17/11/2023

From: Silver Kayondo, Advocate (Uganda)

To: BIS

<u>Re: Comments on digital fraud discussion paper.</u>

I have read the draft discussion paper, which highlights some important general digital fraud principles. However, I would propose the following additions;

1. Distinction between card-present (CP) frauds and card-not-present (CNP) frauds
2. Privity of contract between card processors and bank customers (card holders)
3. Dispute resolution and recovery measures (domestic and cross-border challenges)

Relating to 1 above, Card-present frauds are in-person, while card-not-present transactions are not in-person. Neither the cardholder nor the physical card is present at the time of the fraudulent transaction(s). The latter category are the hardest to investigate as every transaction done on the clients' account is presumed to have been authorized by the client. I would propose that a proper distinction is made in the discussion paper so that adequate regulatory guidance may be preferred for each type.

On the aspect of contractual privity under 2, the principal contract for card issuance and processing is between banks and card issuers/processors such as Mastercard and VISA. The customer/account holder is largely an outsider to this arrangement, and cannot assert his/her rights directly against the card companies. In many African jurisdictions, the card companies do not have support functions in-country, and customers have to rely on information/investigation reports obtained by the banks in event of fraud. I suggest that the final discussion paper avails some guidance on the available options/remedies for such practical scenarios. Capacity building of local regulators might be required in order to enhance their consumer protection mandate.

Lastly, dispute resolution and recovery measures for digital frauds are mostly challenging because in most cases, the amounts involved are fairly small, for example, credit card/e-commerce frauds, yet these amounts are big in terms of aggregated losses to consumers and the impact on consumer trust and confidence in the electronic banking/payment and settlement systems. Such small losses cannot be resolved in Courts of law. It is proposed that semi-formal structures like bank Ombud schemes be strengthened for oversight. Furthermore, in cases of cross-border digital frauds, the costs of investigation are very high because the process might require court orders, forensic investigations, *et cetera*. A discussion around these practical solutions might be worthwhile so that the final document has an analysis of potential remedies as a way of not just ending at problem identification, but also offering some practical solutions to banks, customers, regulators, service providers, *et cetera* considering that it will be a global document.