

A Regulatory Diagnostic Toolkit (RDT)

for

Analysing the Regulatory Frameworks for
Digital Financial Service (DFS) in Emerging Markets

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ACRONYMS

Acronyms

AML	Anti-Money Laundering
BCBS	Basel Committee on Banking Supervision
BIS	Bank of International Settlements
BTCA	Better Than Cash Alliance
CFT	Countering the Financing of Terrorism or Combating the Financing of Terrorism (also referred as Counter-Terrorism Financing or CTF)
CGAP	Consultative Group to Assist the Poor
CPMI	Committee on Payments and Market Infrastructures
CPSS	Committee on Payment and Settlement Systems
DFS	Digital Financial Services
G20	Group of 20
GPFI	Global Partnership for Financial Inclusion
IFC	Irving Fisher Committee on Central Bank Statistics
MFI	Microfinance Institution
MM4P	Mobile Money for the Poor
MNO	Mobile Network Operator
OCC	Office of the Comptroller of the Currency
PFIP	Pacific Financial Inclusion Programme
RDT	Regulatory Diagnostic Toolkit
SSB	Standards-Setting Body
UNCDF	United Nations Capital Development Fund
USAID	United States Agency for International Development

THE REGULATORY DIAGNOSTIC TOOLKIT IN A NUTSHELL

Digital financial services (DFS) are not new. What is new is the focus on how to promote the use of DFS to improve financial inclusion. This Regulatory Diagnostic Toolkit (RDT) provides a **framework for regulators to analyse their regulatory regimes** in order to identify barriers and/or remove gaps to DFS adoption and to promote financial inclusion.



An ideal state of financial inclusion would require 'universal access to a wide range of financial services that can be used when and as needed.'



— The Bank for International Settlements and World Bank Group

THE RDT WAS DESIGNED TO HELP REGULATORS
REALISE THE FOLLOWING **FIVE OUTCOMES:**

1

Reduced entry barriers for digital payment services and other retail financial services

2

Levelled playing field and flexibility in the market to promote innovation

3

Effective, yet proportionate approach to consumer protection

4

Sustained rapid growth and large-scale volumes

5

Access to market information for providers along with data security and privacy for customers

THESE SEVEN RDT SUBJECT DOMAINS CAPTURE THE MAIN REGULATORY ISSUES CONNECTED TO DFS:



Overall regulatory architecture

Provides an overview of the country's DFS regulatory regime and helps identify and assess factors that engender barriers/gaps to DFS adoption in relation to dimensions of regulatory mandate, capacity and coordination



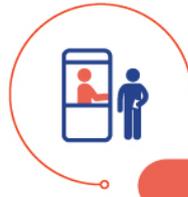
Ecosystem development

Examines dimensions that concern the regulator's intention and capacity to implement enabling regulation so as to build a sustainable DFS ecosystem, including the dimensions of competition, innovation, consumer demand, financial literacy, interoperability, partnerships and public access to market data



Protection of funds

Assesses the country's regulatory regimes for depositor and e-money funds protection, and evaluates whether these regimes effectively protect customer funds from insolvency, liquidity and operational risks



Use of agents

Examines existing regulatory and contractual arrangements regarding use of agents, allocation of liability, and management of credit, liquidity and consumer risk that may arise amongst the provider, agent and customer



Consumer protection

Assesses the effectiveness of the country's financial consumer protection framework in the following dimensions: regulatory mandate, industry codes, product disclosure, recourse mechanisms, use of agents and digital delivery of financial services



AML/CFT

Evaluates the country's efforts to balance implementation of proportionate anti-money laundering/countering the financing of terrorism (AML/CFT) measures and promotion of financial inclusion, including assessing these dimensions: use of a risk-based approach, adoption of simplified consumer due diligence, transaction monitoring and reporting, and new approaches to AML/CFT



Data privacy

Reviews the country's regulatory and contractual mechanisms to protect customer data and privacy, considering four dimensions: rights of individuals to privacy and data protection; sharing of customer financial information amongst providers; use of customer credit information and dispute resolution; and consumer recovery mechanisms to redress data misuse and privacy infringement

THESE FOUR RDT PHASES COMPOSE THE PROCESS:



PHASE 1

Desk-based research /
Pre-fieldwork

PHASE 2

Fieldwork



PHASE 3

Post-fieldwork

PHASE 4

Post-assessment



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1. BACKGROUND AND INTRODUCTION

What will the RDT do?

This Regulatory Diagnostic Toolkit (RDT) provides a **framework of analysis for regulators to use to assess their regulatory regimes** to identify barriers and gaps preventing the adoption of Digital Financial Services (DFS).¹ The RDT, and the method of applying it, have been designed to be consistent with **international best practice** and to this end an expected outcome of using the RDT is an improved capacity of regulators to promote **optimal linkages between financial inclusion, financial stability, financial integrity and consumer protection**.² The application of the RDT will also call for a **data-driven evidence-based approach** to underpin the policy development process. Accordingly, another expected outcome of using the RDT is an **improved policy development process** due to the identification of critical data gaps prior to the formalisation and endorsement of policy reforms. Development partners will be also able to use the results of the RDT to better understand the legal and regulatory barriers and gaps faced by a country and to reach a consensus on how to prioritise assistance to the country. Once a country has undergone the RDT process, it should be in a position to determine whether it has an enabling, proportional, risk-based regulatory system.

What do we mean by improved financial inclusion and DFS?

The number of adults in the world without access to financial services has dropped from 2.5 billion in 2011 to 2 billion in 2015;³ 62 per cent of adults now have some form of financial services account compared to 51 per cent three years ago.⁴ However, there is still much to be done to financially include the remaining 2 billion people. DFS matter primarily because their usage promotes financial inclusion.⁵ Financial inclusion in turn matters as a means to an end, not an end in itself; access to formal financial services provides economic empowerment and raised standards of living for individuals and broader benefits for economic development.⁶

Aside from recent innovations such as mobile money, **DFS are not new**. Similarly, the digital platforms (or retail payment systems) used to access these digital services are not new, aside from the platforms used to process mobile money payments. The mobile money payment services give

¹ The regulatory regime refers to both the tools (legislation/regulations/guidelines) and the use of these tools (oversight/supervision/market-monitoring).

² Stefan Staschen, 'Inclusion, Stability, Integrity, and Protection: Observations and Lessons for the I-SIP Methodology from Pakistan' (Report, CGAP, 2014) 42; 'Financial Inclusion and the Linkages to Stability, Integrity and Protection: Insights from the South African Experience' (Report, CGAP, 2012) (We refer these two CGAP documents together as 'CGAP I-SIP Methodology').

³ Jake Kendall and Leora Klapper, 'Global Findex: The main facts and figures you should know about financial inclusion around the world' (May 2015) <<http://www.impatientoptimists.org/Posts/2015/05/Global-Findex-The-main-facts-and-figures-you-should-know-about-financial-inclusion-around-the-world#.V2tqU3opoWQ>>.

⁴ Asli Demirguc-Kunt et al, 'The Global Findex Database 2014: Measuring Financial Inclusion around the World' (Policy Research Working Paper No 7255, World Bank Group, April 2015) 4.

⁵ DFS refer to any financial service accessible using digital platforms. These financial services include traditional products such as basic transaction accounts, savings, credit, insurance and investment, and more recent innovative products such as mobile money. Digital platforms refer to platforms used to conduct transactions and access financial services – these platforms are essentially retail payment systems. Examples of digital platforms include card payment networks, electronic funds transfer systems and mobile money systems. DFS contrast with cash payments or traditional financial services accessed through physical means, such as visiting a bank branch or writing a cheque. DFS providers include banks, other authorised financial institutions, mobile network operators and other payments service providers. These providers make use of consumers' access to telecommunication networks and the internet using devices such as mobile phones, tablets and point-of-sale devices. These providers also rely on agent networks as opposed to bank branch networks.

