in transaction to the extent of account balance.⁸⁷ In addition, the directive provides in case of liquidity shortage as per agency contract, a loan support to the agent

⁸⁵ Supra note 8 article 7(1)

⁸⁶ Financial Institution (Agent Banking)Regulation of Uganda, article 7(2b)

⁸⁷ Supra note 8 article 14(1)

upon fulfillment of the financial institution's internal lending requirements. It is important to note that financial institutions must guarantee agents to complete real-time transactions for any transactions involving the deposit, withdrawal, payment, or transfer of cash from or to an account.⁸⁸ Customers' monies that are in excess of their prepaid balance with financial institutions may never be accepted by agents. Upon conducting any transaction that requires a decrease or rise in the account balance of the agent or client, financial institutions must debit or credit the agent's or customer's account. Under the new UAD the minimum amount that the agent has to have in his/her electronic account is not provided. In case of opening an account it is important if it is stipulated under the directive the minimum amount limited which the financial institution can determine.

3.5. Geographical restrictions

The need relating to geographic location is another crucial factor for an agent. Certain countries put restrictions on where agents can operate, though these limitations are occasionally relaxed when regulators acknowledge that the laws are a barrier to financial inclusion.⁸⁹ For instance, Brazilian legislation initially restricted the use of agents to areas without bank branches out of concern that they might jeopardize bank branches, even though this limitation was eventually overturned.⁹⁰ This means enabling the expansion of agents as a lower cost and more convenient alternative to branch banking, even in places already served by bank branches. Depending on how far away a site is, countries restrict an agent's ability to operate in a given area. Indian regulators previously mandated that agents be situated within 15 kilometers and 5 kilometers, of the "base branch" of the appointing bank in rural and urban areas, respectively. This policy's justification is to limit the use of agents by banks with only a few branches and to provide adequate bank oversight of those agents. Later, regulators have expanded the distance to 30 kilometers, and banks can seek exemption from this requirement in areas with underserved populations where a branch would not be viable.⁹¹ Countries like Bangladesh, on the other hand,

⁸⁸ Id article 7(4)

⁸⁹Supra note 69

⁹⁰Resolution CMN 2707/00 (2000).

⁹¹ Supra note 69 page 2

rather than limiting by distance, they incorporate in their regulation for bank agent priority.⁹² When granting approval, Bangladeshi banks prefer locations where there aren't any bank branches or agent points within a 1 kilometer radius for the establishment of new agent banking outlets.⁹³ Further Bangladesh's prudential guideline on agent banking demonstrates or takes into account the need for banks to maintain a minimum 3:1 ratio between rural and urban areas.⁹⁴ Moreover, banks shall give priority to remote rural areas, islands and other geographical areas with limited accessibility. However, literatures reviewed on this matter have shown that overly restrictive location requirements can complicate the business case for viable agent-based banking and ultimately work against financial inclusion goals. Additionally, since most agent services are real-time, remote monitoring is now possible, eliminating one of the main defenses for location constraints. Countries are cautioned against limiting the location of agents while considering the consequences of restrictions. Among these nations, Mexico seems to be following the lead of other nations and, although first considered location-based limitations, finally opted against them.

In the case of Ethiopia, the UAD rather than prohibiting undertaking agent banking services outside designated area does not clearly provide for banks to consider when granting them approval. The researcher visited cooperative bank of Oromia around Bole Mikael church where the *coop pay agent banking* operates. In this area, there is one branch bank and another two or more agents located at nearby distance. Given that the branch bank and agent are situated near to each other, it looks convenient for the branch manager for monitoring them. However, this doesn't seem to meet the objective for which the agent banking is designated for. The writer of this paper would suggest that as mentioned under the UAD, one of the objectives of issuing the directive is financial service accessibility to the wider section of the unbanked and under-banked population at an affordable price. Therefore, in order to attain this objective, it is good for NBE to make clarity on its regulation like that of Bangladesh on the specific factors that banks need to consider when it gives approval for agent banking services.

⁹² Supra note 79 article 33.

⁹³ Id article 33(1.2)

⁹⁴ Id article 33(1.4)

3.6 Agent exclusivity

Agent exclusivity means restriction placed on the agent by the principal bank/FI not to serve other banks/FIs. To promote commercial viability, financial inclusion, and competition, regulations are believed to frequently restrict banks from engaging in "exclusive" agent contracts which could be justified on two grounds.⁹⁵ First, in order to make significant profits, agents in low-traffic locations could be required to conduct transactions for a range of banks and other service providers. Second, according to some authorities, abolishing "exclusivity" limitations will make it more likely that many banks will enter rural regions where there is a scarcity of skilled agents, fostering competition and outreach. In order to achieve this purpose, many countries mandate non-exclusivity on use of agents. On this countries experience reveals that they follow different approaches as their regulation provides. For example in Pakistan the Branchless Banking Guidelines specifically allow banks to implement a "open architecture" that would allow agents to serve many banks without having individual agreements with each bank. Occasionally, authorities have also thought of enforcing "agent interoperability" laws, which would require that once an agent has been registered with one bank, it can be used by customers of any other bank to conduct transactions.⁹⁶ Countries like Kenya, Ghana, Nigeria, Tanzania, and Uruguay are among the countries that their regulations restrict exclusivity.⁹⁷ In other instances, authorities view exclusivity as permissible as it increases the providers' incentives to take part in agent banking. Without exclusivity, competitors can take advantage of the financial investment made by early movers by hiring, selecting, and training new agents. A country like Nigeria clearly stated that agents are permitted to represent more than one financial institutions, but technically allow agents to enter into exclusive arrangements should they choose to.⁹⁸

