



# **Diagnostic Report on the Legal and Regulatory Environment for Branchless Banking in El Salvador**

Ernesto Aguirre  
Denise Dias  
Yanina Seltzer

August 2009

## Notes on Branchless Banking Policy and Regulation in El Salvador August 2009

### Executive Summary

El Salvador is regarded by multilateral organizations as having a high level of financial reach relative to other Latin American nations. However, only 30-40% of the adult population has a bank account,<sup>1</sup> and less than half of the adult population has access to formal financial services.<sup>2</sup> The country has no formal financial access policy or strategy and there is minimal coordination among relevant government agencies on this topic. The newly elected government, however, is willing to work on this front to create a better policy environment for financial access, including by defining the roles and responsibilities of each relevant authority.

The microfinance and international remittances sectors in the country are highly developed. However, branchless banking is still in its initial stages. A handful of banks are currently experimenting with agents and mini-branches in retail establishments, despite the fact that the current legal and regulatory framework in the country does not clearly permit the use of retail agents.

There are no examples of nonbank-based branchless banking initiatives. There is no specific regulation on the issuance of multi-purpose stored-value instruments (e-money) by nonbanks. However, banking activity is defined as taking deposits and intermediating those deposits. It is widely assumed that Salvadoran regulators would strictly apply this definition to e-money schemes and deem such activity to be banking activity, particularly if funds are then intermediated.

Within its efforts to advance access to finance in El Salvador, and in order to create an enabling environment for branchless banking, the regulators should promote regulatory and legal changes to: (i) clearly allow the use of agents by licensed and regulated institutions, (ii) allow the issuance of electronically stored value instruments by both banks and nonbanks subject to prudential and other considerations, (iii) adapt and or clarify the anti-money laundering rules accordingly to such changes. The provision of products and services through alternative means and channels such as agents and mobile phones or prepaid cards must be governed by clear and simple operational and conduct-of-business standards, and consumer protection provisions should not be so burdensome as to effectively prohibit development of these channels.

These notes offer details on CGAP's findings and recommendations as a result of a branchless banking policy and regulatory diagnostic carried out in late 2008 in El Salvador. CGAP has completed similar assessments in several other countries in diverse regions. An overall analysis and policy recommendations resulting from the

---

<sup>1</sup> Interview with SupFin, October 29, 2008.

<sup>2</sup> Latin American Bank Federation – FELABAN “Promoviendo el Acceso a los Servicios Financieros: Que nos Dicen los Datos sobre Bancarización en América Latina?” 2007. Available at [www.felaban.com/pdf/servicios\\_financieros.pdf](http://www.felaban.com/pdf/servicios_financieros.pdf).

seven first diagnostics are found in CGAP Focus Note 43 *Regulating Transformational Branchless Banking: Mobile Phones and Other Technologies to Increase Access to Finance*.<sup>3</sup>

## Background: CGAP, Branchless Banking and Policy Diagnostics

CGAP is a global resource center for microfinance standards, operational tools, training, and advisory services. Its members—bilateral, multilateral, and private donors—are committed to building more inclusive financial systems for the poor. The CGAP Technology Program is a multiyear learning initiative co-funded by the Bill and Melinda Gates Foundation to find and test promising technology solutions to improve access to finance.

CGAP defines **branchless banking** as the delivery of financial services outside conventional bank branches using information and communications technologies and nonbank agents. Due to the potential to radically reduce the cost of delivery and increase convenience to customers, branchless banking can expand coverage to new, previously underserved segments of the population. Technology can help a range of market actors to expand the boundaries of access to finance, including not only banks but also microfinance institutions, mobile phone operators, and technology companies.

### Some Highlights

- Less than 40 percent of the adult population has a bank account.
- There is no consensus among the authorities on whether the existing legislation permits the use of agents by licensed financial institutions.
- Nonbanks are not allowed to issue stored-value instruments or e-money.
- Financial authorities are open to considering business and regulatory innovations with potential to increase the level of financial access.

Two models of branchless banking—bank-based and nonbank-based—can be distinguished. Both make use of retail agents such as merchants, supermarkets, or post offices to deliver financial services outside traditional bank branches. In the **bank-based model**, every customer has a direct, contractual relationship with a prudentially licensed and supervised financial institution—whether involving an account or a one-off transaction—even though the customer may deal exclusively with a retail agent who is equipped to communicate directly with the bank (typically using either a mobile phone or a point-of-sale (POS) terminal).

In the **nonbank-based model**, customers have no direct contractual relationship with a fully prudentially licensed and supervised institution.<sup>4</sup> Instead the customer exchanges cash at a nonbank agent (or otherwise transfers, or arranges for the transfer of, funds) in return for an electronic record of value. This electronic account is stored on the server of

<sup>3</sup> CGAP publications on branchless banking policy can be found at [www.cgap.org/p/site/c/template.rc/1.11.1772/](http://www.cgap.org/p/site/c/template.rc/1.11.1772/).

