



# Reducing the Cost of Migrant Remittances to Optimize their Impact on Development

Financial products and tools for the Maghreb Region and the Franc Zone

REPORT

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## ● LIMITED DISTRIBUTION ●

This report is the result of studies and research conducted by a team of experts under the direction of Epargne Sans Frontière in the following locations: two Central Maghreb countries namely, Morocco and Tunisia, Senegal, a member-country of the West African Economic and Monetary Union (WAEMU) and headquarters of the Central Bank of West African States (or BCEAO), Cameroon, a member-country of the Central African Economic and Monetary Community (CAEMC) and headquarters of the Bank of Central African States (or BEAC), and Comoros, a member of the Franc Zone.

A steering committee set up in January 2008 supervised the research to ensure that it complied with recommendations contained in the African Development Bank (AfDB) study entitled, “Migrant Remittances, a Development Challenge,” funded by France. Laurent Weill from the French Ministry of the Economy and AfDB’s Patrick Giraud co-chaired the steering committee. Other members

of the steering committee were Stéphane Gallet and Frédéric Bard from the French Ministry of Interior, Overseas France, Local Authorities and Immigration and the General Secretariat of Immigration and Integration; Virginie Lucas and Sarah Lahmani from the French Development Agency (or AFD); Suzanne de Bellescize from the Ministry of Foreign and European Affairs; and Luc Jacolin from the Banque de France.

The ideas and opinions expressed in this report are those of the authors and do not necessarily reflect the views of the African Development Bank or of France.

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The background features a repeating pattern of various icons enclosed in circles, all connected by a network of dotted lines. The icons include: a person's head profile, a mobile phone, a laptop, a classical building with columns, a scale of justice, a credit card, and a stack of coins. The overall color scheme is a solid orange with white and light orange accents.

# EXECUTIVE SUMMARY





**GIVEN THEIR IMPORTANCE TO RECIPIENT POPULATIONS, THE FLOW OF MIGRANT REMITTANCES TENDS TO REMAIN STABLE AND UN-IMPACTED BY CHANGES IN THE ECONOMIC SITUATION.**

Remittances from migrants are a major source of financing for the economies of developing countries and of the recipient populations. They are of great benefit to large segments of the population which, without these resources, would live in conditions of abject poverty. Consequently, remittance flows tend to remain stable even when the migrants' countries of residence are beset by economic and financial crisis. They seem to be less volatile than official development assistance and foreign direct investment. This is true for countries of the Maghreb and the Franc Zone especially those that form the core focus of this study, namely Morocco, Tunisia, Senegal, Cameroon and Comoros.



## ● **REDUCE THE COSTS OF MIGRANTS MONEY TRANSFERS TO INCREASE THE CONTRIBUTION OF THESE FUNDS TO DEVELOPMENT.**

Remittance costs currently tend to stabilize at a high level, spurring governments to national, bilateral and multilateral action. This report seeks to recommend the ways and means to reduce the cost of money transfers and optimize their contribution to development through suitable financial and regulatory innovations, in keeping with commitments made at the Africa-France Summit in Nice in 2010, and at the G20 Summit in Cannes in November 2011. This report comes in the wake of an earlier study initiated by the African Development Bank (AfDB), with the support of France.

- 2007 study entitled Migrant Remittances, a Development Challenge,
- Establishment of a multi-donor “Migration and Development Trust Fund” at the AfDB in 2008,
- Capacity-building programme for remittance service providers in the Maghreb and Franc Zone (2009).



## ● **UNDERSTANDING THE LOCAL ENVIRONMENT IS KEY TO REDUCING REMITTANCE COSTS AND INFORMAL FLOWS.**

This report presents the general context for international and regional money transfers in the countries under review:

- Analysis of the formal remittance markets and actors,
- Presentation of regulatory and legal measures governing remittances and review of their utilization by the financial sector in recipient countries,

- Analysis of bank and non-bank products in existence within this framework,
- Proposals for innovative financial products and services taking account of recent developments, particularly the use of information and communication technologies.