Under UAD prohibits exclusivity. That means the FI is not allowed to contract with the agent on exclusive base. In other words in Ethiopia, however, the new UAD states that an agent is not permitted to serve only as a representative of financial institutions within the boundaries of the agency contract.⁹⁹ In such situations, where the agent performs agency services for multiple

⁹⁵ Supra note 68 page 7

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Supra note 48

⁹⁹ Supra note 8 article 11(1)

financial institutions, the agent is required to have a separate agency agreement with each of the financial institution, be capable of managing transactions for various financial institutions, and be open and truthful with the client regarding the financial institution for which the agent is performing any given activity. As long as the agent has the space, technology, and financial resources required to manage the transaction for each financial institution, offering an agent banking service for several institutions is permissible. Issue that arises with this notion is whether the agent can be an agent for more than one FI is the reverse exclusivity restricting the bank possible? To express it differently, can the agent prevent the bank from appointing another agent in the locality? Although this is not clearly articulated under UAD, the fact that banks/FIs are more powerful than agents implies that this question is not practical. Indeed, it is under the supervision of the FI and agency contract that the agents deliver the services to clients. As far as the agent is permitted to give agency services with more than one FI, there is no legal ground to prevent the FI or bank to appoint another agent in the local.

Interestingly, some banks like cooperative bank of Oromia are not comfortable with non-exclusivity. Their justification is that if the agent is delivering banking agent services, there is a fear on the part of the bank that the agent may skew to the activity of another one.¹⁰⁰ Other banks like Lions bank, Commercial Bank of Ethiopia, Abyssinia Bank, and Dashan bank are comfortable with non-exclusivity principle for the fact that the objective of agent banking is for making accessible banking services to unbanked population.¹⁰¹ However, if agent is on the exclusive base, attaining the objective for which it has come into being would remain impossible.

3.7 Agent recruitment

For FI to conduct agent banking through an agent, the FI is required to recruit agent. FI can do agent recruitment by itself or through a written agreement can outsource to a third

¹⁰⁰ Supra note 75

¹⁰¹ An interview made with Mrs. Abebe Niguse, Digital business officer at commercial bank of Ethiopia, Addis Ababa, on April 25, 2023 at 10:00 a.m., Abune Desta Director of agency banking business at Dashen Bank, Main office located in front of National Bank Addis Ababa, April 24, 2022, at 11:00 a.m., Mrs. Alifiya Gebo, Head Agent recruitment and management section at Lions Bank Main office situated in Addis Ababa around 22, Interviewee made on April 24, 2022, at 3:00 p.m

party.¹⁰² However, FI has not implemented outsourcing to the third party.¹⁰³ The UAD doesn't provide details on how the agent is recruited, but its directive provides clues regarding how the agent is appointed. Regarding the appointment of an agent, the directive stipulates some form of fit and proper test. This requirements mandates a form of agent due diligence that financial institutions are required to verify when appointing an agent given that due diligence and eligibility are the criteria used for selecting the agent. The due diligence and eligibility criteria in some countries have been provided under their regulation or guidelines depending on the type of agent recognized by their specific law. According to the experience of certain countries, a fit and proper requirement entails mandating a type of agent due diligence that calls for financial institutions to check that prospective agents have good reputations, no criminal histories, and no history of financial difficulty or insolvency.¹⁰⁴

The directive toward the recruitment of an agent is blurred in connection with how the FI can recruit the agent in Ethiopian banks. In all the banks that the researcher interviewed (Abyssinia Bank, Commercial Bank of Ethiopia, Lion Banks, Cooperative Bank of Oromia), they witnessed that FI recruit their agents by door-to-door selection.¹⁰⁵ In the case of commercial Bank of Ethiopia, agent recruitment procedure is provided under their agency banking procedure services. However the procedure provides clue for the selection of super-agent only, it lacks clarity on the recruitment of regular agents and sub-agents. In the case of super-agent recruitment, creation and sign off the agreement is processed at the regional level that to take place based on competitive bidding that needs to be public.¹⁰⁶ It is companies who are involved in this so in such cases it is by advertisement that FI selects the super agents.¹⁰⁷ As to the implementation banks used for this research purpose till now banks are on pilot stage¹⁰⁸ on the

¹⁰² Supra note 8 article 8

¹⁰³ Interviewee conducted with Mrs.Mikiyas Adefris Division Manager at Awash Bank Lideta Branch On April 20,2022 at 10:00 a.m