<sup>4</sup> The term “banks” is used in this document to refer to fully prudentially licensed and supervised financial institutions (e.g. banks, credit cooperatives, microfinance institutions, exchange houses, etc.), whereas the term “nonbanks” is used to refer to entities which are not licensed or supervised by a financial authority (e.g. mobile network operators, retailers, financial entities outside the supervised spectrum, etc.).

a nonbank, such as a mobile operator or an issuer of stored-value cards. The balance in the account can be used for making payments, storing funds for future use, transferring funds, or converting stored-value back to cash at agents. If the system relies on a POS network and plastic cards, customers must visit a participating agent to conduct a transaction. If the system is mobile phone-based, customers need to visit an agent only to add value or to convert stored-value back into cash. A more limited version of the nonbank-based model can be found in payment networks, which involve a technology provider or other nonbank institution offering a network of "payment points" (for example, payment terminals, ATMs, or retail agents equipped with POS devices) where a customer can make payments to third parties or a governmental entity can make payments to beneficiaries.

Stored-value instruments are often referred to as *e-money*. There are various definitions of e-money, including the following from the European Union's Electronic Money Institutions Directive (2000): "monetary value as represented by a claim on the issuer which is: (i) stored on an electronic device, (ii) issued on receipt of funds of an amount not less in value than the monetary value issued, and (iii) accepted as a means of payment by undertakings other than the issuer."

## 1 Introduction

From October 28 to November 7, 2008, CGAP conducted a mission in San Salvador to analyze the policy and regulatory environment for branchless banking.<sup>5</sup> The analysis of the existing regulation and other documentation was complemented by interviews held with a wide variety of stakeholders including the Central Reserve Bank, the Superintendence of the Financial System, the Consumer Defender, the Competition Superintendence, the Telecommunications Superintendence, the Financial Intelligence Unit, mobile network operators, and payment and banking service providers. stakeholders (see Annex 1). A subsequent mission to San Salvador was conducted from May 18-23.<sup>6</sup>

## 2 State of Play: Government Authorities

There is no formal financial access policy or strategy in El Salvador. The Central Reserve Bank (BCR) has identified financial inclusion as one of its priority areas, but success will depend on how it involves and coordinates with the Superintendence of the Financial System (SupFin), as well as with relevant government agencies such as the Technical Secretariat to the Presidency, the Consumer Defender (CD), and the political sphere regarding legal reforms. A senior officer of the new government expressed that it is the intention of the government to consider the adoption of a comprehensive financial access policy, including improved inter-agency coordination.

---

<sup>5</sup> Policy Advisory Consultants Ernesto Aguirre and Denise Dias conducted the field portion of the mission and authored these notes, with significant editorial support from CGAP consultant Yanina Seltzer. The Central Reserve Bank of El Salvador kindly provided logistic support throughout the mission.

<sup>6</sup> The follow up mission was conducted by CGAP Policy Advisory Consultant Ernesto Aguirre.

Although the current legal and regulatory framework does not clearly permit some business innovations such as the use of retail agents to deliver financial services (see Section 5), the SupFin and the BCR are open to promoting regulatory changes to allow the development of branchless banking models that have the potential to bring a larger number of Salvadorans into the formal financial sector.

As part of its broader *Red Solidaria* project, the government runs a conditional cash transfer program that targets the poorest families. The cash transfers are delivered by armored cars every two months.<sup>7</sup> At the start of 2009, a pilot project was launched to switch the payments to debit cards that could be used at bank branches, ATMs and a limited number of agents (available only in the largest urban areas). However, the pilot was quickly suspended and the use of armored cars has been reinstated. This was due to operational obstacles and the fact that the bank branch network was too small to serve all beneficiaries.<sup>8</sup> The Technical Secretariat of the Presidency, the government branch responsible for the program, has shown little interest in incorporating financial inclusion as an important component of the program, and none of the banks showed interest in handling the cash transfers on behalf of the government. This situation may change with the new government's interest in increasing financial access and taking advantage of official programs to this purpose.

### 3 State of Play: Clients

El Salvador is a densely populated country, with a total of 6.9 million inhabitants. Over 60 percent of the population lives in urban areas.<sup>9</sup> The economically active population (EAP) is 2.87 million and the adult population (over 16 years of age) is 3.74 million.<sup>10</sup> In 2007, 6.3 percent of the population was unemployed, 13.9 percent of the population over the age of 10 was illiterate, and 34.6 percent of households were considered poor.<sup>11</sup>

The average monthly household income was USD 483 in 2007.<sup>12</sup> About 30 percent of the EAP is employed by small and microenterprises<sup>13</sup> in urban areas, which account for approximately 40% of the GDP. An estimated 20 percent of the microenterprise sector is being served by the microfinance system.<sup>14</sup> According to the government statistics agency, 91 percent of households have electricity, 82.9 percent have television, and 65 percent have mobile phones. Less than 9 percent have computers and 3.1 percent have

---

<sup>7</sup> In 2008, the program transferred nearly USD7.4 million to approximately 56,000 families in 100 municipalities. Grants may vary from USD15 to USD50. According to an interview with Minister Caceres in June 2009, transportation costs represent 30% of the costs of the cash transfer program.

