Financial Services Regulatory Modernization in East Africa: The Search for a new paradigm for Kenya

Jacob K. Gakeri
S.J.D. Candidate
Maurer School of Law
Indiana University

Abstract

This article interrogates the appropriateness or suitability of the single or unified regulator financial services regulatory system in East Africa with Kenya as the reference point, in the context of financial services regulatory modernization. Using multiple jurisdictions, the article exemplifies the workings of the different regulatory systems. Drawing from experiences in other jurisdictions and the circumstances in Kenya, the discussion establishes that the prevailing market conditions cannot justify the shift to a unified regulator. The analysis makes the argument for retaining the current fragmented regulatory system over the short term, albeit with certain reforms.

Introduction

Recent financial crises have demonstrated the need to keep domestic and global regulatory systems under constant review to ensure that they grow in tandem with market demands and remain dynamic and relevant.[1] However, history is replete with dramatic exemplifications of the actuality that regulatory modernization is crisis driven. Regulatory frameworks in many jurisdictions are increasingly being shaped by crises. The United States which is home to the world's most developed financial markets is the *locus classicus* illustration of the discontinuous approach to regulatory modernization. Significantly, the Securities Act of 1933, Securities Exchange Act of 1934 and the Banking Act of 1933 (Glass-Steagall Act) were promulgated after the economic depression of 1929. The Sarbanes-Oxley Act (Sox) of 2002 was enacted after the unprecedented collapse of several high profile companies.[2] Finally, the Dodd-Frank Act of 2010 was enacted after the 2008-2009 financial crisis.[3]

Interestingly, regulatory modernization in Sub-Saharan Africa has historically not been a reaction to financial crises. It is typically a product of piece-meal reform and gradual evolution coupled with the anxiety to replicate developments in other jurisdictions. Regulatory reforms in East Africa emblematize this phenomenon.

---

[1] See Joseph J. Norton & Christopher D. Olive, *Ingoing Process of International Bank Regulatory and Supervisory Convergence: A new Regulatory Market "Partnership,"*16 ANN. REV. BANKING L. 227 91997); Eric C. Chaffee*, A Panoramic view of the Financial Crisis that Began in 2008: Domestic and International Regulatory Reform,* 35 U. DAYTON L.R. 1 (2009); *Richard O'Brien, Global Financial Integration: The end of Geography*, 26 GEO. WASH. J. INT'L L. & ECON. 473 (1992); Randall D. Gynn, *The Global Financial Crisis and Proposed Regulatory Reforms,* B.Y.U.L. REV. 421 (2010); John W. Head, *The Global Financial Crisis of 2008-2009 in Context—Reflections on International Legal and Institutional Failings, "Fixes and Fundamentals"* 23 PAC. MCGEORGE L. J. 43 (2010); Robert B. Ahdieh, *Introduction—After the fall: Financial Crisis and the International Order*, 24 EMORY INT'L L. REV. 1 (2010); Rolf H. Weber, *Toward a new Design for International Financial Regulation*, 29 U. PA. J. INT'L L. 391 (2007); Rosa M. Lastra, *The Crisis of 2007-2009: Nature, Causes and Reactions*, 13 J. INT'L ECON. L. 531 (2010); Michael E. Patterson, *Convergence of Global Financial Services*, 21 FORDHAM INT'L L. J. 377 (1997).

[2] See generally Miguel Lamo de Espinosa Abarca, *The Need for Substantive Regulation of Investor Protection and Corporate Governance in Europe: Does Europe need a Sarbanes-Oxley?* 199(11) J.I.B.L.R. 419 (2004). These included: Enron, WorldCom, Tyco, Sunbeam, Cendant and Adelphia. See also Joseph Schwartz, *Democracy against the Free Market: The Enron Crisis and Politics of Global regulation,* 35 CONN. L. REV. 1097 (2003).

[3] See Arthur E. Wilmarth, *The Dodd-Frank Act: A Flawed and Inadequate Response to the too-big-to-fail Problem*, 89 OR. L. REV. 951 (2011); Kristin N. Johnson, *From Diagnosing the Dilemma to Divining a cure: Post Crisis Regulation of Financial Markets*, SETTON HALL L. REV. 1299 (2010); William Poole, *Causes and Consequences of the Financial Crisis of 2007-2009,* 33 HARV. J. L. & PUB. POL'Y 421 (2010); Ann Gelpern, *Financial Crisis Containment*, 41 CONN. L. REV. 1051 (2009); Eric A. Posner & Adrian Vermuele, *Crisis Governance in the Administrative State: 9/11 and the Financial Meltdown of 2008,* 76 U. CHI. L. REV. 1613 (2009); Robert B. Ahdieh, *Imperfect Alternatives, Networks, Salience and Institutional Design in Financial Crisis,* 79 U. CIN. L. REV. 527 (2010).

Because the financial services sectors in East Africa are exceedingly small, lack sophisticated financial investment products and are not significantly globalized, global financial crises have had insignificant domino effect on the local financial sectors.[4] However, this should not be construed that regulatory modernization is not an economic imperative.

The current debate on regulatory modernization appears to lay disproportionate emphasis on the structure, functions and jurisdictional boundaries of regulatory agencies. Proposals for reforms focus on the form the organizations will assume and their envisioned role. The debate has invariably crystallized into an elucidation of the suitability or appropriateness of the single or unified regulator or the "twin peaks" financial services regulatory models. One of the principal reasons why the debate on regulatory modernization is likely to remain dynamic is that it is no longer confined within the context of domestic regulatory systems. It has extended to the global financial markets where regulation is increasingly becoming elemental.[5]

This article interrogates the question whether Kenya should pursue regulatory modernization by adopting the unified or integrated regulatory model. Put differently, how many supervisory bodies should be institutionalized for effective supervision of the country's financial services? This is a pertinent question because the financial services sector is an important and dynamic sector of the economy. Relatedly, there is a symbiotic relationship between the various segments of financial services. Most importantly, the regulation of different segments impact on the industry generally. This article argues that circumstances in Kenya have not attained the threshold to warrant the adoption of the unified regulator model. The article progresses as follows:

Part I establishes the context of the analysis by a brief recapitulation of the salient attributes of the various financial services regulatory methodologies. Part II examines the viability of the unified regulator model for Kenya's financial services. From the analysis, it is evident that market developments cannot justify the shift to a single regulator. Part III embodies the conclusion. It is argued that whereas, there is need to maintain the fragmented regulatory system over the short term, certain reforms are imperative in order to make if more efficacious and responsive to market needs.

It is important to emphasize that many jurisdictions have been grappling with the challenge of regulatory modernization as they endeavor to make their financial services sectors more competitive and responsive to local, regional and global dynamics.[6]

---

[4] See generally Jospeoh E.O.Abugu, *Technology, Globalization and the Nigerian Securities Market*, 18(7) J.I.B.L.R. 284 (2003) (discussing the role of technology in globalization of Nigeria's securities markets).

