

Expert Meeting on

CYBERLAWS AND REGULATIONS FOR ENHANCING E-COMMERCE:
INCLUDING CASE STUDIES AND LESSONS LEARNED

25-27 March 2015

Central Bank of Kenya Paper

By

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The views reflected are those of the author and do not necessarily reflect the views of UNCTAD

EXPERT MEETING ON CYBERLAWS AND REGULATIONS



PRESENTED TO:

**UNITED NATIONS CONFERENCE ON TRADE
AND DEVELOPMENT**

By

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HEAD, NATIONAL PAYMENT SYSTEMS
CENTRAL BANK OF KENYA**

Wednesday, 25th March 2015

KENYA



Area: 582,650 sq km

Population: 43 million

GDP per Capita: USD 994.31

Currency: Kenya Shilling

Legal System: English Common Law system

No. of mobile money accounts: 20 million.

Mobile Phone penetration: 79.2 %

Internet usage / penetration: 78.2 %



AGENDA

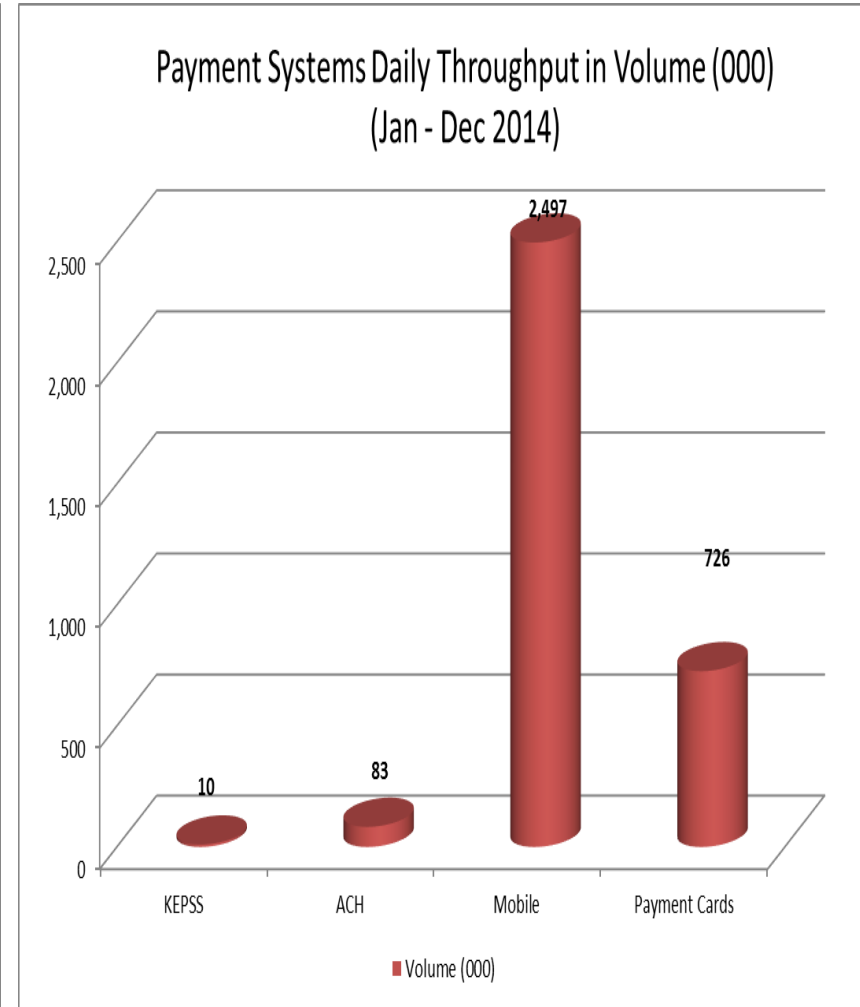
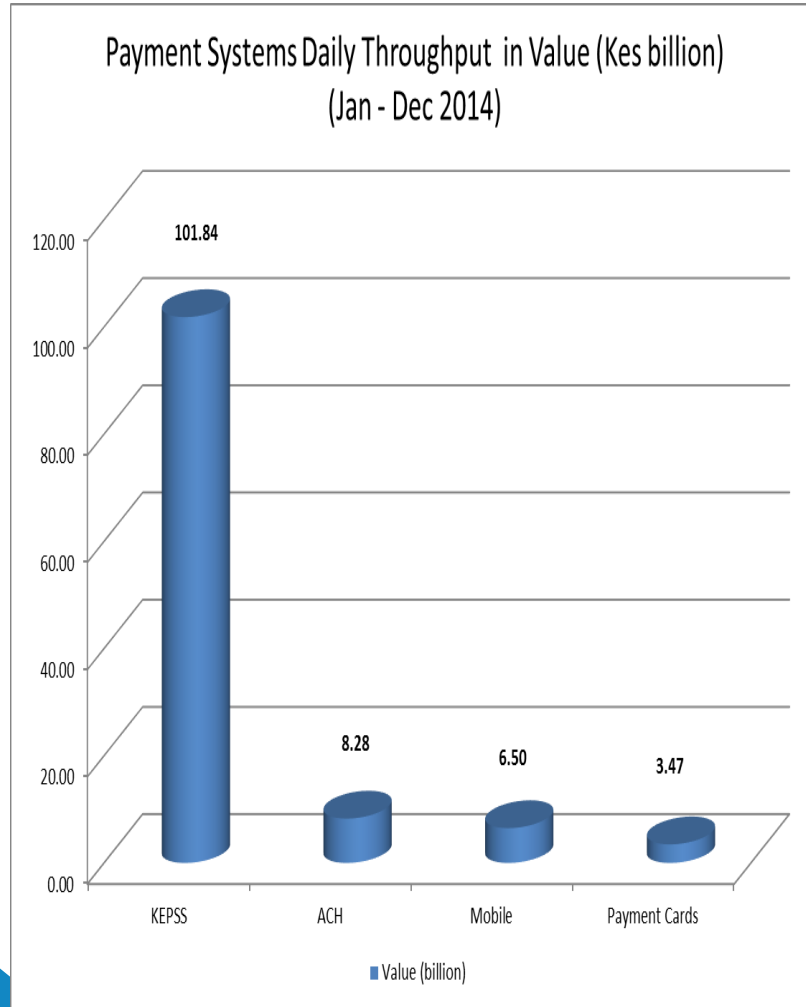
- 1. Payment Systems Background & Structure**
- 2. Modernization of Payment Systems**
- 3. Performance of Payment Systems**
- 4. Financial Inclusion**
- 5. Legal Framework**
- 6. Emerging legal Challenges**
- 7. Q & A.**