<sup>8</sup> Fifteen municipalities withdrew their cooperation with the project due to problems such as blocked pin number (due to erroneous use), faulty ATM connections and others. Also, over 30 percent of the beneficiaries could not open bank accounts because they did not have identification documents and/or because they were not yet 16 years old. Also, the government became wary of having retail agents deliver the grants, as in some cases agents required grantees to purchase products in exchange for the transfer.

<sup>9</sup> World Bank, Development Data, September 2008 ([http://devdata.worldbank.org/AAG/slv\\_aag.pdf](http://devdata.worldbank.org/AAG/slv_aag.pdf)).

<sup>10</sup> Digestyc ([www.digestyc.gob.sv](http://www.digestyc.gob.sv)).

<sup>11</sup> Digestyc, "Encuesta de Hogares de Propósitos Múltiples, 2007" ([www.digestyc.gob.sv](http://www.digestyc.gob.sv)).

<sup>12</sup> Idem.

<sup>13</sup> In El Salvador, microenterprise is defined as firms with less than 10 employees.

<sup>14</sup> Digestyc, "Encuesta de Hogares de Propósitos Múltiples, 2007" ([www.digestyc.gob.sv](http://www.digestyc.gob.sv)).

access to the Internet.<sup>15</sup> Our interviews suggest that most people have official identification cards that are required by banks for account opening, although lack of documentation is more common in the lowest income segments.<sup>16</sup>

Despite many years of macroeconomic and political stability in the 1990's, poor Salvadoran families continue to face many challenges. The poverty reduction trend observed between 1991 and 2002 was interrupted mainly by the coffee crisis<sup>17</sup> and the earthquakes of 2001, high oil prices in 2006, and rising unemployment rates. Income inequality, already high by international standards, has been increasing. Persistent high levels of crime and violence have affected the poor by eroding their assets.<sup>18</sup> The impact of the current global crisis on this dollarized economy is still unfolding; an important effect of which has been a decrease in the flow of international remittances.<sup>19</sup>

## 4 State of Play: Industry

### 4.1 The bank and the microfinance sectors

There are 14 banks in El Salvador, two of which are state-owned banks. The four largest private banks retain 80 percent of the total assets of the banking system.<sup>20</sup> The bank branch network is not very extensive (there are 378 branches in the country, or one branch for every 18, 250 people), falling short of covering the majority of Salvadorans. Branch penetration reflects the focus on wealthier clients, although there is increasing attention being paid to new low-income segments. Some banks, particularly Banco Cuzcatlan, HSBC and Banco Agrícola, offer free and simple savings accounts catered to low-income clients, and compete directly with credit cooperatives and microfinance institutions.<sup>21</sup> Some are experimenting with agents and mini-branches in retail establishments despite the unclear regulatory framework for the use of agents (see Section 5.2).

El Salvador is regarded by multilateral organizations as having a high level of financial reach relative to other Latin American nations. However, only an estimated 30-40% of the adult population has a bank account.<sup>22</sup> A recent study commissioned by the Latin American Bank Federation<sup>23</sup>, estimated that less than half of the adult population has access to formal financial services.

<sup>15</sup> Idem.

<sup>16</sup> Interviews with Banco Agrícola and the Technical Secretariat of the Presidency, October 29, 2008.

<sup>17</sup> According to UNICEF (United Nations Children's Fund), thousands of Salvadoran families in the coffee growing areas became unemployed during 2001-2002, falling into extreme poverty. Similar troubles are faced by other coffee-producing countries in Latin America ([www.commondreams.org/headlines02/1023-04.htm](http://www.commondreams.org/headlines02/1023-04.htm)).

<sup>18</sup> World Bank, Country Brief (<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/ELSALVADOREXTN/0,,menuPK:295253~pagePK:141132~piPK:141107~theSitePK:295244,00.html>).

<sup>19</sup> Approximately two million Salvadorans live abroad and send remittances to their families in El Salvador.

<sup>20</sup> Interview with BCR, October 28, 2008.

<sup>21</sup> Some banks have been acquiring microfinance institutions to leverage their capacity to reach the low-end market.

<sup>22</sup> Interview with SSF, October 29, 2008.

<sup>23</sup> Available at [www.felaban.com/pdf/servicios\\_financieros.pdf](http://www.felaban.com/pdf/servicios_financieros.pdf).

There are 300 credit cooperatives, seven of which are regulated and supervised by the SupFin<sup>24</sup> either because they offer current accounts to their members or because they have requested to be supervised. A new law for nonbank financial entities was passed last year and has been in force since January of 2009. The law allows for the formation of cooperative banks that may take deposits from the general public.

