



# Branchless Banking Diagnostic Template

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## **BRANCHLESS BANKING DIAGNOSTIC TEMPLATE**

Branchless banking is defined as the delivery of financial services outside conventional bank branches, often using agents and relying on information and communications technologies to transmit transaction details – typically card-reading point-of-sale (POS) terminals or mobile phones. It has the potential to radically reduce the cost of delivery and increase convenience for customers. Consequently, branchless banking can increase poor people’s access to financial services if regulation (i) permits the use of a wide range of agents outside bank branches, thereby increasing the number of service points, (ii) eases account opening (both on-site and remotely) while maintaining adequate security standards and (iii) permits a range of players to provide payment services and issue e-money (or other similar stored-value instruments), thereby enabling innovation from market actors with motivation to do so.

As a relatively new and rapidly developing phenomenon, branchless banking is rarely addressed directly by the relevant regulatory frameworks.<sup>1</sup> Instead, branchless banking cuts across a broad spectrum of regulatory “domains”, making a cohesive and coordinated policy and regulatory environment necessary for branchless banking to thrive.

The questions surrounding regulation of branchless banking specifically targeting the unbanked poor<sup>2</sup> have only relatively recently begun to receive comprehensive and systematic attention. To this end, during the first six months of 2007, CGAP diagnostic teams<sup>3</sup> visited seven very different countries where policy makers and regulators find themselves on the frontlines of policy making about regulation of branchless banking targeting the unbanked poor: in Africa, South Africa and Kenya; in Asia, the Philippines, India and Pakistan; in Europe/Central Asia, Russia; and in Latin America, Brazil. We used earlier versions of this template,<sup>4</sup> building on a model developed for our partner DFID specifically focused on mobile banking.<sup>5</sup>

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<sup>1</sup> Following the conventions used in CGAP’s “Guiding Principles on Regulation and Supervision of Microfinance”, this template uses the term “regulation” (without a final “s”) to refer to binding rules governing the conduct of legal entities and individuals, whether they are adopted by a legislative body (laws or legislation) or an executive body (regulations – with a final “s”). The terms “regulatory framework” or “regulatory environment” or simply “regulatory” are therefore used in the broadest sense, and include the full range of relevant binding rules (both laws and regulations).

<sup>2</sup> Branchless banking can be either *additive* or *transformational*. It is additive when it merely adds to the range of choices or enhances the convenience of existing customers of mainstream financial institutions; it is transformational when it extends to customers who could never be reached profitably with traditional branch-based financial services. This template focuses on *transformational branchless banking*.

<sup>3</sup> The work of the diagnostic teams was co-funded by CGAP and the Bill and Melinda Gates Foundation as part of the CGAP Technology Program.

<sup>4</sup> The earlier versions separated the diagnostic process into two parts: a “Level One” process of desk research and a “Level Two and Three” process of in-country interviews aimed at filling gaps in understanding coming out of the “Level One” analysis and gaining a sense for the political economy of decision making around branchless banking policy and regulation in the countries studied. This template integrates all three levels of analysis into a single framework.

<sup>5</sup> Porteous, David. 2006. “The Enabling Environment for Mobile Banking in Africa.” London: Department for International Development (DFID). The GSM Association also funded a series of “Level One” diagnostic assessments in a broader range of countries, carried out by country offices of PriceWaterhouseCoopers.

The purpose of this template is to aid diagnostic teams in developing a robust understanding of the regulatory and practical environment related to branchless banking in any given jurisdiction. It is intended to help these teams (i) understand applicable regulatory frameworks, (ii) identify current or potential restrictions on the growth of branchless banking and gaps in protection of customers or the integrity of the financial system, (iii) ascertain government and industry willingness to increase financial access to the poor and (iv) propose recommendations and solutions to facilitate branchless banking's development as a means of extending financial services to the unbanked poor.

***Given the novelty of the branchless banking phenomenon and the fast rate of change, this template should be understood as a work in progress.*** It must also be understood that the uniqueness of each jurisdiction's relevant existing policy and regulation, economy, demographics, financial system and telecommunications infrastructure, among other factors, poses significant challenges for the development and use of a universal diagnostic tool. The greater the range and depth of expertise of diagnostic teams using the template – and deeper their country knowledge – the more successful the results are likely to be.

### **Conducting Diagnostic Studies**

Before conducting a diagnostic study, we recommend that research teams read CGAP Focus Note 38 “Use of Agents in Branchless Banking for the Poor: Rewards, Risks and Regulation” and CGAP Focus Note 43 “Regulating Transformational Branchless Banking: Mobile Phones and Other Technologies to Increase Access to Finance”. These background documents explain branchless banking models and offer guidance and recommendations based on the experiences of policy makers and regulators in countries that have targeted branchless banking at the unbanked poor. The descriptions of the models of branchless banking (“bank-based” and “nonbank-based”) contained there are particularly important to understanding and using this template. Reports on regulation of branchless banking in each of the countries studied provide insight into specific applications of branchless banking models and the variability to be expected moving from one jurisdiction to another. Both the country reports and Focus Notes 38 and 43 are available on-line at CGAP's website “Regulating Transformational Branchless Banking” (<http://www.cgap.org/policy/branchlessbanking>), together with other documents that may provide further guidance to diagnostic teams.

Background preparatory research is the first step in conducting a diagnostic study. Such research is an opportunity to identify not only what information exists but what information must be obtained, confirmed or clarified through the field interviews. Each of the thirteen policy and regulatory domains included in this template sets forth a number of research questions, primarily to help guide diagnostic teams in their initial preparations. Some topics may spread across several domains (for example, bank agent liability to customers may be under agency law, banking law or consumer protection law). Other domains may implicate more than one body of regulation (for example AML/CFT is often considered a single topic but in some jurisdictions, anti-money laundering is governed by one law while combating financing of terrorism is governed by another law). Relevant laws and regulations, as well as other information and guidance regarding their application or interpretation (including on-line resources) should be obtained and kept on hand for citing and future reference. (There is no substitute for thorough review of the applicable definitive regulatory texts.) Due to the complex legal

nature of much of the diagnostic study, we consider it essential that diagnostic teams enlist the services of local legal counsel, not only to advise on and interpret the law but also to identify what relevant laws and regulations exist.

Field interviews are the next step in conducting a diagnostic study. Each of the regulatory domains included in this template sets forth interview questions based on whether the person interviewed is a government regulator/policy maker (some bodies, such as the bank regulator, will cover several or most domains) or another relevant actor, such as service providers and specialists. While relevant policy makers and regulatory bodies are easily identifiable for each regulatory domain through the analysis of the applicable regulation, we recommend that the research team carefully select service providers and domain specialists in order to form a complete view of the state of affairs affecting branchless banking. We recommend interviews with a mix of large and small, state-owned and private banks and nonbank entities that currently or potentially use branchless banking to deliver banking or payment services (such as banks, mobile network operators, microfinance institutions, card companies, bank switches, etc.) and other service providers such as credit bureaus and agent network managers. These entities will be able to answer most questions of the regulatory domains targeted at service providers, but it is also important to meet imminent specialists in each field (such as lawyers and academics). They usually offer alternative points of view and elucidate regulatory or practical issues raised in other interviews. It is advisable to leave some free space in the team's planned schedule since additional relevant actors are likely to be identified during the field work. It is typically very productive to have a follow-up meeting with the main regulators and policymakers to discuss matters raised during other interviews.

Further research is often needed after completing field interviews. It may be necessary to contact other experts (such as academics and consultants) to help clarify information gathered in the field and to help develop a cogent analysis of the current state of affairs.

***It is important to remember that the questions included in this template are not exhaustive, and effective interviewing will require a thorough discussion of matters that may be unique to the jurisdiction you are researching and that are not included in this template.***

CGAP welcomes any suggestions on how to make this template more effective.

### **The Regulatory Domains**

The countries studied by CGAP helped identify six critical topics policymakers and regulators must address to formulate proportionate regulatory policy for branchless banking.

