



Unlocking Africa's fintech potential: Resolving jurisdictional gaps in cross-borders digital banks acquisition under AfCFTA

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Abstract

This paper examines the legal and regulatory challenges affecting cross-border digital banking acquisitions under the African Continental Free Trade Area (AfCFTA) and explores pathways to harmonize fintech regulation across Africa. The study highlights how varying national laws such as Nigeria's BOFIA 2020 create jurisdictional conflicts that impede regional fintech integration. It further analyzes the AfCFTA's Protocol on Trade in Services, particularly Annex 4, as a framework for liberalizing financial services and promoting digital financial inclusion. However, the lack of mutual recognition mechanisms, inconsistent data protection regimes, and fragmented supervisory systems remain significant barriers. The paper adopts a doctrinal and analytical approach, reviewing legal texts, economic theories, and secondary data to achieve its objectives. Also, the paper argues that adopting mutual recognition agreements, harmonized AML/CFT standards, and interoperable data frameworks is essential to unlock Africa's fintech potential. It recommends regulatory convergence under AfCFTA as a sustainable solution to strengthen financial integration, consumer protection, and economic growth across the continent.

Keywords: Cross-border digital banking, fintech regulation, legal and regulatory challenges, financial integration, Nigeria's BOFIA 2020

Introduction

Africa is witnessing a rapid expansion of financial technology (FinTech) innovations, from mobile money platforms to digital lending and payment apps (Kuyoro *et al.*, 2024; FinTech, 2024) [28]. The advent of digital banking and fintech across Africa presents a transformational opportunity for the continent's economic integration under the African Continental Free Trade Area (AfCFTA). With more than 1.3 billion people and 54-member states, the AfCFTA aims to create the world's largest free-trade area by population, unlocking intra-African trade and facilitating the free movement of goods, services and capital. At the same time, fintech innovations such as digital banks, mobile money, peer-to-peer lending and e-payments are rapidly scaling across Sub-Saharan Africa, offering a pathway to financial inclusion, cost-efficient services and cross-border commerce. However, despite this promise, the regulatory and jurisdictional environment remains fragmented: national licensing regimes, data-localisation laws, divergent banking regulations, and inconsistent supervisory frameworks hamper the ability of digital banks and fintechs to operate seamlessly across borders.

Furthermore, acquiring a digital bank across a boundary implies navigating multiple regulatory regimes, supervisory overlaps and potential conflicts in licensing, supervision, capital adequacy and consumer-protection frameworks. Without integration, scale-up and pan-African operations remain elusive. This undermines the AfCFTA objective of leveraging digital financial services as engines of intra-African trade and economic growth. This article therefore examines how to unlock Africa's fintech potential by resolving these jurisdictional gaps in cross-border digital bank acquisitions under the AfCFTA framework. It explores the current regulatory landscape, identifies the principal jurisdictional challenges, and proposes pathways toward

harmonised regulation, licensing passporting and supervisory cooperation that can support digital banks' acquisition strategies and continental-scale expansion.

This paper is divided into nine parts. The first part is the Introduction, which outlines the background, objectives, and significance of the study in examining Africa's fintech potential under the AfCFTA. The second part discusses Fintech (Financial Technology), defining its concept, evolution, and transformative role in modern financial systems. The third part focuses on Digital Banks, explaining their structure, functionality, and relevance to financial inclusion. The fourth part examines Cross-Border Digital Banking Acquisition, exploring its opportunities and challenges in Africa's emerging digital economy. The fifth part analyzes the African Continental Free Trade Area (AfCFTA), emphasizing its objectives and importance in promoting regional integration. The sixth part presents The AfCFTA Legal Framework for Financial Services, assessing its role in liberalizing digital financial markets. The seventh part discusses National Regulatory Regimes and Jurisdictional Conflicts, highlighting disparities across African states. The eighth part explores Harmonization and Regulatory Convergence, addressing the need for mutual recognition, data interoperability, and alignment of fintech regulations. The ninth and final part, Legal Challenges for International Corporations in AfCFTA, identifies key barriers and concludes with recommendations for achieving a unified, stable, and inclusive digital financial landscape in Africa.