¹⁰⁴ Supra note 68 page3

¹⁰⁵ Supra note 69

¹⁰⁶ Commercial Bank of Ethiopia: Agency Banking Service Procedure article 3.2.1

¹⁰⁷ Abune Desta Director of agency banking business at Dashen Bank, Main office located in front of National Bank Addis Ababa, April 24,2022,at 11:00 a.m

¹⁰⁸ Supra note 76

implementation of super-agent.¹⁰⁹ Once the FI has got an approval from NBE and have recruited agent on issue that needs to be addressed is the number of agents the FI can have. No limitation is provided under UAD as to the number of agents the FI can have. The data that the researcher got from NBE as of May 10,2022, there are 137,378 agents of which 61,650 of them are Tele birr which is operating by Ethio Telecom. Cooperative Bank of Oromia has 10,000 agents.¹¹⁰ Lions bank has 2,800 agents,¹¹¹ Commercial bank of Ethiopia 34,000, Abyssinia Bank has 7000.¹¹² Although data shows this, it doesn't mean that all are giving agent banking service. The researcher in an attempt made to interview the agent they are not found at the place where they are said to give agent banking services.

¹⁰⁹ Supra note 8 article 2(26) super agent is a legal person which has an overarching agreements with Financial Institution to contract and manage sub agents(including outlets) that provide agent service to customers on behalf of a financial institution. The super agent enters into a contract with sub agents for the provision of agent service on behalf of financial institution .The super agent may or may not in addition to the management capacity ,service the financial institution in an agent capacity.

¹¹⁰ Supra note 75

¹¹¹ Interview with Mrs.Alifia Gebo, Head Agent recruitment and management section at Lions Bank main office April 23,2022 11:00 a.m

¹¹² Interview with Tolessa Chala :Digital Banking Officer at Abyssinia Bank Main office situated at in Addis Ababa ,Lagahar, April 19,2022 4:00 a.m

CHAPTER FOUR: REGULATION OF RELATIONSHIP BETWEEN THE AGENT, BANK AND CUSTOMER UNDER UAD

Under this chapter, the responsibility of bank and agent, liability of FI to the agent or the customer, supervision of agent and bank, how the law regulates the relationship between the agent, bank, and customer will be addressed.

4.1 Formation of contract

Once an application made by FI is accepted and approved by NBE, the other pre requires for conducting agent banking is the formation of Agency contract between the agent and FI. “Agency contract means a contract concluded between a financial institution and another person the agent to enable an agent to provide agency business services to customers in the name and on behalf of the financial institution.”¹¹³ The fact that contract agreement is a prerequisite for conducting agent banking services means, no financial institution can conduct agent banking services without priori signed contract. The FI can enter into such agency contract agreement in written form.¹¹⁴ The contract agreement shall be made through the template format prepared for this particular purpose. The researcher asked whether FI uses this template format for contract agreement or not in the interview made during data collection and learnt that FI uses this template contract.¹¹⁵ Contract concluded has to state the role and responsibility of each party. Among others, the contract shall include role responsibility and liability of the parties, specific agency business service to be provided by the agent.¹¹⁶ Additionally, the contract agreement has to include that the FI is responsible for actions or commission of the agent. As far as contract issue is concerned, the point worth addressing is whether the agent or FI is liable for any act that will be arise from the act of an agent. Accordingly, FI employee interviewed in this research responded that it is determined by the agency contract.¹¹⁷

¹¹³ Supra note 8 article 2(2)

¹¹⁴ Id article 9(1)

¹¹⁵ Supra note 75

¹¹⁶ Supra note 8 article Annexed II minimum provision to be specified /Addressed under Agency Contract

¹¹⁷ Supra note 75

Once the contract is made between the agent and FI, the contract can be terminated on different grounds. Among the grounds that lead to the termination of the contract is if the agent has ceased main commercial activity, guilty of criminal offence involving fraud, dishonesty, or other financial impropriety.¹¹⁸ Moreover, the directive further stipulates other grounds leading to the termination of contract and these include; being dissolved or wound up through court or otherwise, sustains a financial loss or damage to such a degree which in the opinion of the financial institution makes it impossible for the agent to gain its financial soundness within three months from the date of the loss or damages, dies or becomes mentally incapacitating case of a natural person.¹¹⁹ The financial institution can terminate the contract with the agent at any time upon notification to NBE in writing every quarter termination of the contract, demonstrating name of agent, location of agent, notices of termination to general public, reason and date of termination.¹²⁰

4.2. Responsibilities of banks

As discussed above, the relationship between the bank and the agent is determined by agency contract. In order to regulate such relationship the UAD the regulator stipulates the responsibility of the bank and agent. As discussed above, the relationship between the bank and agent is determined by agency contract signed/made between them. In the contract agreement, the role and responsibilities of each party shall be articulated although UAD stipulates the responsibility of the agent and the FI separately. According to the directive, the provision training to the agent is the sole responsibility of the bank.¹²¹ Through the visit the researcher made to the different banks, banks have adopted their internal procedure and assign a specific department to conduct the required training. For example, CBE has issued agency banking service procedure, on October, 2020, with the objective to ensure consistency and uniformity in the operation of the services across all Bank staffs to have a single frame of reference.¹²² More importantly, the procedure stipulates in an unequivocal term the responsibility of president of the bank, branch manager, director of digital banking services, district director, manger agency banking, and