The microfinance sector is highly competitive, with no single dominant provider.<sup>25</sup> It serves approximately 86,000 borrowers, 68 percent of whom are women.<sup>26</sup> This sector also plays an important role in offering remittances services. To compete with banks, microfinance providers—including credit cooperatives—are looking into new delivery channels to expand their client base and to diversify geographically. The country was ranked fourth in Latin America in the 2008 Microscope,<sup>27</sup> behind Peru, Bolivia and Ecuador. According to the study, NGOs face no significant obstacles for setting up and operating microfinance activities, but weaknesses remain in the “politicized judicial system and the right to property”. Regulated entities also enjoy a reasonable and enabling regulatory framework. The SupFin has a team of specialists in microfinance and credit cooperatives that respond to the needs of this sector.

#### 4.1.1 Credit information

Credit bureaus are particularly strong in El Salvador. The World Bank’s Doing Business 2009 Report gives the country a score of 6 on its Credit Information Index<sup>28</sup>, compared to a regional average of 3.4 and an OECD average of only 4.8. There are private bureaus that cover 83 percent of the adult population (the average for Latin America is 33.1 percent) and are used by regulated and non-regulated institutions. There are bureaus specialized in microfinance, such as Infocred, that offer data on small loans.<sup>29</sup> Both regulated and non-regulated institutions provide positive and negative information on borrowers to private bureaus. There is also a public registry operated by the SupFin, however, it does not cover small transactions and provides less information than the private registries.

## 4.2 *Payment systems, instruments, and services*

There is no Real Time Gross Settlement (RTGS) system in operation. A RTGS system

---

<sup>24</sup> Superintendencia del Sistema Financiero, “Entidades Fiscalizadas” ([www.ssf.gob.sv](http://www.ssf.gob.sv)).

<sup>25</sup> In 2000, the SupFin created a new institutional window for microfinance: Sociedad de Ahorro y Credito, that can offer savings accounts and are subject to a minimum capital of \$1.1 million compared to \$11.4 million required for banks. The minimum solvency rate is the same as that applicable to banks (12%). Source: Inter-American Development Bank (2005), “Principios y practicas para regulacion y supervision de microfinanzas”.

<sup>26</sup> Asociacion de Organizaciones de Microfinanzas (Asomi): [www.asomi.org.sv/35.0.html](http://www.asomi.org.sv/35.0.html).

<sup>27</sup> Microscope is a sectoral ranking prepared by the Economist Intelligence Unit (EIU), sponsored by IDB and Corporación Andina de Fomento (CAF). It analyzes three areas with potential to affect microfinance development: business climate, regulation, and institutional development in 20 Latin American countries. Microscope reports can be found at: [www.iadb.org/mif/microscope.cfm?lang=en](http://www.iadb.org/mif/microscope.cfm?lang=en).

<sup>28</sup> The Credit Information Index measures the scope, access and quality of credit information available through public registries or private bureaus. It ranges from 0-6, with higher values indicating that more credit information is available from a public registry or private bureau. The report is available at: [www.doingbusiness.org/ExploreEconomies/?economyid=62](http://www.doingbusiness.org/ExploreEconomies/?economyid=62)

<sup>29</sup> 2008 Microscope ([www.iadb.org/mif/microscope.cfm?lang=en](http://www.iadb.org/mif/microscope.cfm?lang=en)).

operated by the BCR is due to begin operations in late 2009.

The limited interoperability in retail payments hinders bank clients from depositing or withdrawing money in other bank branches (except when using checks) and from transferring funds to another bank using the Internet.<sup>30</sup> Most banks have their own POS and ATM networks which are partially interoperable due to switching services provided by ATH and Credomatic. Most banks also use the POS and ATM networks owned by ATH, which is the largest one in the country. However, withdrawing cash from an ATM that does not belong to the client's bank costs between USD1 and USD3.50.<sup>31</sup> Overall, the coverage of POS and ATMs in El Salvador is not extensive, leaving the majority of the country without electronic means for payments.

Mobile banking is in its early stages and is only available for those who already have bank accounts.<sup>32</sup> Internet banking seems to be readily available for those with internet access and a bank account, for a monthly fee of approximately USD2.<sup>33</sup> The majority of the population does not have access to either service. There are no examples of nonbank-based branchless banking initiatives.

Cash is the preferred medium for low-value payments and is also used by the government to deliver welfare payments. Utility bill payments are made at banks, directly with utility companies or in retail stores such as supermarkets. In the latter case, private companies collect the payments and provide POS devices. Several banks have piloted services that allow agents to receive credit card bill payments. In theory, BCR sees no need for requesting authorization for this service, as this is covered under Article 70 of the Banking Law, however, a consensus needs to be reached with the SupFin in this regard (see Section 5.2).

