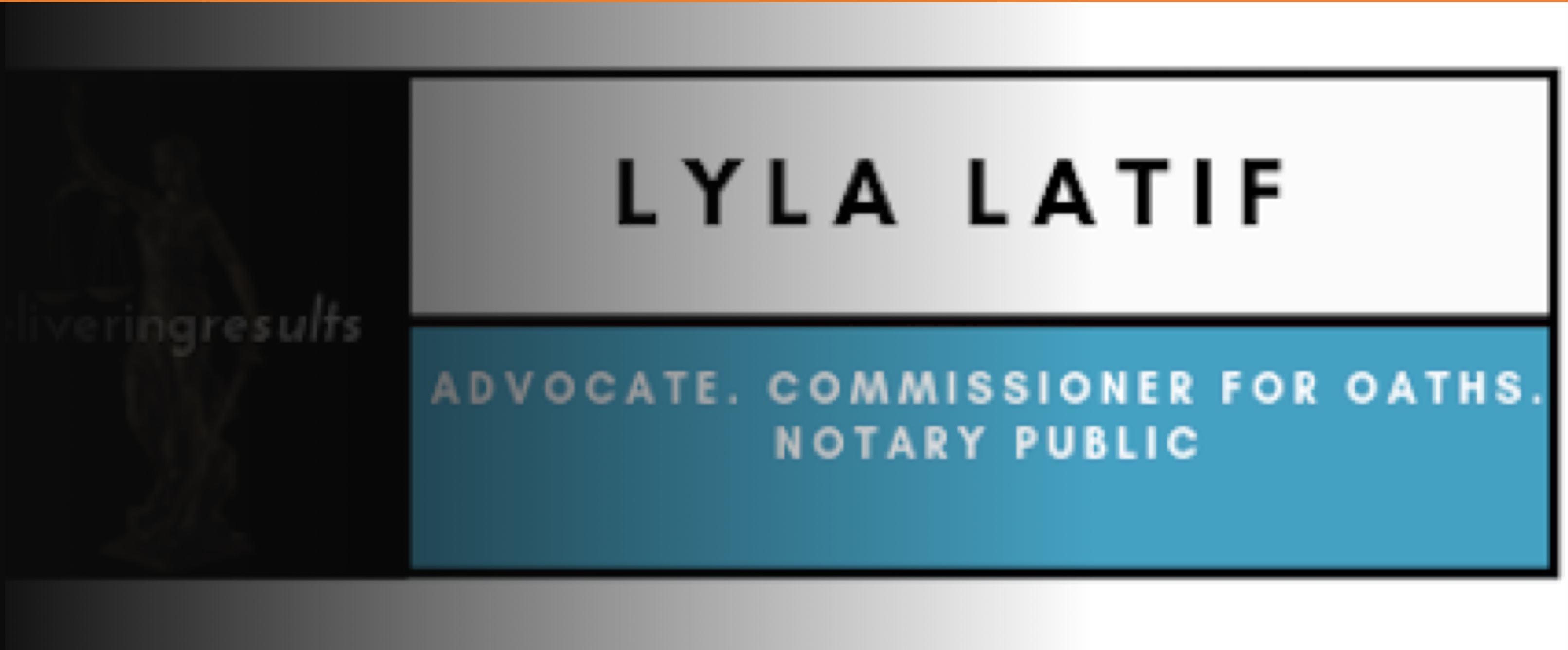
The Regulation and Taxation of FinTech in Africa



How the Working Paper on FinTech was Conceptualised

How is the Global South regulating and taxing FinTech

Are there similarities that justify advocating for a common African approach to FinTech regulation and taxation?

The Methodology Employed

- Purely legal perspective – regulation and taxation are creatures of the law, as such the doctrinal approach was adopted
- Grounded in the exploratory, descriptive and explanatory methodology
- Comparative case study of leading Global South FinTech jurisdictions (LDCs also featured)
    - Cluster 1: Africa – Cote d’Ivoire, Egypt, Ghana, Kenya, Malawi, Nigeria, Senegal, South Africa and Uganda (Mauritius and Zimbabwe also referred to)
    - Cluster 2: Latin America – Argentina, Brazil, Colombia, El Salvador, Mexico, Peru and Uruguay
    - Cluster 3: Asia – China, Singapore, Malaysia
- Research was supplemented by literature review and interviews conducted during PAC2019 in Nairobi
- Revised Working Paper was submitted in November 2019 following peer review.