PAYMENT SYSTEMS BACKGROUND & STRUCTURE

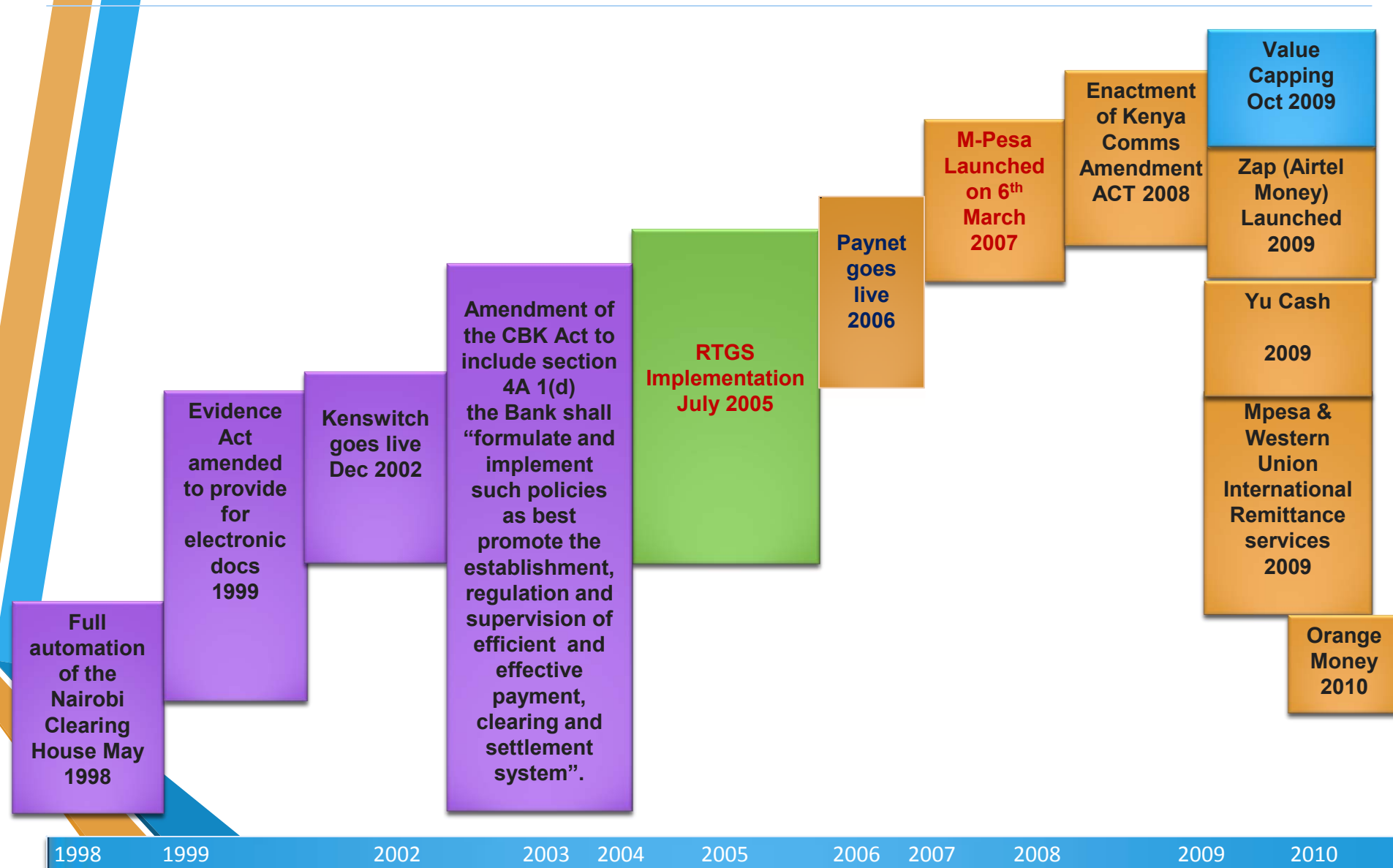
- Innovation in the financial services sector positively contributes to an efficient and effective payment, clearing and settlement system. In addition, ***innovation contributes to improved financial access which is a key attribute of the financial inclusion agenda.*** At an advanced level, innovation ultimately leads to an enriching customer experience that result in the satisfaction of the public good.
- The payment system architecture is subdivided into 4 broad areas:
 - KEPSS (Kenya Electronic Payment and Settlement System)
 - ACH (Automated Clearing House)
 - Payment Card Infrastructure
 - Mobile Payment Platform