Fintech (Financial Technology)

According to the International Monetary Fund, financial technology, commonly referred to as Fintech, encompasses innovative technologies designed to enhance and automate the provision and utilization of financial services. Fintech

enables businesses, organizations, and individual consumers to more efficiently manage their financial activities and processes through specialized software and algorithms deployed on computers and mobile devices. The growing integration of Fintech solutions has positioned technology-driven entities as potential competitors to traditional financial institutions, markets, and infrastructures.

1. Digital Bank

According to Mhlanga, a digital bank refers to a licensed financial institution that delivers its services primarily through digital platforms, without the need for traditional physical branches. It provides core financial services such as deposits, fund transfers, lending, and payments through mobile and online applications, thereby reducing operational costs and improving efficiency. Similarly, Ozili explains that digital banks rely on advanced financial technologies, including artificial intelligence (AI), blockchain, and big data analytics, to enhance customer experience and ensure faster, more transparent service delivery. They play a vital role in expanding financial inclusion by reaching unbanked and underbanked populations across Africa. Furthermore, Kou, Chao, and Peng highlight that digital banks promote innovation in the banking sector by fostering competition, offering personalized products, and enabling real-time financial transactions while adhering to regulatory standards comparable to conventional banks.

2. Cross-Border Digital Banking Acquisition

Cross-border digital banking acquisition refers to the process by which a financial institution or investor gains ownership or control of a digital bank operating in another jurisdiction. According to the Bank for International Settlements, such acquisitions allow financial institutions to extend their reach, diversify markets, and enhance technological capacity across national boundaries. However, this process involves navigating multiple legal and regulatory frameworks, supervisory bodies, and licensing requirements that vary from one country to another. As observed by the International Monetary Fund, cross-border acquisitions in digital banking are complicated by inconsistencies in prudential standards, data protection rules, and cybersecurity policies, particularly within emerging economies. In Africa, these complexities are amplified by fragmented regulatory oversight and the absence of harmonized fintech laws under regional frameworks like the African Continental Free Trade Area (AfCFTA), which often hinders seamless operational integration and market expansion.

3. African Continental Free Trade Area (AfCFTA)

According to the African Union (2018) ^[2], the African Continental Free Trade Area (AfCFTA) is a landmark continental agreement established to create a single market for goods, services, and investments across all member states of the African Union. The initiative seeks to facilitate the free movement of persons, capital, and business, thereby accelerating economic integration and sustainable development in Africa. Similarly, UNECA emphasizes that AfCFTA aims to boost intra-African trade by eliminating tariffs on up to 90% of goods and reducing non-tariff barriers, promoting industrial diversification and job creation. Furthermore, Kuhlmann notes that AfCFTA provides a regulatory framework that can harmonize trade

and investment laws, including digital trade and financial services, which is essential for supporting cross-border fintech and digital banking expansion across the continent.

4. The AfCFTA Legal Framework for Financial Services

The African Continental Free Trade Area (AfCFTA) establishes a comprehensive legal foundation for integrating Africa's financial markets through its Protocol on Trade in Services, particularly Annex 4, which emphasizes the liberalization of financial services among member states. According to the United Nations Economic Commission for Africa, this framework seeks to remove barriers that limit financial institutions from operating across borders, thereby encouraging innovation, competition, and the expansion of digital financial solutions. The AfCFTA also acknowledges the growing importance of digital finance in advancing cross-border trade and financial inclusion across the continent. However, as noted by the African Union (2023) ^[1, 3], the implementation of these financial provisions remains inconsistent, with many states yet to domesticate the Protocol into their domestic legal systems. This lack of harmonization has resulted in fragmented regulatory oversight and limited regional cooperation. Furthermore, the absence of mutual recognition or "passporting" arrangements for digital banks and fintech companies constrains regional financial integration and efficiency.