#### 4.2.1 Money transfers

International remittances represent approximately 20 percent of GDP (up from 17 percent in 2005) and 80 percent of foreign exchange.<sup>34</sup> Over one-quarter of the adult population receives remittances.<sup>35</sup> They receive, on average, USD 170, ten times a year. Over 90 percent of the remittances come from the United States. Nearly 50 percent of remitters use money transfer companies, while a third use banks. Approximately 70 percent of the transfers are cleared and settled by banks, however, these can be distributed by nearly any type of financial institution.<sup>36</sup> The average cost to transfer USD

<sup>30</sup> Interview with BCR, October 28, 2008.

<sup>31</sup> Superintendencia del Sistema Financiero, "Tasas de interes, comisiones, recargos y cargos de cuenta de terceros", September 2008.

<sup>32</sup> Interview with BCR, October 29, 2008.

<sup>33</sup> Superintendencia del Sistema Financiero, "Tasas de interes, comisiones, recargos y cargos de cuenta de terceros", September 2008.

<sup>34</sup> Available at Multilateral Development Fund, Inter-American Development Bank ([www.iadb.org/mif/remittances/lac/remesas\\_es.cfm](http://www.iadb.org/mif/remittances/lac/remesas_es.cfm)). Note that this data is pre-crisis. Significant alterations are expected in the remittance flows to El Salvador.

<sup>35</sup> Digestyc ([www.digestyc.gob.sv](http://www.digestyc.gob.sv)).

<sup>36</sup> The major players are Banco Agricola, Bancomercio, Bancosal, Gigante Express, Moneygram, Viamericas, Vigo,

200 is 5.2 percent.<sup>37</sup>

El Salvador is one of the most competitive money transfer markets in Latin America due to its dollarized economy and the participation of large banks with companies such as Western Union and Gigante Express. The four largest banks—Banco Agrícola, Banco del Comercio, Banco Cuscatlán, and Banco Salvadoreño—have branches in the United States that offer money transfers. Fedecaces, a credit union network, has entered this market to focus on low-income households.

In El Salvador, 23 percent of remittance recipients have bank accounts and 37 percent report knowing how to use an ATM machine.<sup>38</sup> Although living in the largest urban areas, remittance recipients have higher average annual household incomes and significantly higher education levels than the general population.

### **4.3 The mobile phone industry**

According to the government agency for statistics, 65 percent of households have at least one mobile phone in use. However, there are more than 6.5 million active mobile phone lines, the equivalent of approximately 94 percent of the population.<sup>39</sup> Mobile phone coverage is high, although reliability is low in remote and rural areas. There are five MNOs and the largest one controls a third of the market. Operators are not yet actively looking at financial services as a means to increase their income. They are currently focused on competing for new prepaid clients for voice services. Top-ups are done in a variety of vehicles, such as at ATMs, merchants and by phone.<sup>40</sup>

## **5 The Regulatory Environment for Branchless Banking**

### **5.1 Banking business, deposit-taking and stored-value instruments**

SupFin is responsible for the regulation and the supervision of the financial system, which includes banks, nonbanks and insurers. The BCR also issues some regulations in areas under its jurisdiction and is consulted in the SupFin's regulatory process.<sup>41</sup> The BCR's broad mandate includes: (i) maintaining stability and liquidity of the financial system, (ii) promoting the development of an efficient competitive financial system, and (iii) fostering the normal functioning of payment systems.<sup>42</sup>

---

Western Union, Banco Cuscatlan, and MFIC. Interview with BCR, October 28, 2008.

<sup>37</sup> Available at Multilateral Development Fund, Inter-American Development Bank ([www.iadb.org/mif/remittances/lac/remesas\\_es.cfm](http://www.iadb.org/mif/remittances/lac/remesas_es.cfm)).

<sup>38</sup> Available at Multilateral Development Fund, Inter-American Development Bank ([www.iadb.org/mif/remittances/lac/remesas\\_es.cfm](http://www.iadb.org/mif/remittances/lac/remesas_es.cfm)).

<sup>39</sup> Interview with Telecom, November 4, 2009.

<sup>40</sup> Interview with BCR, October 28, 2008.

<sup>41</sup> A draft law modifying the regulatory authority of both SupFin and BCR is currently being discussed in the executive branch and could be presented to congress soon. The law would transfer most regulatory topics from the BCR to the SupFin, such as agency regulation, while the BCRA would retain its authority over payment systems and few other topics.

<sup>42</sup> Banco Central de Reserva ([www.bcr.gob.sv/?cat=5&name=Funciones%20y%20Organizaci%F3n&lang=es](http://www.bcr.gob.sv/?cat=5&name=Funciones%20y%20Organizaci%F3n&lang=es)).

The banking law covers deposit-taking, financial intermediation and “other activities carried out by banks” and gives the BCR the prerogative to authorize other operations and services.<sup>43</sup> The law also defines banks as institutions that engage in financial intermediation in a habitual manner and capture funds from the general public through deposits and other types of liabilities to invest in active operations. Banks are subject to regulation ranging from prudential to management and ownership rules, and are licensed by the SupFin (the BCR opines on all licensing cases).