Payment Systems Structure

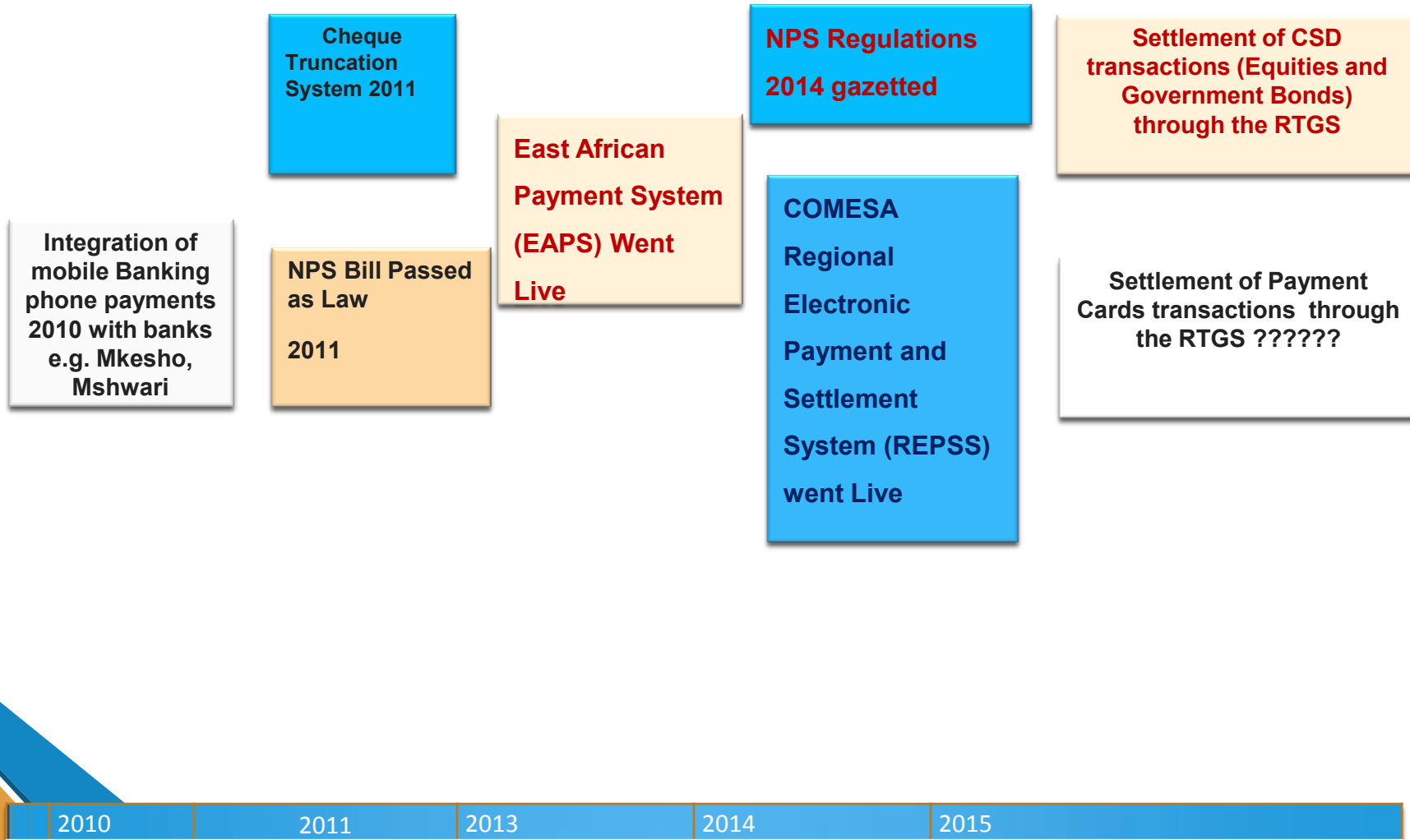
Classified into 2 in based on the value and volume throughput;