[5] Garry Hufbauer & Daniel Danxia Xie, *Financial Stability and Monetary Policy: Need for International Surveillance,* 13 J. INT'L ECON L. 939 (2010); Anu Arora, *The Global Financial Crisis: A new Global Regulatory Order*? 8 J.B.L. 670, 698-99 (2010), Rolf H. Weber, *New Rule-making Elements for Financial Architecture's Reform,* 25(10) J.I.B.L.R. 512 (2010); Rolf Weber, *Challenges for the new Financial Architecture,* 31 HONG KONG L. J. 241 (2001); Rhys Bollen, *Setting International Standards for Hedge Funds: Part 2,* 26(3) J.I.B.L.R. 105 (2011); Christopher J. Mailander, *Financial Innovation, Domestic Regulation and the International Market Place: Lessons on Meeting Globalization's Drawn from the International Bond Market,* 31 Geo. Wash. J. Int'l L. & Econ. 341 (1997-8); Chaffee, supra note 1; Kern Alexander, *The Need for* Efficient International Financial Regulation and the Role of a Global Regulator, 591) J.M.L.C. 52 (2001); Kapstein E. *Resolving the Regulatory Dilemma: International Coordination of Banking Regulations'* 43 INTL. ORG. 324, 327-28 (1989); Alexander K., *The International Supervisory Framework for Financial Services: An Emerging Regime of Transnational Supervision,* 1(4) J.I.B.R. 33, 34-35 (2000); Walker G., *The law of Financial Conglomerates—The Next Generation*, 30 Int'l L. 57 (1996); *The Global Financial Crisis and Financial Stability: The Awakening and Transformation of an International Body*, 19 TRANSNAT'L L. & CONTEM. PROBS. 203 (2010); Jonathan T. Fried, *Meeting the Challenges of International Financial Crisis,* 5 ILSA J. INT'L AND COMP. L. 397 (1999); Olufunmilayo B. Arewa, *Financial Markets and Networks: Implications for Financial Market Regulation*, 78 U. CIN. L. REV. 613 (2009); Josef Ackermann, *The Global Financial System and Challenges Ahead*, 35 WTR-FLETCHER F. WORLD AFFAIRS 127 (2011).

[6] Donald C. Langevoort, *U.S. Securities Regulation and Global Competition*, 3 VA. L. & BUS REV. 191, 191-96 (2008); Roberta S. Karmel, *The Future of the Securities and Exchange Commission as a market Regulator*, 78 U. CIN. L. REV. 501(2009); Thomas Lee Hazen, *The Short-term/Long-term Dichotomy and Investment Theory: Implications for Securities Market Regulation and for Corporate Law,* 70 N. C. L. REV. 137, 176 (1991); Christopher L. Culp, *Stock Index, Futures and Financial Market Reform: Regulatory Failure or Regulatory Imperialism, 13* GEO. MASON U. L. REV. 517, 517-18 (1991); Stephen J. Friedman & Connie M. Friesen, *A new Paradigm for Financial Regulation: Getting from here to there,* 43 MD. L. REV. 413-448 (1984); Thomas A.

Approaches to financial services regulation

Traditionally, regulatory structures were classified as institutional and functional.[7] However, this dichotomy is not mutually exclusive and recent scholarship designates them as a single category. Coffee Jr. and Sale for instance, postulate that jurisdictions with sizable financial services sectors follow one of the three basic regulatory models: the functional/institutional model, unified or consolidated financial services regulator model, and the "twin peaks" model.[8] These regulatory models overlap and vary considerably. It is important to emphasize that although the single or unified regulator model has attracted most attention,[9] there is no one-size-fits-all regulatory structure or universal model. Additionally, configurations of either model vary from jurisdiction to jurisdiction.
According to Carmichael and Pomerleano, the institutional or silo regulatory system is characterized by different legal entities regulating different sectors of financial services namely: banks, insurance, securities and pension are regulated by distinct agencies.[10] Regulation is thus determined by the institution as opposed to the business being transacted. For instance, banks are regulated by a Central or Reserve Bank. In Brazil for example, the Central Bank of Brazil is responsible for supervision and regulation of the banking system. It defines prudential standards and imposes penalties for non compliance. The Securities and Exchange Commission (Camissao de Valores Mobiliarios) (CVM), is the regulatory authority for securities markets, publicly held companies and market intermediaries.

The National Council of Private Insurance and the Superintendence of Private insurance regulate the insurance sector.[11] Similarly, in Thailand, the responsibility of banking supervision is shared between the Bank of Thailand and the Ministry of Finance. Under the provisions of the Financial Institutions and Business Act, 2008, the Ministry is empowered to license or revoke the license of any commercial bank on recommendations of the Bank of Thailand. The bank is the sole regulator of commercial banks and is responsible for prudential and conduct of business. Under the provisions of the Securities and Exchange Act, the Securities Exchange Commission is responsible for promoting, developing and supervising the securities markets including the over the counter market and the Thailand Futures Exchange. Finally, under the provisions of the Life Insurance Act, the insurance sector is regulated by the Office of the Insurance Commission. In some countries, two sectors are regulated by a single regulator. This regulatory model is characterized by at least two regulatory bodies. Although institutional regulation nurtures specialization, it is criticized as inefficient in resource utilization and promotes fragmentation in supervision. Additionally, it is ill-equipped to regulate financial conglomerates. This regulatory model is a product of "historical contingency, piece-meal reform and gradual evolution."[12]

The groundwork of functional regulation is the principle that like functions should be regulated alike. Consequently, similar activities are regulated by the same regulator. It is

> "a system in which each separate function--such as commercial banking, investment banking, or mortgage banking--is supervised by the same regulatory body, regardless of the function's location within a particular financial institution."[13]

It focuses on the function or classification of the types of product or service rather than the institution offering it.[14]

Russo & Marlisa Vinciguerra, *Financial Innovation and Uncertain Regulation: Selected Issues regarding new Product Development*, 69 TEX. L. REV. 1431, 1495-1500 (1991).

[7] See JEFFREY CARMICHAEL & MICHAEL POMERLEANO, THE DEVELOPMENT AND REGULATION OF NON-BANK FINANCIAL INSTITUTIONS, 21-73(2002).

[8] John C. Coffee Jr. & Hillary A. Sale, *Redesigning the SEC: Does the Treasury have a better idea?* 95 VA. L. REV. 707, 718-26 (2009).

[9] See Douglas Amer & Jan-Juy Lin, *Financial Regulation: A Guide to Structural Reform*, 19(1) J.I.B.L.R. 32, 32 (2004).

[10] See generally Carmichael & Pomerleano, supra note 7.

[11] See Ana Nicolaci da Costa, Brazil Tight Bank Rules a blessing in disguise, *available at* http://www.reuter.com.article/idUSTRESS58965mz0090910 (visited on Dec. 19th 2010)

[12] See Coffee Jr. & Sale, supra note 8 at 718.