CGAP classifies two topics as “necessary but not sufficient” preconditions:

1. Use of Agents. Authorization to use nonbank retail agents as the “cash in/cash out” point and principal customer interface; and
2. AML/CFT. Risk-sensitive anti-money laundering (AML) rules and rules for combating financing of terrorism (CFT) (adapted to the realities of remote transactions conducted through agents).

CGAP classifies four topics as “next generation” policy and regulatory topics. Though they may not prevent branchless banking from getting a start in a given country, they will figure in its success and sustainability as a means of getting financial services to the unbanked poor:

3. E-Money. Appropriate regulatory space for the issuance of e-money and other stored-value instruments (particularly when issued by parties other than fully prudentially licensed and supervised banks);
4. Consumer Protection. Effective consumer protection to address the risks involved in electronic payments;
5. Payment Systems. Inclusive payment system regulation and effective payment system oversight as branchless banking reaches scale; and
6. Competition. Policies governing competition among providers (which balance incentives for pioneers to get into the branchless banking business against the risk of establishing or reinforcing customer-unfriendly monopolies and which promote interoperability).

Seven other topics are classified as “ancillary” policy and regulatory topics. These topics are essential to form a complete understanding of the regulatory framework that may affect the development of branchless banking in any given jurisdiction, and may, in some jurisdictions, present the largest obstacles to such development:

7. Prudential Regulation: Deposits & Payments
8. Data Privacy
9. Foreign Exchange Controls
10. E-Commerce and e-Security
11. Telecom/Mobile Network Operator (MNO) Regulation
12. Taxation
13. General Banking & Financial Access

## I. USE OF AGENTS

The common element across branchless banking models is the use of agents to reach customers who are either unable (e.g., because of physical distance) or unwilling (e.g., because of the fees charged or negative perceptions) to take advantage of financial services delivered through traditional bank branches<sup>6</sup>. The parties to whom direct customer interaction is outsourced may or may not be “agents” in the legal sense of being able to legally bind the bank or nonbank on whose behalf they interact with poor customers. Regardless, they are indispensable because:

- They can be outfitted with the necessary information and communications technologies (known as ICTs”) and can operate at a fraction of the cost of opening and operating conventional bank branches (making it possible to reach vast new groups of poor customers profitably).
- They offer customers both convenience and an environment in which they are already comfortable transacting business.

The use of retail agents introduces new or enhanced risks policy makers and regulators should consider seriously. For example, agents present a variety of operational risks to the provider (particularly reputational risk, given that the agent is the public face of the provider) and to the consumer (particularly in terms of agent liability). Moreover, the use of agents adds a special dimension to the challenge of satisfying AML/CFT norms and to consumer protection — two other topics critical to branchless banking.

### Background Research Questions

1. What regulation governs outsourcing by banks and nonbanks for the provision of financial services?
  - 1.1. What does the regulation generally require?
  - 1.2. Who is responsible for policy making and enforcement?
2. How is the regulation different, if at all, from the Bank of International Settlements (BIS) outsourcing guidelines?<sup>7</sup>
3. What type of institutions may appoint/use agents?
4. Who may act as an agent (retailers, financial institutions, post office, individuals, etc.)? What are the requirements (such as lack of criminal record, etc.)? Is any entity or type of entity expressly prohibited from acting as a financial services agent?
5. What services can agents provide? Can they
  - 5.1. accept or disburse cash?
  - 5.2. transfer funds electronically?

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<sup>6</sup> The term “bank” as used in the template is intended to include other fully prudentially licensed and supervised forms of financial institution.

<sup>7</sup> BIS Publication “Outsourcing in Financial Services” (2005) available at <http://www.bis.org/publ/joint12.htm>.

- 5.3. make payments to utilities or third parties?
  - 5.4. conduct KYC/CDD procedures? (See Part II below.)
  - 5.5. Is there any financial service they are expressly prohibited from providing?
6. Does the agency/outsourcing relationship require the prior authorization from any regulatory body?
    - 6.1. If so, is such authorization required in all cases or only specific cases?
    - 6.2. What is the authorization process?
    - 6.3. Is this process different for nonbanks appointing agents?
  7. What operational requirements (such as equipment specifications, transactional limits, security measures) does the regulation require of agents to perform any given service?
    - 7.1. Does the regulation require transactions by agents to be settled within a specified timeframe?
    - 7.2. What other limitations/conditions (such as accounting, auditing, security standards) are imposed on agents?
  8. What other limitations/conditions are imposed on banks and nonbanks in the appointment of agents?
  9. Does any regulatory body have the right to inspect agents? If so, what body and what is the inspection process?
  10. What is the legal liability of the bank/nonbank to the customer who uses agents? What if the agent acts outside the scope of the agreement with the bank/nonbank? (See Part IV below for questions 12 to 17)
  11. What is the legal liability of agents to the customer?
  12. Is data privacy and bank secrecy regulation applicable to agents?
  13. Is price transparency regulation applicable to agents?
  14. Are agents required to disclose their agent status to bank customers? If so, how?
  15. Are agents required to post or otherwise disclose information (such as fee structure, banking ombudsperson telephone number or the bank's customer service telephone number)?

**Questions for Bank Regulatory Agency if Relevant Agency Regulation Exists**

16. Are you aware of jurisdictions in which agents are explicitly allowed to take deposits or provide cash for withdrawals on behalf of banks (such as Brazil, India) or nonbanks (such as the Philippines)? If so, how do you view such examples?

17. How widespread is the use of agents by banks and nonbanks for the delivery of financial services in your country? Provide number of
  - 17.1. transactions conducted through agents,
  - 17.2. customers relying on agents,
  - 17.3. accounts opened through agents.
18. How do the numbers in 17 above compare with total transactions conducted in bank branches?
19. Provide a breakdown of the transactions agents conduct (by type and percentage each type represents of the total).
20. What functions (such as conducting KYC/CDD procedures, etc.) do agents typically perform on behalf of banks and nonbanks engaging in financial services?
21. What types of retail establishments typically serve as agents?
22. What are the main risks and problems involved in the use of agents?
23. Is current regulation considered adequate for increasing access to banking services such as withdrawals, deposits, transfers, savings, loans and foreign remittances?
24. Do the limitations/conditions imposed by regulation on the agency relationship make it difficult for banks to use smaller, independent retailers as agents?
25. What in the current regulation (or supervisory process) must be changed in order to increase access to financial services through agents?
26. Are there entities desiring to appoint/use agents for financial services who are not permitted to do so? What is the policy intent regarding this matter?
27. Are there entities desiring to act as agents who are not currently permitted to so? What is the policy intent regarding this matter?
28. Are there are other government agencies, such as the Dept. of Labor, whose jurisdiction extends to bank agency matters? If so, is there any regulation from such agency which adversely impacts or complicates the use of agents by banks and nonbanks? How can such issues be addressed?

**Questions for Bank Regulatory Agency if No Relevant Agency Regulation Exists**

29. Are you aware of jurisdictions in which non-bank agents are explicitly allowed to take deposits or provide cash for withdrawals on behalf of banks (such as Brazil, India) or nonbanks (such as the Philippines)? If so, how do you view such examples?
30. Have there been requests from the financial sector or nonbanks to be permitted to use agents for the handling of deposits and withdrawals? If so, what kinds of entities are interested in using such agents? What is the policy intent in this respect?

31. Are you aware of how risks are mitigated and problems addressed in other jurisdictions?
32. Has agency/outsourcing regulation been considered in your jurisdiction?
  - 32.1. If so, what was considered?
    - 32.1.1. What type of financial institutions and nonbanks would be allowed to use agents for the delivery of financial services?
    - 32.1.2. What types of retail establishments would be permitted to act as agents?
  - 32.2. What risks were identified?
  - 32.3. Have provisions to mitigate risk been considered?
  - 32.4. Has regulation to supervise agents been considered?
    - 32.4.1. Who would supervise?
    - 32.4.2. Is supervision capacity currently adequate?
    - 32.4.3. Would supervision require greater coordination with other supervisory bodies, such as the supervisors of telecommunications or consumer protection?
  - 32.5. Is there a need for specific regulation to be introduced?
  - 32.6. If regulation is to be introduced, what is the timeframe and process?