## REMITTANCE COSTS IN THE MAGHREB AND THE FRANC ZONE APPEAR TO BE STABILIZING AT LEVELS THAT ARE YET TOO HIGH.

An analysis of the remittance market brings the following points to the fore:

- A relatively large share of cash-to-cash transfers;
- Growing use of non-cash money-transfer products, especially account-to-account transfers within the same bank group and with some partial cash payments;
- Sharp growth in traditional linked bank account (bi-bancarization) products;
- Financial intermediaries' primary interest in migrants rather than recipient families;<sup>1</sup> this has a negative impact on financial inclusion – especially the use of bank facilities – by remittance recipients – as reflected by a preference for cash remittances;

- Remittance service providers' primary interest in cash-to-cash transfers; these are simple, cheap and risk-free money-spinning operations.

A strategy to earn, keep or even raise profits rather than to promote financial inclusion or banking appears to drive the actions of remittance service providers. Profit margins remain high everywhere. This seems to have fostered stable rather than decreased remittance costs, giving governments all the more reason to take national, bilateral and multilateral action to reduce these costs, in line with recommendations made by the Cannes Summit in November 2011.

<sup>1</sup> With the exception of the Moroccan banks, which are also interested in the needs and desires of recipients in countries of origin.





**A WIDER RANGE OF PLAYERS NOW OPERATE IN THE REMITTANCES MARKET, BUT OFFERS NEED TO BE FURTHER DEVELOPED FOR INCREASED COMPETITIVENESS.**

This study has identified five types of remittance service providers already active in the market or about to start operations:

- Money-transfer companies (MTCs);
- Banks (including postal banks);
- Microfinance institutions (MFIs);
- Mobile network operators (MNOs) and other firms with automated-payment technology and expertise;
- Stock-and financial-exchange operators.

Within the group of MTCs, the leading international corporations – Western Union and Money Gram – operate differently from the domestic MTCs, which are smaller and of more recent inception. Local banks and post offices have recognized the importance of remittances and the commission income they can generate. These local operators are moving to diversify their still small and uncompetitive product offerings, through the use of new technologies.



**COMPETITION COULD BE STRENGTHENED AND REMITTANCE COSTS REDUCED BY UPDATING REGULATORY FRAMEWORKS AND PROMOTING A WIDER RANGE OF FINANCIAL PRODUCTS AND SERVICES.**

Regulatory frameworks remain relatively stringent when it comes to migrants putting their savings into productive investments. The underlying purpose for this is to preserve the financial stability of the system, guarantee the security of means of payment, and protect depositors and consumers, especially in keeping with the recommendations of regulatory bodies such as the Financial Action Task Force (FATF) and the Basel Committee.

However, particular attention should be paid to some regulatory provisions, addressing strong technological innovations and the risks of informal market expansion and market stagnation. The regulatory frameworks governing linked bank accounts

could be improved; such accounts would help meet economic and financial development objectives for migrants' countries of origin.

Regulatory and supervisory authorities have made progress, particularly in microfinance in the WAEMU and in the use of information and communication technologies – and e-commerce more broadly – in Senegal and Cameroon. Further progress is needed to adapt regulatory frameworks and – more generally – the conditions for scaling-up and diversifying financial products and services to increase competition – vital for reducing remittance costs and encouraging migrants to put more of their savings to work for development.



## FOUR TYPES OF FINANCIAL AND TECHNOLOGICAL SERVICES CAN CONTRIBUTE TO THE REDUCTION OF THE COST OF MONEY TRANSFERS.

This report shows that costs cannot be reduced solely by lifting the exclusivity clause. Remittance cost reduction will be conditioned by the diversification of relevant and attractive financial and technological products and services that would better meet the expectations of the two main protagonists at the two ends of the transfer chain, namely the migrants and the remittance recipients.

The report considers four types of financial and technological products and services:

- Improved “traditional” remittance products and services;<sup>2</sup>
- “Inclusive” linked bank account products and services;<sup>3</sup>
- Collective investment products for migrant associations and long-term institutional investment products, (securities, banking and financial products);
- Lastly, international communication and technology-based products for North/South remittances through ‘mobile-banking’, and the development of automated payments and e-banking.

These products and services would foster growth in the number of migrants with linked bank accounts<sup>4</sup> They would help strengthen banking systems in migrants’ countries of origin, reduce the use of cash (and by extension, cash remittances) and informal channels, and increase remittance flows to countries of origin. The offer for such products would differ from one market to another.