[13] Chairman Allan Greenspan, Remarks before the 31st Annual Conference on Bank Structure and Competition (May 11, 1995) reproduced in Schooner & Taylor, infra note 24 at 323.

This regulatory model is predicated on the premise that, "no one regulator can have or easily develop expertise in regulating all aspects of financial services."[15] Different agencies regulate different sources of market failure. Kenya's regulatory structure embodies attributes of both models.

The unified or single or integrated regulator ("single peaked" model) is based on the unification of supervisory responsibilities of all sectors of the financial services industry in a single regulator. Although this regulatory structure was first adopted by Scandinavian countries in the 1980s, its implementation by the United Kingdom in 2000 made it more conspicuous.[16] Countries such as Singapore had a single regulator for banking, insurance and securities since 1984.[17]The eminence of the United Kingdom's financial services sector and the number of regulators agglomerated made the shift not only but dramatic and historical.[18] Scholarship is unshakable that the United Kingdom example "stands out as the most influential."[19] It was the largest, most sophisticated and diverse international financial market to embrace this regulatory model. What is seldom emphasized is that the adoption of this regulatory model was largely influenced by country specific factors.[20] According to Joseph Silvia, legal scholarship in the United Kingdom attributes the adoption of the unified regulatory model for the financial services to three specific reasons.[21]

Of particular importance, there is rich heterogeneity of regulatory structures under this classification and several jurisdictions have implemented different configurations of the model.[22] However, none of the different combinations of the model is deemed optimal and jurisdictions are at liberty to implement whatever arrangement is appropriate to their needs and circumstances.[23] The outstanding challenge with this model is that it has not established a track record particularly in responding to financial crises.

---

[14] See MICHAEL P. MALLOY, FUNCTIONAL REGULATION: PREMISE OR PRETEXT? IN FINANCIAL MODERNIZATION AFTER GRAMM-LEACH-BLILEY, 179, 180 (Patricia McCoy ed., 2002); Ionnis Kokkoris & Rodrigo Olivares-Caminal, *Some Issues on Cross-border Stock Exchange Mergers*, 29 U. PA. J. INT'L. L. 455, 473 (2007-8).

[15] Coffee & Sale, supra note 8 at 718.

[16] Norway established the first integrated agency in 1986, Denmark followed suit in 1988 and Sweden in 1991.

[17] See generally Introduction to MAS, *available at* http://www.mas.gov.sg/about_us Introduction_to_MAS.html (visited on Oct. 30, 2010).

[18] See Joseph Silvia, *Efficiency and Effectiveness in Securities Regulation: Comparative Analysis of the United States' Competitive Regulatory Structure and the United Kingdom's Single Regulatory Model,* 6 DEPAUL BUS & COM. L. J. 427, 253 (2006) ; Howard Davis, *Law and Regulation*, 3(5) J.I.F.M. 169 (2001).

[19] See generally Eilis Ferran, *Examining the United Kingdom's Experience in Adopting the Single Financial Regulator Model,* 28 BROOK J. INT'L L. 257, (2003) (exploring the United Kingdom's adoption of a single regulator model).

[20] See generally TOM BOWER, MAXWELL AND THE OUTSIDER (1992); PETER TRUELL & LARRY GURWIN, FALSE PROFITS: THE INSIDE STORY OF BCCI, THE WORLD'S MOST CORRUPT FINANCIAL EMPIRE (1992); Betty M. Ho, *Rethinking the System of Sanctions in the Corporate and securities Law of Hong Kong,* 42 MCGILL L. J. 603, 629 (1997) (describing the Blue Arrow" Affair); Barry A. K Rider, *The Control of Insider Trading—Smoke and Mirrors*, DICK J. INT'L L. 1 (2000) (discussing lack of enforcement against insider trading); CHARLES GOODHART ET AL., FINANCIAL REGULATION: WHY, HOW AND WHERE NOW, 181 (1998); PETER WRIGHT, CONSUMER PROTECTION IN FINANCIAL SERVICES, 152 (1999); David Scott & Jonathan Herbst, *The Financial Services and Markets Bill-Regulation and the 21st Century*, 1(1) J.I.F.M. 33 (1999).

[21] See generally Silvia, supra note 18. (1)The existing system failed to deliver the standards of investor protection and supervision that the industry and the public expected, (2) the existing regulatory system was inefficient confusing and lacked accountability and clear allocation of responsibilities and lastly, (3) there was need for a regulatory structure that could reflect the nature of the markets where the traditional distinctions of banks, securities firms and insurance companies were increasingly blurred.

[22] In Singapore for example, the Monetary Authority of Singapore is responsible for the entire financial services sector. In the United Kingdom, the FSA is responsible for bank supervision, a function previously vested in the Bank of England. Most countries however exhibit what may be described as partial unification. Countries such as South Africa, Canada, Malaysia, Colombia and Venezuela have a single regulatory body for the securities markets and insurance. In Mexico, Uruguay, Finland and Dominican Republic banking and insurance are regulated together.

[23] See generally KENNETH KAOMA MWENDA, LEGAL ASPECTS OF FINANCIAL SERVICES REGULATION AND THE CONCEPT OF A UNIFIED REGULATOR, LAW, JUSTICE DEVELOPMENT SERIES (Word Bank 2005); Goodhart C.A.E., Price *Stability and Financial Stability,* in FINANCIAL STABILITY IN A CHANGING ENVIRONMENT, SAWAMOTO K. ET AL., eds, (1995)

Its resilience as a regulatory model has not been adequately tested.[24] For instance, in the United Kingdom where parliament delegated enforcement powers to the Financial Services Authority (FSA), the handling of the Northern Rock scandal demonstrated some of the fundamental short comings of the model.[25]

The "twin peaks" model places responsibility for prudential regulation of financial institutions in one agency and supervision of business conduct and consumer protection in another. The closest illustration of the model is Australia which established the Australian Prudential Regulatory Authority (APRA) to safeguard the soundness of deposit taking institutions, insurance companies and other financial firms, and the Australia Securities and Investment Commission (ASIC) to protect securities markets investors, depositors and insurance policy holders.[26] However, the ASIC retains supervisory jurisdiction over financial soundness of investment banks, thus retaining some element of functional regulation. Relatedly, the Reserve Bank of Australia (RBA) is still responsible for the monetary policy and payment system. Arguably, the Australian model is more of a "three peak." The "twin peaks" model is predicated on the fact that financial stability and consumer protection are distinguishable regulatory objectives the synergies between them notwithstanding.[27] This was succinctly exemplified by the United Kingdom's Northern Rock conundrum referred to above.[28] It demonstrated the precariousness of a single regulatory agency emphasizing on one regulatory objective to the detriment of the other. However, since the purpose of financially sound and prudentially regulated institutions is to provide financial services and investment opportunities to customers who require protection, the two regulatory objectives are interrelated.[29] The fact that it is essential to maintain a balance between prudential and conduct of business emboldens the "twin peaks" regulatory model. Some commentators advocate for its implementation in the United States.[30]

Viability of the single regulator model in Kenya

The current regulatory model for financial regulation in Kenya is a hodgepodge of institutional and functional regulation. There are seven Governmental agencies regulating specific segments of financial services. The Central Bank of Kenya (CBK) licenses and supervises the operations of all commercial banks excluding the Kenya Post Office Savings Bank (KPOSB)[31] which is regulated by the Treasury.