⁶ Izabela Karpowicz, 'Financial Inclusion, Growth and Inequality: A Model Application to Colombia' (Working Paper No WP/14/166, International Monetary Fund, September 2014); Era Dabla-Norris et al, 'Identifying Constraints to Financial Inclusion and Their Impact on GDP and Inequality: A Structural Framework for Policy' (Working Paper No WP/15/22, International Monetary Fund, January 2015); Alicia García-Herrero and David Martínez Turégano, 'Financial Inclusion, Rather than Size, is the Key to Tackling Income Inequality' (Working Paper No 15/05, BBVA, February 2015).

rise to the issue of how to protect the underlying stored value if, as is usually the case, it is not a deposit in the traditional sense. However, aside from this funds protection issue, DFS and the systems they are accessed through are not new.

An ideal state of financial inclusion, as pointed out by the Bank for International Settlements (BIS) and World Bank Group, would require 'universal access to a wide range of financial services that can be used when and as needed.'⁷ Any regulatory initiative that aims to advance financial inclusion, therefore, must first take into account the objective of promoting universal access to transaction accounts and focus on addressing difficulties and barriers which may prevent the achievement of that objective.

Payment services are fundamental to universal access as they not only serve as 'gateways to other financial services'⁸ but they also facilitate the efficient provision of those services.⁹ Therefore, the existence of 'efficient, accessible and safe retail payment systems and services'¹⁰ is considered a precondition for advancing financial inclusion. At a minimum, this means all individuals and businesses should be able to access and use at least one transaction account operated by a regulated payment service provider to perform most of their payment needs, safely store some value, and use that account to access other financial services.¹¹

Why focus on improved policy development for advancing financial inclusion?

Universal access to transaction accounts must be addressed from several angles with the involvement of a range of stakeholders. There are no straightforward solutions. There is no silver bullet. Strong and clear commitment from all public and private stakeholders, adequate legal and regulatory frameworks, robust information and communications technology infrastructure, needs-satisfying transaction account products, readily available access points, greater financial literacy and sustainable volumes of payment streams are all core for financial inclusion.¹² Not all of these core elements are within the financial regulator's sphere of influence. In particular, the most basic and fundamental infrastructure required for successful and sustained financial inclusion such as electricity, telecommunication networks, roads and public transport are certainly not within the control of financial regulators.

Financial regulators are typically well aware that there is only so much they can do to promote successful financial inclusion strategies. They typically know they must work to implement the strategies in parallel with other government agencies responsible for addressing the broader key infrastructure issues on which the success of financial inclusion relies.¹³ This RDT and the process for applying it, does not purport to solve these challenges of public policymaking in developing countries. However, what it does do is equip financial regulators to be the local champions in their respective countries for driving successful and sustained financial inclusion by having these regulators take a good look at their regulatory regimes and policy development processes in order to identify any barriers or gaps which could be holding up the long march towards advancing financial inclusion.

Financial regulators also know that the advances in financial inclusion in recent years have been supported by the rising global penetration of digital technology.¹⁴ For this reason, these regulators

⁷ BIS and World Bank Group, 'Payment Aspects of Financial Inclusion' (April 2016), 4.

⁸ Ibid 2.

⁹ Ibid 4.

¹⁰ Ibid 2.

¹¹ Ibid. Transaction accounts are defined to include accounts (including e-money and prepaid) held with banks or other authorised and/or regulated payment service providers, which can be used to make and receive payments and to store value, p70.

¹² Ibid 56-61.

¹³ Other government agencies include, but are not limited to, Ministry of Finance, telecommunications regulators, agencies in charge of ICT policy, and regulators for nationwide competition and consumer protection matters.

¹⁴ It is recognised by SSBs that the potential for financial products to be offered via digital platforms is significant. These developments introduce new market participants and allocate roles and risks in different ways as compared with traditional delivery of retail financial services. Global Partnership for Financial Inclusion, 'Global Standard-Setting Bodies and Financial Inclusion: The Evolving Landscape.' (White Paper. Washington, D.C.: CGAP. License: Creative Commons Attribution CC BY 3.0, March 2016) 9-10.

are already adopting an advocacy role in order to mobilise other regulators and government bodies involved in financial inclusion matters to focus on the development of 'DFS ecosystems'.

Focusing on the 'DFS ecosystem' is really about working out how to promote the use of DFS to improve financial inclusion.¹⁵ Financial regulators are well aware that digital technology can be used to provide financial services to remote regions in emerging markets and make a difference in people's lives and improve their standards of living. However, the new providers and newly banked customers that come with the adoption of digital technology for financial services means financial regulators tend to be alert not only to the tremendous opportunities, but also the possible risks and hazards.¹⁶

This means that in emerging markets, where the regulators' roles are already stretched in terms of limited resources and capacity, the regulatory environment is now becoming more challenging and complex as a direct result of the expanded range of products and services available to the previously unbanked or underbanked consumers, and the fact that these products and services can now be provided by a wide range of entities and not simply banks or non-bank financial institutions. While the opportunities with digital technology for financial inclusion are immense, financial regulators require guidance and support on how best to respond to these rapid changes. The application of the RDT and the resulting observations and findings provide a framework that offers this guidance and support.

What philosophy underpins the RDT and its application?

Security and efficiency of the retail payment market are typically two of the principal objectives pursued by the regulator.¹⁷ The former ensures the market's trustworthiness and enhances people's acceptance and uptake of retail payment services provided by nonbanks.¹⁸ The latter is often achieved by reducing barriers to entry for new players. Regulators in different jurisdictions adopt different regulatory approaches to pursue these two objectives.

One approach could be described as proactive as it aims to predict future market developments and prescribe corresponding regulations *ex ante*.¹⁹ However, such an approach is likely to subject the market to the risk of innovation-stifling overregulation. Another approach is to 'wait-and-see' and 'let the market grow'. Under this approach regulators only act when specific market developments have emerged.²⁰ A third approach, which is gaining momentum in developed countries and can be considered as a sub-type of the 'wait-and-see' approach, is to implement a regulatory sandbox.²¹

Unlike the pure form of 'wait-and-see', a sandbox allows regulators to get involved in the early stages, not by *ex ante* and premature regulation, but by collaborating with firms to experiment with new products or services in a controlled environment. Current developments of regulatory sandbox often involve the granting of industry-wide or entity-specific waivers or the issuance of no-action letters.²² Notwithstanding that the term 'regulatory sandbox' only became popular very

¹⁵ This is also called 'digital financial inclusion' and is defined by the GPFI Markets and Payment Systems Sub-Group to refer 'broadly to the use of digital financial services to advance financial inclusion. Digital financial inclusion involves using digital means to reach financially excluded and under-served populations with a range of formal financial services suited to their needs, delivered responsibly at a cost affordable to the customer and sustainable for the providers.' World Bank Group's Payment System Development Group, BTCA, and AFI for the G20 GPFI, 'Innovative Digital Payment Mechanisms Supporting Financial Inclusion Stocktaking Report' (2015) 15 ('GPFI Stocktaking Report').

¹⁶ Digital technology facilitates market entry by new providers who innovate in the means by which traditional services are delivered. Similarly, the digital technology is accessible and used by people who may have limited experience with, financial services, let alone such financial services being provided digitally.