**Questions for Service Providers if Relevant Agency Regulation Exists**

33. Are you aware of jurisdictions in which non-bank agents are explicitly allowed to take deposits or provide cash for withdrawals on behalf of banks (such as Brazil, India) or nonbanks (such as the Philippines)? If so, how do you view such examples?
34. If you currently use agents to provide services:
  - 34.1. What services do your agents provide?
  - 34.2. What is the most common type of transaction carried out by your agents?
  - 34.3. What kinds of entities act as your agents?
  - 34.4. How many agents do you currently use?
  - 34.5. Where do your agents operate?
  - 34.6. What type of client uses your agents?
  - 34.7. What kind of ICT is used to send/receive information about transaction conducted by your agents?
  - 34.8. How do you control/monitor transactions conducted by your agents?
  - 34.9. Do you establish daily (transactional) limits for each agent? If so, how do you determine and enforce these limits?
  - 34.10. What percentage of your total transactions do agent transactions represent?
  - 34.11. What percentage of your total revenue do agent transactions represent?
  - 34.12. Why do you use agents (cost-cutting, decongesting branches, enlarging or diversifying client base, reaching remote areas, etc.)?
  - 34.13. Has using agents affected the price of your services to the customer? If so, how?
  - 34.14. Do you offer low-cost accounts for low income customers through agents? If so, in what respect are these accounts different from regular bank accounts?
  - 34.15. What type of problems have you encountered so far in the use of agents? How are they addressed?

35. Do the limitations/conditions imposed by regulation on the agency relationship make it difficult for banks to use smaller, independent retailers as agents?
36. If you currently do not use agents to provide services:
  - 36.1. Why don't you use agents?
  - 36.2. Are you considering using agents? If so, what agency models are you considering?
  - 36.3. Where would you like to use agents?
  - 36.4. For what transactions?
  - 36.5. For what target clientele?
  - 36.6. What aspects of the current regulation would you like to see changed before you use agents? Are these changes likely to occur?

### **Questions for Service Providers if No Relevant Agency Regulation Exists**

37. Are you aware of jurisdictions in which non-bank agents are explicitly allowed to take deposits or provide cash for withdrawals on behalf of banks (such as Brazil, India) or nonbanks (such as the Philippines)? If so, how do you view such examples?
38. Would you like to use agents (such as retailers) to provide your services? If so,
  - 38.1. What services would you provide through agents?
  - 38.2. What entities would you use as agents?
  - 38.3. What clientele would you target through agents? Where?
39. What risks do you see in using agents? How could these risks be mitigated or eliminated?
40. Have you proposed the use of agents to the relevant regulators? Why or why not? If so, what was the outcome?
41. How open are the relevant regulatory bodies to discussing this matter?

## **II. Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT)**

The Financial Action Task Force (FATF) sets international AML/CFT standards and oversees compliance monitoring.<sup>8</sup> It calls for national-level regulatory regimes to require that adequate customer due diligence (CDD) (also known as “know your customer” (KYC) rules) be undertaken on all accounts and on one off cash transactions over designated thresholds.

A critical prerequisite for safely and rapidly launching branchless banking is adopting a risk-sensitive regime for combating money-laundering and terrorist financing. Perhaps the largest challenge for regulators is to adapt AML/CFT rules to the realities of (i) low income clients who may have limited access to formal documentation normally needed to open an account and (ii) remote transactions conducted through relatively unsophisticated retail agents. AML/CFT rules can either be an insurmountable obstacle

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<sup>8</sup> FATF recommendations and methodology are found at <http://www.fatf-gafi.org>.

if unduly over-protective or permit branchless banking to be used for criminal activity if under-protective.

### **Background Research Questions**

1. What regulation, if any, governs money laundering and/or the financing of terrorism?
  - 1.1. What does the regulation generally require?
  - 1.2. To whom or to what functions does it apply?
  - 1.3. Who is responsible for:<sup>9</sup>
    - 1.3.1. setting overall AML/CFT policy?
    - 1.3.2. monitoring reports of financial transactions for suspicious activity?
    - 1.3.3. promulgating AML/CFT regulations covering bank accounts, payments and remittances?
    - 1.3.4. AML/CFT enforcement?
  
2. Is the country a member of the Financial Action Task Force (FATF) or a regional FATF-style body? If so, which?
  
3. Has the country been the subject of a recent Financial Sector Assessment Program (FSAP) report or policy paper (or other assessment on compliance with AML/CFT standards)? If so, what was the conclusion?
  
4. Is there a national identification system available for bank and nonbank financial services providers to use in order to verify customer identification information for account opening and one-time transactions? Do other entities, such as credit bureaus and mobile network operators, have access to the system?
  
5. Summarize the Customer Due Diligence (CDD)/Know Your Customer (KYC) procedures required for:
  - 5.1. opening each type of bank account in a bank branch.
  - 5.2. opening a new bank account remotely (such as outside of bank premises and/or by a person who is not a bank employee and/or by electronic means, such as internet or mobile phone).
  - 5.3. receiving/sending a single payment/remittance (including explaining any distinction made between CDD/KYC for domestic & foreign remittances and any distinction made between CDD/KYC for payments/remittances received or sent by a citizen versus foreign national).
  - 5.4. buying a prepaid card or other prepaid instruments not linked to a bank account (such as electronic stored value accounts in mobile phones) or subscribing to a prepaid account/service with nonbank.
  - 5.5. subscribing to a mobile telephone service.

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<sup>9</sup> Note that there is usually a distinction between (i) the entity (often known as the Financial Intelligence Unit) making the AML/CFT policy which typically cuts across various sectors *and* which might also be responsible for regulation and enforcement in some sectors (such as real state, casinos, and jewelry businesses) and (ii) the agency responsible for regulation and enforcement in sectors such as banking and payment businesses.

6. What information or documentation regarding clients and transactions must be stored by banks and for how long? Are such requirements equally applicable to nonbank financial services providers? If not, what is different?
7. What are banks and nonbank financial service providers required to monitor, and report in respect to suspicious transactions?
8. Is there regulation which reduces CDD/KYC requirements on low-value accounts or transactions performed by banks and nonbanks? If so, describe these reduced requirements.
9. Regarding telecommunication services specifically, what are mobile network operators required to monitor and report in respect to suspicious transactions conducted on their networks? What information or documentation must be stored by mobile network operators and for how long?

**Questions for AML/CFT Policy Maker**

10. Does the AML/CFT regulation comply with FATF standards? If not, summarize in which respects relating to retail banking and payment activities it does not comply.
11. What percentage of adults in the country would be able to comply with CDD/KYC requirements for
  - 11.1. bank account opening?
  - 11.2. single payment/remittance?
  - 11.3. subscribing to a prepaid account/service with a nonbank?
  - 11.4. subscribing to a mobile phone service?
12. Which aspects of the AML/CFT regulations are especially onerous for small value accounts and payments/remittances provided by banks and nonbanks?
13. Is lack of formal/official identification documents a common problem for account opening and payments?
14. Is there any intention to change the regulation regarding CDD/KYC for low value accounts or one-time payments/remittances? If so, what changes are being considered and how are they received by officials? What is the proposed timeframe?
15. Which entities are not covered by AML/CFT regulation today that are or may be important in the delivery of branchless banking? Is there any intention to change the regulation to cover such entities?
16. Do you have specific concerns with respect to small value accounts and/or payments?<sup>10</sup>

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<sup>10</sup> This is sometimes the case for AML/CFT policy makers in countries where proceeds from drug sales and other illicit activities are specifically laundered through low value accounts.

17. Do you have specific concerns with respect to small value accounts and/or payments that are currently subject to lower, less strict AML/CFT standards?
18. Do you have specific AML/CFT concerns with respect to nonbanks (either independently or as agents) providing financial services?