¹¹⁸ Supra note 8 article 10(1a,b)

¹¹⁹ Id sub article (c,d,e)

¹²⁰ Id article 10(5)

¹²¹ Id article 16(f)

¹²² Supra note 106 Preamble

manager digital banking support. Among the responsibilities of the branch manager, for instance, are ensuring that proper awareness is created to agents, customers and performers related to agency banking.¹²³

Manager of agency banking has the responsibility of guiding and coordinating the overall activities of the agency banking team.¹²⁴ Under the UA, one of the responsibilities of FI or bank is establishing a unit at head office level department that is directly responsible for coordinating and facilitating the overall activities of the agent banking business. The researcher visited Awash bank, Lions Bank, Abyssinia, Cooperative Bank of Oromia and Commercial bank of Ethiopia, Dashen bank to confirm the presence of a unit in charge of offering training in those banks and noted the existence of a unit designated to serve the purpose. This means that the relationship between the agent and the bank is not only regulated with what is being provided by the UA, but also by the banks internal procedure. As per the interview that the researcher collected from the employee of NBE, although FI are delivering training to agents and making follow up with an agent, it doesn't look satisfactory.

The researcher through visits made to the different banks also noted that FI have issued procedures through which each department within the bank can undertake its responsibility. Undoubtedly, the adoption of such procedure will help for regulating the smooth relationship that exists between the agent and the bank. The mandate to issue policy and monitoring of the agent is given to the bank in order to follow up as to whether the agent has been operating in accordance with the guidelines and laws. Moreover, the directive mandates FI or bank to establish a unit at head office level department directly responsible for coordinating and facilitating the overall activities of the agent banking business.¹²⁵ In attempts the researcher has made to further explore the presence of a unit at different banks like Awash bank, Lions Bank, Abyssinia, Cooperative Bank of Oromia, Commercial bank of Ethiopia, Dashen bank the researcher identified the presence of a unit designated to serve the purpose in order to follow up agent banking in all of the banks visited. What the researcher in conducting the research has found is whether FI is undertaking its responsibility as specified under UAD or the adopted

¹²³ Id article 2.1.10(f)

¹²⁴ Id article 2.1.8(q)

¹²⁵ Id article 16(1a)

procedure the information from the employee of NBE that FI are delivering training to agents and making follow up on agent is not as such satisfactory.

The other responsibility of FI is to set the operational limits. Indeed, FI determine the services to be accomplished by the agent and this has to be specified under the agency contract. Beyond this, the FI shall establish limits for each transaction agreed upon with the agent. Even though the mandate to limit the operation is given to FI, such exercise has to be prudent and consistent with the limit provided under licensing and authorization of payment instrument issuers under the directive No. ONRS/ 01/2020 of Ethiopia. However, the later directive stipulates for electronic account limit as indicated under article 8 amended licensing and authorization of payment instrument issuer (Amendment) directive No.ONPS/06/2022. According to the amendment directive, limits are based on levels that is level 1 has a maximum daily electronic account balance of 5000, while level 2 is allowed a maximum daily account limit of 30,000. Even if the directive provides for daily electronic agent limit, this doesn't apply as far as inward remittance, payment for the purchase of airlines ticket, salary payments, and payments of utilities are concerned.¹²⁶ According to the regulator, the lists of agents who provide agent banking services shall be publicized to the public and FI has to publicizes lists and outlet's location of an agent, services given by the agent and updates the number agents on its web page at head office level.¹²⁷ For agents who provide agent banking services the regulator wants that the lists of the agents be publicized to the public. Accordingly, FI has to publicize lists and outlet's location of an agent, services given by the agent and updates the number agents on its web page at head office level.¹²⁸

¹²⁶National Bank of Ethiopia: Licensing and authorization of payment instrument issuer (Amendment) directive No. ONPS/06/2022 article 7. Before the amendment Licensing and Authorization of payment Instrument Issuers Directive No.ONPS 01/2020 article 8(1) provides three level of accounts 5000,20,00 and 30,000.But under the amendment directive it is two level

¹²⁷ Supra note 8 article 20(1&2)

¹²⁸ Ibid

4.3 Responsibilities of agent

Though the agent undertakes agent banking services on behalf of the bank, the permissible activities that the agent undertakes are provided along with the list of prohibited activities.¹²⁹ This means that agents are not allowed to carry out all the activities that banks performs. Under the permissible activities of the agent are opening of an electronic account, cash in and cash out service, cash disbursement of loan approved by a bank or microfinance institution and repayment of loans in cash. Additionally, payment of bills and services, salaries, social benefits any other domestic payments, local money transfers, over the counter transactions, balance inquiries, collection of documents in relation to account opening, loan application, credit and debit card application, including customer due diligence for anti-money laundering (AML) or counter-financing terrorism (CFT) purposes, collection of obligation via debit and credit cards and similar activities.