National Regulatory Regimes and Jurisdictional Conflicts

According to Ekezie and Adegboyega, the regulation of digital banking and fintech across African countries remains fragmented due to the absence of a unified continental framework. Each state has established its own national laws to govern financial technology operations, often without mechanisms for regional coordination. For instance, Nigeria's Banks and Other Financial Institutions Act (BOFIA) 2020 and Kenya's National Payment System Act provide robust domestic frameworks for the licensing and supervision of digital financial institutions. However, these national laws operate independently, resulting in jurisdictional overlaps and conflicts when digital banks attempt to expand their services beyond national borders. UNECA observes that these inconsistencies are further intensified by disparities in data protection and cybersecurity laws. For example, Nigeria's Nigeria Data Protection Regulation (NDPR) 2019 differs significantly from South Africa's Protection of Personal Information Act (POPIA) 2020, making it challenging to ensure uniform compliance in cross-border digital banking transactions. The lack of standardized rules for data sharing, consumer protection, and dispute resolution creates legal uncertainty for investors and service providers.

As Kuhlmann highlights, the absence of harmonized supervisory structures across African jurisdictions weakens enforcement of prudential, anti-money laundering (AML), and counter-terrorism financing (CFT) regulations. This regulatory fragmentation not only hinders market expansion but also exposes the region to financial risks.

Towards Harmonization and Regulatory Convergence

1. The Need for Harmonization in African Fintech Regulation

The African fintech landscape remains fragmented, with each nation maintaining unique regulatory and supervisory

structures that complicate regional digital integration. As fintech services such as mobile banking and digital payments increasingly transcend national boundaries, harmonization of regulatory frameworks becomes imperative to facilitate interoperability and minimize legal uncertainty. A uniform legal structure would foster cross-border innovation, reduce compliance burdens, and improve financial inclusion across the continent.

2. The Role of the AfCFTA in Regulatory Alignment

The African Continental Free Trade Area (AfCFTA) provides a supranational legal platform for promoting regulatory convergence among member states. Under Article 3 of the AfCFTA Agreement, one of its objectives is to create a single market for goods and services, supported by the movement of capital and persons. This includes digital financial services within the broader Protocol on Digital Trade. The integration of financial service liberalization within AfCFTA's framework provides a legal foundation for mutual recognition of fintech licenses, shared supervisory standards, and cross-border dispute resolution mechanisms.

3. Mutual Recognition and Data Interoperability Frameworks

Legal harmonization requires mutual recognition agreements (MRAs) for digital banking and payment service providers, ensuring that licenses issued in one-member state are valid in others. In addition, harmonized data protection laws such as a continental framework aligned with both the African Union Convention on Cyber Security and Personal Data Protection and national instruments like Nigeria's NDPR (2019) or South Africa's POPIA (2020) facilitate data interoperability and consumer trust. Such measures ensure compliance with anti-money laundering (AML) and counter-financing of terrorism (CFT) obligations across borders.

4. Benefits of Regulatory Convergence

Fintech regulatory environment promotes investor confidence, encourage cross-border innovation, and strengthen consumer protection mechanisms. Moreover, it aligns Africa's financial governance with international best practices under organizations such as the Financial Action Task Force (FATF) and the Basel Committee on Banking Supervision (BCBS). Ultimately, convergence will enhance the resilience of Africa's digital economy and enable the AfCFTA to serve as a catalyst for sustainable regional financial integration).

Data Policy Frameworks in Some States in Africa

Data protection frameworks across Africa reflect a growing commitment to safeguarding privacy and promoting responsible data governance, though implementation and scope vary among states. Nigerian Data Protection Act (NDPA) 2023 establishes a robust legal foundation that aligns with international standards by ensuring lawful, fair, and accountable data processing. It creates the Nigeria Data Protection Commission, empowered to regulate personal data use and assess adequacy for cross-border transfers, thereby strengthening Nigeria's participation in the global digital economy.