#### **Questions for AML/CFT Regulator/Supervisor**

19. Is your current capacity (staff, budget) adequate for analyzing and processing reported transactions?
20. How many entities do you supervise regarding AML/CFT rules?
21. How many suspicious transactions are reported per year? What percentage of total reported transactions do they represent?
22. How is information shared between you and the AML/CFT policy maker?

#### **Questions for Service Providers**

23. Which aspects of the AML/CFT regulations are especially onerous for small value accounts and payments/remittances provided by banks and nonbanks?
24. Is there any banking industry-wide process for proposing change to any aspect of AML/CFT regulation? Have any such proposals been made? If so, what happened?
25. What aspect of AML/CFT regulation would you like to change? Why?
26. How open are the regulatory agencies to discussing your AML/CFT concerns?

### **III. E-MONEY**

Definitions of electronic money vary by jurisdiction, but a common definition is “monetary value stored on an electronic device which is issued on receipt of funds and accepted as a means of payment by parties other than the issuer”. Most banks store money in this way (on their computers) and they are regulated in every country as e-money issuers or simply as bank institutions. A key question is whether non-bank organizations are permitted to issue e-money as well, and if so, under what conditions and subject to what prudential and non-prudential regulation. For example, when pre-paid airtime balances stored in mobile phones are used to purchase a good or service not provided directly by the mobile operator, in a number of countries this would be considered the creation of e-money by a non-bank. A similar example would be the issuance of multi-use or open network<sup>11</sup> pre-paid plastic cards by non-banks.

#### **Background Research Questions**

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<sup>11</sup> In an open network, e-money is accepted at a wide array of merchants and other outlets, as opposed to only at outlets of the e-money issuer.

1. What regulation, if any, governs e-money?
  - 1.1. What does the regulation generally require?
  - 1.2. Who is responsible for policy making and enforcement?
2. What is the regulatory definition of e-money?
3. Who can issue e-money?
  - 3.1. Can nonbanks issue e-money?
  - 3.2. If so, under what conditions?
4. Is e-money issuance subject to regulation as a banking activity?<sup>12</sup>
5. Is there specific regulation on prepaid cards or other prepaid schemes that are not subject to regulation as a banking activity? If so,
  - 5.1. how are such schemes defined?
  - 5.2. are there balance limits or other limitations on this type of service?
  - 5.3. who may sponsor such prepaid schemes and under what conditions?
  - 5.4. are there other requirements such as reporting or registering or prudential requirements (e.g. minimum capital, liquidity)?

**Questions for Financial Policy Maker and/or Bank Regulator/Supervisor**

6. If there is no e-money regulation, is there any intention of future regulation? If so, when?
7. Are you aware of the EU Directive 2000/46/EC<sup>13</sup> on prudential supervision of e-money? If so, has it had any impact on current or proposed regulation in your jurisdiction?
8. In your opinion, could nonbanks contribute to financial access by offering low-value electronic accounts (such as those stored in mobile phones or plastic cards) capable of payments and remittances (including foreign remittances)?
9. Would it be necessary to introduce changes to the current regulation to increase the use of electronic accounts by low-income bank customers?
10. What is the policy intention regarding nonbanks issuing e-money and taking low-value deposits?

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<sup>12</sup> This is often the case if e-money issuance is considered a form of deposit taking. (See Section VII: Prudential Regulation: Deposits & Payments.)

<sup>13</sup> Directive 2000/46/EC of the European Parliament and of the Council of 18.9.2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions available at [http://ec.europa.eu/internal\\_market/bank/regulation/index\\_en.htm](http://ec.europa.eu/internal_market/bank/regulation/index_en.htm), being currently reformed according to report available at [http://ec.europa.eu/internal\\_market/bank/e-money/index\\_en.htm](http://ec.europa.eu/internal_market/bank/e-money/index_en.htm).

- 10.1. How do you propose to address any concerns?
- 10.2. Does current regulation need to be amended to provide for nonbank issuance of e-money? If so, what coordination with other authorities (such as telecom regulators) would be necessary?
11. How do current e-money schemes in your country operate?
12. How are e-money schemes in your country supervised?
13. What are the risks and policy issues associated with these schemes?
14. Are there illegally functioning e-money schemes? If so, what do you plan to do about them?
15. Has there been any loss of funds by consumers as a result of a prepaid/e-money scheme (legal or illegal schemes)? If so,
  - 15.1. When?
  - 15.2. How many consumers were affected?
  - 15.3. What measures, and under what regulation, were brought against the operator of the scheme?

**Questions for service providers**

16. If you operate e-money schemes:
  - 16.1. How do they function? Where, and on what terms, do you keep the float?
  - 16.2. Who is the target customer?
  - 16.3. What is the average account value?
  - 16.4. Where do clients transact (make purchases, withdraw/deposit cash)?
  - 16.5. What is the most common transaction?
  - 16.6. How important is e-money for your business?
  - 16.7. What are the main risks of e-money issuing? How are they addressed?
  - 16.8. How does the current regulation affect this business?
17. If you do not operate e-money schemes:
  - 17.1. Why?
  - 17.2. Would you consider issuing e-money?
  - 17.3. Who would be your target client?
  - 17.4. What services would you provide?
  - 17.5. Where would clients transact (make purchases, withdraw/deposit cash)?
  - 17.6. What are the main risks of e-money issuing? How could they be addressed?
  - 17.7. How would the current regulation affect this business?
18. Is there any other obstacle for e-money issuers besides regulation (such as inadequate telecommunications infrastructure or lack of interoperability in POS networks)?

19. In your opinion, could nonbanks contribute to financial access by offering low-value electronic accounts (such as those stored in mobile phones or plastic cards) capable of payments and remittances (including foreign remittances)?
20. Would it be necessary to introduce changes to the current regulation to increase the use of electronic accounts by low-income bank customers?
21. Have you approached regulators and policy makers in order to propose changes to the current regulation of e-money issuing? What was the outcome?

#### **IV. CONSUMER PROTECTION**

Electronic means of payment and the use of retail agents by banks and nonbanks may bring new risks to consumers, arising, for example, from loss of payment instruments, fraudulent transactions, identity theft, etc. Branchless banking models require special attention to consumer protection due to:

- potentially large distances separating customers, agents and retail transactions from the premises (let alone head offices) of the branchless banking institution and the tribunals where disputes would ordinarily be taken for redress),
- the insertion of retail agents between customers and the branchless banking institution, raising questions about who is legally responsible to the customer and increased possibility of fraud, and
- increased difficulty of ensuring transparency of pricing due the larger number of parties whose fees and commissions need to be factored and the greater number of arguably separate, yet embedded, services involved (airtime purchases, SMS messaging fees, retail agent commission, etc.)

#### **Background Research Questions**

1. What is the consumer protection regulation, if any, which governs bank and nonbank financial services providers (particularly account opening and operation, deposits and withdrawals, and the sending or receiving of payments/remittances)?
  - 1.1. What does the regulation generally require?
  - 1.2. Who is responsible for policy making and enforcement?
2. Is there a financial services ombudsperson? If so, what are the ombudsperson's powers and to whom does the ombudsperson report?
3. Are there specific consumer protection rules applicable to the use of agents by banks and nonbanks? If so, describe. (*Note questions above on consumer protection and agents in Section 1: Use of Agents*).
4. Are there specific consumer protection rules applicable to electronic financial transactions? If so, describe:
  - 4.1. customer's liability for unauthorized transactions,

- 4.2. dispute resolution mechanisms between the service provider and customer,
  - 4.3. any requirement to provide statements in paper or electronic format.
5. What information must be disclosed to the consumer at the time of opening an account or making a one-off payment/remittance?
  6. Are there specific consumer protection rules applicable to mobile phone services? If so, describe. Who is responsible for enforcement of these rules?