---

[24] See Heidi Mandanis Schooner & Michael Taylor, *United Kingdom and United States Response to the Regulatory Challenges of Modern Financial Markets*, 38 TEX. INT'L L. J. 317, 343-45 (2003); Ferran, supra note 19 at 307; Georgosouli A., *The Revision of the FSA's Approach to Regulation: An Incomplete Agenda*, 7 J.B.L. 599 (2010) (explaining that financial regulation reform proposals of the coalition Conservative-Liberal Democratic Government of the United kingdom would on the one hand see the replacement of the FSA with a Consumer Protection Agency and the Bank of England reassuming its powerful position of regulating banking activities on the other. The two-tier structure would be akin to the "twin peaks" system).

[25] See generally Michael W. Taylor, *The Road from "Twin Peaks"-- and the way back,* 16 CONN. INS. L. J. 61 (2009).

[26] See Howard Davies, *Law and Regulation,* 3 J. INT'L FIN. MARKETS 169, 169 (2001).

[27] The Financial Services Authority (FSA) admitted having placed too much emphasis on conduct of business at the expense of safety and soundness of the institution. The latter led to its collapse.

[28] See Taylor, supra note 25 at 81-4; Financial Services Authority, The Supervision of Northern Rock: A Lesson Learned Review, 8, 27 (2008), *available at* http://www.fsa.gov.uk/pubs/other.nr_report.pdf (visited on Oct. 2, 2010); Yesha Yadav, *Looking for the Silver Lining: Regulatory Reform after the "Credit Crunch,"* 15 STAN. J. L. BUS. & FIN. 314 (2010) (using the Northern Rock debacle to exemplify her postulation that neither the unified nor the fragmented regulatory framework "fitted the bill" in dealing with the economic meltdown 2008-2009).

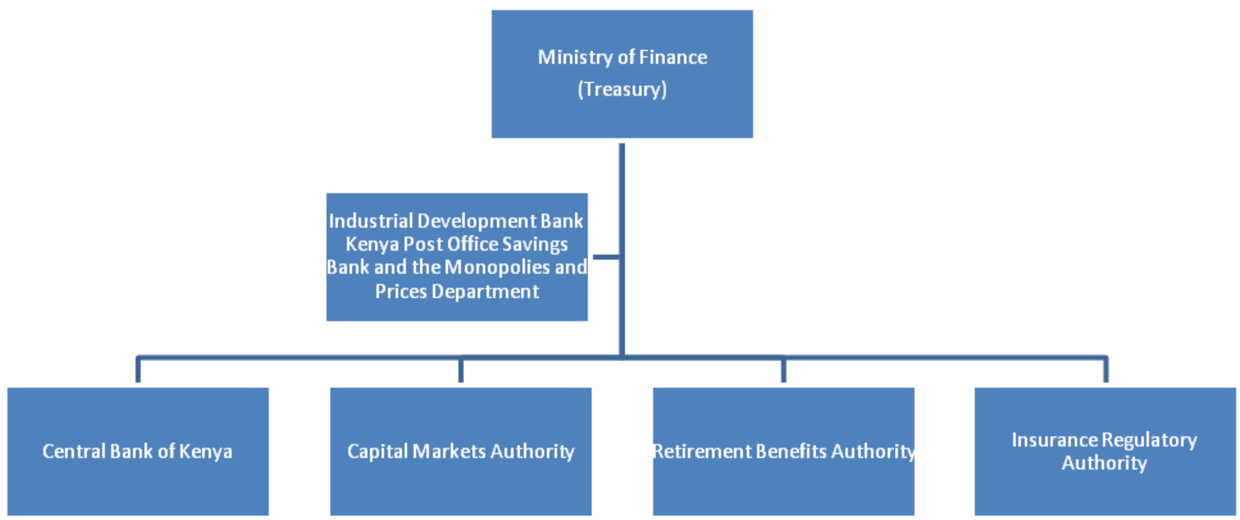
[29] See Howard Davis & David Green, GLOBAL FINANCIAL REGULATION: THE ESSENTIAL GUIDE, 192 (2008).

[30] See Coffee & Sale, supra note 8 at 778.

[31] This bank was established by the Kenya Post Office Saving Bank Act, Cap. 493B which came into operation on Jan 1st, 1978. It took over the assets and liabilities and thus replaced the Post Office Savings Bank. The objective of the bank was to encourage and facilitate saving. A principal mandate of the bank is "to encourage thrift and provide the means and opportunities for the people of Kenya to save" by providing savings account facilities through the Post Office and other branch networks. It is administered by a board of eleven members. § 8 under which the Government of Kenya guaranteed customer deposits with the bank was repealed in 2001. See Kenya Post Office Savings Bank *available at* http://www.postban.co.ke/whoweare.php (visited on Oct. 24, 2010).

Development Finance Institutions (DFIs) are regulated by different Government ministries. For instance, the Industrial Development Bank (IDB)[32] is regulated by the Ministry of Finance, Industrial and Commercial Development Corporation (ICDC)[33] by the Ministry of Trade and the Agricultural Finance Corporation (AFC)[34]by the Ministry of Agriculture. The Capital Markets Authority (CMA) regulates the securities markets while the Retirement Benefits Authority (RBA) is responsible the pension sector. The Insurance Regulatory Authority (IRA) was established in 2006 to replace the Commissioner of Insurance who previously regulated the insurance industry. The Sacco Societies Regulatory Authority (SSRA) regulates all savings and credit co-operative societies. It is accountable to the Ministry of Cooperative Development. The Monopolies and Prices Department which is charged with antitrust powers and responsibilities is accountable to the Ministry of Finance .[35]

Regulatory structure of Kenya's financial services



The existing regulatory arrangements for financial services involve a large number of regulators exercising jurisdiction over different sectors of the industry. It is fragmented with each regulatory agency being responsible for a particular segment. This largely politicized regulatory structure is a product of piece-meal reform and gradual evolution as opposed to deliberate planning.[36]

---

[32] This bank was established in 1973 as part of government efforts to promote economic development to assist in the promotion, establishment, expansion and modernization of medium and large scale industrial enterprises by providing medium and long-term finance, direct equity investment, provision of guarantees and underwriting of securities. During the 1980s 1nd 1990s the bank played an insignificant role in development due to inadequate resources and mismanagement. However, the bank was re-launched in 2006 under the name Industrial Development Bank Capital Ltd. See Development Finance Company of Kenya homepage *available at* http://www.idbkenya.com (visited on Oct. 25, 2010).