NPS MODERNISATION FRAMEWORK

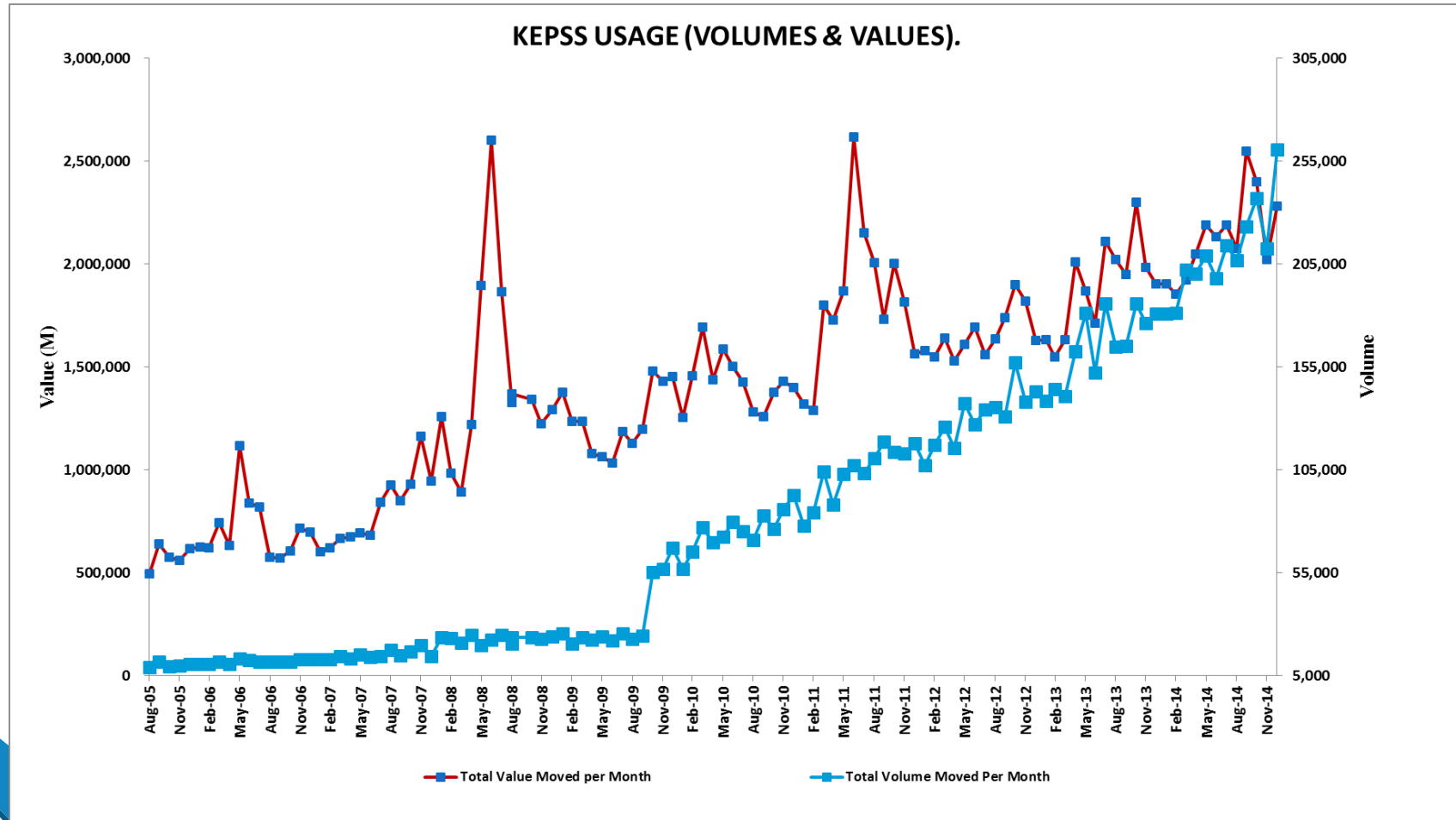


NPS MODERNISATION FRAMEWORK



KENYA ELECTRONIC PAYMENT AND SETTLEMENT SYSTEM (KEPSS)

Kenya's only systemic significant payment system used for large value and time critical payment instructions. It is a Real Time Gross Settlement system (RTGS).