**Questions for Policy Maker and/or Consumer Protection Agency Responsible For Enforcement**

7. If there is no specific consumer protection regulation addressing electronic financial transactions, is there any intention to introduce such regulation? If so,
  - 7.1 what would such regulation require?
  - 7.2 what is the proposed timeframe for such regulation?
  - 7.3 what body would supervise the application and enforcement of such regulation?
8. Is general consumer protection regulation applicable to financial services? If so, how?
9. Is there a statutory definition of consumer?
  - 9.1 If yes, is it based on the nature of the services received (e.g, any entity or person receiving a certain service is considered a consumer) or on the identity of the consumer (e.g, only natural persons? natural persons and legal entities?)
  - 9.2 If a legal entity can be a consumer, are there any restrictions (such as revenue, number of employees) limiting the application of consumer protection measures to such entity?
  - 9.3 Does the definition of consumer vary between different laws or regulations, or between different products, providers and delivery channels? If so, describe.
  - 9.4 Are there any real or perceived negative consequences to the definition of consumer (such as exclusion of certain groups)? If so, describe.
  - 9.5 If there is no statutory definition of consumer, is there a widely accepted definition used by industry, regulators or entities providing recourse?
10. How adequate is consumer protection regulation for basic banking services and electronic payments with and without the use of retail agents?
  - 10.1 How can it be improved?
  - 10.2 In particular, how can consumer protection mechanisms (such as enforcement and dispute resolution) be improved?
11. Are there consumer advocacy bodies in the country? If so, how active or influential are they?

12. What is the capacity of your agency (staff, budget)? Do you consider it adequate for your needs? If not, what is needed?
13. Has there been popular mobilization or media coverage against perceived or actual exploitation related to the provision of financial services in the past five years? If so, what were the causes and extent of the mobilization/coverage and how have the causes been addressed?
14. Which abuses (specifically in connection with account opening and electronic transactions):
  - 14.1 are reported most frequently to consumer protection agencies?
  - 14.2 are consumer protection agencies most concerned about?
15. Have you received any complaints with respect to aspects of branchless banking? If so, describe. How were such complaints resolved? How long did resolution take?
16. Do you have any specific concerns (such as lack of consumer literacy or consumer education) with respect to the use of mobile network operators or other nonbanks in providing financial services?
17. Do you have any specific concerns with respect to the use of retailers as agents in providing financial services?

#### **Question for Consumer Protection Advocacy Bodies**

18. Do you have a position or approach with respect to consumer protection in financial services (particularly with respect to nonbanks and electronic accounts)? If so, please describe.
19. Have you advocated for any reform affecting financial services? If so, what reform and what is its status?
20. How adequate is consumer protection regulation for basic banking services and electronic payments with or without the use of retail agents?
  - 20.1 How can it be improved?
  - 20.2 In particular, how can consumer protection mechanisms (such as enforcement and dispute resolution) be improved?
21. Have you received any complaints with respect to aspects of branchless banking? If so, describe. How were such complaints resolved? How long did resolution take?

#### **Questions for Service Providers**

22. Do you make representations, written or oral, to your customers (either directly or through your agents) about the extent of your liability to the customer? If so, how do these representation differ from what is otherwise afforded under consumer protection regulation?

23. What recourse mechanisms do you currently offer to clients with complaints or disputes to resolve? Are these mechanisms different for clients using your agents or holding e-money accounts?
24. How do you monitor agent compliance with consumer protection regulation when using agents? How do you resolve agent noncompliance?
25. What are the most common consumer protection related complaints and how are they usually resolved? How long does resolution take?
26. How adequate is consumer protection regulation for basic banking services and electronic payments with or without the use of retail agents?
  - 26.1 How can it be improved?
  - 26.2 In particular, how can consumer protection mechanisms (such as enforcement and dispute resolution) be improved?

## V. PAYMENT SYSTEMS

Payment systems consist of specific sets of instruments, banking procedures and inter-bank fund transfer (clearing and settlement) systems that ensure the circulation of money. These are supported by a payment infrastructure formed by network facilities, technologies and procedures for accessing and transacting payment instruments and for processing, clearing and settling related payments. The payments service market is thus composed of various arrangements that coordinate the production and pricing of payment instruments and services and their delivery from payment service providers to users.

Although high value payments<sup>14</sup> are likely to be settled through a wholesale system (often operated by the central bank) and are almost exclusively processed by the financial/banking sector, in small value retail systems non-bank service providers may play a much more relevant role and contribute to the expansion of branchless banking. Retail payment infrastructures are mechanisms for transaction, clearing and settlement of relatively low-value payments initiated through payment instruments such as checks, credit transfers and direct debits (also by mobile or internet) and payment cards where networks are often provided by communication service operators and other non-financial entities.

The payments industry includes financial actors, information service operators and technology providers. This is a very dynamic market, where cooperation on the one side and competition on the other side have to find the right balance. Of particular interest in this domain is the potential tension between consolidation and innovation. Consolidation may reduce costs and ensure security; yet, it may frustrate innovation and reduce competition among players, foreclosing the market to new entries. Indeed, a special role is played in this context by interoperability of payment systems. A lack of such

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<sup>14</sup> These are commonly referred to as large-value payments, and generally involve a very large amount, which is mainly exchanged between banks or between participants in the financial markets and usually requires urgent and timely settlement.

interoperability could favor dominant actors and limit competitive growth if, for example, (i) the early rapid growth of one system that is not interoperable with others blocks other actors from entering the market or (ii) new payments systems are inhibited from interconnection with older larger systems. (See Section VI below: Competition.)

### **Background Research Questions**

1. What is the regulation, if any, which governs the operation of payment systems?
  - 1.1 What does the regulation generally require?
  - 1.2 Who is responsible for policymaking and enforcement?
2. Is there a national policy statement with respect to the development of retail payment systems?
3. Is there a differentiation in policy between wholesale and retail payments?
4. Is the Central Bank responsible for the functioning of the retail payments market?
5. Do payment service providers need to be licensed and/or supervised?
  - 5.1 If so, by whom?
  - 5.2 Is there a differentiation of treatment in licensing or supervision between financial institutions and non-financial institutions providing payment services?
6. Do financial regulators have the power to require or enforce interoperability of retail payment systems? If so, under what conditions?
7. Is there anti-trust legislation? If so,
  - 7.1 does it clearly apply to payment services?
  - 7.2 does it include regulatory powers to enforce interoperability?
8. Do financial regulators have the power to intervene in pricing of payment services? If so, under what conditions?
9. Do financial regulators have the power to intervene on consumer protection issues?
  - 9.1 If so, is this power shared with other authorities?
  - 9.2 Is pricing under the jurisdiction of competition or consumer protection?
10. What percentage of total annual payments are payments by
  - 10.1 cash,
  - 10.2 checks,
  - 10.3 debit/credit card,
  - 10.4 electronic transfer, and
  - 10.5 money transferors (including postal service).

11. What is the primary medium for small payments?
12. Is there a real time wholesale settlement system in operation for banks?
13. Are there electronic retail payment systems in operation?<sup>15</sup> What are the main retail payment switches (ATM/EFTPOS/other)?
14. With respect to both wholesale and retail systems:
  - 14.1 Who owns and operates each system?
  - 14.2 Who has direct access to each system?
  - 14.3 What is required to have access to each system?
  - 14.4 Who is responsible for supervising or overseeing each system?
  - 14.5 Who promulgates the operating rules of each system? Are such rules subject to review/approval of financial sector supervisory bodies?
  - 14.6 What is the role of self-regulation?
15. How many ATMs are there in the country? How many ATM networks?
16. How many POS devices are there in the country? How many networks?

#### **Questions for Payment System Regulator**

17. If cash is preferred over electronic payment instruments, what accounts for such preference? If checks are preferred over electronic payment instruments, what accounts for such preference?
18. Do you believe the use of electronic means of payment have the potential to increase access to financial services by lower-income clients? If so, describe how. What can be done to meet such potential?
19. Is there a lack of interoperability in retail payment systems (specifically, ATM and POS networks)?
  - 19.1 If so, why?
  - 19.2 If the lack of interoperability is a barrier to expanding access to financial services and retail agent networks, how can this barrier be removed?
20. Is there a healthy level of competition in retail payment systems, specifically in relation to card transactions?
  - 20.1 If the lack of competition is a barrier to expanding access to financial services and retail agent networks, how can this barrier be removed?
  - 20.2 Is there any policy combining competition policy and safety regulation?
21. Is price a barrier to the expansion of payment services to low-income segments? If so, how can this barrier be removed?