All countries of origin tend to offer their nationals abroad products that are available on the home front on the same terms as for the local populations. Despite their merits, these products do not generally offer the possibility of securing loans in countries of residence for operations in countries of origin. This further reduces the possibilities for savings and investments for the residents abroad. The limited success of traditional linked bank accounts and the prospects for their growth have prompted proposals for other forms of linked bank accounts which would partly be in the context of collective development and entail some regulatory and legislative adjustments and financial engineering. They should come in supplement and not in replacement of the traditional bi-bankarization.

2 Cash transfer to an account, with the ability to withdraw part of the transfer in cash via a direct debit.

3 Linked bank account products and services: non-resident remote bank account opened in the country of origin from the country of residence, real property loans granted in the migrant’s country of residence for a purchase in his or her country of origin, savings products set up in the country of residence for investment in the country of origin, and savings products – especially home-savings schemes – for property investments in the country of origin.

4 Ability to open a non-resident bank account in the country of origin, remotely manage the account, and access to loans and other financial services via this account.



● **FIVE FUNDAMENTAL AVENUES MUST BE EXPLORED, INVOLVING STAKEHOLDERS, SERVICES, TOOLS AND NEW TECHNOLOGIES TO EXPAND AND STRENGTHEN BANK AND NON-BANK PRODUCT OFFERS, PROMOTE REMITTANCE COST-REDUCTION AND FOSTER CO-DEVELOPMENT.**

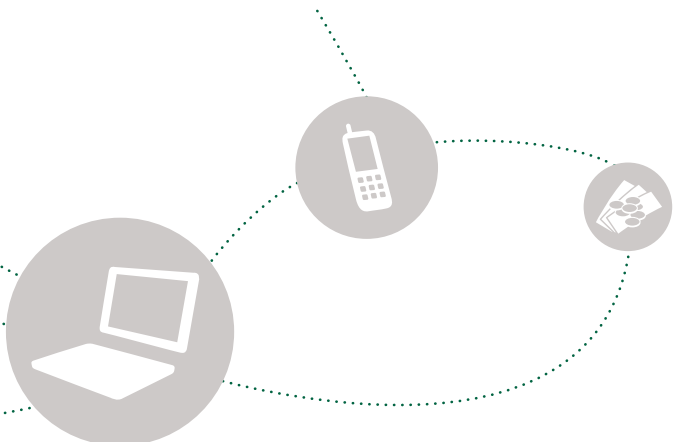
●

Given the range of technical and regulatory situations, it would be useful to step up the sharing of experiences and formation of partnerships among the countries covered by this report, especially with regard to market regulation and supervision. The report recommends five guidelines for developing and strengthening bank and non-bank products proposals for both migrants and their communities of origin:

- Scaling up the role of MTCs solely for emergency remittances to reduce informal money transfers and increase competition in this market;
- Developing traditional linked bank accounts as a means of banking and promoting financial inclusion in countries of origin, a more effective mobilisation of transferred savings;
- Promoting inclusive linked bank accounts as an integrative tool in migrants' countries of residence, directing the savings of nationals abroad to the service of national development and the implementation of their own personal projects in their countries of origin;

- Increasing the use of information and communication technology in linked bank accounting transactions: mobile banking, e-banking and – more broadly – branchless banking, to facilitate remittances and promote access to banking services;
- Promoting diaspora-oriented financial and stock market products as instruments for harnessing the savings and expertise of nationals abroad for development, strengthening the economies and financial systems of countries of origin and improving their integration into the global economy.

This report also suggests modalities for the implementation of its recommendations by, among other things, widely disseminating it, organizing thematic meetings between the stakeholders, and setting up focus-group meetings with support from the G20 countries, especially France, as well as bilateral and multilateral development finance institutions, in particular the African Development Bank (AFDB) and the French Development Agency (AFD).



**AIFMD**

Or Alternative Investment Fund Managers Directive Refers to the Directive of the European Parliament and Council of the European Union concerning regulation of marketing and management of so-called AIF funds, that is hedge funds and speculative “non-UCITS” into marketable securities, that seek to govern their management and negotiation in European countries.

**AMF**

Independent Regulatory Authority; The independent authority in charge of regulation and supervision of financial and stock markets. Depending on the country or geographical zone, this authority is called the Authority for financial markets- France. In Morocco, the authority in charge of capital markets. In Tunisia, the Financial Markets Board and in the WAEMU, the Regional Board for public savings and financial markets, and in Central Africa, the Central African financial markets Supervisory.