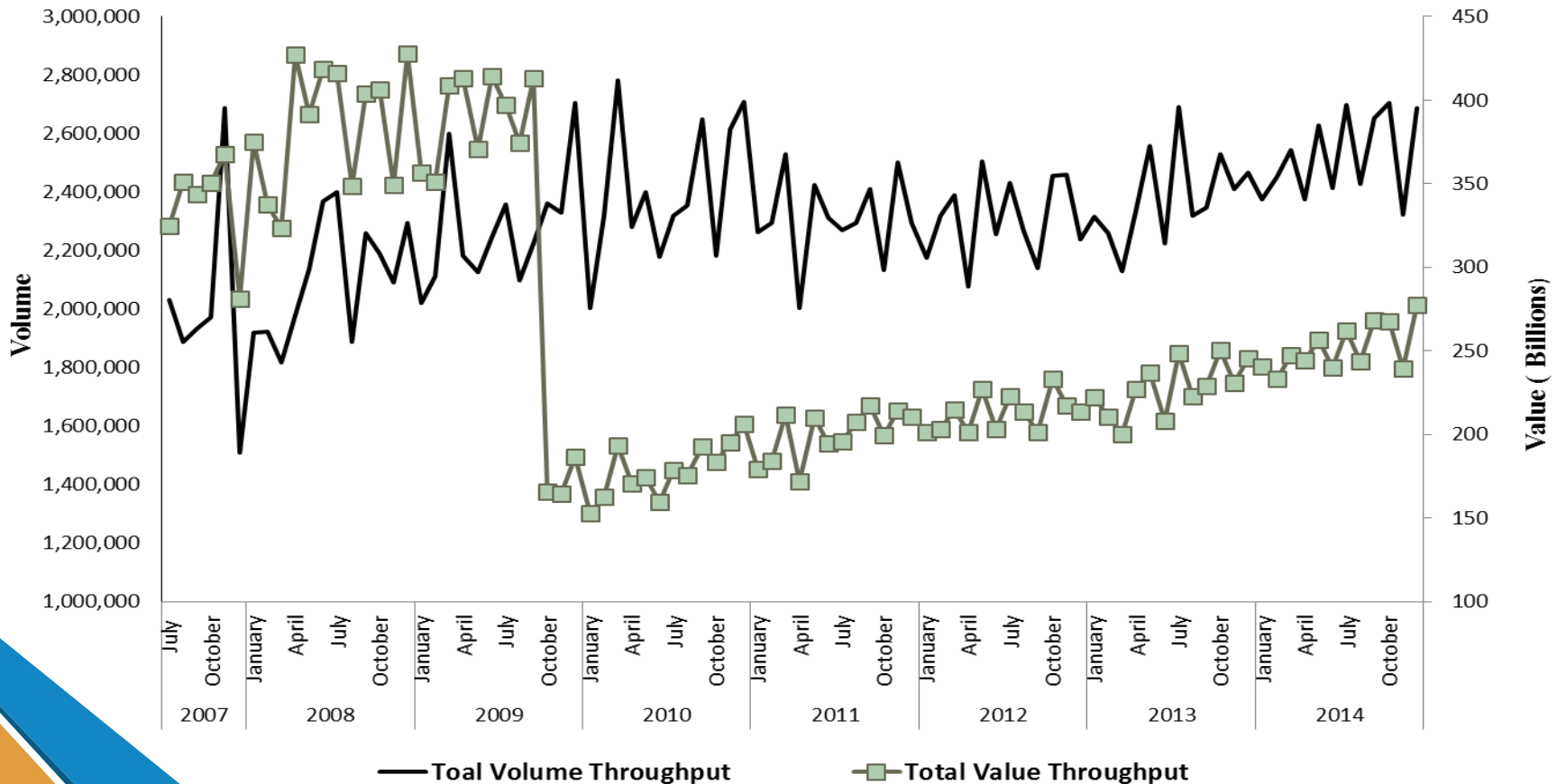
AUTOMATED CLEARING HOUSE (ACH)

This is used for clearing Electronic Fund Transfer instructions (EFT) and cheques.

Various modernization initiatives have been implemented;

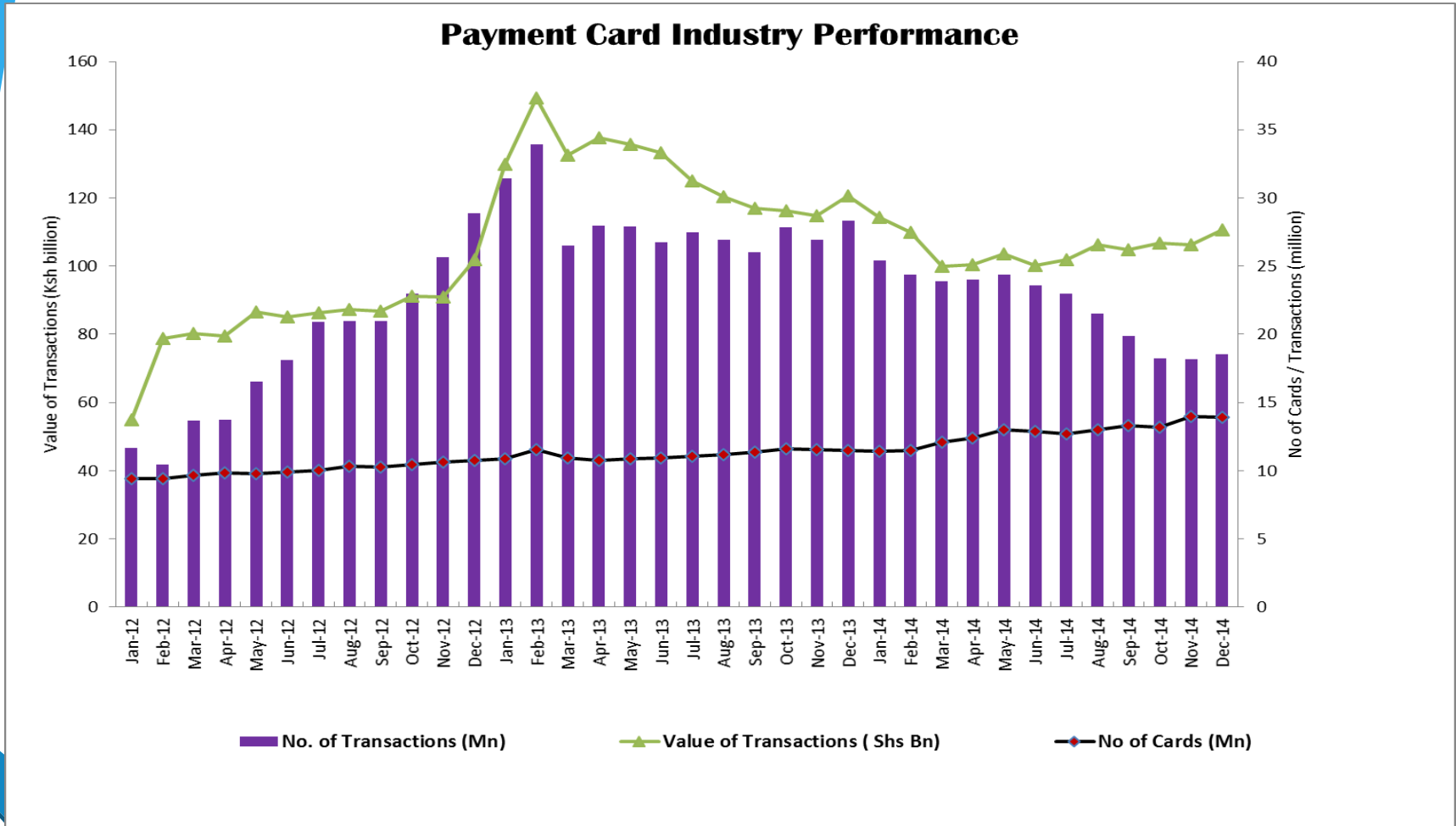
- ✓ Value capping 2009,
- ✓ Cheque truncation 2012 enabled T+1 clearing cycle