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<sup>15</sup> Electronic retail payment systems may include arrangements among banks and/or nonbanks for operation of facilities such as ATMs or point of sale terminals, usually on an interoperable basis.

22. Have you ever intervened in the retail payment systems to require fair pricing or interoperability? What were the results?
23. What changes in the regulation affecting retail payment systems do you foresee in the next 3 years?
24. Is your capacity (staff, budget) adequate to perform your functions?

**Questions for Payment Service Providers**<sup>16</sup>

25. For each identified domestic retail payment system:
  - 25.1 Who may join/participate in this system?
  - 25.2 What are the requirements to join/participate in this system?
  - 25.3 How many current members/participants are there?
  - 25.4 How many have newly joined/participated in the past 2 years?
26. Can non-banks join/participate in a domestic retail payment system?
  - 26.1 If so, under what conditions (such as bank sponsorship)?
  - 26.2 How is non-bank participation viewed by regulators and by the sector?
27. What barriers limit your ability to expand your network and provide payment facilities/instruments for small transactions? How can such barriers be removed?
28. If there is a lack of interoperability, what accounts for such lack? How can this be resolved?

**VI. COMPETITION**

A lack of competition would stifle the development of branchless banking through higher pricing or lower rates of innovation. Competitive dynamics should be considered early even though concerns about market dominance and unfair competition may appear premature when numbers of customers remain low. Of particular interest in the domain of competition is the interoperability of payment systems (see Section V above: Payment Systems).

**Background Research Questions**

1. What regulation, if any, governs the promotion of competition and/or the prohibition of anti-competitive measures relevant to the banking and telecommunication sectors?
  - 1.1. What does the regulation generally require?
  - 1.2. Who is responsible for policymaking and enforcement?

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<sup>16</sup> Banks, card companies, clearinghouses, ATM networks, POS networks, other nonbanks directly providing similar services, such as mobile network operators.

2. Does the regulation clearly state the role of financial and telecommunications regulators in promoting and enforcing competition in the respective sectors?
  - 2.1. If so, what is the role?
  - 2.2. Is there conflict of competencies with policymakers and among regulators regarding the provision of financial services?
3. Have any practices in the financial services and telecommunications sectors ever been found by an official body to be anti-competitive? If so, what was the practice and what was the outcome?
4. Are any practices of the financial services and telecommunication sectors currently under official, publicly-disclosed investigation by competition authorities? If so, which?

**Questions for Competition Authority/Regulator**

5. How do you view the state of competition (concerns, risks, needs) in
  - 5.1. the retail banking sector?
  - 5.2. money transfer services?
  - 5.3. electronic money providers?
  - 5.4. the mobile phone industry?
6. How do you view the current level of interoperability between retail payment systems?
  - 6.1. Does it prohibit new bank and nonbank entities from entering the market?
  - 6.2. How does it affect the development of retail financial systems?
  - 6.3. How do dominant market actors facilitate or prohibit the entry of payment services competitors into the market?
  - 6.4. On what terms may these new competitors share existing networks and equipment? How do you view such terms?
7. With respect to financial services, has the jurisdiction of competition regulators vis-à-vis financial regulators been clearly defined? If not, does this situation affect the ability of competition authorities to adequately oversee and take measures against anti-competitive behavior in the financial sector? Are any legal changes needed to address this issue?
8. Do you have any concerns about anti-competitive practices among e-money issuers and mobile network operators? If so, how will you address these concerns?
9. Is your current capacity (staff, budget) adequate for investigations and enforcement?

**VII. PRUDENTIAL REGULATION: DEPOSITS & PAYMENTS**

Deposit taking and/or payment making often defines the business of a bank. Consequently, nonbank actors seeking to provide such financial services<sup>17</sup> to low-income customers (a central component of branchless banking) may be subject to a wide array of potentially prohibitive banking regulations: licensing, ownership restrictions, deposit pooling limitations, reporting and prudential requirements such as capital adequacy. This section is intended to illuminate some of the various prudential regulation obstacles to the provision of banking services through branchless banking arrangements.

### **Background Research Questions: Deposits**

1. How does the regulation define “deposit”, “deposit taking” and “business of a bank”?<sup>18</sup>
2. What types of entities may engage in deposit taking? Can nonbanks take deposits from the general public?
3. Are deposit takers subject to registration and licensing? If so, are there different levels of licensing and registration based on the nature of the deposit taking entity, account balance limits or channels through which deposits are taken (such as mobile phones or retail agents)? What other requirements exist for engaging in deposit-taking (minimum capital, etc.)?
4. What body is responsible for regulation/supervision of deposit taking entities? Are there different levels of supervision based on the nature of the deposit taking entity?
5. Does regulation prohibit, limit or guide the process whereby a nonbank party pools funds<sup>19</sup> in one account at a bank for the benefit of multiple clients? If so, describe.

### **Background Research Questions: Payments**

6. How does the regulation define a “payment”?
7. How does the regulation define a “payment service provider”?
  - 7.1. Are money transferors such as Western Union and MoneyGram considered payment service providers? Why or why not?
  - 7.2. What types of entities may provide money transfer services?
  - 7.3. Is there any type of entity that is expressly prohibited from providing payment services?
  - 7.4. Are any government institutions (such as the postal service) permitted to provide money transfer services? If so, under what conditions?
8. Are payment services businesses specifically regulated as such? If so:

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<sup>17</sup> However, e-money issuance (see Section III) is not always considered deposit-taking, such as in the United Kingdom.

<sup>18</sup> Deposits are sometimes defined in a civil code if not defined by financial regulation.

<sup>19</sup> Deposit pooling refers to the process whereby a nonbank party aggregates underlying individual deposit accounts, the record of which is kept by that party, into one account at a licensed deposit taking entity. This commonly happens with accountants and lawyers via trust accounts; and with stock brokers and dealers in the securities industry. In the context of branchless banking, the interest is deposit pooling by retailers.

- 8.1. What body is responsible for regulation/supervision of payment service businesses?
- 8.2. Are payment service providers subject to registration, licensing and/or supervision? If so, are there categories of payment service providers subject to different levels of licensing, registration or supervision?
- 8.3. What are the requirements (in particular, prudential requirements such as minimum capital and liquidity) to operate as a payment service provider?

9. What is the maximum time allowed before a payment must be available to a recipient?

### **Background Research Questions: Bank Ownership**

10. Does the regulation prohibit a mobile network operator or any other non-bank holding company:
  - 10.1. From owning or controlling a bank?
  - 10.2. From entering into a joint venture with a bank to provide banking services?
  - 10.3. Are there exceptions to either of 10.1 or 10.2 above? If so, what are they?

### **Questions for Financial Policy Maker**

11. Is there an intention to introduce new (or change existing) regulation in the area of payments? How would such regulation affect nonbanks providing payment services?
12. What is the policy intention with regard to nonbanks taking deposits?
13. Are you aware of, or do you already apply, the World Bank/ BIS General Principles for International Remittances?<sup>20</sup> If you do not already apply them, do you have plans to comment, respond and/or apply them?
14. In your assessment, do bank ownership restrictions impose barriers to increasing financial access? If so, how can such restrictions be ameliorated?

### **Questions for Financial Regulator/Supervisor**

15. Is your current capacity (staff, budget) adequate for the number of entities you supervise?
16. How is the supervisory process carried out?
17. Do you have specific concerns with nonbanks offering small value deposit accounts? How could such concerns be addressed?

