

Will you pay by credit card? No, I have my mobile thanks.

Mobile operators and industry experts see the mobile payment, also called Mobile Banking, MBanking, M-payment or SMS Banking, as the future of a cashless society.

The mobile payment works by storing a consumer's credit or debit card within the SIM card and employing the near-field communication (NFC) technology¹ or sending money by text message. Clients can convert cash into electronic money (and vice versa) through any retail outlets and then use their mobile phone to instantaneously send and receive money wherever they have cell coverage. The transaction information is then communicated back to the telecommunication provider or to the bank.

A report of the Bill & Melinda Gates Foundation explains how secure this type of payment is: *“by leveraging this real-time communications system, neither the scheme operator nor the customer needs to worry about stores running off with their cash because stores must pre-purchase electronic value from the issuing bank or mobile operator. Hence, any cash exchanged between the customer and the retail store is offset by an immediate, opposite transfer of value between the customer’s and store’s accounts (not the issuer’s)”*².

In Europe, the development of the mobile payment is slow. Since 2008, the Global System for Mobile Association (GSMA) and the European Payments Council (EPC), which represents 8000 banks in the European Union and Switzerland, decided to collaborate to accelerate the deployment of services that enable consumers to pay for goods and

services in shops, restaurants and other locations using their mobile phones. They have written the Trusted Service Manager requirements document and a certification process in order to serve as a reference basis for the development of the mobile payment.

The mobile payment has been already introduced some years ago in developing countries where it met a great success, especially in Africa. According to the UN, in 2009, 350 million Africans had a mobile phone. Meanwhile, the World Bank estimates that less than 20% of households have access to banking services and this rate can be as low as 5% in some countries. The mobile payment is a way to compensate the banking lack in these countries.

Therefore, mobile operators are investing in the field of mobile payment and compete with banks. They develop two types of products:

- Mobile oriented solutions: the mobile operators control the entire value chain by creating and managing payment accounts;
- Bank oriented offers: the mobile operator and banking institutions cooperate to offer a solution where the bank is responsible for creating and managing accounts and the telecom operator is in charge of the transportation of the data. These “bank oriented offers” propose their subscribers consulting services, local money transfer and paying bills via mobile phone.

Setting up a mobile bank account on your phone is very simple: you just need to register with an approved agent, provide your phone, along with an ID card, and then deposit some cash onto your account.

Due to the resources of the population, the amounts of cash being transferred are often small but the total volume of business can be huge. For instance, at M-Pesa, the Kenya’s biggest mobile phone banking service, the ordinary transaction is actually less than \$40

¹ Near-field communication (NFC) allows data to be exchanged between devices via short-range, high frequency wireless communication technology by combining the interface of a smartcard and reader into a single device. NFC devices are also compatible with existing contactless infrastructure.

² “Scaling mobile money”, Ignacio Mas and Dan Radcliffe, Bill & Melinda Gates Foundation, September 2010, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1681245

but the total amount of money moved per day is around \$8.5 millions.

This company is the most successful mobile money deployment starting as mobile payment operator and becoming a big company in Africa. Since its commercial launch in March 2007, M-Pesa now has 11.9 million customers (corresponding to 54% of Kenya's adult population) and processes more transactions domestically than Western Union does globally.

With the market in Kenya largely set up, M-Pesa is now looking to invest in the market of Tanzania and even in Afghanistan. Another major mobile phone banking service in Africa is the South Africa's MTN which has extended its services to 20 other African countries, including Uganda, Nigeria, Cameroon and Ivory Coast.

The mobile payment is revolutionizing the banking system in Africa. For instance, since 2004, Wizzit, which is a bank only accessible via mobile phone, has already recruited more than 50,000 South African customers. Wages can be paid electronically to a Wizzit account. Customers receive a debit card Maestro, which is accepted by vending machines and retailers. There is neither minimum balance requirement nor annual bank fees and users pay the equivalent of 0.15 to 0.78 dollars per transaction.

Some European mobile operators are becoming active in this area, such as the Orange group, which has also developed its mobile payment solution "Orange Money" and offers it in several countries in Africa.

The strong expansion of mobile banking in Africa has forced the West African Economic and Monetary Union (GIM-UEMOA) to create a platform with several operators of the sub-region of West Africa and some 80 banks to improve customer services and especially to better organize and secure the industry.

The mobile payment appears to be a very interesting sector for investors, particularly for telecom operators and banks. The propagation of an efficient e-payment network has become

an efficient mean for delivering a fuller range of financial products to poor households. For example, as more and more people joined the system to make payments, M-Pesa started integrating the platform with a range of institutional partners including banks, utility companies, employers and government institutions. In May 2010, Equity Bank and M-Pesa announced a joint venture, M-Kesho, which permits M-Pesa users to move money between their M-Pesa mobile wallet and a prudentially-backed, interest-bearing Equity Bank account. M-Kesho makes possible to market savings services and these bank accounts will pay interest even if at a low rate (0.5% – 3.0% per annum).

Unfortunately, the mobile phone revolution continues to leave large parts of the continent behind. While countries like Kenya, South Africa and much of North Africa are approaching 100% mobile penetration, in Burundi, the Central African Republic, Eritrea, and Rwanda it is less than 30%.

The Bill & Melinda Gates Foundation and the GSMA, which represents the interests of the worldwide mobile communications industry, have worked together to found the Mobile Money for the Unbanked (MMU) initiative. The MMU helps the developing countries to set up mobile banking system. The Bill & Melinda Foundation has donated \$12.5 million to the MMU and will support 20 projects in Africa, Asia, and Latin America. The ultimate goal is to supply 20 million unbanked people with mobile financial services by 2012. Mark Suzman, acting President of the Global Development Program at this Foundation, explains that *"making financial services widely available to the poorest families in the developing world can help break the cycle of poverty by giving them a safe place to save, guard against risks, build assets, and provide opportunities for the next generation"*.

Thus, the mobile payment is an interesting source of revenue for investors, as it is illustrated with the example of M-Pesa, but it also a mean to help for the development of emerging countries and a future market in Europe.

M-payment will be one of the main subjects developed in the session prepared by Ichay & Mullenex during the African Telecom Forum organized in Marrakesh the March 17th, 18th and 19th 2011. Diane Mullenex will talk on “The convergence of services and contents (Mobile payment, Games and TV on mobile phone, etc.): legal and regulatory constraint associated to new business models”.

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Ichay & Mullenex Avocats is a French law firm focusing on all legal issues related to the new technologies, the green business and the sustainable development in France and abroad. They are considered experts in intellectual property and Internet law, e-commerce, online gaming, data protection. Ichay & Mullenex Avocats also assists its clients on all issues related to financing, mergers & acquisitions, restructuring, etc. and advises them on their litigation and arbitration procedures.

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