CLEARING HOUSE THROUGHPUT VALUES AND VOLUMES (CHEQUES & EFT)



PAYMENT CARD INDUSTRY (PCI)

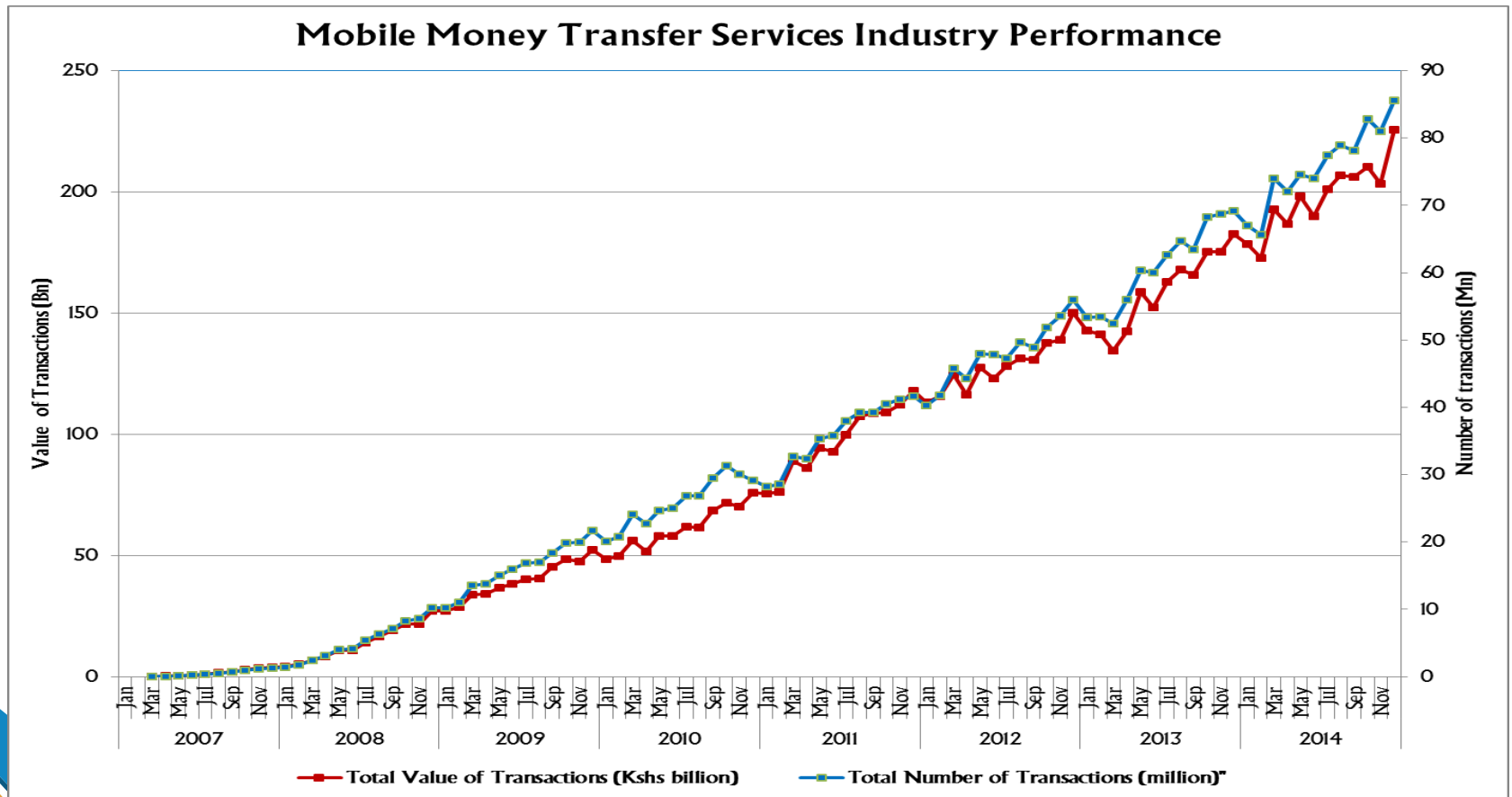
This industry continues to register growth with mixed fortunes. To reduce fraud, the industry is using EMV compliant infrastructure – cards, ATMs and POS.