¹⁷ BIS, 'Innovations in Retail Payments' (May 2012) 37.

¹⁸ Ibid.

¹⁹ Ibid. As pointed out by the BIS, one example was the E-Money Directive of 2000 adopted by the EU. 'In hindsight, however, this measure has turned out to be a barrier to innovation by setting overly strict legislative hurdles.' That directive was consequently revised in 2009 to allow for less stringent requirements.

²⁰ Ibid.

²¹ The 'regulatory sandbox' in the context of financial services regulation was arguably first proposed by the UK's Financial Conduct Authority in its report entitled 'Regulatory Sandbox' published in November 2015. Financial Conduct Authority, 'Regulatory Sandbox' (November 2015) < <https://www.fca.org.uk/your-fca/documents/regulatory-sandbox> >. This approach is currently tested and practised in a number of markets such as Australia and Singapore. For instance, see ASIC, "Fintech: ASIC's Approach and Regulatory Issues", paper to the 21st Melbourne Money & Finance Conference (July 18-19, 2016) 10-12 ('ASIC Fintech Paper').

²² ASIC Fintech Paper, Ibid.

recently, similar outcomes have been engineered through the issuance of no-objection letters or the launch of regulatory pilot programs, on an ad hoc basis, in some developing countries for years.

On balance, we generally recommend the second or the third of these approaches as the price of overregulation is often very high. The potential drawback of these approaches is that when market developments occur, the regulators might not be able to react sufficiently swiftly.²³ Therefore, regular monitoring and routine assessment of the market conditions and regulatory capacity to respond are essential. Any guidance and support provided to regulators should therefore have as a key precondition a current assessment of market conditions and of regulatory capacity prior to applying the RDT. A focus on policy development which is data-driven and evidence based also provides the basis for an improved capacity of regulators to respond with policy reforms when necessary.

Where does the RDT fit with international best practices for financial inclusion?

There are numerous forums and tools now available to financial regulators to assist with the focus on developing and supporting DFS ecosystems. For example, the Alliance for Financial Inclusion provides assistance to countries launching national financial inclusion strategies and the Better Than Cash Alliance (BTCA) undertakes similar work and has, for example, developed general diagnostic tools such as the *Ecosystem Diagnostics Toolkit*.²⁴ There is also considerable work being done by international Standard-Setting Bodies (SSBs) to promote the integration of financial inclusion objectives into standards and guidance. This work is being led by the Global Partnership for Financial Inclusion (GPFI).²⁵ Most recently there has been the announcement from CGAP and the Citi Foundation of the “Citi Foundation Funded East Asia Digital Financial Inclusion Program”.²⁶ The RDT should be viewed as a support for these strategies and initiatives.

The RDT provides an analytical framework for conducting an improved policy development process which is firmly grounded in data-driven evidence-based research. The goals of this analytical framework can be summarised as:

1. Reduced barriers to entry for digital payment services and other retail financial services;
2. A level playing field and flexibility in the market to promote innovation;
3. An effective yet proportionate approach to consumer protection;
4. Sustained rapid growth and large scale volumes;²⁷ and
5. Access to market information for providers while ensuring security and privacy of customer data.

The RDT has been designed to help regulators realise these outcomes and be consistent with international best practice.²⁸ Nonetheless, the RDT does not presume that regulators in every jurisdiction will want to pursue all of these objectives, and the authors are conscious of the political factors present in different jurisdictions that may prevent regulators from pursuing any of these objectives.

²³ BIS, above n. 17, 38.

²⁴ See, eg, the Alliance for Financial Inclusion’s Financial Inclusion Strategy Peer Learning Group: *Financial Inclusion Strategy Peer Learning Group (FISPLG)*, Alliance for Financial Inclusion <<http://www.afi-global.org/about-us/how-we-work/about-working-groups/financial-inclusion-strategy-peer-learning-group-fisplg>>. The Better Than Cash Alliance has a number of toolkits available at: *Toolkits*, Better Than Cash Alliance <<https://www.betterthancash.org/tools-research/toolkits>>.

²⁵ Global Partnership for Financial Inclusion, ‘Global Standard-Setting Bodies and Financial Inclusion: The Evolving Landscape.’ (White Paper. Washington, D.C.: CGAP. License: Creative Commons Attribution CC BY 3.0, March 2016) <http://www.gpfi.org/sites/default/files/documents/GPFI_WhitePaper_Mar2016.pdf>. G20 High-level Principles for Digital Financial Inclusion have also been endorsed at the Hangzhou Summit.

²⁶ <http://www.cgap.org/news/cgap-launches-citi-foundation-funded-east-asia-program>, 12 September 2016.

²⁷ As pointed out by the GPFI Stocktaking Report, it is important to ‘have the capacity to scale up payment innovations and leverage their benefits for larger volumes of payments’ if innovations are to help advance financial inclusion. Above n 15, 14.

²⁸ For instance, Guiding Principle 2 of the BIS ‘Payment Aspects of Financial Inclusion’ Report states that ‘[t]he legal and regulatory framework underpins financial inclusion by effectively addressing all relevant risks and by protecting consumers, while at the same time fostering innovation and competition.’ This implies that consumer protection, innovation and competition are all important to the development of retail payment systems. Above n 7, 57-58.

It is important for financial regulators to be confident in the structure of their regulatory regimes and to review and revise these regimes in conjunction with the broader market systems approach.²⁹ Sound and responsive regulation is fundamental for providing people with the trust and confidence to use formal financial services and products. Trust and confidence is required for investors, providers and consumers to want to participate in the financial system.

This paper is organised as follows:

- Section 1, this section, is the background and introduction;
- Section 2 summarises the methodology for the RDT;
- Section 3 explains for which countries the RDT is most applicable and useful and our plans for rolling out the use of the RDT;
- Section 4 details the content of the RDT;
- Section 5 describes the method of applying the RDT for a particular country;
- Annex A accompanies Section 4 by detailing the Subject Domains and associated technical details which we recommend as the focal points for the review of regulatory regimes to identify barriers and gaps preventing the adoption of DFS;
- Annex B accompanies Section 5 and contains the Checklist for Documents/Information needed prior to commencing the Regulatory Diagnostic in any given country; and
- Annex C lists resources used in developing the RDT and this paper.

²⁹ Deena Burjorjee and Barbara Scola, 'A Market Systems Approach to Financial Inclusion: Guidelines for Funders' (Report, CGAP, 2015).

2. METHODOLOGY FOR THE RDT

The RDT provides assistance to financial regulators wanting to focus specifically on legislative and regulatory issues associated with DFS. The RDT begins with an assessment of the current market situation, where it is headed, and the regulator's objectives for the market.³⁰ Using this assessment as a guide for expected outcomes, the RDT then provides a **framework of analysis for regulators to use to assess their regulatory regimes** to identify barriers and/or remove gaps in the adoption of DFS.³¹

The RDT aims to support regulators navigating their way towards compliance with current standards of SSBs while simultaneously responding to the opportunities that DFS present for financial inclusion and economic growth. To this end an expected outcome of using the RDT is an improved capacity of regulators to promote **optimal linkages among financial inclusion, financial stability, financial integrity and consumer protection.**³²

Observations and findings from the application of the RDT will also focus on whether there is a data-driven evidence-based approach underpinning the policy development process. This will ensure there is an improved policy development process due to the identification of critical data gaps prior to the formalisation and endorsement of policy reforms.