A different framework governs member-based financial institutions, most of which were not, until January 2009, subject to supervision by the SupFin. This sector, comprised of savings and loans societies and cooperatives (along with their associations/federations), recently succeed in pushing for a new law to allow some types of cooperatives to take deposits from the general public.<sup>44</sup> The new law requires SupFin to supervise cooperatives that have or that reach deposits in excess of USD 6 million and any cooperative taking deposits from non-members. This set of institutions is defined in the law as “cooperative banks”. Only 7 out of approximately 300 existing cooperatives are currently supervised by the SupFin.

There is no specific regulation on the issuance of multi-purpose stored-value instruments (e-money) by nonbanks. However, banking activity is defined as taking deposits and intermediating those deposits. It is widely assumed that Salvadoran regulators would strictly apply this definition to e-money schemes and deem such activity to be banking activity, particularly if funds are then intermediated.

*In order to allow the development of alternative means of distribution for financial services through a wider range of providers, the BCR and the SupFin should consider issuing regulations under which nonbanks could issue e-money. The regulations should clarify the roles of banks and nonbanks, establish minimum operational requirements and determine rules for client-fund protection and mitigating system risk (most notably by requiring nonbank e-money issuers to place all collected funds in a prudentially regulated institution and held isolated from the issuer’s creditors..*

## **5.2 The use of agents by regulated institutions**

There is no regulation on agency or on outsourcing of bank activity and the bank law is not clear whether banks and cooperative banks may operate outside branches. Even though the banking law does not explicitly prohibit the use of third parties (agents) for the delivery of payments and banking services, it is widely interpreted by the financial authorities as not permitting outsourcing (though conflicting interpretations do exist among BCR and SupFin regulators). Hence, in order to allow the development of agent banking, it is necessary to publicly and clearly authorize licensed and supervised institutions to use retail agents. Both the BCR and the SupFin expressed a willingness to

---

<sup>43</sup> Banking Law, Art. 1 and 51.

<sup>44</sup> Decree No. 849.

work on such clarification.

Various banks have presented requests to use retailers to deliver services on their behalf. As mentioned earlier, some banks have already launched pilots using limited forms of agency, and the cooperative sector is highly interested in using this scheme as well. The incentive to address this issue is also linked to the movement by many Latin American regulators to allow this type of branchless banking. There is a concern that the Salvadoran authorities will not allow the banks that are already using limited forms of agents to continue to do so until the bank law is reformed and agency regulations are issued.

*The BCR and the SupFin should take the necessary steps for the creation of a legal and regulatory environment for the use of retail agents by licensed and supervised institutions. Such framework would establish minimum operational and conduct-of-business requirements for the agency business, keeping providers fully responsible and liable for the actions of their agents. Such measures would generate legal certainty for financial institutions to be able to expand their reach to underserved areas in a cost-effective manner.*

### **5.3 AML/CFT regulation and impact on financial access**

El Salvador signed the Central American Treaty against Money Laundering in 1997,<sup>45</sup> which has set the tone for the country's domestic regulation. The Salvadoran legislation<sup>46</sup> based its definitions of *affected* activities and institutions –including credit card companies and entities providing funds transfers- on this treaty.<sup>47</sup> Cooperative banks and loans and savings societies are subject to the same framework, while mobile phone operators are not.

Financial institutions are required to have policies and systems in place that give them access to the identity and transactional profiles of their clients.<sup>48</sup> In order to open a bank account, clients need to complete a form in which they provide their name, birth place and date, nationality, address, profession and marital status. Clients must also present an identity card, although the law does not specify which documents are acceptable. These policies and their modifications must be communicated to the SupFin. Banks and insurance companies must inform the FIU of any transaction over USD 500,000 (or multiple transaction totaling this amount) in a one-month period conducted by the same client/customer. They must also ensure that all transactions are in line with the client's income level and economic activity.<sup>49</sup> Supporting documentation of all transactions must be stored for a minimum period of 5 years.

---

<sup>45</sup> Convenio Centroamericano para la Prevención y la Represión de los Delitos de Lavado de Dinero y de Activos Relacionados con el Trafico Ilícitos de Drogas y Delitos Conexos.

<sup>46</sup> Ley Contra el Lavado de Dinero y de Activos (Decreto 498), Reglamento (Decreto 2, 2000) and Banking Law, Art. 63.

<sup>47</sup> AML/CFT Law, Art. 2.

<sup>48</sup> Banking Law, Art. 63.

<sup>49</sup> AML/CFT Law, Art. 9.