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<sup>20</sup> Available at

<http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/060313CPSSWBfinal.pdf>

18. Have there ever been failures of PSPs which have resulted in the loss of customer money? If so, describe these failures and how they were remedied.
19. How prevalent is deposit pooling?
20. Have you ever taken action against a deposit pooling scheme?
21. In your assessment, do registration/licensing or other requirements for PSPs constitute a significant entry barrier for entities wanting to engage in such activities? If so, how has this impacted financial access?

#### **Questions for Payment Service Providers**

22. How does the current level of regulation and supervision affect your businesses?
23. Is there any other barrier related to retail payments systems adversely affecting the development of branchless banking?
24. What changes to current regulation regarding deposit-taking and payment services would you make and why?

#### **Questions for Money Transferors**

25. What requirements (licensing or other) are imposed on money transferors?
26. How do you provide foreign and domestic remittance services?
27. How many money transferors operate in the country?
28. How competitive is the market (provide market shares if possible)?
29. How many transactions do you conduct every year? What is the average amount of each transaction? What are the principal geographic origins/destinations of the transfer?
30. Who are your typical customers?

#### **VIII. DATA PRIVACY**

Consumers are likely to have some measure of regulatory protection with respect to data privacy, depending on the model of branchless banking and the country in question. Such protection would be offered under general consumer protection regulation, bank secrecy provisions, and sometimes “right to privacy” provisions of the telecommunications act, as well as under common law privacy doctrines, where applicable. But this patchwork of provisions is typically untested in the branchless banking context. In deciding what reforms are necessary to increase access to payments, savings and credit, special attention should be given to data privacy obstacles to (i) international remittances services; (ii) the sharing of information among banks and nonbanks; and (iii) comprehensive credit bureaus (with both positive and negative credit information on low-income customers).

Please note that banks and/or mobile network operators may be subject to different data privacy regulation than commercial organizations generally and/or may be subject to data privacy regulation issued by different regulators. Data privacy regulation as applicable to different business sectors should be thoroughly reviewed.

### **Background Research Questions**

1. What regulation, if any, governs rights to the sharing, use and storage of financial information regarding consumers (collectively “data privacy regulation”) by banks, mobile network operators or other commercial organizations?
  - 1.1. What does the regulation generally require?
  - 1.2. Who is responsible for policymaking and enforcement?
2. How does data privacy regulation affect the ability of financial providers or mobile telephone operators to transfer information relating to their clients to
  - 2.1. domestic third parties?
  - 2.2. foreign third parties?
3. How does data privacy regulation address the use of credit information by credit bureaus?
4. Does data privacy regulation allow the collection of positive credit information by credit bureaus? If yes, from what sources?
5. Does data privacy regulation set a maximum amount of time for credit bureaus to store negative information?
6. Does data privacy regulation require customers to authorize the collection, sharing and use of personal information by financial service providers and credit bureaus?

### **Questions for Financial Sector Policy Maker or Data Privacy Regulator**

7. What is the impact of your data privacy regulation on financial access?
8. If there is currently no data privacy regulation, is there an intention to introduce any? If so, what is the timeframe? How would the new regulation solve identified problems?

### **Questions for Service Providers**

9. How does the current data privacy regulation affect your business? What changes to current regulation would you make and why?
10. Is there any specific barrier related to data privacy adversely impacting the development of branchless banking? If so, how could such a barrier be removed?
11. For Credit Bureaus:
  - 11.1. Do you feel adequately protected by current data privacy regulation?

- 11.2. Does your database contain positive and negative information on low-income (or low loan amount) segments?
- 11.3. What are the sources of the information you use?
- 11.4. Who has access to your database (such as clients, financial institutions, etc.) and on what terms?

### **Question for Money Transferors**

12. Does the data privacy regulation unduly restrict foreign or domestic money transfers and if so, how could these restrictions be ameliorated?

## **IX. FOREIGN EXCHANGE CONTROLS**

Foreign remittances may account for a significant portion of branchless banking usage, particularly in countries such as the Philippines which relies heavily on funds sent home (often via mobile phones) from Filipinos abroad. Foreign exchange controls can consequently encourage or impede the growth of branchless banking for this type of service.

### **Background Research Questions**

1. What regulation governs foreign exchange?
  - 1.1. What does the regulation generally require?
  - 1.2. Who is responsible for policymaking and enforcement?
2. Are foreign exchange controls administered differently based on the amount of the transaction? If so, how are low amount transactions treated? What constitutes a low amount?
3. Do foreign exchange transactions require approval? If so, what is the approval process? Is there a threshold amount below which approval is not necessary?
4. Who may engage in foreign exchange? Is a license required? If so, how does one obtain such a license? Are there exemptions from the licensing requirement?
5. Are there foreign exchange record keeping and/or reporting requirements? If so, what must be recorded and by whom? What must be reported and to whom?
6. Do foreign exchange controls apply to both incoming and outgoing international remittances by individuals or financial institutions (including nonbank remitters)?
  - 6.1. If so, what restrictions are imposed on the amount that can be sent or received by natural persons?
7. Do foreign exchange controls require the foreign exchange rate to be set upon receipt or do fix-on-send rules apply?

### **Questions for Exchange Control Regulator/Central Bank**

*Note: It is often not necessary to speak to foreign exchange regulators unless there are doubts regarding the regulation or, if after speaking with service providers, specific matters were raised which should be addressed by regulators.*

8. Is the foreign exchange control regime likely to be changed or removed in next 1-3 years?

### **Questions for Service Providers**

9. How do the current foreign exchange controls limit your abilities to provide services? How could such limitations be ameliorated?
10. Have you ever contacted regulators with any concerns with regard to foreign exchange regulation? If not, why not? If so, what was the outcome?

## **X. E-COMMERCE AND E-SECURITY**

Branchless banking often requires the use of electronic means to make deposits and payments and send remittances (such as in the context of mobile phone banking or e-money issuance). Such electronically authorized financial transactions will not be made however, unless financial service providers and customers know they can be made securely. Branchless banking requires not only developed electronic commerce regulation but just as importantly, effective enforcement. In addition, a robust set of procedures and rules to safeguard digital data – including client’s personal information – must be in place.

E-commerce is based on specialized certification of the digital documents that have replaced paper documents. Certification usually entails public-key cryptography – a process by which a user has both a public key and a private key. A digital signature is an electronic message signed with the sender’s private key. The signature can be verified to prove authenticity by anyone holding the sender’s public key, which has the ability to read the private key but not replicate it.

### **Background Research Questions**

1. What regulation governs e-commerce and e-security (including e-signatures)?
  - 1.1. What does the regulation generally require?
  - 1.2. Who is responsible for policymaking and enforcement?
  - 1.3. Who controls the processes for ensuring adequate integrity, security and confidentiality of electronic signatures?
2. Is the regulation based on or inspired by any model law, such as the UNCITRAL Model Law on Electronic Signatures?<sup>21</sup>

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<sup>21</sup> Available at [http://www.uncitral.org/uncitral/en/uncitral\\_texts/electronic\\_commerce.html](http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce.html)

3. Under what conditions can electronic signatures have binding legal effect in lieu of physical signatures?
4. Is there a public key infrastructure?
5. Are certifying authorities subject to any type of licensing/registration requirements? If so, by whom and what are the requirements?
6. How do certifying authorities certify electronic signatures?
7. Does the regulation define e-commerce related crimes (fraud, identity theft, etc.)?

**Questions for E-Commerce Policy Maker/Regulator**

8. Does e-commerce regulation provide adequate protection for e-signatures? If not, how can such protection be provided? Is there any intention of providing such protection and, if so, when?
9. How widespread are electronically authorized transactions in financial services?
10. Has there ever been a legal challenge in which the validity of an e-signature has been contested? If so, what were the facts of the case and how was it resolved?
11. How effective is prosecution of e-commerce related crimes? If the regulation does not define e-commerce related crimes, under what regulation are these crimes prosecuted?
12. Do you consider e-security in your operational risk assessment?
13. Are service providers required to record, retain and/or report suspicious e-commerce activity or operational failures related to digital information (such as losing electronic files with personal customer information)?
  - 13.1. If so, what must be reported, how and to whom?
  - 13.2. What type of activity or failure is most frequently reported?
  - 13.3. What do regulators do with service provider reports in terms of review, analysis and/or enforcing remedial action?
14. Do regulators require service providers to set and follow e-security policies? If so, what are the policies? Do these policies cover agents? Are service providers required to appoint an individual to be responsible for e-security?
15. Is there a specialized team within the government for analyzing e-security in service providers?