Regulatory barriers and gaps are identified by:

- understanding in detail the policy and regulation development approach of the regulator and the importance of local context (discussed further below);
- using the RDT to systematically review all relevant legislation and regulation pertaining to DFS;
- gathering data and documents which support existing or planned policy;
- interviewing regulators to understand how policies and regulations are developed if there is an absence of data or other evidence; and
- interviewing relevant stakeholders to understand how they are affected by existing and proposed legislation and regulation (or lack thereof).

Barriers can include but are not limited to: prohibitions on new players piloting the provision of DFS without a licence; licensing arrangements for new players which serve to discourage new entrants; or weak or fragile regulatory capacity for the implementation and enforcement of well-intended regulation. Legislation and regulations to be analysed in the RDT include those related to banking and payments, and, more generally, policy and legislation that directly impact the uptake of DFS, including anti-money laundering, competition, data protection, data privacy and consumer protection laws and regulations.

³⁰ In addition to BTCA's Ecosystem Diagnostics Toolkit, the GPF I Stocktaking Report on 'Innovative Digital Payment Mechanisms Supporting Financial Inclusion' also provides a good conceptual framework that helps regularly assess market developments and new innovations. GPF I Stocktaking Report, above n 15, 11.

³¹ The regulatory regime refers to both the tools (legislation/regulations/guidelines) and the use of these tools (oversight/supervision/market-monitoring).

³² CGAP I-SIP Methodology, above n 2.

3. APPLICABILITY AND USE OF THE RDT

The RDT is designed for regulators who are implementing national financial inclusion strategies or who want to ensure the regulatory framework is conducive to the next generation of innovation in the DFS space.

The analysis requires regulators to first clearly articulate the current market situation and where the regulator wishes to position itself in relation to DFS. The Diagnostic Team, who is responsible for applying the RDT in a country, will then conduct interviews with regulators and stakeholders to understand the current policy making processes and establish whether there are gaps in the evidence by way of data or documentation which could support the policy and regulatory decisions. The RDT then focuses on the issues that will need to be addressed in order for the regulator to achieve its DFS goals. Regulators who have implemented national financial inclusion strategies should be able to identify readily the current market situation and how they want DFS to develop in their country.

This RDT is being designed for regulators to use as an objective means of assessing, reviewing and refining regulatory frameworks that support DFS. It is a tool to enhance regulatory capacity.

This paper reflects the RDT at this point in time. Consultations and further piloting of the RDT will see its refinement and revision going forward with the sole purpose of assisting regulators to support DFS ecosystems.

The RDT was trialled 'in-country' in 2016. With approval from the lead regulators, a summary of the diagnostic and recommendations for each trial country will be made public.³³ It should be noted that interviewees' responses will relate to a particular point in time and therefore any analysis and recommendations resulting from the application of the RDT must be read in the context of those responses and the time at which they were given.

³³ A lead regulator refers to the financial regulator responsible for overseeing the country's financial system, including the payments system, and whose regulatory measures would have direct implications for the development of DFS.

4. CONTENT OF THE RDT

The RDT has seven subject domains to capture the main regulatory issues connected to DFS. Each subject domain contains a subsidiary list of issues for regulators to consider when assessing how well their regulatory regime supports the development of the DFS ecosystem as envisaged by the regulator. These subject domains and subsidiary lists of issues have been compiled in consultation with UNCDF (including Mobile Money for the Poor (MM4P) and the Pacific Financial Inclusion Program (PFIP)), BTCA and Consultative Group to Assist the Poor (CGAP) and build on earlier versions of regulatory diagnostics.³⁴

Regulators are not expected to address each subject domain comprehensively in their regulatory regime. Rather, the subject domains are meant to provide regulators with a structured approach to assess their regulatory regime such that the main regulatory issues connected with DFS are considered and not inadvertently overlooked. Each country will have its own ideas about how the DFS ecosystem should be developed and this will affect how regulators consider their regulatory regime should address the various regulatory issues associated with DFS. This local context (e.g., regulation and market structure) is important to maintain relevance for the country applying the RDT. *In other words, the assessment using the RDT must align with the local definition of success and the regulator's vision and objectives.* The RDT does not seek to produce a consistent and generic approach to the regulation of DFS throughout the world. Regulations work best when they are organic and specific to the needs and realities of a country. The RDT is designed to assist a country to learn from the experiences of other nations, and international best practices. It is not designed, or intended, to dictate to a country how it should proceed. Through the data/evidence gathering exercise we will, in close collaboration with other development partners, be able to help the regulator decide which of the seven domains it might best address first. We hope the diagnostic exercise will also serve as an analytical basis to assist development partners to reach consensus on the priorities of different regulatory issues facing the country.

In summary the RDT seeks to encourage regulators to set and prioritise regulatory objectives in terms of how they want DFS to develop in their country, and using those objectives to then determine how far the current regulatory regime is away from those objectives. We refer to this as a regulator's level of 'regulatory preparedness' within each subject domain for promoting the DFS ecosystem as envisaged by that regulator.

³⁴ See Annex A and C of this Toolkit on the subsidiary issues and complementary resources for consideration. See also digital financial services diagnostics in West Africa: Tenzin Keyzom Ngodup, *Digital Financial Services Diagnostics in West African Fragile States Guinea, Liberia and Sierra Leone* (1 April 2016) UNCDF <<http://www.uncdf.org/en/digital-financial-services-diagnostics-west-african-fragile-states-guinea-liberia-and-sierra-leone>>.

The seven subject domains are:



1. Overall Regulatory Architecture

This domain aims to depict an overview of the country's DFS regulatory regime and helps identify and assess factors that give rise to barriers/gaps preventing the adoption of DFS in relation to dimensions of regulatory mandate, capacity and coordination.



2. Building the Ecosystem

This domain examines dimensions that concern the regulator's intention and capacity to implement enabling regulation so as to build a sustainable DFS ecosystem. These dimensions include competition, innovation, consumer demand, financial literacy, interoperability, partnerships, and public access to market data.



3. Protection of Funds

This domain assesses the country's regulatory regimes for depositor and e-money funds protection, and evaluates whether these regimes effectively protect customers' funds from insolvency, liquidity and operational risks.



4. The Use of Agents

This domain examines the existing regulatory and contractual arrangements with regard to the use of agents, the allocation of liability, and the management of credit, liquidity and consumer risk that may arise among the provider, agent and customer.



5. Consumer Protection

This domain assesses the effectiveness of the country's financial consumer protection framework in the following dimensions: regulatory mandate, industry codes, product disclosure, recourse mechanisms, use of agents and digital delivery of financial services. It is expected that in emerging markets a proportionate approach is taken, which means one that takes into consideration local context and the costs of the framework for regulators, providers and consumers are proportionate to the risks.



6. AML/CFT

This domain evaluates how well the country is doing in terms of balancing the implementation of proportionate anti-money laundering/countering the financing of terrorism (AML/CFT) measures and the promotion of financial inclusion. Dimensions assessed include the use of a risk-based approach, the adoption of Simplified Consumer Due Diligence (CDD), transaction monitoring and reporting and new approaches to AML/CFT.



7. Data Privacy

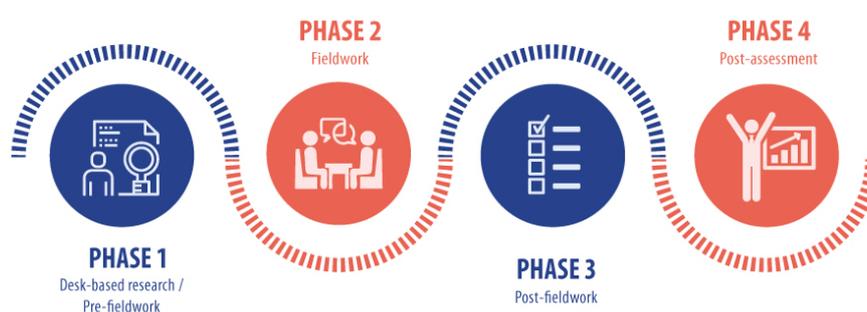
This final domain reviews the country's regulatory and contractual mechanisms concerning the protection of customers' data and privacy. Four dimensions are considered: the rights of individuals to privacy and data protection; the sharing of customers' financial information among financial services providers; the use of customers' credit information and dispute resolution; and recourse mechanisms for consumers to redress misuse of data and infringement of privacy.

