

Short Notes on:

THE DIGITAL TURN OF BANKING

Introduction

Traditionally banks provided the function of acting as an intermediary between a client and endpoint chosen by such client. However, with the recent turn towards all things digital, banks now offer a variety of services at the touch of your fingertips. However, as welcome as easier access to services may be; defining the function of a bank in generalized terms has become a little more difficult.

The reason for this is that a large portion of the services offered by banks are more than just monetary transactions. Further to the variety of services; technological developments have now added virtual currencies to the mix.

In saying that, can South Africa's current legal and regulatory framework deal with the change?

Overview

Some of the technological changes to the banking sector include the following:

- Mobile Payments: payment facilities and mechanism offered and utilized on mobile phones.
- Blockchain: database and collection of information which provides numerous benefits to the banking sector.
- Artificial Intelligence: tailored online experiences, chat bots and enquiry boxes.

It is clear to see that the aforementioned functions and factors do not necessarily fit into the traditional ideas of what most people think a bank does. Banking law is mainly regulated in South Africa, by the Banks Act 94 of 1990 as amended, the Bills of Exchange Act 34 of 1964 as amended, the banking code of practice, the Financial Intelligence Centre Act and a number of other instruments depending on the particular area of banking law.

However, South Africa's banking regulations may be regarded as fragmented considering that applicable laws and regulations is spread out amongst numerous pieces of legislation¹, including consumer-based legislation and those described above.

Be that as it may, we have made steps towards incorporating international models² in order to allow us to better cope with financial crisis and the digitization of the banking sector.

In terms of the Financial Sector Regulations Act 9 of 2017; South Africa adopted the "twin peaks model" by regulating two bodies namely the Prudential Authority and the Financial Sector Conduct Authority.³

The adoption of the model sought to begin the process of consolidating South Africa's banking legal framework. In saying that however, there appears to be significant further reform on the horizon.

The Competition Commission recently published a paper indicating certain measures which may be implemented to promote the inclusion of "fintech" amongst others.⁴

Conclusion

Despite the aforementioned changes the ever-growing digital economy imposes new demands on financial institutions and services providers every day. Legislators and regulation writers will accordingly be required to respond with the necessary frameworks which allow for the mitigation of risk and fulfilment of obligations.

Contact and Attorney at SchoemanLaw for your legal needs.

¹ R Macleod (2019), "South Africa's Current Financial Regulatory Framework: Can We Bank On It?", Mondaq, www.mondaq.com Accessed on: 23 November 2020.

² R Macleod (2019), "South Africa's Current Financial Regulatory Framework: Can We Bank On It?", Mondaq, www.mondaq.com Accessed on: 23 November 2020.

³ D de Villiers, D Govender, E Madumo (2020), "Banking Regulations| South Africa", Global Legal Insights, www.globallegalinsights.com Accessed on 23 November 2020.

⁴ Business Tech (2020), "Regulations Should Allow Mobile Networks to Become Your Next Bank" www.businesstech.co.za Accessed on 24 November 2020.