[33] As mentioned in Chapter one, the origins of this corporation is traceable to the 1950s. Currently, its core functions include: advancing corporate loans to medium and large enterprises, venture capital, joint ventures and commercial loans to small and medium enterprises.

[34] This corporation was established in 1963 by the Agricultural Finance Corporations Act with the sole purpose of advancing loans to individuals, groups of individuals or companies to develop agriculture and agricultural industries. See http://www.grifinance.org/corporate.php (visited on Oct. 25, 2010).

[35] This Department was established by the Restrictive Trade Practices and Monopolies Act, Cap. 504, Laws of Kenya whose object was to "encourage competition in the economy by prohibiting restrictive trade practices, controlling monopolies, concentration of economic power and prices. It is headed by the Commissioner of Monopolies and Prices appointed by the Minister of Finance, see § 3.

Although it is not as fragmented as that of the United States, commentators postulate that a system of multiple regulatory agencies is defined by regulatory gaps, duplication, overlaps, inconsistent regulations and cost ineffectiveness.[37] The fragmented approach is discredited for inefficiency, complexity, confusion and cost ineffectiveness to the regulated and the government. The hallmark of fragmented regulatory regimes is their inability to anticipate how to address future financial crisis or adapt to market innovation and development. Additionally, it is argued that they are susceptible to capture by the regulated.[38]

In Kenya, whereas some regulators have delegated legislative power, others do not.[39] Relatedly, not all regulators in the financial services sector are exempted from the provisions of the State Corporations Act.[40] Instances of regulatory duplication involve listed banks and insurance companies. For example, fund managers are regulated by both the Retirement Benefits Authority and Capital Markets Authority. Furthermore, takeovers and mergers involving listed companies must be approved by the CMA and the Commissioner of Monopolies and Prices.[41] Conceivably, because none of the regulators has capacity to "look at the market as a whole,"[42] no governmental agency commands all the necessary information to monitor systemic financial risk.[43] The cardinal question is whether the foregoing challenges are sufficiently weighty to constitute the impetus for the shift in regulatory paradigm.

The rationale underpinning the adoption of the unified or single regulator model in the United Kingdom was encapsulated by Clive Briault in the following words:

> "In the United Kingdom and some other countries, the rationale for an integrated national financial services regulator reflects four primary considerations. First, market developments such as the increase in the number of financial conglomerates and the blurring of the boundaries between financial products. Second, the availability of economies of scale and scope and the importance of allocating scarce regulatory resources efficiently and effectively. Third, the benefits of setting a single regulator clear and consistent objectives and responsibilities and resolving any trade-offs among these within a single agency, and fourth, the clarity of making a single regulator accountable for its performance against statutory objectives for the regulatory regime for the costs of regulation and for regulatory failures."[44]

---

[36] Apart from the Central Bank of Kenya which was established as early as 1966 because of its prominent role in the country's monetary policies, the establishment of other regulatory bodies has been haphazard and chaotic. For instance, the insurance industry which is more advanced than the securities markets was not subject to any form of oversight before July 1987 when the Insurance Act, Cap. 487 came into operation. Even, then, it was under the supervision of the Commissioner of Insurance (an officer in the ministry of finance). It was not until 2006 when the industry had a regulatory authority. The Capital Markets Authority was established in 1989. The Retirement Benefits Authority was established in 1997. Finally, although savings and credit co-operative societies had been an integral part of the way of life of both rural and urban communities, it was not until 2009, that the Sacco Societies Regulatory Authority was created. The establishment of the last two authorities is sufficient evidence that government commitment to the institutional/functional regulatory model has not changed.

[37] See Heidi Mandanis Schooner, *Regulating Risk Not Function,* 66 U. CIN. L. REV. 441, 459 (1998).

[38] See generally Eva Hupkes, *Regulation, Self-regulation and Co-regulation,* 5 J.B.L. 427 (2009).

[39] The Retirement Benefits Authority, Insurance Regulatory Authority and the Sacco Societies Regulatory Authority have no law making powers. The power is exercisable by the Minister concerned. See §§ 55(1), 68 and 197E of the Retirement Benefits Authority Act, Sacco Societies Act and the Insurance Act respectively.

[40] This Act was enacted in 1986 to make provision for the establishment of state corporations by the president, and for the control and regulation of all state corporations other than those exempted. Its objective was to streamline and standardize the management and operation of state corporations. Whereas the CMA and the RBA are exempted, the IRA and SSRA are not.

[41] Capital Market (Take Overs and Mergers) Regulations 2002, Reg. 4 (1) (d).

[42] See *The Risk Business,* LAWYER, Sept. 10, 2001 at 21 reproduced in Jerry W. Markham, *Super Regulator: A Comparative Analysis of Securities and Derivatives Regulation in the United States , the United Kingdom and Japan,* 28 BROOK J. INT'L L. 319, 379.

[43] Lawrence A. Cunningham & David Zaring, *The Three or Four Approaches to Financial Regulation: A Cautionary Analysis Against Exuberance in Crisis Response,* 78 GEO. WAS L. REV. 39, 50 (2009).

[44] Clive Briault, Rationale for a Single National Financial Services Regulator, 5 (FSA Occasional Papers 2, 1999), *available at* http://www.fsa.gov.uk/pubs/occpapers.index-1999.html; Clive Briault, FSA Revisited and Some Issues for European Securities Markets Regulation, Paper presented at the conference on Financial Supervision of Banks and Specialized Banks in the EU, European University Institute, Dec. 15, 2001 at 1.

Most commentators and scholars acknowledge that the gravitation towards the unified or single regulator in developed jurisdictions was primarily attributable to market developments.[45] It is hypothesized that the single regulator epitomizes the nature of modern financial markets where the traditional delineations between sectors and products are nonexistent. Incontrovertibly, in developed jurisdictions, the once bright line boundaries between banking, insurance and securities are difficult to draw.[46] This is christened the "blurring the boundaries" argumentation.[47] The convergence of various financial services sectors, emergence of large financial conglomerates and functional despecialization of financial service providers played the climactical role.[48] These developments and other factors necessitated a shift in the regulatory structure. In some countries in Asia, the shift was motivated by the Asian financial crisis. Simply put, the unified regulator model emblematizes the economic realities of integrated financial services.

Unified or single regulatory structures are ordinarily established by agglomerating the different regulators under the same management structure. In most instances, the individual regulators continue to function as departments or divisions of the new organization with Chinese walls separating them. It is opined that unification facilitates information sharing and enables the organization to anticipate and deal with financial crises.