Annex A details the subsidiary list of issues for each subject domain.

5. PROCESS FOR APPLYING THE RDT

The Diagnostic Team is responsible for applying the RDT in a country. For the pilot of the RDT in 2016, this team was the UNSW Digital Financial Services Research Team in coordination and consultation with UNCDF represented by MM4P in Africa and the PFIP in the Pacific. In addition to being used to carry out regulatory diagnostics by the Diagnostic Team, it is also expected that the RDT may be used by financial regulators to initiate and undertake their own assessment, with some support, as necessary, from outside consultants or local specialists of international development organisations. Self-diagnosis without outside support could be difficult, if not impractical, as the regulator who carries out the diagnostic may well be constrained by capacity issues and is likely to find challenging the coordination of matters beyond its control. The challenges in coordinating matters beyond a regulators' control must also be taken into consideration in the scope of recommendations arising from the diagnostic.

The method used to apply the RDT has four phases. These phases are outlined below.



Phase 1 - Desk-Based Research – Pre-Fieldwork

The Diagnostic Team undertakes research on the country context. The objective of this phase is to work with regulators to ensure a clear understanding of the current state of the market and the legal and regulatory landscape. The desk-based research will seek to clarify the specific policy and regulatory objectives for DFS (for example, those stated in the National Strategy) and the regulator's vision for the DFS ecosystem.

A context paper prepared by the Diagnostic Team will address: an overview of the financial sector, the country's financial inclusion policies, the existing legal and regulatory frameworks, the telecommunication infrastructure and mobile phone penetration, the general access to finance in the country, the state of play of DFS, challenges to DFS growth and initiatives to deepen DFS. The context paper will provide the background for the Diagnostic Team to have informed discussions during fieldwork, and, after extensive revision to incorporate all that is learned from the in-country fieldwork, will be incorporated into the final country diagnostic report.

A preliminary briefing will be scheduled with the lead regulators regarding the scope and purpose of the research. This will be done either via email exchange or a phone conference. One objective

of this preliminary briefing will be to start discussions on the regulatory objectives so as to later appropriately gauge the level of 'regulatory preparedness' (see discussion above in Section 4 on 'regulatory preparedness').

A checklist of required background information and documents is completed by the Diagnostic Team. Local facilitators (UNCDF and PFIP) typically also play a critical role by assisting with this task. The checklist is then forwarded to the relevant regulators so that they may assist in its completion with the objective of developing a thorough understanding of the country context (an example of this checklist is attached in Annex B).

Interviewees for fieldwork will be determined in this phase. Interviewees will be chosen in consultation with the lead regulator and are drawn from both government and private sectors. Private sector interviews will be sought with MNOs, banks, medium sized service providers, payment aggregators, agent network managers, e-money institutions, microfinance institutions (MFIs), etc. Phone consultation with local facilitators (such as UNCDF and PFIP) will be conducted.

The schedule of interviews should be set prior to the commencement of fieldwork. Spare time should be allocated to facilitate follow-up on particular issues with key stakeholders. Spare time must also be allocated for the inevitable need to interview additional relevant parties identified in the course of the fieldwork.

Interview questions will be developed based on the desk-research undertaken; and structured using the seven subject domains. Interview questions will also be aimed at helping the Diagnostic Team understand the regulatory-making process and evidence base behind intended regulatory initiatives. The subject domains and subsidiary list of issues are *not* expected to be systematically addressed. These domains and subsidiary issues serve to focus research in a structured and comprehensive manner; the interviewer refers to these issues to guide their questions and the issues may be highlighted throughout the course of the interview if relevant to the local context. **This is important because it is not expected that a regulator should address every subsidiary issue in each domain, nor should interviewees be given the impression that the lead regulator will be moving to a regulatory regime that looks to address every issue noted in the RDT.**

Phase 2 - Fieldwork

The Diagnostic Team will commence the fieldwork with an opening meeting with the lead regulator. The scope and purpose of the research will be explained again and clarification will again be sought on the regulator's understanding of the current state of the market and the specific policy and regulatory objectives for DFS (i.e. those stated in any National Strategy, including the data and documentary evidence underpinning the policies) and the regulator's vision for the DFS ecosystem. It is considered important to cover this ground again at the beginning of fieldwork and in a face-to-face meeting because this contributes towards ensuring the Diagnostic Team truly understands how the regulator perceives its current position and how it wants DFS to develop in its country.

The Diagnostic Team will then proceed to conduct interviews with the entities identified in Phase 1. The interviews aim to provide the Team with a deeper and more comprehensive understanding of existing regulatory approaches with respect to DFS and to identify regulatory barriers to further adoption of DFS and any gaps in current DFS regulation. Interviews with government bodies will focus on understanding their respective roles in relation to the provision of DFS. Private sector interviews will focus on understanding local issues, interviewees' business plans and any regulatory issues (perceived and actual) that may need to be addressed from an industry perspective in order to support market development.

Questions are asked and information is gathered throughout the interviews using the seven subject domains. As noted above (see Phase 1), the subject domains and subsidiary list of issues only exist to focus discussions in a structured and comprehensive manner as opposed to providing a 'laundry

list' of questions which the interviewers should strictly observe. Only questions and issues relevant to the local context will be raised.

Compiling responses to the diagnostic is a very interactive process involving interviews with a large number of participants. The interviews aim to provide a nuanced picture a country's local context so as to deepen the Diagnostic Team's understanding of existing regulations and how these regulations are being implemented from the perspective of the regulator and the regulated. *It is critical that the application of the RDT allows for robust consultation with industry stakeholders.*

It is important to engage with the legal counsel of the lead regulator early in the fieldwork. The legal counsel is crucial in providing an applied understanding of the relevant laws and regulations and up-to-date information and guidance on how to interpret the laws and regulations and how they are being applied in practice.

Prior to the completion of fieldwork, time will be allocated to meet the local champions of development partners and the lead regulator once more. The purpose of the second meeting with development partners is to report and reflect on what has been learned from fieldwork interviews. The purpose of the second meeting with the lead regulator is to discuss general matters of interest raised during the interviews and to confirm the regulator's view on how it wants DFS to develop in its country, and how it plans to coordinate with other regulators and government bodies to move in that direction, given what has been learned from the interviews. It is likely that during the course of interviews, the interviewers will have gained a deeper understanding of the local context. The interviewers should be in a better position to understand gaps in data-driven evidence and reasons for the barriers and gaps in the existing regime. This deeper level of understanding should result in better discussions with local champions, including both development partners and regulators, to assist the lead regulator in identifying what needs to be done to achieve its desired position in respect of DFS.

Phase 3 - Post-Fieldwork

The Diagnostic Team assesses the information gathered against the understanding of the regulator's goals in relation to DFS. Time should be allocated for requesting extra information identified as necessary or clarifying issues raised in the interviews.