Agent banking outlets are used by the government to make mass payments in PSNP the ‘Productive Safety Net Program’, which is a more effective strategy for putting a safety net in place for vulnerable individuals.¹³⁰ Such supports have been given to the vulnerable people through the agent banking network.¹³¹ In order for an agent to provide these types of important activities, the agent is responsible for maintaining adequate balance in its electronic account. With respect to account opening, agent is permitted to open only electronic account; however,

¹²⁹Supra note 8 article 12 &14

¹³⁰Productive Safety Net Program (PSNP):<https://essp.ifpri.info/productive-safety-net-program-psnp/> page 1.last visited on April 14, 2023 at 09:22 a.m. In Ethiopia, what is practically seen is that there are instances where people feel in the situation of food insecurity as a result of which people may fail in poverty. Under such circumstances, the government of Ethiopia has designed a system in place in order to react to food insecurity and one of the mechanisms the government uses to handle this is by emergency food for the purpose of saving people lives. However, attempts the government has made to save the live repeatedly failed to protect the livelihood and this became a growing concern according to several studies (REF). In response, having realized this the Ethiopian government improved its mechanisms handling food insecurity through the provision of emergency food aid in 2005

¹³¹Ethiopia Payment Mechanism Assessment Report: Piloting Guidance For Multipurpose Cash December 2017 page 7.

opening regular account is prohibited activities.¹³² However, agents can collect things that may be needed for account opening.¹³³ On the other hand, agent is prohibited from under taking certain activities like provision of agency business services outside of its specified geographic areas and performing against or beyond the agency contact. Additionally, deny issuance of receipts or advice to users; carry out transactions in the absence of system or network connectivity; directly charge or collect any fees from users, open regular accounts, grant loans, or perform any appraisal functions in order to open an account, grant a loan, make transaction by foreign currency, impose terms and conditions that are distinct from those offered by the financial institution and undertake other activities that are prohibited by NBE¹³⁴

4.4 Liability of FI to the agent or the customer

The UAD stipulates the responsibility of the agent and FI separately. With respect to this the issue that needs to be addressed is as to who is liable for agents' non-compliance with UAD. Global experiences on these countries that permit agent banking also impose bank liability for the acts of agents.¹³⁵ However, different countries follow different approaches regarding who is liable to the customer. In country like Brazil, banks are fully responsible for the services rendered by its agents. Similar to this, India mandates that all contracts and agreements with customers must express that the bank is liable to the customer for the actions, inaction, and commission of the agent. Likewise, the Kingdom of Saudi Arabia agent banking regulation stipulates that the bank is responsible for all actions or omissions of its Agent(s) in the matter of providing the permissible banking products and services on behalf of the bank. In Pakistan, banks are also held liable for their agents' conduct; the bank is allowed to take steps it deems necessary to safeguard it against liabilities arising out of such actions according to the law. This clause suggests that banks should enter into indemnification agreements with their agents; a protection that could lead banks toward large and well-capitalized agents capable of indemnifying the bank while forgoing agent relationships with smaller retailers who might still be better-positioned to serve the segments of low-income consumers. There are countries that

¹³² Id article 14(6)

¹³³ Supra note 68

¹³⁴ Supra note 8 article 14

¹³⁵ Supra note 69 page 9

clearly limit the extent of liability in agency banking to the financial services provided. In Kenya, for instance, banking agent guidelines, the bank is liable for agent's action even if the agency contract doesn't allow doing so in as far as the act of the agent relates to banking services.¹³⁶ When the experience of Ethiopia is inspected through the interview conducted on this matter, FI has contract with the agent with regard to liability that is governed by their contract.¹³⁷ The interviewees further explained that the FI got approval in order to deliver its services through the agent, as the result it has to bear all the liabilities that come along. But, this doesn't mean that the bank will have no claim against the agent.

In another interviewee from Buna Bank employees, they responded that customers who get service with the agent are not customer of the agent rather they are customers of the bank and hence FI will be liable to the agent for the acts of the agent.¹³⁸ Under its article 16(1c), UAD states that FI is responsible for any act or omission made by agent related to agency business services, although such liability is not included in the contractual agreement. Because, agent is acting as a channel for the principal, which is the bank or FI and therefore under all circumstances the bank is liable for every action of the agent. In the case of super-agents, the bank will also be liable for subagent's acts. The reason for such liability could be that in the first place when the bank is requesting approval from the NBE it gets approval in order to deliver its services through the agent. This means the agent has consented and received approval from NBE for all its activities including all the liabilities that come along. In the case of Ethio telecom, for instance, they are currently undertaking tele birr after getting approval from the NBE. Given that Ethio telecom is undertaking agent banking services through the agent, it is true that Ethio telecom is liable for the act of the agent.¹³⁹

¹³⁶ Ibid

¹³⁷ In an interview conducted with Mr. Solomon Damtew, Principal, Payment systems development and oversight at the National Bank of Ethiopia, interview conducted on April 14, 2022 at 9:00 p.m.