**AUCG**

The Trading Rights Act

**Bancarisation – the role of banks in the economy**

Providing banking services adapted to the needs of the populations; these services are essentially related to savings, means of payment and advisory services and provision of financial assistance.

**Branchless banking**

Banking services provided remotely, without a branch office, using information technology and/or retail agent networks. The provision of branchless banking may be part of an additional or a transformational strategy. A strategy is called additional when it simply expands the range of products offered by traditional lending institutions or offers more convenience to existing customers. It is called transformational when it seeks to extend this offer to customers whom traditional financial-service institutions cannot reach in a cost-effective way through their branch offices (Consultative Group to Assist the Poor, 2008).

**Mobile banking**

A form of branchless banking based exclusively on the use of mobile phones and the capacity of telecommunications operators to provide payments and assets storage i.e electronic wallet.

**Linked-banking services**

Bi-bankarization, the role of banks and services provided to migrants in Europe in their countries of origin – or that of their forebearers – within the framework of coordinated action between the banks in their country of residence and their country of origin, a holistic attitude concerning the requirements in banking and financial services of clients.

Bi-bankarization agreements between credit institutions within the same group and each established at one end of the transfer chain concern in general the following operations; the opening of branchless accounts, the opening of an account in the South in a bank agency in Europe and in exchange, facilitating access to account transfers, the right to loans for real estate investments or others in the South. To this should be added sometimes the privilege to purchase stock market products in the country of origin.

**CGAP**

Consultative Group to Assist the Poor.

**Corridor**

A channel for financial transfers between a migrant’s country of origin and country of residence.

**Credit institution**

(i) An outfit whose business is to receive deposits or other repayable funds from the public and to grant credit for its own account; or (ii) a business or legal entity, other than those under (i), which issues means of payment in the form of electronic money.

**Electronic money or e-money**

Electronic money is a digital equivalent of cash, stored electronically (including magnetically) on a device or remotely at a server. One common type of e-money is the “mobile wallet” where users store relatively small amounts of money on their payment card or other smart card, to use for making small payments. E-money can also be stored on (and used via) mobile phones or in a payment account on the Internet.

**Euroclear**

Euroclear France is the central depository of securities and manager of the French system for settlement of financial instruments. [www.euroclear.fr](http://www.euroclear.fr)

**Exclusivity clause**

A clause in a contract to distribute financial services: (i) granting exclusive distribution of the product to a financial institution in a country or area; or (ii) forbidding the financial institution from distributing a competing product; or (iii) requiring that the owner of each product should have an exclusive distribution relationship over a country or territory. As stated in this report, exclusivity clauses are used by the major international money-transfer companies for their rapid money-transfer products, as distributed by banks, micro-finance institutions and other agents in various countries.

## **FATF or Financial Action Task Force**

An intergovernmental body that aims to develop and promote policies to fight money-laundering and the financing of terrorism both at the national and international levels.

## **Great Wedding (Grand marriage)**

A social institution specific to Comoros and Mayotte. Weddings are celebrated by inviting the entire village to a big community party; such an event often costs from €25,000 to €40,000. The grandiose event usually occurs several years after an actual, legal wedding. To meet the wedding expenses, each member of a village community contributes money to a tontine (see below) regularly throughout his or her working life. The recipient of the Great Wedding even incurs a debt that takes years to repay, beyond the capital he or she has already paid. The event ties all personal projects to the community for the long term. By celebrating a Great Wedding, a person achieves the status of a village notable, or community leader, enabling him or her to participate in decisions affective the community – particularly those involved in collective investments, such as building a school or other facilities. Each village has its own coffers where villagers' contributions are deposited. In addition to paying for Great Weddings, these resources allow the villages to pay for collective expenditures; the funds are not always deposited with microfinance institutions and usually get transferred through informal channels in cash and saved as cash.