Financial authorities clearly state that bank accounts must be opened in person by the client, as a way to reduce the risk of the use of such accounts for criminal purposes. However, the law is flexible enough to allow customer due diligence procedures to be conducted by a third party such as retail agents. There is also flexibility on the part of the Financial Intelligence Unit, which has stated that is not concerned with the use of retail agents provided that the provider is held fully liable.<sup>50</sup>

*Although the current regulatory framework for AML/CFT does not pose significant barriers to the development of branchless banking, the financial authorities could create an enabling framework by issuing clear risk-based rules for customer due diligence in transactions conducted through agents and other electronic means.*

#### **5.4 Payments regulation**

Apart from the general norms contained at the Central American treaty on payments (see below) there is no national payments law in El Salvador, and hence, no comprehensive legal and regulatory treatment of the high- and low-value payments systems. The BCR's organic law and the banking law give the BCR broad regulatory powers over check clearinghouses and other payment systems operated and used by banks and other financial institutions.<sup>51</sup> The law also requires banks to accept payment orders directed to their clients, but originated by other banks. However, payment services providers are not regulated or supervised to date.

Based on its broad mandate, the BCR has recently issued regulations for automated central clearinghouses, which would be subject to the SupFin's supervision. However, there are currently no ACHs in operation in the country.<sup>52</sup> El Salvador is a signatory of the Central American Treaty on Payments, which awards the BCR oversight powers over what it deems important systemic payments and settlement systems and it also defines low and high value payments. Unfortunately, the Treaty does not clearly deal with retail payments, so this topic remains pending. It is thus not clear whether the SupFin or the BCR have the power to supervise retail payment services providers and systems. Both the BCR and the SupFin also have ambiguous authority in dealing with a variety of issues, such as competition and interoperability in payment systems.

Overall, the regulatory framework for payments services in El Salvador leaves space for innovation by banks and nonbanks but it creates a certain degree of uncertainty to potential entrants, since the authorities have not clarified their view and have not issued rules on a range of matters, such as the issuance of stored-value instruments<sup>53</sup> by nonbank entities.

*As part of their efforts to create an enabling environment for branchless banking,*

<sup>50</sup> Interview with Unidad de Investigación Financiera, Fiscalía General de la República, November 3, 2008.

<sup>51</sup> Banking Law, Art. 60.

<sup>52</sup> ACH-El Salvador is expected to start operations in the second semester of 2009.

<sup>53</sup> Instruments such as prepaid cards or mobile banking.

*the BCR and the SupFin should issue regulations and/or guidelines for the operation of and access to retail payment systems.*

## 5.5 Consumer protection

There is no specialized agency or a comprehensive regulatory framework that deals with financial consumer protection. However, the general consumer protection law<sup>54</sup> has many provisions to protect financial services users and the banking law also provides some basic protections. For instance, banks must develop and publicize policies for the prices and conditions of their products, which are scrutinized by the BCR.<sup>55</sup> In addition, the bankruptcy legislation protects deposits by giving customers priority over other bank creditors in the case of bankruptcy.<sup>56</sup>

Banks, when providing services through electronic channels, must submit the respective service level contracts to the SupFin, which might ask for changes. Banks must also provide customers with instructions for technology use and clarify their rights and obligations in electronic transactions and put in place systems to substitute the client's signature by electronic records.<sup>57</sup>

Interest rates and fees may be freely set, although interest rate variation policies must be submitted to the BCR. The BCR reserves the right to fix prices under extraordinary conditions and publicize current prices.<sup>58</sup> There are many rules that banks must abide by in order to ensure price transparency and fair treatment of their clients.<sup>59</sup> The SupFin is responsible for verifying regulatory compliance and may impose sanctions and penalties. The Consumers Defender, a government agency, is responsible for ensuring compliance with the consumer protection law in general.

**Data privacy and security.** Data collection between a client and a financial institution is not regulated in El Salvador (there is a draft law in congress to govern data privacy) However, data collected by credit bureaus is regulated. Bank customers – regardless of the type of delivery channel used – are also protected by the bank secrecy rule.

*The current regulatory framework seems well balanced and provides a reasonable level of consumer protection to financial services users. However, our interviews indicate that the relevant agency technical and financial capacity to*

---

<sup>54</sup> Ley de Protección al Consumidor.

<sup>55</sup> Banking Law, Art. 55 and 64,

<sup>56</sup> Banking Law, Art. 112.

<sup>57</sup> Banking Law, Art. 56.

<sup>58</sup> Banking Law, Art. 64.

<sup>59</sup> Banking Law, Art. 56, 64, 66, 80. Banks are required to disclose interest rates on a monthly basis or when there is a change, by publishing them in two well-known newspapers. Interest rates must also be posted in bank branches. The SupFin and the BCR publish bank prices in the newspaper on a monthly basis. Loan contracts must disclose the effective annualized rate in bigger font than the nominal rate. Banks are also not allowed to lower interest rates on deposits or increase fees and/or rates without previously informing their clients. If interest rates on deposits are lowered, clients are allowed to withdraw their deposit without penalties. Banks cannot impose maintenance fees on savings accounts, unless the balance is lower than the minimum amount required for opening an account—which varies from bank to bank.