¹³⁸ Mr Tafasee Negussie, Director Digital Banking Directorate at Buna made on April 10,2022 at 11:00 a.m

¹³⁹ Supra note 137

4.5 Supervision of agent

It is believed that whether the agent is under taking its agent banking services according to the UAD, agency contract, or other laws, the supervision has to be conducted by FI or NBE. Thus, under this section discussion will be made how the supervision is being made either by FI or NBE.

4.5.1 Supervision by bank

Once a financial institution's application for conducting an agent banking service is approved by NBE, and started agent banking services, the bank or NBE has to supervise and ensure whether the agent is conducting its activity in line with the directive, bank policy, and agency contract. Under article 19 of the UAD, it is clearly stated that FI is entitled to conduct not only supervision, but also responsible for monitoring the activities of the agent. However, the mechanism through which the FI conducts supervision can be made by on-site visit through its staff¹⁴⁰. The NBE conducts supervision depending on the report submitted to it by FI, or upon conducting surveillance or if the bank gets an information from media¹⁴¹ FI can also conduct sudden on- site visit in case there is suspicious activity.¹⁴² Furthermore, the FI can also make follow up on the system making sure that there is always the same type of customers and the bank can ask the agent to make a report. In addition, FI has the duty to implement measures to mitigate operational risks to the extent of including clauses in the contract governing liabilities of the agent.¹⁴³ In the case of super-agent, the UAD doesn't stipulate how supervision could be conducted. The experience of Nigeria, for instance, indicates that it has adopted a separate regulatory framework for licensing super-agents. According to the regulatory framework, super-agent has the responsibility for monitoring and supervising the activities of the agents.¹⁴⁴ Additionally, whether the agent works in line with law, guidelines and the signed

¹⁴⁰ Supra note 8 article 18(5)

¹⁴¹ Supra note 137

¹⁴² Supra note 75

¹⁴³ Supra note 8 article 18(4)

¹⁴⁴ Regulatory Framework For Licensing Super Agents in Nigeria: <https://www.cbn.gov.ng/out/2015/bpsd/regulatory%20framework%20for%20licensing%20super-agents%20in%20nigeria.pdf> Article 4 accessed on August 18, 2022 at 9:00 a.m

contract, the super-agent is responsible to conduct on-site visiting of the agent. Thus, super-agents are responsible for conducting the above stated responsibilities given to them by the central bank of Nigeria; however, the central bank of Nigeria can request for any information and can conduct inspection it deems necessary.¹⁴⁵

4.5.2 Supervision by National Bank of Ethiopia

The NBE is entitled to undertake any supervision of an agent in three ways. One is by requesting of any information from an agent at any time when it deems necessary, second by physically examining books and premises of the agent, thirdly direct the FI to order its agent to take an action or desist from certain conduct.¹⁴⁶ Moreover, the NBE can conduct supervision depending on the report submitted to it by FI, or upon conducting surveillance or if the bank gets an information from media or upon conducting surveillance or if the bank gets an information from media.¹⁴⁷ Under the Ethiopian UAD directive, the directive mandates the NBE to take administrative sanction against the financial institution when it fails to comply with what is provided under the directive. Such administrative sanction may include prohibition from engaging in any further agency business services, prohibition from contracting new agents, termination of agency contract, revocation of agency business service approval or imposing financial penalties.¹⁴⁸ Under UAD directive, apart from stating what super-agent is, the directive didn't mention the role and responsibility of super-agent. The experience of Ethiopia tells indicates for FI to conduct agent banking services through super-agents, the FI has to get approval from the NBE. In the interview made with the employees of NBE regarding super-agent, the researcher noted that the FI gets approval for its supervision is done by super-agent.¹⁴⁹ Under this circumstance, the FI will not supervise and monitor the agent. But, what has been practically observed currently is that FI has started to give agent banking services through super-agent, but only Ethio telecom which has implemented master agent.¹⁵⁰ The other important issue

¹⁴⁵ Ibid

¹⁴⁶ Id article 19(a,b,c)

¹⁴⁷ Supra note 137

¹⁴⁸ Supra note 8 article 19(4)

¹⁴⁹ Supra note 137

¹⁵⁰ Supra note 81

worth addressing is how the outsourced agent management firms could be managed. It has been shown that under UAD, agent recruitment, training and agent management can be outsourced to a third party. In such instances, the regulator didn't stipulate how supervision could be exercised. However, it could be deduced from the directive that given that FI outsourced it, is logical to say that the supervision could be conducted by FI.

4.6 Regulation of relationship between the agent and customer

Once the agent concluded a contract with FI for the provision of agent banking services how the law regulates the relationship between the agent and the customer has to be addressed. In order that customer knows and becomes aware of the service provided by the agent UAD imposes the obligation of disclosure. This disclosure is what the agent has to do for the customer. Accordingly the agent is required to disclose to the customer a copy of the current license for the business activities being undertaken by the agent, a copy of the approval letter from the bank, the name of the bank it is working for, a list of banking services offered by the agent, notice to the effect that if the electronic system is down no transaction shall be carried out; notice to the effect that services shall be provided subject to availability of funds; the list of charges or fees applicable for each service which are payable to the bank by the customers, a dedicated call center through which customers can contact the bank, name, telephone numbers and location of the bank's branches/offices to which the agent reports its agent activities.¹⁵¹

¹⁵¹ Supra note 8 article 23

CHAPTER FIVE: CONCLUSION AND RECOMMENDATION

5.1 Conclusion

The main issue addressed in this research is the regulation of agent banking in Ethiopia. In order to address this issue, the research has been organized in five chapters. The first chapter provides the research proposal. In chapter two overview of agent banking, concepts of agent banking, why agent banking, modalities of agent banking which include bank led model and non-bank led model is discussed. Additionally, under this chapter the writer also has tried to assess the experiences of other countries and discussed how agent banking is regulated in Kenya, xxx, Nigeria, in general and how other countries regulate their agent banking.