## **GPFI**

Or Global Partnership for Financial Inclusion was established by the G20. The partnership has adopted a number of principles for financial inclusion. These principles serve as a reference for regulators and policymakers in their efforts to strengthen the process of adopting strong and healthy financial innovation. Financial innovation aims to: (i) increase the supply of affordable financial products and services; (ii) establish an incentive framework, ensuring healthy competition among all stakeholders (banks, insurance and other financial intermediaries; and (iii) strengthen financial services that meet consumer needs, at an affordable price. [www.gpfi.org/sites/default/files/documents/Principles%20and%20Report%20on%20Innovative%20Financial%20Inclusion\\_0.pdf](http://www.gpfi.org/sites/default/files/documents/Principles%20and%20Report%20on%20Innovative%20Financial%20Inclusion_0.pdf)

## **MFI or Microfinance institution**

A generic term that varies from one country to another, and may be abbreviated MFI, AMC, SFD, IFD, EMF. They are financial institutions authorised and under supervision and given the authority to carry out certain financial operations for the benefit of populations excluded from the classical banking sector. Banking operations of these institutions often include micro-credit and savings collection, receipt of public funds, and other forms of payment including money transfers at the national level. These institutions are often actors in the money transfer chains and the valorization of migrant savings and especially in the bancarisation of populations in the South.

## **NYSE Euronext**

Global stock market exchange, resulting from the merger of the New York Stock Exchange and the Euronext family of European stock exchanges: Paris, Amsterdam, Brussels, Lisbon, Porto and LIFFE in London.

## **Paris Europlace**

An association founded in 1993 with the overall mission to promote the Paris financial market and consolidate its key players.

## **SWIFT**

The Society for Worldwide Interbank Financial Telecommunication is a member-owned cooperative based in Belgium through which more than 9,700 banking organizations, securities institutions and corporate customers in 209 countries exchange standardized financial messages. It was created in 1977 to replace slow or unreliable Telex communications.

## **Tontine**

A non-bank membership-based savings and loan mechanism used to finance individual and/or collective projects. Each member pledges to regularly pay a predetermined amount into the mechanism over a sufficiently long period of time, often more than 10 years or throughout his or her working life. If tontine members belong to the same village or community, part of the resources are set aside to be used for community projects. The main purpose is to finance individual projects on a rotating basis, on the basis of drawing of straws or seniority. The tontine functions as a form of savings and interest-free loans; a loan beneficiary continues to pay his or her share until all participants have received funds, at which point the tontine ends.

## **Trojan computer virus**

A term used to describe software that allows users to divert, distribute or destroy information, or to take remote control of the computer, without the knowledge of its owner.

## **UCITS**

Or Undertakings for Collective Investment in Transferable Securities are a form of mutual investment fund for retail (unsophisticated) investors, formed as an investment company with variable capital or a mutual fund.



## ABBREVIATIONS

§

U.S. Dollar (USD)

€

Euro

### ACEP

Alliance d'épargne et de crédit pour la production/Alliance for Productive Savings and Loans

### ACP

Autorité de contrôle prudentiel/ Prudential Supervisory Authority (France)

### ADIE

Association pour le Droit à l'Initiative Économique/Right to Economic Initiative Association

### AfDB

African Development Bank

### AFD

Agence Française de Développement/ French Development Agency

### AIFM

Alternative investment fund manager (a European Union Directive)

### AMC

Association de microcrédit/Microcredit Association Morocco, Tunisia)

### AMF

Autorité des marchés financiers/ Financial Markets Authority (France)

### AMMC

Autorité marocaine du marché des capitaux/Moroccan Capital Markets Authority

### AML-CFT

Anti-Money Laundering—Combating Financing of Terrorism

### ANTIC

Agence nationale des technologies de l'information et de la communication/ National Agency for Information Technology and Communication (Cameroon)

### APR

Annual Percentage Rate

### APTBEF

Association professionnelle tunisienne des banques et établissements financiers/ Professional Association of Tunisian Banks and Financial Institutions

### ATM

Automatic Teller Machine

### BCEAO

Banque centrale des États de l'Afrique de l'Ouest/Central Bank of West African States (WAEMU)

### BDC

Banque de développement des Comores/ Comoros Development Bank

### BDE

Banque d'Escompte (France)

### BEAC

Banque des États de l'Afrique centrale/ Bank of Central African States (CAEMC)

### BFC

Banque Fédérale de Commerce

### BHS

Banque de l'Habitat du Sénégal

### BIAT

Banque Internationale Arabe de Tunisie

### BICEC

Banque Internationale du Cameroun pour l'Épargne et le Crédit

### BIMAO

Banque des Institutions Mutualistes d'Afrique de l'Ouest

### BNPP

BNP Paribas

### BOAD

La Banque Ouest-Africaine de Développement/West African Development Bank

### BRED

Banques Populaires Group (France)