Protagonists of the unified regulator model postulate its principal advantages as, efficiency in organization of supervisory activities because of the resultant economies of scale and scope, cost effectiveness, enhanced responsibility and accountability, harmonization of regulation and reduced susceptibility to agency capture.[49] Antagonists on the other hand assert that a single regulator may lack capacity to prioritize matters, undermine specialist knowledge and expertise in different sectors of the industry and accountability to consumers and market participants. Moreover, its implementation could encounter innumerable logistical challenges. Another danger is the increased threat of cross-sector contagion precipitated by credibility contagion. It is also argued that since its operations are dependent on internal structures and coordination, conflicts could delay decision making.[50] Finally, a single regulator has the potential to become a monolithic super regulator characterized by bureaucratic red tape and could lead to overregulation and stifling of competition.[51]Incontestably, since its implementation by the United Kingdom, the single regulator model has generated substantial interest from scholars, government bureaucrats and policy makers.

---

[45] See Clive Briault, *The Rationale for a single Financial Services Regulator,* 1(6) J.I.F.M. 249, 250-53 (1999); Nancy Worth, *Harmonizing Capital Adequacy Rules for International Banks and Securities Firms,* 18 N.C.J. INT'L L. & COM. REG.133 (1992); Rosa M. Lastra, *The Governance Structure for Financial Regulation in Europe,* 10 COLUM J. EUR L. 49 (2003); Michael Fox, *The FSA: The first six years,* 12(3) , J.F.R. & c. 201 (2004).

[46] Laurence Cecil Bartlett Gower, *"Big Bang" and the City Regulation,* 51 MOD. L. REV 1 (1998); Ian MacNeil, *The Future for Financial regulation: The Financial Services and Markets Bill,* 62 MOD. L. REV 75 (1999); Alistair Alcock, *A Regulatory Monster*, J. BUS L. 372, 376 (1998); Berger A. N. *The Integration of Financial Services Industry: Where are the Efficiencies*? 4 N. AM. ACTUARIAL J. 2, 2-4 (2000); Charles K. Whitehead, *Reframing Financial Regulation*, 90 B.U.L.REV. 1 (2010); Rolf H. Weber, *Challenges for the New Financial Architecture*, 31 HONG KONG L. J. 241 (2001).

[47] See 294 Parl. Deb., H. C. (6th ser.) 510 (1997) in Taylor supra note 25 at 73.

[48] Schooner & Taylor supra note 24 at 321-22; Richard K. Abrams & Michael W. Taylor, Issues in the Unification of Financial sector Supervision, 10-14 (International Monetary Fund, Working Paper No. 00/213, 2000) *available at* http://www.imt.org/external/pubs/ft/wp/2000/wp00213.pdf (visited on May 28, 2009).

[49] Elizabeth F. Brown, *E pluribus Unum—Out of many, one: Why the United States needs a single Financial Services Agency,* 14 U. MIAMI BUS L. REV. 1, 28-39 (2005); Giorgio Di Giorgio & Carmine Di Noia, *Financial Markets Regulation and Supervision: How many Peaks for the Euro Area?* 28 BROOK J. INT'L .L. 463, 479 (2003); Eva Z. Lomnicka, *Reforming U.K. Financial Services Regulation: The Creation of a Single Regulator*, J.B.L. 480 (1999); Elizabeth F. Brown, *The Tyranny of the Multitude is a Multiplied Tyranny: Is the United States Financial Regulatory Structure Undermining U.C. Competitiveness*? 2 BROOK J. CORP FIN 7 COM L. 369, 372-88; Kokkoris & Olivares, supra note 14 at 473; Mwenda, supra note 23 at 40; Ferran, supra note 19 at 284; Graham Bannock, *Financial Services Regulation: Controlling the Costs,* 6 FIN. REG. 31, 31-3 (2002); Amelia C. Fawcett, EXAMINING THE OBJECTIVES OF FINANCIAL REGULATION—WILL THE REGIME SUCCEED? A PRACTITIONER'S VIEW IN REGULATING FINANCIAL SERVICES AND MARKETS IN THE TWENTY FIRST CENTURY, 37, 47 (Eilis Ferran & Charles A. E. Goodhart eds., 2001).

[50] See Nzomo Mutuku, Case for Consolidated Financial Sector Regulation in Kenya, RBA Research Papers, 16-7 (2008), *available at* http://www.rba.go.ke/publications.html. (visited on Feb. 19, 2009).

[51] Markham, supra note 42 at 378; Jerry W. Markham, *Banking Regulation: Its History and Future,* 4 N.C. BANKING INST.221, 272-85 (2000).

Regrettably, the rationale employed to justify the adoption of the single regulator model in developed jurisdictions may be inapplicable to the East African context. One of the building blocks of the single regulator model is a fairly integrated financial system. Although a few commercial banks in Kenya have acquired stock brokerage firms or investment banks as subsidiary companies, majority of the financial services providers have not ventured outside their traditional business lines.[52] The market is dominated by businesses specializing in their particular business. For example, commercial banks in the region have not embraced bancassurance notwithstanding the fact that insurance business market penetration is exceptionally low.[53]Similarly, the markets have not developed sophisticated financial products. More fundamentally, the sectors are at different stages of development and the financial markets are exceedingly small.

In a nutshell, there has been little convergence of financial services and there are no financial conglomerates straddling the banking, securities and insurance sectors in East Africa. Functional despecialization and universal banking have not been embraced.[54]To embellish this argument further, there has been no misalignment between regulators and the regulated. It is not implausible to argue that the single regulator system would not exteriorize economic realities of the financial services sector. Consequently, East African countries cannot rely on market developments as the principal rationale for regulatory modernization. However, this does not necessarily mean that there are no other compelling reasons to justify regulatory reforms.

It is essential to emphasize that those who have advocated for regulatory modernization in Kenya have generally suggested that the unified or single regulator model would endear the financial services industry. They appear convinced that the unified financial regulator would rationalize the country's financial regulation and ensure financial stability. Some scholars have argued that this regulatory model has a superficial appeal since it implies simplicity and efficiency.[55] However, the more fundamental questions of appropriateness of the regulatory structure or the configuration it could take or whether other models are more adaptable has never been articulated. The boilerplate argument has been that the unified regulator is the modern regulatory structure and the country should embrace it in order to keep pace with global developments.[56]

Interestingly, the earliest appeal for a shift from the current fragmented regulatory structure to a more integrated arrangement was made by the CMA before the United Kingdom institutionalized the unified regulatory model. In its 1997-8 Annual Report, the CMA observed that:

[52] See generally Joseph J. Norton, *Financial Sector and law Reform in Emerging Economies,* 51 (3) I.C.L.Q. 752 (2002). The banks are: Equity, Standard Chartered, CFC, NIC, African Banking Corporation, Co-operative and Family Bank. See also Moses Michira, *Family Bank enter Stock Market to lock in clients*, BUSINESS DAILY, Nov. 16, 2010, at 16.