Under chapter three and four which is the main point of this research it deals with who can be an agent under UAD, gaps that exists on who can be an agent under UAD when compared to other countries agent banking regulation. Additionally, under this chapter specifically, gaps that exists under UAD distance kilo meter within which FI can conduct an agent banking, requirements to be an agent under UAD, geographical restriction, agent exclusivity, gaps that exists with respect to recruitment of an agent is dealt with. Under chapter four regulation of relationship between the agent, bank and customer under UAD was addressed. In connection with this, the responsibilities of the agent and FI are discussed. Moreover, circumstances under which the bank and NBE conducts supervision is also discussed. Furthermore, who is liable to the customer in case the agent fails to comply with the agency contract is entertained accordingly.

Generally, from this paper what can be concluded is that the advancement of technology has urged banking industry to be more innovative and competitive than ever before. As the result banks have started giving banking services through other delivery channel. This has given the opportunity to customer rather than physically appearing to get banking services where ever they are or nearby where they are. Such delivery channel includes ATM, mobile banking, and agent banking. In order to give agent banking services, the FI has to make an application to NBE upon getting an approval can deliver agent banking through the agent. Other countries who have implemented agent banking like Bangladesh, Kenya, Nigeria, Uganda, and kingdom of Saudi Arabia regulation requested ~~provides the~~ the approval of their central bank for the FI to give agent banking services through an agent. The experiences of the above named countries

regulation specifies or lists down entities which are supposed to be an agent. In Ethiopia, however, the UAD fails to mention entities who are eligible to be an agent. Although the main objective of agent banking is to make accessible banking services to unbanked population, the directive doesn't mention at what distance the FI can give the agent banking services. The failure to mention this in the directive could result in that the agent may be concentrated in one specific area. One of the type of agents given recognition by the directive is super-agent but the directive fails to mention the relationship that exists between the bank and the agent and nor does it clearly provide how the management can undertake its activities.

Based on the above conclusion the writer will recommend the following.

5.2. Recommendation

1. Given that under UAD eligible and non-eligible entities are not provided, the NBE has to amend the UAD in such way that the directive accommodates eligible and non-eligible entities to be an agent.
2. As stated under the preamble of the New UAD, the objective of agent banking is to make banking services accessible to unbanked population. In order to properly address this objective and to limit the operation of agent banking in one area where branch banks exists the NBE has to amend the UAD in a way that it includes agent banking priority.
3. With respect to super-agent, the relationship between the FI and super-agent has to be clearly provided and the management strategy regarding the super-agent has to be clearly indicated under the directive.
4. A requirement to be an agent is to be a commercial person; however, the UAD lacks clarity on the minimum capital requirement and for how long that an agent is engaged in the commercial activity. Therefore, NBE has to amend the UAD and set forth the minimum capital the agent is required to have and for how long time the agent undertakes the commercial activity in order to qualify to be an agent. Thus, the researcher recommends that the NBE shall amend the UAD and specify the minimum capital requirement to be an agent.
5. The requirements to be an agent, is equally applicable for an agent operating in urban and rural areas. However, with these requirements, FI /Ethio telecom are facing challenges, and

therefore the NBE has to amend the UAD and set specific requirement that could invite a very well-known persons who bear community acceptance/recognitions to qualify to become an agent.

6. As to the number of agents that FI can have, no limitation is provided under UAD. Even if the number the agents that FI has is as many as that the FI wishes to have but there are instances when all are not function. Thus, it is nice if the number of agents that the FI can have is limited and the agent should also be the one which is proved to be functioning. In this regards, the NBE has to design a mechanism of supervising the FI whether the number of agents it has is properly functioning or not.

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Interviewees

- Mrs. AbebeNiguse, Digital business officer at commercial bank of Ethiopia, Addis Ababa
- AbuneDesta Director of agency banking business at Dashenbank, Main office located in front of National Bank Addis Ababa

- Mrs. AlifiyaGebo, Head Agent recruitment and management section at Lions Bank Main office situated in Addis Ababa around 22
- Mr. BerketTadele, Manager ,Digital Banking Support team at Cooperative bank of Oromia, Addis Ababa, situated at Filamingo branch,
- Mr. TafaseeNegussie, Director Digital Banking Directorate at Buna Bank
- Mr. Solomon Damtew, principal, payment systems Development and oversight,
- Mrs. MikiyasAdefris, Division manager at Awash bank lideta branch,
- Mr. Tolassa Chala ,Digital Banking officer at Abyssinia Bank Main office situated in Addis Ababa ,Lagahar

- Mr. ZawuduGurmu: Compliance and Risk Management Manager at Ethio tell birr Situated in Addis Ababa, Churchill street Malka Building 12 floor.