Ghana's Data Protection Act (GDPA) 2012 was one of the earliest African data laws, emphasizing registration and

accountability of data controllers but providing limited direction on cross-border data transfers. Kenya's Data Protection Act (KDP) 2019 mirrors Nigeria's approach more closely, guaranteeing key data protection principles while explicitly regulating international data transfers. Sections 37 and 48 of the KDP mandate consent, legal authorization, and adequate safeguards before data is shared abroad. Collectively, these frameworks signify Africa's progressive efforts to harmonize privacy protection and support cross-border digital transactions, though disparities in enforcement and regulatory capacity persist, hindering full regional alignment and interoperability.

Legal Challenges for International Corporations in AfCFTA

The African Continental Free Trade Area (AfCFTA) presents significant opportunities for international corporations looking to expand their presence in Africa. However, there are also various legal challenges and considerations that need to be navigated when doing business in the AfCFTA region. Some of the key legal challenges for international corporations in AfCFTA include the following:

- **Tariff and Non-Tariff Barriers:** While AfCFTA aims to eliminate tariffs on 90% of goods, non-tariff barriers such as customs procedures, import restrictions, and differing regulatory requirements can still impede trade. Companies must navigate these barriers and ensure compliance with varying national regulations.
- **Intellectual Property Rights:** Protecting intellectual property (IP) can be challenging, as IP regulations and enforcement differ significantly from one African country to another. Corporations must take steps to safeguard their IP rights and adapt to local IP laws.
- **Dispute Resolution:** International corporations operating in multiple AfCFTA member states may face difficulties in dispute resolution. AfCFTA has established an AfCFTA Dispute Settlement Mechanism, but the effectiveness of this mechanism remains to be seen.
- **Inconsistent Legal Frameworks:** AfCFTA member states have varying legal systems, making it challenging for international corporations to navigate the complex legal landscape. Understanding local laws, regulations, and business practices is crucial.
- **Regulatory Compliance:** Each member state may have regulatory requirements and standards. International corporations must be prepared to comply with different regional rules and regulations.
- **Taxation and Customs:** Taxation systems can vary significantly from one country to another. International corporations must understand the tax implications of their operations in each AfCFTA member state. Customs and import/export regulations can also be complex, requiring close attention to ensure smooth cross-border trade.
- **Local Content Requirements:** Some AfCFTA member states may have local content requirements that

international corporations must meet. This can affect procurement and hiring practices.

- **Human Resources and Labor Laws:** Labour laws and practices can vary widely in different African countries. International corporations must be knowledgeable about local labour regulations and consider local employment practices and cultural factors.

To address these legal challenges, international corporations should conduct thorough due diligence, seek legal advice from experts with knowledge of the specific AfCFTA member state's laws, and develop comprehensive market-entry and compliance strategies that take into account the unique legal and regulatory environment of each country in which they operate within the AfCFTA region.

Conclusion

Unlocking Africa's fintech potential under the AfCFTA requires addressing the legal and regulatory fragmentation that currently hinders cross-border digital banking integration. The AfCFTA's Protocol on Trade in Services provides a foundation for financial liberalization, uneven implementation and lack of mutual recognition for fintech licenses limit progress. Divergent national regulations, data protection laws, and supervisory standards create jurisdictional conflicts and weaken consumer protection and financial stability. To realize the promise of a unified digital financial market, Africa must pursue harmonization through regulatory convergence, standardized AML/CFT measures, and interoperable data frameworks. A coordinated approach under AfCFTA would foster innovation, enhance trust, attract foreign investment, and ensure that digital banking operates securely and inclusively across the continent. Effective legal alignment is key to transforming Africa's fintech landscape into a sustainable engine for economic integration and growth.

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