[53] See Siddharthy Iyer, *Why Insurance take up is still low in Kenya,* DAILY NATION, Oct. 31, 2010, at 32; Peter Wanyama, *Insurance Regulator has put a premium on supervision to build confidence,* BUSINESS DAILY, Dec. 2, 2010, at 5; Julius Sigei, *Insurance companies bet big on farmers in drive to grow revenue*, BUSINESS DAILY, Dec. 28, 2010, at 21; Steve Mbogo, *Insurance Regulator revokes brokers licenses, BUSINESS* DAILY, Jan. 1, 2011, at 7; Lillian Kavilu, *Why Insurance is wise investment,* THE PEOPLE, Mar. 8, 2011, at 22; Lillian Kavilu, *UAP Insurance to cover small scale farm harvests,* THE PEOPLE, Mar. 7, 2011, at 23.

[54] See Olusesan Oliyide, *Legal Structure of Universal Banking in Nigeria*, 24(4) J.I.B.L.R. 206 (2009).

[55] See generally Joseph J. Norton, *Global Financial Sector Reform: The Single Financial Regulator Model based on the United Kingdom FSA Experience: A Critical Evaluation,* 39 INT'L LAW. 15 (2005); Markham supra note 42.

[56] See CMA, infra (arguing that other countries have already adopted the arrangement); Jimnah Mbaru, Capital Markets and Development: Law, Bond Market and Securitization in Emerging Markets: Challenges and Opportunities for Kenya (Aug. 2003) (unpublished LLB dissertation, University of Nairobi) (on file with the Law School Library, University of Nairobi) (arguing that adoption of a unified regulatory model for the insurance, securities and pension sectors would be in consonance with global developments); Moses Nyabanda, *Is time ripe for a single regulator?* BUSINESS DAILY, Feb. 1, 2010, at 17; Geoffrey Irungu, *Is time ripe for an Umbrella Financial Services Regulator?* BUSINESS DAILY, Apr. 27, 2009, at 24; Mutuku, supra note 50; Editorial, *The time has come for a financial oversight authority,* BUSINESS DAILY, May 13, 2009, at 16 (arguing that Kenya should adopt a financial regulatory model similar to that of the United Kingdom)

> "The CMA welcomes the enactment of the Retirement Benefits Act in order to regulate the retirement and pension sector. This brings the regulatory authorities to three, namely the CMA, Commissioner of Insurance and the Retirement Benefits Authority which regulate a highly integrated financial services sector with potential overlapping regulatory jurisdiction that could impede market development. It is therefore necessary to harmonize and work towards building a consolidated framework for the financial services sector in order to address the fragmented position… CMA plans during 1999 to consult on the appropriate modalities that will help in building a suitable regulatory framework for the financial services sector relevant for the next millennium. *The emerging global trend now is to establish a consolidated regulatory regime such as the Financial Services Authority of the U.K, the Financial Services Supervisory Board of Japan, the Financial supervisory Commission of Korea, Financial Services Board of South Africa and the Securities and Investment Commission of Australia among others.'"*[57](emphasis added)

Although the report made perfunctory reference to the integrated character of the financial services sector, it canvassed no sustainable or plausible justification for a paradigmatic shift in the regulatory structure. More importantly, it made no reference to other regulatory models to underscore the appropriateness of the integrated model. Unfortunately, the government remained non committal and the proposal appears to have been abandoned altogether.[58]This proposition is bolstered by subsequent developments. The transformation of the office of the Commissioner of Insurance to the Insurance Regulatory Authority through amendments to the Insurance Act in 2006 and subsequent institutionalization of the Sacco Societies Regulatory Authority in 2009 signified the government's commitment to maintain the *status quo.*

Analysis

Whether a jurisdiction should pursue regulatory modernization by adopting the unified regulator model, twin peaks or a configuration of either model is dependent on economic, institutional and political imperatives.[59] The size of the economy, state of development of the financial services sector, public perceptions of existing regulators and the resources needed are critically important.[60] In the case of a unified regulator, it is important to determine whether, the agency will be responsible for prudential and conduct of business or both.[61]Significantly, the extent to which the financial sectors are interconnected plays an important role. This is because:

> "[A]t its most basic, the problem of designing a regulatory structure is one of deciding which of these functions belong to the same agency. The single regulator concept combines most of these functions within one agency…But there are possible configurations between this option and the current highly fragmented regulatory system." [62]

In East Africa, it is unlikely that consolidating the regulatory agencies will translate to efficiency in the performance of the various regulatory functions. As already noted, unified regulation would not symbolize the financial services sector and could arguably lead to loss in regulatory diversity and critical sector specific knowledge and expertise.[63]Conceivably, jurisdictions with limited interconnections between banking, insurance, pension and securities may be better of maintaining the fragmented model over the short term.

---

[57] Capital Markets Authority, ANN. REP., 35 (1998).

[58] In 2002, the then Minister of Finance honorable Chris Obure was reported as having intimated that it was the government's desire to undertake further reforms of the financial sector regulatory regime that would see the regulation of securities markets, retirement benefits and the insurance sector under a single regulator. The minister is reported to have justified the shift on the need to minimize costs and harmonize the regulatory regime for the sector in consonance with international trends. See Capital Markets Authority Annual Report, 53 (2002).

[59]See generally Mwenda, supra note 23.

[60]*Id.* at 51.

[61] *Id*. at 51-2 (2005); Taylor M. & Fleming A., *Integrated Financial Supervision: Lessons from Northern European Experience, Policy Research*, World Bank, Working Paper No. 2223, (1999).

[62] Taylor, supra note 25 at 95.

[63] See Nyabanda, Supra note 56 at 17; George A. Walker, *The law of Financial Conglomerates: The Next Generation*, 30 INT'L LAW. 57 (1996) (discussing the concept of financial conglomerate, historical development of financial conglomerates, their advantages and challenges and the importance of developing a comprehensive regulatory structure).

It retains distinctive characteristics of the sectors, is more flexible and responsive to sector specific challenges particularly where different sectors are at different stages of development.[64]

From a regional perspective, the lukewarm reception of the unified or single regulator model in Sub-Saharan Africa is circumstantial evidence that these countries are not prepared for a paradigmatic shift in the regulatory architecture. The closest illustration is a partial unification in Nigeria where the banking and pensions sectors are regulated by the same agency.[65] Arguably, in many Sub-Saharan African countries, the challenges of the fragmented regulatory structure are not sufficiently grave to justify intervention. Put differently, the acclaimed advantages of the single regulator model do not appear to have motivated or incentivized policy makers and legislators that current regulatory arrangements should be dismantled. Admittedly, because of the dynamic character of the financial services industry, regulatory reform is work in progress. It is essential that the regulatory structure adjusts and reflects changes as they continuously occur. In sum, whereas some advantages could accrue from measured unification, this is unlikely to happen over the short term.