Appendices

Appendix 1: Interview Questionaries'

2. Sample Guideline on how commission for an agent is fixed

3. Use of Agents Directive No.FIS/02/2020

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Topic of the Research:-Regulation of Agent Banking In Ethiopia

An Interview questioner for Agents

1. In order to serve their customers what equipment's do agents use?
2. How does an agent benefit from agent banking services?
3. Do you use the contract templates provided by the directive? Are they helpful?
4. Can customer withdraw cash from an authorized Agent without an ATM card?
5. How is the agent's fee determined?
6. Who will be the 1st point of contact for support for the customer?
7. Who will be the 1st point of contact for support for the agent?

Thank You!!

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Appendix 2

Topic of the Research:-Regulation of Agent Banking In Ethiopia

Name of Bank.....

An Interview questioner for Financial Institution/Bank

1. In order to serve their customers what equipment's do agents use?
2. How does an agent benefit from agent banking services?
3. Do you use the contract templates provided by the directive? Are they helpful?
4. Are the requirements provided by the directive easy to comply with or are they burdensome?
- 5 Can customer withdraw cash from an authorized Agent without an ATM card?
6. How is the agent's fee determined?
7. How do you ensure customer data protection when providing services on behalf of the bank?
8. Do you use third party management?
9. How the banks manage their risk relating to the agent having unlimited account?
10. Who will be the 1st point of contact for support for the customer?
11. Who will be the 1st point of contact for support for the agent?

Thank You!!

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Appendices

Appendix 3

Topic of the Research:-Regulation of Agent Banking in Ethiopia

Interview questioner for Bank managers and concerned Bank employee who work on agent banking

1. How many agents does your institution have?
2. How do you fix the amount of agent's fee?
3. What is the minimum business hour of agents?(In other countries it is bank working hour under the New Use agent directive this is not provided)
4. How do you ensure that the agents do know-your-customer verifications? Do you give them trainings?
5. Who qualifies to be an Agent?
6. Do you feel comfortable when your agent also works for other financial institutions? Is prohibition of agent exclusivity a sound policy or is there alternative to achieve the purposes of the prohibition?
7. In the case of unforeseen event, is it allowed to facilitate banking transaction on an offline mode?.
8. Is there a deposit/withdrawal limit at Agents?
9. Can Agents provide services outside their authorized business locations as long as requirements are met?
10. How many agents are allowed per financial institution?
11. How do you recruit your agents? By advertisement or by door to door visit? Does your bank use third part agent management firm? What types of entities can be third party agent managers?
12. What is the difference between an outsourcing entity and a super-agent
13. Who will be responsible for guaranteeing the quality of service offered by the agents?
14. How is the agent's cash safeguarded? Is there insurance?

15. Is it mandatory for every Bank/financial institution to recruit agents?

16. Overall, are the requirements provided by the directive easy to comply with or are they burdensome?

CBEBirr Terms and Tariffs

CBEBirr Terms and Tariffs Revision for Agents

CBEBirr Terms and Tariffs of Agents are revised as hereunder.

A. Agent Commissions on CBEBirr Services

CBEBirr Services	Proposed transaction range and agent commission	
	Transaction Range	Agent Commission
Account opening	-	Birr 11.50 upon registration with full KYC and first customer cash deposit
Cash in	25-500	4.45
	501-2,000	5.60
	2,001-3,000	6.18
	3,001-4,000	7.33
	4,001-5,000	8.48
	5,001-6,000	9.63
	Above 6,001 up to 30,000	0.15% of the value
Cash out by registered customer		75% of the charge collected from customers on this service.
Cash out by unregistered customer;	<=100	Birr 0.75
	101 - 3,000	0.75% of the transaction value.
	Above 3,000	Birr 22.50
Airtime top-up	-	Existing
Bill payment	Less than 25-	2.12
	25-500	4.45
	501-2,000	5.60
	2,001-3,000	6.18
	3,001-4,000	7.33
	4,001-5,000	8.48
	5,001-6,000	9.63
	Above 6,001	0.15% of the value
Business Deposit/ withdrawal at agents		60% of the charge collected
Transfer to betting companies		No commission
Large customers KYC		No commission

CBEBirr Terms and Tariffs

CBEBirr Terms and Tariffs Revision for Agents

CBEBirr Terms and Tariffs of Agents are revised as hereunder.

A. Agent Commissions on CBEBirr Services

CBEBirr Services	Proposed transaction range and agent commission	
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Bill payment	Less than 25-	2.12
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	3,001-4,000	7.33
	4,001-5,000	8.48
	5,001-6,000	9.63
	Above 6,001	0.15% of the value
Business Deposit/ Withdrawal at agents		60% of the charge collected
Transfer to betting companies		No commission
Change customers KYC		No commission