### BRVM

Bourse régionale des valeurs mobilières/ West African Regional Bourse (WAEMU)

### BVMAC

Bourse des valeurs mobilières de l'Afrique centrale/Central Africa Stock Exchange (CAEMC)

### CAEMC

Communauté Économique et Monétaire de l'Afrique Centrale (CEMAC)/Central African Economic and Monetary Community

### CBAO

Compagnie Bancaire d'Afrique de l'Ouest

### CCMAO

Confédération du Crédit Mutuel d'Afrique de l'Ouest

### CDC

Caisse des dépôts et consignations (France)

### CDG

Caisse des Dépôts et Consignations (France)

### CDVM

Conseil déontologique des valeurs mobilières/Securities Compliance Board (Morocco)

### CESAG

Centre Africain d'Études Supérieures en Gestion/African Center for Advanced Management Studies

### CFA

Communauté Financière Africaine/ African Financial Community

### CGAP

Consultative Group to Assist the Poor

### CICID

Comité interministériel de la coopération internationale et du développement (France)/Inter-ministerial International Cooperation and Development Committee (France)

**CIF**

Confédération des institutions financières (UEMOA)/Cooperative Credit Unions (WAEMU)

**CIMA**

Conférence Interafricaine des Marchés d'Assurance/Inter-African Conference on Insurance Markets

**CMF**

Conseil du Marché Financier/  
Financial Market Council (Tunisia)

**CMS**

Crédit Mutuel du Sénégal

**COBAC**

Commission Bancaire de l'Afrique Central/Central Africa Banking Commission (CAEMC)

**COMOFI**

Code monétaire et financier (France)/  
Monetary and Financial Legal Code (France)

**CREPMF**

Conseil régional de l'épargne publique et des marchés financiers/Regional Council of Public Savings and Financial Markets (WAEMU)

**CSE**

Casablanca Stock Exchange

**DFS**

Decentralized Financial System (a type of MFI)

**DFI**

Development Finance Institution (Comoros)

**DSX**

Douala Stock Exchange

**ECB**

European Central Bank

**EIB**

European Investment Bank

**EMI**

Electronic Money Institution

**ESF**

Épargne sans Frontière

**ESMA**

European Securities and Markets Authority

**E.U.**

European Union

**FATF**

Financial Action Task Force

**FBPMC**

Fondation Banque Populaire pour le Micro-crédit/Banque Populaire Foundation for Microcredit (Morocco)

**FDI**

Foreign Direct Investment

**FORIM**

Forum des Organisations de Solidarité Internationale Issues des Migrations/  
Forum of International Migrant Solidarity Associations

**G-20**

Group of Twenty Finance Ministers and Central Bank Governors

**GDP**

Gross Domestic Product

**GPFI**

Global Partnership for Financial Inclusion

**ICT**

Information and Communication Technology

**IFAD**

International Fund for Agricultural Development

**IMCEC**

Institution mutualiste ou coopérative d'épargne et de crédit/Cooperative Savings and Loan Associations and Credit Unions

**INAFI**

International Network of Alternative Financial Institutions

**KMF**

Comorian Francs

**KfW**

Kreditanstalt für Wiederaufbau

**KYC**

Know Your Customer

**MFI**

Microfinance Institution

**MFW4A**

Making Finance Work for Africa

**MTC**

Money-Transfer Company

**MTN**

Mobile Telephony Network (South African incorporated telecommunication company)

**ODA**

Official Development Assistance (foreign aid)

**OECD**

Organisation for Economic Co-operation and Development

**OHADA**

Organization for the Harmonization of Business Law in Africa, representing 16 countries (Benin, Burkina Faso, Chad, Cameroon, Comoros, Côte d'Ivoire, Central African Republic, Democratic Republic of the Congo, Gabon, Guinea, Equatorial Guinea, Guinea-Bissau, Mali, Niger, Senegal, Togo)

**PAMECAS**

Union des mutuelles du partenariat pour la mobilisation de l'épargne et le crédit au Sénégal/Union of Mutual Partners to Mobilize Savings and Loans in Senegal

**PAR**

Portfolio at Risk

**PPI**

Public-Private Partnership

**REMIT**

Remittance

**RIA**

A money-transfer company

**ROA**

Return on Assets

**RSP**

Remittance Service Provider

**SA**

Société Anonyme (a form of corporation)

**SGBC**

Société Générale de Banques (Cameroon)