Observations and findings will be presented to the lead regulator and other key stakeholders with the focus on addressing barriers or gaps preventing the regulatory regime from supporting the realisation of the vision of the regulator. Gaps in data-driven evidence will be communicated to UNCDF for their further assessment and investigation. It may be that a discrete project is necessary, or another development partner or source of expertise needs to be brought into the process, to address these evidential gaps. The lead regulator will then be asked to decide upon the actions it wants to pursue and the means to be used to address the actions. A report will be prepared detailing the research findings and proposing the next steps for the regulator. This report will be submitted to the regulator for comment. This phase entails close collaboration between the regulator and the Diagnostic Team so as to ensure a clear understanding of the recommendations and the feedback from the regulator.

Phase 4 - Post-Assessment

This phase involves the preparation of a final report by the Diagnostic Team in consultation with the lead regulator. Ideally the final report is then presented for industry consultation and plans for implementation of the recommendations are formulated.

ANNEX A: RDT - SUBJECT DOMAINS AND SUBSIDIARY ISSUES FOR CONSIDERATION

Note: The subject domains and subsidiary list of issues are *not* expected to be systematically addressed. These domains and subsidiary issues serve to focus research in a structured and comprehensive manner. During an interview, the interviewer refers to these issues to guide their questions and to identify the issues that may be highlighted throughout the course of the interview if relevant to the local context. **This is important because it is not expected that a regulatory regime should address every subsidiary issue in each domain, nor should interviewees be given the impression that the lead regulator will be moving to a regulatory regime that looks to address every issue noted in the RDT.**

Subject Domain – Overall Regulatory Architecture

Dimensions	Issues for Consideration
Responsibilities of Regulators	<ol style="list-style-type: none"> 1. How does the law prescribe the lead regulator for DFS? 2. How are the responsibilities and objectives of each regulator defined in regulation? 3. What efforts are made to ensure market participants understand the responsibilities of the lead regulator for DFS? 4. Does the relevant regulatory framework accommodate DFS and financial inclusion generally?
Regulatory Mandate	<ol style="list-style-type: none"> 1. How are non-financial firms that wish to provide DFS treated? Do they need to be registered or licensed, or to establish a separate legal entity to seek registration or a licence to operate?³⁵ 2. What powers are given to regulators to review the activities of DFS providers (and their affiliated companies) to determine the risks such activities may pose to the safety and soundness of the supervised institution and the wider financial system?³⁶
Regulatory Capacity	<ol style="list-style-type: none"> 1. What resources and training in relation to DFS are provided to frontline supervisors? 2. Are supervisors responsible for overseeing multiple types of institutions? For example, is oversight and supervision activity-focused or provider/technology-neutral? 3. What is done with the reports received from regulated institutions? <ol style="list-style-type: none"> a) How is the information collated by the regulator (e.g. manually or automatically uploaded into databases)? b) How is the information analysed? c) How do supervisors follow-up on issues identified from information reported?

³⁵ Basel Committee on Banking Supervision, 'Guidance of the Application of the Core Principles for Effective Banking Supervision to the Regulation and Supervision of Institutions Relevant to Financial Inclusion' (Consultative Document, Bank for International Settlements, December 2015) 15.

³⁶ Ibid 15–17.

Regulatory Coordination	<ol style="list-style-type: none"> 1. What are the arrangements in place to ensure cooperation and collaboration among domestic and foreign authorities responsible for the regulation and supervision of DFS?³⁷ 2. What are the processes for cooperation and coordination between the payment system overseer and other regulatory authorities such as the prudential regulator, market conduct regulator, competition authority, financial consumer protection authority and the Ministry of Finance?³⁸ 3. What is the consultation process among the relevant authorities for the drafting of regulations and guidelines for institutions supervised by more than one authority?³⁹
Payments Oversight versus Prudential Supervision	<ol style="list-style-type: none"> 1. What is the role of payment system overseer with respect to the provision of DFS? 2. What laws govern the payment system and payment service providers (i.e., definition, registration and licensing requirements, and eligibility to be a payment service provider)? 3. Does payment legislation/regulation define retail payments to include e-money and agent networks? 4. What are the arrangements for coordination between prudential supervisors and payments overseers?

Subject Domain – Building the Ecosystem

Dimensions	Issues for Consideration
Regulatory Intention	<ol style="list-style-type: none"> 1. What is the regulator’s involvement in supporting the ecosystem for DFS? 2. What is the national strategy to coordinate financial inclusion efforts? 3. What regulatory actions have been taken to promote agent networks?
Competition	<ol style="list-style-type: none"> 1. How is competition promoted? Are anti-competitive practices prohibited? Are there specific laws on the matter?⁴⁰ 2. How do regulations ensure that the incumbents do not create undue barriers to entry and that entrants can have equal access to information and infrastructure needed to provide DFS?⁴¹ 3. Are there regulations which prohibit rivals from colluding with each other with the purpose or effect of hindering the competitive process? 4. Do regulations define the role and power of financial, telecommunications and competition regulators in protecting and promoting competition in the DFS sector?⁴² 5. How is the issue of regulatory arbitrage between regulated and non-regulated providers of DFS being addressed?
Innovation	<ol style="list-style-type: none"> 1. Is the regulator structured such that its approach is flexible and it can promote or support innovation in DFS? (e.g., does there exist a unit within the financial regulatory agency that serves as the agency’s central point of contact on DFS promotion or innovation more generally, providing a channel of communication so industry can seek guidance from the regulator prior to product development and launch? Are there mechanisms which allow institutions to test new products and services on a small scale prior to licensing being required? Is there a focus on streamlining the licensing procedures for providers of DFS?)⁴³ 2. What steps have been taken to ensure the regulator fosters an internal culture supportive of innovation in DFS?⁴⁴ For example, does the regulator have a sufficient level of background knowledge, adequate staffing of subject domain experts (or fiscal resources to hire these experts to do the evaluation for them) and proper continuing education/training to help equip regulators with the expertise needed?

³⁷ Ibid 6–7.

³⁸ Ibid 7.

³⁹ Ibid 7, 35.

⁴⁰ CGAP, ‘Branchless Banking Diagnostic Template’ (February 2010) 21.

⁴¹ See Ibid 22.

⁴² Ibid.

⁴³ Office of the Comptroller of the Currency, ‘Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective’ (March 2016) 5-6.

⁴⁴ Ibid 6-7.

Consumer Demand	<ol style="list-style-type: none"> 1. Is there any, or might there be, dialogue between the financial regulator and Treasury to encourage the use of digital financial systems for G2P payments given that G2P payments are a particularly effective means of introducing consumers to DFS? 2. What research or surveys have been undertaken by the regulator to enhance their understanding of customer/end-user demand and perceptions of DFS? 3. Is there any source of data or requirements of data to facilitate an understanding of the evolution of DFS among regulated and non-regulated providers?
Financial Literacy	<ol style="list-style-type: none"> 1. Do regulators see a need to support financial literacy programs to drive regular use of DFS products? 2. Are regulators actively involved in financial literacy programs? 3. What mechanisms exist to improve financial literacy on issues of DFS? 4. Does the regulator encourage providers to incorporate financial literacy training in product launches?
Interoperability	<ol style="list-style-type: none"> 1. How does the regulator view its role in facilitating interoperability among DFS providers? 2. Are there regulator-driven industry discussions or arrangements in place for exploring interoperable and interconnected systems (i.e. interoperability of platforms and interoperability of agents)?
Partnerships	<ol style="list-style-type: none"> 1. What methods does the regulator use to assess partnerships between banks and non-banks in providing and delivering DFS? 2. How does the regulator expect regulated entities to manage collaboration risk arising from partnerships?
Access to Market Data	<ol style="list-style-type: none"> 1. Which institution collects data relating to financial inclusion?⁴⁵ Is the current data collection framework supported by adequate resources?⁴⁶ 2. Does the current data collection framework on financial inclusion separately identify financial services delivered via digital means? If yes, what types and of data have been collected and from what sources? 3. Do regulators use the data collected to measure the success of the strategies to support DFS and financial inclusion? 4. Does the current data collection framework cover non-bank financial service providers such as post offices, microfinance institutions, savings groups or telecommunications companies? If yes, what types of data have been collected and from which sources?⁴⁷ 5. Does the current data collection framework face any challenges? (e.g., the cost of demand-side surveys, or the data collecting process being insufficiently integrated with national statistical frameworks.)⁴⁸ 6. Is there a need for the regulator to share data with other government bodies and supervisory authorities?⁴⁹ If yes, is the data currently being shared and through what arrangements? 7. Do regulators disclose or publish the data they have collected? If yes, through what medium and format? 8. Might there be excessive requirements for provision of data? Have DFS providers been overwhelmed with data requests? Have the purpose of data requirements such as risk analysis or industry evolution been established?