*ensure compliance with rules and to solve customer grievances is still deficient. The SupFin and the BCR will need to consider consumer protection issues in potential branchless banking regulations, including those concerning the use of agents by banks and nonbanks and the protection of funds deposited in stored-value instruments.*

### **5.6 Regulation of telecommunication services**

The regulation of telecommunication services, particularly the regulation of mobile phone services, does not appear to pose obstacles for banks or nonbanks to develop mobile branchless banking models. There are no price limitations either. Services other than voice are not regulated and the regulator is not inclined to introduce new rules to cover such services (although it retains the prerogative to do so with any new service/product offered by MNOs). MNOs can provide peer-to-peer balance transfers (this service is not yet used on a significant scale). Number portability is being discussed among the industry and the regulator, although it will not be implemented very soon given the challenges it poses for all parties involved. The telecommunication regulator seems to have no interest or concerns regarding possible MNO forays into financial services.

### **5.7 Electronic commerce**

Limited electronic banking (balance enquiry and moving funds between a single customer's accounts through internet and mobile phones) currently reaches mostly high-income bank clients. The banking law recognizes electronically-authorized financial transactions; putting electronic documents at the same level as paper-documents.<sup>60</sup> There is a draft law currently under consideration in congress pertaining to the advanced legal security of electronic transactions. According to the draft, the BCR would be the certifying authority for digital signatures on financial transactions. Currently, electronic financial transactions rely on the commercial code as the main legal basis.

### **5.8 Foreign exchange regulation**

Money transferors are not supervised or licensed. Their business is considered a commercial activity. There are no foreign exchange controls that impact branchless banking; therefore, initiatives in this area may not encounter obstacles.

---

<sup>60</sup> Banking Law, Art. 56, I.

## Annex 1: List of Persons Interviewed

Entity	Name	Title
Asociación Bancaria Salvadoreña (ABANSA)	Mrs. Marcela de Jiménez	Executive Director
Banco Agrícola	Mr. Gustavo Denys	Director, Banca de Consumo
Banco Agrícola	Mrs. Carla de Espinoza	Popular Credit Manager
Banco Agrícola	Mr. Roberto Mena	Channel Strategy Manager
Banco Agrícola	Mrs. Claudia de Gómez	Manager
Banco de América Central (BAC)	Mr. Mauricio Campos	Financial Manager
Banco de América Central (BAC)	Mr. Vinicio Zelaya Valladares	Chief, Finance Department
BCR	Mrs. Luz Maria de Portillo	President
Claro CTE Telecom	Mr. Antonio Roshardt	Commercial Director of Marketing
Defensoría del Consumidor	Mr. Mauricio Pérez	Legal Sub-Director
EQUIFAX	Mr. Mauricio Flores	General Manager
Federación Cajas de Crédito (FEDECREDITO)	Mr. Macario Rosales	President
Federación de Cajas de Crédito y de Bancos de los Trabajadores	Mr. Mario Andrés López	Planning and Information Manager
Federación de Cajas de Crédito y de Bancos de los Trabajadores	Mr. Ovidio Edgardo Magaña	Business Manager
Financial System Superintendence (SSF)	Mr. William Durán	Risk and Conglomerates Intendant
Financial System Superintendence (SSF)	Mr. Jose Franklin Hernandez	Judicial Intendant
Financial System Superintendence (SSF)	Mr. Luis Armando Montenegro	Superintendent
Fondo de Inversión Social para el Desarrollo Local	Mr. Fredy Cañas	Coordinator, Local Solidarity Network
Gerencia de Operaciones Financieras, BCR	Mr. Juan Alberto Hernández	Manager, Financial Operations
Gerencia del Sistema Financiero, BCR	Mr. Edgar Cartagena	Coordinator, Payment Systems
Gerencia del Sistema Financiero, BCR	Mrs. Laura Ayala	Legal Department Chief
Gerencia del Sistema Financiero, BCR	Mr. Agustín Ventura	Gerencia del Sistema Financiero-BCR

Entity	Name	Title
Gerencia del Sistema Financiero, BCR	Mrs. Sonia Gómez	Manager, Financial Systems Management
Gerencia del Sistema Financiero, BCR	Mrs. Idis Villalta	Specialist, Financial Development Department
Operadora TIGO	Mr. Ignacio Barateli	General Director, Tigo El Salvador
Red Solidaria	Mrs. Cecilia Gallardo	Coordinator
ATH, Servicios Financieros	Mr. Fernando Villalobos	General Manager
Superintendencia de Competencia	Mrs. Celina Escolán	Superintendent
Superintendencia de Electricidad y Comunicaciones	Mr. Fernando Arguello Téllez	General Superintendent for Electricity and Telecommunications
Superintendencia General de Electricidad y Telecomunicaciones	Mr. Juan Carlos Castro	Technical Assistant, Telecommunications Management
Unidad de Investigación Financiera, Fiscalía General de la República	Mr. José Rolando Monroy	Chief, Financial Research Unit