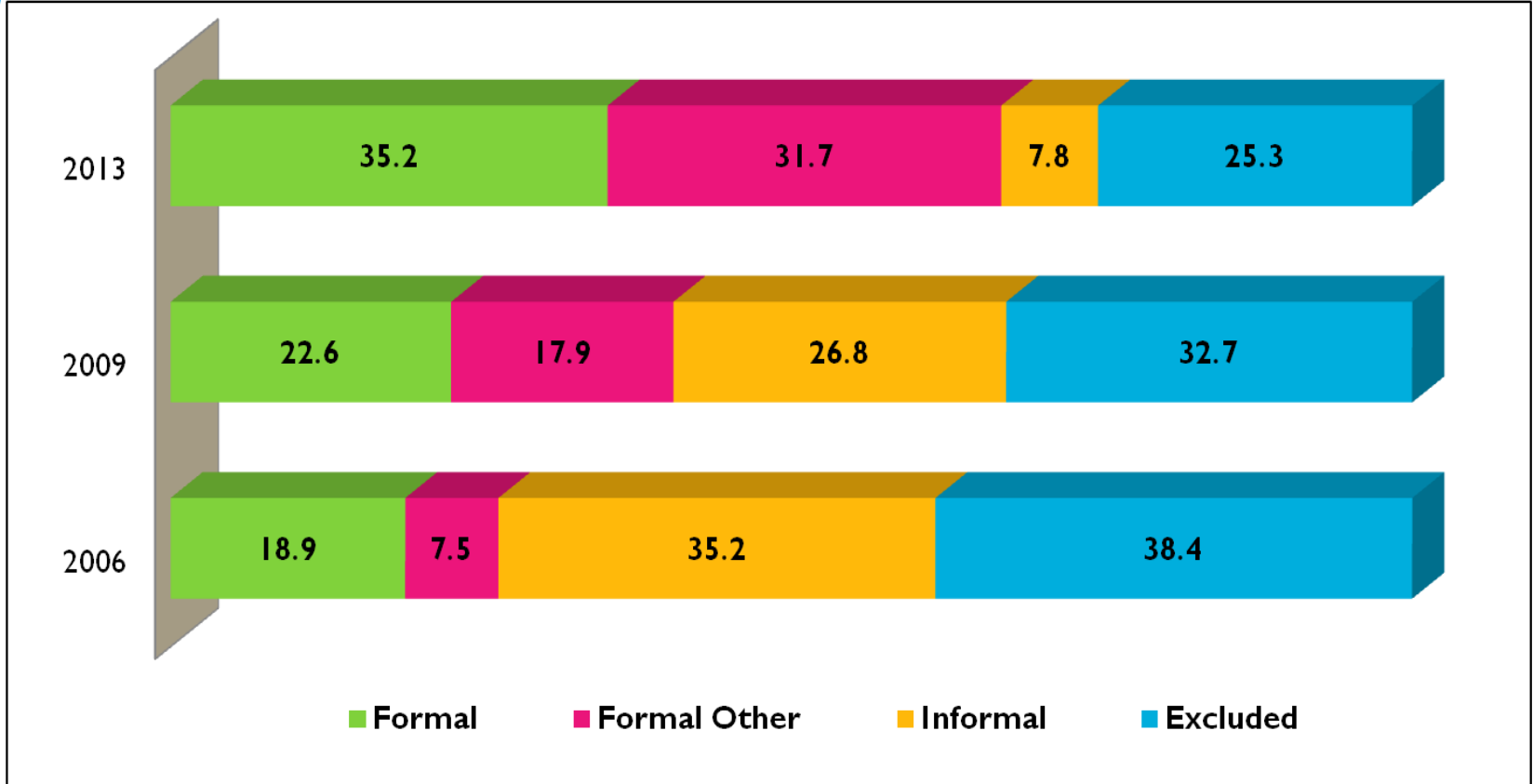
MOBILE MONEY TRANSFER SERVICES

This is the success story of the Kenyan retail payments. It has continued to grow significantly since inception and has revolutionised the Kenyan economy. Partnerships have been forged in all industries with Mobile payment service providers ranging from Banking to Public Transport sectors.

Kenya has over 25.4 million mobile money transfer accounts transacting Kes. 6.5 Billion daily undertaking over 2.5 million transactions per day using the mobile money transfer platform. An average of KShs. 180 (USD 2.0) Billion per month are transacted through this platform.



FINANCIAL INCLUSION



Source: Financial Access Surveys: 2006, 2009 & 2013

- ✓ An increase to 67 percent of Kenyans can access financial services .
- ✓ Only about 7.8 percent are served by informal financial services.
- ✓ A reduction to 25 percent of the population are still excluded.