⁴⁵ Irving Fisher Committee on Central Bank Statistics, 'Measures of Financial Inclusion – A Central Bank Perspective' (Bank for International Settlements, 2016) 33 (Appendix 2).

⁴⁶ Ibid.

⁴⁷ Ibid 36.

⁴⁸ Ibid 33.

⁴⁹ Ibid 39.

Subject Domain – Protection of Funds

Dimensions	Issues for Consideration
Deposits	<ol style="list-style-type: none"> 1. Do regulations clearly define the scope of deposits and what types of entities may engage in deposit taking? 2. Is there a deposit insurance scheme? If yes, does it cover customers' e-money funds? 3. Are there different levels of licensing, registration and supervision based on different risk levels as a result of the nature of the deposit taking entity, account balance limits or channels through which deposits are taken?
E-Money	<ol style="list-style-type: none"> 1. Do regulations clearly define e-money and what types of entities may engage in e-money issuance? 2. Is there a regulatory regime in place for non-banks to issue e-money? 3. Are there legal or regulatory arrangements in place to safeguard customers' funds from insolvency, liquidity and operational risk of the e-money issuer? Has there been consideration of adopting approaches other than relying on trust arrangements to protect funds such as the EU approach – choosing either to ensure funds are not commingled or funds are covered by an insurance policy?⁵⁰ 4. What is the regulator's view on how the interest accrued on the e-money float should be used?

Subject Domain – Regulating the Use of Agents

Dimensions	Issues for Consideration
Use of agents	<ol style="list-style-type: none"> 1. Do retail payment regulations allow banks and payment service providers to provide payment services through agent networks? 2. Are regulatory obligations with respect to the use of agents placed on the principal rather than the agent itself? 3. Do regulators concern themselves with what type of entities may be agents? 4. Does a notification regime exist for the use of agents, in contrast to a registration or licensing regime? 5. Do regulations allow for agent- sharing between different DFS providers? 6. Does the regulator have or use inspection powers for agents? 7. Does the regulator receive reports on agent activity? What is the frequency of such reporting?
Agent services	<ol style="list-style-type: none"> 1. Do regulations require principals to be responsible for the actions of their agents in relation to DFS? 2. How does the regulator satisfy itself that credit or liquidity risk which may arise between the provider, agent and customer is adequately managed?
Agent compensation	<ol style="list-style-type: none"> 1. Is there any regulatory or contractual arrangement in place to ensure that agents are not able to add additional fees and charges to customers' transactions?

⁵⁰ For example, Article 10 (1) of the Revised Directive on Payment Services (PSD2) provides that 'The Member States or competent authorities shall require a payment institution which provides payment services as referred to in points (1) to (6) of Annex I to safeguard all funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions, in either of the following ways: (a) **funds shall not be commingled at any time with the funds of any natural or legal person other than payment service users on whose behalf the funds are held** and, where they are still held by the payment institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, **they shall be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets as defined by the competent authorities** of the home Member State; and they shall be insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of insolvency; (b) **funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution**, which does not belong to the same group as the payment institution itself, for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.' Full text of the PSD2 available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L2366>.

Consumer Protection	<ol style="list-style-type: none"> 1. Are agents provided with training in relation to any consumer protection and disclosure requirements which apply to their principal – be it either a bank or non-bank? Are they required to explain the mechanisms for redress? 2. Do agents play a role in enhancing consumers' financial literacy for DFS?
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Subject Domain – Consumer Protection

Dimensions	Issues for Consideration
Mandate	<ol style="list-style-type: none"> 1. Does the responsibility for consumer protection rest with one authority? 2. Does the authority have a clear consumer protection supervisory mandate for each type of DFS provider? 3. Does the authority have powers to carry out enforcement actions? 4. How does the authority undertake market monitoring, off-site supervision, and on-site supervision? 5. If there are different authorities in charge of consumer protection matters, how do they coordinate enforcement mechanisms and the creation of a level playing field?
Industry Codes	<ol style="list-style-type: none"> 1. How does the regulator make use of existing industry codes? For example, the regulator may ask regulated entities which codes they have signed up to and to demonstrate how they are complying with those codes.⁵¹
Disclosure	<ol style="list-style-type: none"> 1. Is clear product disclosure assessed by the regulator? 2. Do regulators seek to ensure that product disclosure makes it clear who consumers approach for recourse?
Recourse	<ol style="list-style-type: none"> 1. Are DFS providers required to have a dedicated internal complaints handling department and to publish contact details and procedures for complaints handling? 2. Are DFS providers required to record complaints received from consumers and their outcomes? If yes, are DFS providers required to report these details to the regulator? 3. Is there an ombudsman, or a similarly independent body, with whom consumers can lodge complaints? 4. Are procedures for recourse clear, easy to understand, available and affordable? 5. Are recourse mechanisms regularly tested or used?
Agents	<ol style="list-style-type: none"> 1. How do consumer protection arrangements apply to agents?
Digital Delivery	<ol style="list-style-type: none"> 1. How do consumer protection requirements extend to digital methods of delivering financial services? 2. Should supervisory arrangements include reviewing business continuity plans to minimise disruptions due to technology and infrastructure problems?

Subject Domain – AML/CFT

Dimensions	Issues for Consideration
Risk-Based Approach	<ol style="list-style-type: none"> 1. How do regulations provide for the use of a risk-based approach to implementing AML/CFT measures? 2. How does the regulator identify and assess the ML/TF risks posed by DFS?

⁵¹ Codes include the SMART campaign [Client Protection Principles](#) and GSMA's [Code of Conduct for Mobile Money Providers](#).

Remote Account Opening permitted	<ol style="list-style-type: none"> 1. Do regulations allow agents to open accounts for customers prior to providers' verifying identification documents?
Simplified versus Enhanced CDD	<ol style="list-style-type: none"> 1. Do regulations permit the use of simplified Consumer Due Diligence (CDD) where risks are lower? 2. Are identification, verification and monitoring less intensive and less formal under simplified CDD? 3. Are clear procedures in place for institutions to decide when simplified CDD can be used? 4. Should flexible or tiered KYC be allowed? 5. How are AML/CFT rules enforced through agents?
Transaction monitoring and reporting	<ol style="list-style-type: none"> 1. How does the regulator review providers' procedures for transaction monitoring, record keeping and reporting of suspicious transactions? 2. Is a systematic approach used for investigating information from suspicious transaction reports?
New approaches to AML/CFT	<ol style="list-style-type: none"> 1. What plans, if any, are in place with respect to using new technologies/approaches such as biometric identification to improve identification of ML/FT?