**SGBS**

Société Générale de Banques (Senegal)

**SNPSF**

Société Nationale de la Poste et des Services Financiers/Comoros Postal Bank

**SWIFT**

Society for Worldwide Interbank Financial Telecommunication

**TFD**

Techniques financières et développement (France)

**UCITS**

Undertakings for Collective Investment in Transferable Securities

**U.S.**

United States

**WAEMU**

Union économique et monétaire Ouest africaine/West African Economic and Monetary Union

**WAMU**

West African Monetary Union



## INTRODUCTION

1 International remittances from migrants are a major source of resources for developing countries and the recipient populations. When migrants transfer money back to their countries of origin, the poor mainly benefit from such remittances, which help to enhance their living standards. Even when migrants' countries of residence experience economic or financial downturns, remittance flows tend to remain stable; contrary to foreign direct investments. This is evident in the five countries reviewed in this study: Morocco and Tunisia in North Africa, Senegal, Cameroon and Comoros<sup>5</sup> in the sub-Saharan Franc Zone.<sup>6</sup> Remittances play a counter-cyclical role in recipient countries, thus helping to cushion the effects of economic downturns and crises as they fulfill their original purpose of supporting relatives living in the migrants' country of origin. More than 75 percent of remittances provide funds that help to meet the basic needs of people living on the edge of poverty.<sup>7</sup>

2 This report explores ways to reduce the cost of remittances and maximize their contribution to promoting inclusive development through appropriate financial and regulatory innovations, in accordance with the objectives declared by the Group of Twenty Finance Ministers and Central Bank Governors' (G20)<sup>8</sup> and France's Inter-ministerial International Coe-

ration and Development Committee (or CICID<sup>9</sup>). The report builds upon other work and activities initiated by the African Development Bank (AfDB) with support from France:

- a 2008 study on migrant remittances and their importance to development<sup>10</sup>;
- a multi-donor "Migration and Development Trust Fund" established by the AfDB in 2009;
- a capacity-building programme for remittances service providers (RSPs) – money-transfer companies, bank and non-bank financial and credit institutions, and other non-bank remittance service providers – initiated and organized in the Franc Zone and Central Maghreb countries<sup>11</sup> in 2009.

3 This report seeks to align with the G20's recommendations for resilient economic growth and financial inclusion. It may be useful in developing a toolbox for financial services innovation and for strengthening the microfinance sector.

4 The report is made up of six parts besides the introduction: Part I presents the general context for money transfers in central Maghreb and the Franc Zone. Part II analyzes the formal remittances markets. Part III examines the strategies of key remittance service providers. Part IV examines the regulatory and legal frameworks governing remittances and their use by the financial sector in recipient countries. Part V evaluates bank and non-bank product offerings available and proposes other, innovative financial products and services built around recent developments in information and communications technology. Part VI draws conclusions and makes recommendations designed to help reduce the cost of formal and informal remittances; it also suggests ways in which these financial products may better meet the needs of migrants and their countries of origin.

5 The Senegalese, Moroccan and Tunisian governments pay particular attention to their diasporas. Also, the headquarters of the Central Bank of West African States (or BCEAO) is located in Dakar, Senegal. Morocco is also a leading country in terms of financial products and services offered to migrants. The choice of Cameroon is justified both by the amount of migrant remittances received – it is the only Central African country with net positive inflows – and because the Bank of Central African States is headquartered there. Comoros largely depends economically and financially on its diaspora in France.

6 In this report, the "Franc Zone" refers to 14 countries in West and Central Africa where the CFA franc (XOF) is the common currency, and Comoros, which issues the Comorian franc (KMF). The CFA Franc Zone countries belong to one of two economic communities: eight countries – Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo – are members of the West African Economic and Monetary Union (WAEMU); its central bank is known as the BCEAO. Six other CFA Franc Zone countries – Cameroon, Central African Republic, Chad, Republic of the Congo, Gabon and Equatorial Guinea – are members of the Central African Economic and Monetary Community (CAEMC); its central bank is known as the BEAC.

7 See the study, *Migrant Remittances, a Development Challenge*. African Development Bank (AfDB) 2008.

8 Via an initiative known as the Global Partnership for Financial Inclusion (GPII).

9 *Comité Interministériel de la Coopération Internationale et du Développement* (CICID).

10 *Migrant Remittances, a Development Challenge*. African Development Bank (AfDB) 2008.