**Questions for Service Providers**

16. Do you consider the regulation adequate to give security to e-commerce?
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17. Do you have an e-security policy? If so,
  - 17.1. What is it?
  - 17.2. How is it implemented?
  - 17.3. Have you appointed someone specifically to supervise and enforce this policy? To whom does this person report?
18. What are the major risks you perceive in the area of e-security, and how are such risks assessed?
19. Do you record, retain and/or report suspicious e-commerce activity or operational failures (such as losing electronic files with personal customer information)? If so, what do you typically record?
20. Have you had cases of repudiation of e-signatures? If so, what were the facts and the outcome of such cases?
21. How frequently do you experience e-commerce related crimes? What type of crimes do you experience?
22. How effectively are e-commerce related crimes prosecuted?
23. What changes to current regulation would you make and why?

## **XI. TELECOM/MOBILE NETWORK OPERATOR (MNO) REGULATION**

At the core of many branchless banking models is the convergence of telecommunication and banking services. Mobile network operators may act as simply communication service providers (an electronic channel between the bank and the customer) or as financial service providers, if banking and telecom regulation permit. The diagnostic team should have a complete picture of the current state of the mobile phone sector (regulation, supervision, players, competition, penetration, prices, growth potential, etc.) and the level of interest from MNOs in providing financial services, both through partnerships with banks and in a nonbank-based scheme. Attention should be paid to the likelihood of conflicts between MNOs and banks if MNOs enter the banking business.

### **Background Research Questions**

1. What regulation governs telecommunications/mobile network operators?
  - 1.1. What does the regulation generally require?
  - 1.2. Who is responsible for policymaking and enforcement?
2. Does the regulation limit the ability of mobile network operators to:
  - 2.1. Offer value-added services such as e-commerce services? If so, what restrictions or conditions are imposed?

- 2.2. Enter joint ventures with any financial service provider? If so, what restrictions or conditions are imposed?
3. How does the regulation define valued added services, if at all? Are e-transactions via mobile telephone networks considered value added services?
4. Are MNOs permitted to offer prepaid airtime transfers from one individual to another (peer-to-peer prepaid airtime transfer)? If so, can transferred airtime balances be converted to e-money?
5. Is cell phone number portability<sup>22</sup> (from one MNO to another) currently required? How is number portability defined?
6. Do regulators monitor the financial solvency of regulated telecom companies and MNOs (whether or not they issue e-money)? If so, how?
7. Do regulators have the power to require interoperability and interfere in pricing of mobile phone services?

### **Questions for the Telecommunication Services Regulator**

8. Describe the industry:
  - 8.1. How many service providers currently operate?
  - 8.2. What is the market share of each provider?
  - 8.3. How many post-paid and prepaid subscribers are there?
  - 8.4. How many cell phones are in use?
  - 8.5. What is the average airtime price (post-paid and prepaid)?
  - 8.6. What is the average text messaging (SMS) price?
  - 8.7. What is the average handset price?
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9. What are the commercial terms of both postpaid and prepaid airtime (minimum duration of contract, penalties for cancelling subscription, etc.)?
10. If prepaid airtime is more expensive than postpaid airtime, do prepaid customers use the mobile telephones less than postpaid customers?
11. Are mobile telephone calls, text messages and handsets affordable for low-income customers?
12. What barriers do low-income customers face in accessing mobile phone services?
13. Do you have any specific concerns about telecom companies directly or indirectly entering financial services?
14. Have you had discussions with financial regulators over any unclear areas of overlapping regulatory domains?

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<sup>22</sup> Portability refers to the customer's prerogative to switch to another provider without losing her/his original phone number.

15. Will there be any changes in your policy regarding the Value Added Services by telecom companies? If so, what are they and what is the timeframe?
16. If number portability is not currently required, is there any intention to require portability in the future? If so, what is the timeframe?

### **Questions for Mobile Phone Service Providers**

17. Have you had any specific experience in approaching the telecom regulator for guidance with respect to value added services? If so, what happened?
18. Are you interested in providing financial services via your mobile network? Why or why not? What services would you like to provide and how?
19. Do you foresee any legislative or other barriers to providing financial services via your mobile network?
20. Are there particular barriers for low-income customers to access mobile phone services?

## **XII. TAXATION**

Taxation can potentially impact the provision of financial services to low-income customers by banks and nonbanks. For example, if an MNO provides financial services and is taxed on funds placed into a prepaid account, VAT may to apply. In some countries, this taxation would make it cost prohibitive for MNOs to enter the financial services business. The diagnostic team should be able to draw conclusions on the political will to create an equal tax regime for similar services, regardless of the provider. Given the complexity and often uncertain interpretation of tax codes, it may be advisable to consult a tax accountant or lawyer with respect to the questions in this section. Banks and other service providers are also likely to be familiar with the practical application of the tax code, rendering meetings with tax authorities often unnecessary.

### **Background Research Questions**

1. What regulation governs taxation of financial services?
  - 1.1. What does the regulation generally require?
  - 1.2. Who is responsible for policymaking and enforcement?
2. Is there taxation (e.g. VAT, sales tax, excise duty or other levy) on financial transactions such as deposits, withdrawals or payments?
  - 2.1. If so, describe the means of calculation.
  - 2.2. Does any such tax apply equally to any delivery channel (mobile phone, internet, branches, etc.)?
3. Are financial transactions taxed differently when provided by a bank instead of a mobile network operator? If so, describe the differences.

4. Is there taxation (e.g. VAT, sales tax, excise duty or other levy) on mobile transactions such as sale of airtime or e-commerce transactions? If so, describe the means of calculation.

#### **Questions for Telecom and Financial Services Providers**

5. If there is a difference in the tax treatment of financial transactions (whether by VAT, sales tax, excise duty or other levy) via mobile phones versus other means, have proposals been made to the tax authority to change this discrepancy? If so, what happened?
6. Are there taxation barriers to the development of branchless banking? If so what are they and how can they be removed?

### **XIII. BANKING & FINANCIAL ACCESS**

This section aims to complement the rest of the template by providing general information on the banking sector and gauging government and private sector commitment to financial services for low income populations.

#### **Background Research Questions**<sup>23</sup>

1. With respect to the banking sector, provide:
  - 1.1. the number and percentage of people in the country who have deposit bank accounts of any type (current, savings, debit card)
  - 1.2. total amount of assets
  - 1.3. total amount of deposits
  - 1.4. total number of bank accounts
  - 1.5. total number of bank transactions per year
  - 1.6. number of banks and bank branches (as well as other types of offices where banks can transact business)
  - 1.7. number of mobile banks, if any
  - 1.8. percentage of electronic bank transactions in relation to total transactions
  - 1.9. percentage of transactions of total conducted via (i) internet, (ii) mobile phones, (iii) agents, (iv) branches and (v) any other channels

#### **Questions for Policy Makers/Regulators**

2. Is there a general policy by regulators on increasing financial access to low-income segments of the population? If so, describe its main elements. Who are its main supporters and opponents? How important is this issue politically?
3. Do regulators envisage changing or introducing new regulation impacting financial access? If so, what are the main elements of the regulation and who are its main supporters and opponents?

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<sup>23</sup> Bank regulators or banking associations may have answers to these questions readily available.

4. What are the main barriers to financial inclusion? How will these be addressed?
5. Do banks or other entities offering low income banking services report regulatory obstacles which affect their ability to offer these services? If so, what are they?

**Questions for Service Providers**

6. Do you offer low cost bank accounts targeted at low income people? Why or why not?
7. What is the nature and status of dialogue with policy makers regarding measures to promote access to financial services?

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