Subject Domain – Data Privacy / Protection

Dimensions	Issues for Consideration
Individual's Rights	<ol style="list-style-type: none"> 1. Do regulations respect and protect the rights of individuals to privacy and data protection?⁵² 2. Do regulations require consumer authorisation or consent for the collection, sharing and use of personal information by financial services providers and other non-bank DFS providers?⁵³ 3. How do regulations provide for individuals to be sufficiently informed about the processing and use of their personal data and about their rights?⁵⁴ 4. What mechanisms do regulations provide for an individual to object to the processing and use of information concerning him or her at any time on compelling legitimate grounds?⁵⁵ 5. How do regulators make customers aware of the issues regarding data privacy in the context of DFS?
Information Sharing	<ol style="list-style-type: none"> 1. How do regulations govern the use, storage and sharing of customers' financial information by banks, nonbanks, such as mobile network providers, or other types of non-financial institutions?⁵⁶ 2. How do regulations govern information sharing among banks and nonbanks?⁵⁷
Credit Information	<ol style="list-style-type: none"> 1. Is there a credit bureau to collect customer information and provide consumer credit information?⁵⁸ 2. Do regulations allow the collection of both positive and negative customer credit information and address the use of credit information by credit bureaus?⁵⁹ 3. Do regulations govern who can have access to credit bureaus' databases and on what terms?⁶⁰

⁵² European Data Protection Supervisor, 'Guidelines on Data Protection in EU Financial Services Regulation' (November 2014) 6-9.

⁵³ Ibid 13-15.

⁵⁴ Ibid 18-19.

⁵⁵ Ibid 20.

⁵⁶ CGAP, above n 40, 26.

⁵⁷ Ibid 25.

⁵⁸ Ibid 26-27.

⁵⁹ Ibid.

⁶⁰ Ibid.

1. Do regulations require DFS providers to retain records of all services and transactions undertaken for a reasonable period of time?⁶¹
2. How do regulations require DFS providers to implement appropriate measures to protect personal data against accidental or intentional destruction, alteration, unauthorised disclosure, and all other illegitimate forms of processing?⁶²
3. Are dispute resolution and recourse mechanisms in place for consumers to redress misuse of personal data and infringement of personal privacy? How do these mechanisms operate?⁶³

⁶¹ European Data Protection Supervisor, above n 52, 15.

⁶² Ibid 21.

⁶³ Ibid 22.

ANNEX B: CHECKLIST FOR DOCUMENTS/INFORMATION NEEDED PRIOR TO FIELDWORK

Note:

This Checklist is currently a draft version as it is part of a Regulatory Diagnostic Toolkit which is being refined with feedback from UNCDF (MM4P).

This Checklist is to be completed prior to fieldwork - FIRST by the Diagnostic Team undertaking the Regulatory Diagnostic and SECONDLY by the lead regulator for DFS.

Initial responses to this checklist have been completed, where possible, with information obtained from the Diagnostic Team's Desk-Based Research and other sources such as local facilitators, FinScope, WDI, FINDEX, etc.

Where responses require the attachment of additional information, please itemise this information using Annex numbers or hyperlinks if available online.

It is requested that the lead regulator for DFS coordinates with the relevant stakeholders to check, for accuracy and completeness, the initial responses completed by the Diagnostic team and complete the remaining items in this Checklist. Responses can be forwarded to the Diagnostic Team contacts below:

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Documents/Information Required	Response	Annex/Hyperlink	
Legal Documents	1. Laws and regulations (i.e. pertaining to Digital Financial Services (DFS), such as regulations that govern e-money, mobile banking or digital payment services) which the foregoing regulatory agencies administer.		
	2. Laws and regulations that govern consumer protection.		
	3. Laws and regulations that govern AML/CFT.		
	4. Laws and regulations that govern data privacy of customers in banking or finance.		
	5. Laws and regulations that govern deposit taking activities		
Key Organisations and Contact Details	6. Contact details for: - Regulator for banking; - Regulator for non-bank financial institutions; - Regulator for payments systems and payments service providers; - Regulator for mobile network operators; - Regulator for telecommunications; - Regulator for market conduct / consumer protection ; and - Regulator for competition.		
	7. Name and products of the main DFS providers in the country, along with contact details of the DFS provider staff who are in charge of the compliance, technical and marketing aspects for products and services.		
	8. Industry organisations – both government and non-government – with activities relating to DFS, along with contact details of key staff in these organisations.		
	9. Development partners involved in activities which may affect DFS.		
	10. Institutions (such as the postal service) permitted to provide money transfer services, if any, along with contact details of those in charge of compliance, technical and marketing aspects for these services.		
Strategic Planning related to DFS	11. Financial inclusion strategies or digital financial services strategies which have been undertaken in recent years.		
	12. Customer/end-user demand surveys which have been carried out on DFS.		

	<p>13. Retail payment systems and channels (e.g., agent network, e-wallets, and cards at POS) which are interoperable or are to be made interoperable (e.g., the name of the system, the type of transactions processed in the system, the level of interoperability, and the role of the regulator in facilitating the interoperability and any specific laws that empower the regulator to mandate interoperability).</p>		
Data	<p>14. Data:</p> <ul style="list-style-type: none"> a) Population; b) Rural population; c) Financial inclusion rate;⁶⁴ d) Bank account penetration;⁶⁵ e) Gross Domestic Product per capita; f) Gross National Income per capita; g) Mobile phone penetration; h) Bank branches and percentage of which are in capital city; i) Bank ATMs and percentage of which are in capital city; j) Bank EFTPOS terminals and percentage of which are in capital city; k) Branchless banking agents and percentage of which are in capital city;⁶⁶ l) Electronic payments in relation to total payments (%; value); m) Payments by payer and payee (both electronic and non-electronic) (Government, Business, Person) (%; value); and n) Transactions (%; value) conducted via: <ul style="list-style-type: none"> i) internet; ii) mobile phones; iii) EFTPOS; iv) ATMs; v) agents; vi) branches; and viii) any other channels. 		

⁶⁴ Number and percentage of people in the country who use financial services of any type.

⁶⁵ Number and percentage of people in the country who use bank deposit accounts.

⁶⁶ This number provides an indication of points-of-access to branchless banking/digital financial services – however, there may be some double counting for agents who represent two or more banks, unless banks are able to indicate how many of their agents are exclusive at time of the data being collated.

ANNEX C: RESOURCES

- Louise Malady, Ross Buckley and Cheng-Yun Tsang, 'Regulatory Handbook: The Enabling Regulation of Digital Financial Services' (2015)
- CGAP, 'Branchless Banking Diagnostic Template' (2010)
- GPMI, 'G20 High-Level Principles for Digital Financial Inclusion' (2016)
- GPMI, 'Global Standard-Setting Bodies and Financial Inclusion: The Evolving Landscape' (White Paper, 2016)
- GPMI, 'G20 Principles for Innovative Financial Inclusion' (2010)
- John Villasenor, Darrell West, and Robin Lewis, 'The 2015 Brookings Financial and Digital Inclusion Project Report' (Brookings Institute Report, 2015)
- BIS documents:
 - Measures of Financial Inclusion – A Central Bank Perspective (IFC, 2016)
 - Payment Aspects of Financial Inclusion (CPMI & World Bank Group, 2016)
 - Guidance on the Application of the Core Principles for Effective Banking Supervision to the Regulation and Supervision of Institutions relevant to Financial Inclusion (BCBS, 2015) ('BIS Financial Inclusion Guidance')
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