From a socio-political perspective, the fragmented regulatory structure comports with the culture of corruption and particularism under which the executive arm of government in many Sub-Saharan African countries perceive positions in the public service and state owned corporations as avenues for rewarding their friends, relations, tribesmen and women, and political supporters.[66]According to the Transparency International Corruption Index, East African countries are perceived as some of the most corrupt in the world. Corruption is pervasive and remains the largest obstacle to doing business and good corporate governance in the region.[67] Any attempt to consolidate the current regulatory agencies would confront serious political roadblocks. Existing agencies have established constituencies in the industry and would endeavour to retain their sphere of influence. More importantly, both the executive and legislature have their jurisdictions to protect.[68] Arguably, consolidating existing regulatory authorities would reduce significantly the political influence wielded by the executive over the financial services sector to the detriment of the political class.

The prestige of government ministries is determined by the number of state owned corporations accountable to the minister responsible since this translates to the number and quality of appointments the executive can make or influence. In Kenya for example, the Ministry of Finance (Treasury) is the most coveted because it is administratively responsible for the most prestigious and highest paying corporations such as, the Central Bank of Kenya, Capital Markets Authority, Insurance Regulatory Authority, Kenya Revenue Authority and several commercial banks, such as Industrial Development bank, Consolidated Bank and the Kenya Post Office Savings Bank. Preponderantly, the political class is unlikely to embrace a shift to the unified or single regulator model in the short term.

---

[64] See Cunningham & Zaring, supra note 43 at 55-6; Mwenda, supra note 23; Daniel Asher, G*rowing Financial Complexity calls for Improved Structures,* BUSINESS DAILY, Oct. 8, 2010 at 7 (lamenting that Kenya has an exceedingly poor financial literacy record and lacks a history of using superior financial products such as credit options); Norton, supra note 55 at 43.

[65] In Zambia, the insurance and pension sectors are regulated by the same agency. See Alex Fleming & Kenneth K. Mwenda, *International Developments in the Organizational Structure of Financial Services Supervision,* 16(12) J.I.B.L. 291, 293(2001).

[66] See generally James C. Owens, *Government Failure in Sub-Saharan Africa: The International Community's Options,* 43 VA. J. INT'L L. 103 (2003); Naomi Cahn, *Corporate Governance Divergence and Sub-Saharan Africa; Lessons from out here in the Fields*, 33 STETSON L. REV. 893 (2004); Derrick Brinkerhoff & Arthur A. Goldsmith, Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessment and Programing *available at* http://www.abtsassociates.com/report/200260108918330950pdf (visited on May, 12, 2009);Mary H. Moran & Ann Pitcher, Rethinking Patrimonialism and Neopatrimonialism in Africa, AFRICAN STUDIES REVIEW, 2009 *available at* http://www.britannica.combps/additionalcontent/18/138813541/pdf (visited on May 12, 2009); Uslaner Eric, Trust and Corruption in JOHANN GRAFF LAMBSDORF ET AL ED THE NEW INSTITUTIONAL ECONOMICS OF CORRUPTION, LONDON (2004); SCHMIDT ET AL, FRIENDS, FOLLOWERS AND FACTIONS: A READER IN POLITICAL CLIENTELISM (University of California, Berkeley, Press (1977); David Furnivall, *Political Patronage: Corruption threat to Kenya's Unity*, DAILY NATION, June 17, 1995, at 19.

[67] Kenya 2.1, Uganda 2.5 and Tanzania 2.4. See generally World Economic Forum: The Global Competitive Report, 245 (2008), *available at* http://www.guardian.co.uk/global-development/interactive /2010/oct/26/corruptionindex-2010countries-world (visited Nov. 12th 2010); Benjamin Muindi, *Corruption the key reason why Investors shun Kenya*, DAILY NATION, Nov. 29, 2010, at 32.

[68] See Bryan D. Stirewalt & Garry A. Gegenheimer, *Consolidated Supervision in the Former Soviet Republics: A Comparative Examination of the Emerging trend in Emerging Markets,* 23 ANN. REV. BANKING AND FINANCIAL LAW 533, 596 (2004); Markham, Supra note 42 at 407-8; Lisa L. Broome & Jerry W. Markham, *Banking and Insurance: Before and After the Gramm-Leach-Bliley Act*, 25 IOWA J. CORP L. 723, 776-84 (2000).

Conclusion

Since financial services in East African countries are neither unified nor integrated, and the region has not originated a conceptual basis to justify the shift to the single regulator model, the better approach would be to revamp the current compartmentalized system in order to make it less duplicative, more efficient and responsive to market dynamics. Increased information sharing and coordination would be a preferable strategy over the short term.[69]In Kenya for example, the Memorandum of Understanding (MOU) between the Central Bank of Kenya, Capital Markets Authority, Retirement Benefits Authority and the Insurance Regulatory Authority is undoubtedly a positive indicator because it creates the framework for information exchange and crisis management.[70] More importantly, the Central Bank of Kenya remains the *de facto* lead regulator in charge during times of financial crisis. However, the need for a more enduring and effective structure cannot be overemphasized. An inter-agency committee would significantly improve coordination between the agencies. Undoubtedly, the most salient shortcomings of the current regulatory systems can be remedied within the existing conceptual framework. Strengthening existing rules and regulations and enhancing the quality of enforcement and compliance is undeniably progressive.[71] As postulated above, improved information sharing and coordination would be important tools in understanding the principal sources of systemic risk in the industry.[72] Additionally, it is important to appreciate that any proposed changes in the short term are unlikely to draw sufficient political support which is determinative of the matter.[73] In sum, although the region is not facing an immediate financial crisis, it is imperative that regulatory structures be appraised continuously to ensure that they remain relevant and dynamic.

---

[69] See David Mitchell, *Evaluation of Canadian Securities Regulation: Should Canada adopt the Australian "one stop" Regulatory Approach?* 10)4) J.F.C. 382, 385 (2003).

[70] See James Anyanzwa, *Financial Regulators promise to foster close working ties*, THE STANDARD, Apr. 4, 2010 at 14.

[71] Saule T. Omarova, *Rethinking the Future of Self-Regulation in the Financial Industry*, 35 BROOK. J. INT'L L. 665, 679 (2010).

[72] For a discussion on the role of the *de jure* or *de facto* lead regulator, see George A. Walker, *Conglomerate Law and International Financial Market Supervision*, 17 ANN. REV. BANKING L. 287, 323-28 (1998); Geoffrey Irungu, *Plans to form financial crisis task force underway,* BUSINESS DAILY, Mar. 24, 2009, at 6; Steve Mbogo, *Financial Sector Regulators in bid to work jointly,* BUSINESS DAILY, May 13, 2009, at 18.

[73] Harvey Cohen, *Reform of the United Kingdom Financial Services Regulation: Twin Peaks or Britannia's Trident Spear*, 12(5) J.I.B.L. 171 (1997); Ferran, supra note 19 at 302-3; Lomnicka, supra note 49; (explaining the role political will played in the process of switching from the fragmented to the single regulator model in the United Kingdom).