LEGAL FRAMEWORK

The following Acts and Regulations govern the payment infrastructure in Kenya:

- ✓ Central Bank of Kenya Act- CBK Act
- ✓ National Payment System Act- NPS Act, 2011
- ✓ National Payment System Regulations, 2014
- ✓ Kenya Information and Communication (Amendment) Act, 2013
- ✓ Consumer Protection Act
- ✓ Proceeds of Crime Act and Anti-Money laundering Act, 2012

International Standard Setting Bodies:

- ✓ Bank of International Settlement- BIS, Committee on Payment and Settlement Systems
- ✓ International Organization of Standards (ISO)
- ✓ Financial Action Task Force (FATF)

Upcoming Bills/ Legislation :

- ✓ Data Protection Bill
- ✓ Cyber Crime and Computer Related Crimes Bill

REGULATORY AND LEGISLATIVE DEVELOPMENTS

- Mandate of the Central Bank of Kenya Act under Section 4A(1)(d) *‘formulate and implement such policies as best promote the establishment, regulation and supervision of **efficient and effective payment, clearing and settlement systems**’*
- BIS Core Principles for Systemically Important Payment Systems *‘The system should have a well founded legal basis under all relevant jurisdictions’*

Key Areas within the Act:

- **Designation of high value systemically important payment systems** and payment instruments (Sections 3 and 6)
- **Finality of payments** through a designated system (Section 9 and BIS Principle VIII)
- **Authorization of payment service providers.** (Section 12 and 13).
- **Recognition that rights contained in netting rules** and agreements with regard to insolvency, supersede rights of statutory managers in specified statutes (S.16)

ELECTRONIC RETAIL TRANSFERS REGULATION

- The NPS Act divides the different possible market participants in the following areas:
 - ❖ Electronic Retail payment service provider
 - ❖ Designated Payment System or a Payment Instrument
 - ❖ E-Money Issuer
 - ❖ Small E-Money Issuer
- The Electronic Retail Payment Service Provider Part applies to all electronic retail transfers, save for institutions as defined under the NPS Act (i.e. Banks. Microfinance Institutions), utilizing an electronic payment system and includes **mobile payment service providers** (Safaricom, Airtel, Orange)
- It provides for the authorization (*noting that licensing is done by the primary regulator in Communication Services Sector- Communication Authority of Kenya*), suspension and revocation, operation, risk management and reporting requirements.

It also contains **consumer protection and penalty provisions.**

E-Money Regulation

- This Part applies to all **e-money issuers**, save for institutions as defined under the NPS Act.
- An e-money issuer broadly *refers to “an entity that issues monetary value, which can be exchanged for cash and accepted by parties other than the issuer.”*
- It also provides from registration of **small e-money issuers**.

Designation of a Payment Instrument Regulation

- This Part applies to all **issuers of Payment Instruments** that qualify to be designated.
- A payment instrument qualifies for designation if it is of **widespread use** as a means of making payment and may affect the national payment system, if the designation is necessary to protect public interest, and if it is in the interest of the integrity of the system.

Designation of a Payment System Regulation

- This Part applies to all operators of Payment System that qualify to be designated.
- A payment system qualifies for **designation** *if it poses systemic risk, if the designation is necessary to protect public interest, and if it is in the interest of the integrity of the system.*
- The KEPSS System being a systemically significant system handling high value and large volume transactions is one such system that has been designated under the NPS Act.

Consumer Protection

The NPS Regulations provides certain requirements that are key to safeguarding the interests of the customer:

- **Regulation 38: Customer Care Service**

This provides a service where a customer can make inquiries and complaints concerning its services.

- **Regulation 40: Resolution of Complaints**

All complaints from users should be resolved within a time frame of 30 days. There is an in-built complain resolution mechanism that ultimately allows appeals to the Bank.

- **Regulation 41: Customer Service Agreements.**

Providers of the service are required to sign customer service agreements with each user that meets a set minimum threshold.

Electronic Transactions

The Kenya Information and Communication Act (Part VI A)provides the legal recognition to **electronic transactions**.

Some of the key areas that it deals with are:

- facilitate electronic transactions by ensuring the **use of reliable electronic records**;
- facilitate electronic commerce and eliminate barriers to electronic commerce such as those resulting from **uncertainties over writing and signature requirements**;
- promote **public confidence in the integrity and reliability of electronic records and electronic transactions**;
- foster the development of electronic commerce through the **use of electronic signatures** to lend authenticity and integrity to correspondence in any electronic medium;
- promote and facilitate **efficient delivery of public sector services** by means of reliable electronic records; and
- develop sound frameworks to minimize the incidence of **forged electronic records and fraud in electronic commerce** and other electronic transactions (Cyber Crimes)

CHALLENGES IN THE PAYMENTS LANDSCAPE

As a growing and dynamic field, there are certain areas that need to be strengthened to further enhance confidence and trust in the payment landscape.

These areas are as follows:

- ❖ *Data Protection Laws and Regulations specific to electronic transactions.*
- ❖ *Cybercrime and Computer Crime Laws and Regulations*

Upcoming Legislation

Kenya is developing a **Data Protection Legislation** that would provide extra safeguards to the end users. This legislation would be anchored on the following data protection **principles**:

- I. Information is **collected and stored for a lawful and explicitly defined purpose**- noting to uphold the right to privacy.
- II. Information is collected directly and with the **consent of the data subject**.
- III. Data Subjects are **informed of the purpose** of any collection of information and of the intended recipients.
- IV. Data Subjects are allowed **right of access to their personal information**.
- V. Information is **not kept for any longer than is necessary**.
- VI. Reasonable steps are taken to ensure that information is **accurate, up to date and complete**.
- VII. **Appropriate technical and organisational measures** are taken to safeguard the data.

Upcoming legislation...

Apart from Data Protection, there is also a need to develop a comprehensive Cyber Crime Law framework that would deal with issues of: Cyber Crime and Computer Crimes and related issues.

Linked to these are the areas of : Intellectual Property Laws, Taxation and Competition Concerns which have a wider ambit.



Q&A

Thank You ... “Asanteni”