Findings

Africa – General Overview

1. FinTech in Africa developed as a mobile based money transfer technology – African policies and laws drafted to respond to the disruption caused to the banking sector – no separate/distinct law, mere amendments and Central Bank guidelines on licensing FinTech companies

2. From mobile based to internet capture – example, Bitcoins and Crowdsourcing platforms, FinTech becoming Africa's modern financial system. But, no comprehensive policy at plural levels – hence tax free operations, less government interference

3. Financial inclusion of previously excluded -those with no bank accounts and those who couldn't access traditional credit

4. Not uniform across the continent – fast paced development due to digitalisation, globalization and financial liberation, countries infrastructure can't cope and support changes in the financial services sector – impact on regulation and tax

5. Regulation limited to clarifying the existing law as it applies in the context of new technologies, explaining the legal status of new concepts or determining which regulators are authorised to address FinTech disruption

Country Specific Approach - Regulation

AFRICA

Refer to pages 11-18 of the Working Paper

Cote d'Ivoire	Egypt	Ghana
Kenya	Malawi	Nigeria
Senegal	South Africa	Uganda

In General:

- No stand-alone statute on FinTech
- FinTech regulation tackled on a product by product basis (microfinance subjected to microfinance law, insurance services with insurance law)
- Separate framework for regulating and taxing FinTechs
- Regulation is fragmented between various state agencies, chances of regulatory arbitrage high and overlaps
- Regulatory sandboxes the way forward
- Regulated as a bank-led model

Specifics:

- West African states regulation at regional level, national autonomy limited
- Self-regulation (FinTech Association of Nigeria)
- Monopoly on providing credit and public offering in Senegal excludes crowdfunding platforms
- Reductionist regulation in South Africa (4 bodies) and regulation focused around AML, financial crime, data protection, cybersecurity and consumer protection
- Sectoral (procedure/substance) and rules based (behaviour) regulation in Uganda

Key points:

- The Nigerian collaborative approach following the Nigerian FinTech Association and the regulatory sandbox established by Kenya, show room to shift the aspect of regulation away from the umbrella of multiple bodies to the making of distinct and standalone laws.

- It is important to also note that the socio-economic realities (poor infrastructure, limited ICT coverage, low levels of financial literacy) will also impact the transition towards this shift. Advocacy on FinTech literacy is therefore crucial.

Latin America

Refer to pages 2—22 of the Working Paper

- Argentina
- Brazil
- Colombia
- El Salvador
- Peru
- Uruguay

In General:

- Similarities with African countries

Specifics:

- Mexico: specific FinTech law

Asia

Refer to page 23 of the Working Paper

- China
- Malaysia
- Singapore

In General

- FinTech units and regulatory sandboxes

Country Specific Approach - Taxation

So, is FinTech taxed in Africa?

- Cote d’Ivoire, Egypt, Ghana, Kenya, Malawi, Nigeria, Senegal, South Africa and Uganda charging transaction costs play a huge role in the taxation of FinTech related activities and services.
- Mobile money at the point of sale
- VAT (Egypt, Kenya, Nigeria) – greater focus has been here (see p.25-7)
- Excise tax (Kenya, Uganda, South Africa)
- Income tax/CGT (Nigeria)
- Tax holidays (Mauritius)

Key highlight

- FinTech industry in Africa is in its infancy, a minimum corporate income tax has not been contemplated. Considering that some FinTech companies may register as branches or subsidiaries of foreign FinTech companies, they may also, based on the bilateral agreements between the consenting states, be subject to dividend withholding tax. Or if they so choose to register with the Nairobi International Financial Centre (NIFC), the no tax would be incurred as the law establishing the NIFC permits for full repatriation of profits

FinTech Taxation in Latin America and Asia

- Most jurisdictions in Latin America do not have public positions on taxation of FinTech-related activities, and the few that do, rely primarily on existing legal frameworks.

- There is no comprehensive source for taxation-related information specific to the region. While a detailed tabulation of fiscal positions by jurisdiction is not available, there are general rules for tax treatment of FinTech-related activities applicable to the region, which may as well inform the African position (see p28-9)

- Tax exemptions for FinTech in R&D (Asia)

International Collaboration

Context:

- FinTech products can be used to facilitate tax fraud, process funds derived from the hidden economy or to mask the origin of funds (example; crowdfunding platforms)

- Regulatory sandboxes if not carefully regulated, monitored and supervised can lead to the creation of tax havens (example; Jersey)

- Promoting secrecy in digital currencies (Malta)

Focus:

- Collaboration to address tax justice and data privacy
- Operational risk from 3P service providers
- Mitigating cyber-risks

How:

- Interaction platform – GFIN, AFN
- Collective surveillance
- Encouraging information sharing
- Facilitating safe entry of new products, activities and intermediaries

(Refer to pages 31-32)

General Observations on FinTech in Africa

- dependent on socio-economic context
- Regulatory framework – uneven, fragmented, divergent and overlapping
- taxed similar to brick & mortar companies – either fully taxed, exempted or partially taxed, tax incentives for fintech admitted to regulatory sandbox, partial tax exemptions for start-ups and FinTech's invested in R&D
- FinTech not restricted to mobile based money transfer services, evolved (P2P)
- international collaboration around AML, KYC and cybersecurity
- regulatory sandboxes underexplored, exception: Egypt, Kenya, Nigeria, South Africa
- cacophony of overlapping laws and tax structure that remains analogue

Recommendations

Policy level

- innovation v pace of regulation
- comprehensive FinTech specific law on Reg & Tax
- stakeholders to coordinate on Bali FinTech Agenda proposals

Advocacy level

- strengthen regional collaboration as opposed to CAP
- proposal for bespoke FinTech laws
- working definition to streamline regulation and tax
- global reg framework on VAT

Open to questions, discussion and advise

Lyla Latif

Email: latif@lai-latif.com

Twitter: @LylaALatif