11 Algeria, Morocco and Tunisia.



The background features a repeating pattern of icons within green circles, all connected by a network of dotted lines. The icons include: a person's head profile, a mobile phone, a laptop, a classical building with columns, a scale of justice, a credit card, and a stack of money. The overall color scheme is various shades of green.

**PART I**  
OVERALL DATA

## OVERALL DATA

5 Migrant remittance flows to the Franc Zone amounted in 2008 to US\$ 3 billion, that is nearly 2% of GDP. Between 2003 and 2008, the average annual remittances received in the Franc Zone amounted to \$334 million, with an annual growth rate of 28%.

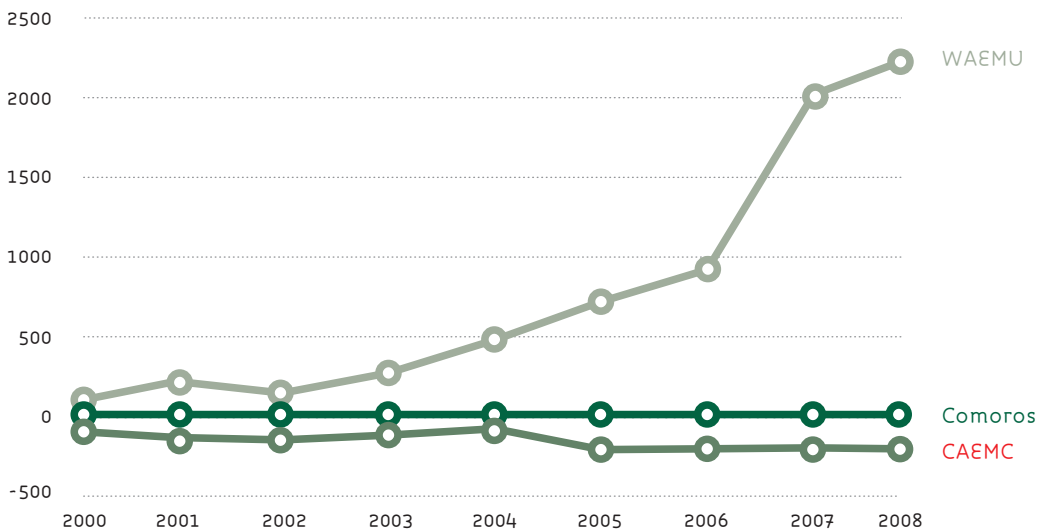
6 The Franc Zone comprises two sub-regions namely the West African Economic and Monetary Union (or WAEMU<sup>12</sup>) and the Central African Economic and Monetary Community (or CAEMC<sup>13</sup>)

<sup>12</sup> Union Économique et Monétaire Ouest-africaine (UEMOA).

<sup>13</sup> Communauté Economique et Monétaire d'Afrique Centrale (CEMAC).

as well as Comoros. According to available statistics, international money transfers to the WAEMU account for 4 percent of its GDP, compared to less than 0.5 percent for the CAEMC. Remittances do not seem to have the same importance everywhere.<sup>14</sup> Some countries, (such as Burkina

<sup>14</sup> We will not discuss the issue of these figures' reliability, although various documents and reports raise questions about the adequacy of available data (see *Migration and Remittances Household Surveys Sub-Saharan Africa: Methodologies, Aspects and Main Findings*, by Sonia Plaza, Mario Navaretti and Dilip Ratha, World Bank (March 2011); see also *Migrant Remittances, a Development Challenge*, by the African Development Bank (AfDB) (January 2008); and *Migrant Workers and Remittances*, by IFAD (2007). While data quality affects measurements of money-transfer flow volumes, it does not call into question the relevance of this report's analysis or recommendations.



**FIGURE I.1**  
Net balance of incoming money transfers  
in the Franc Zone (\$ million)

(Sources: WB, AfDB, OECD.)

Faso), are more involved in intra-regional rather than international migration. Money transfers within the same monetary and economic union are captured very inadequately in international statistics. This is the case for Burkina Faso for example where, according to these statistics, money transfers apparently account for less than 1 percent of GDP.

7 For the WAEMU and Comoros, the balance is positive whereas it is negative for CAEMC, the net balance is negative. In fact, Cameroon is the only CAEMC member country with a positive balance. (see Figure I.2).

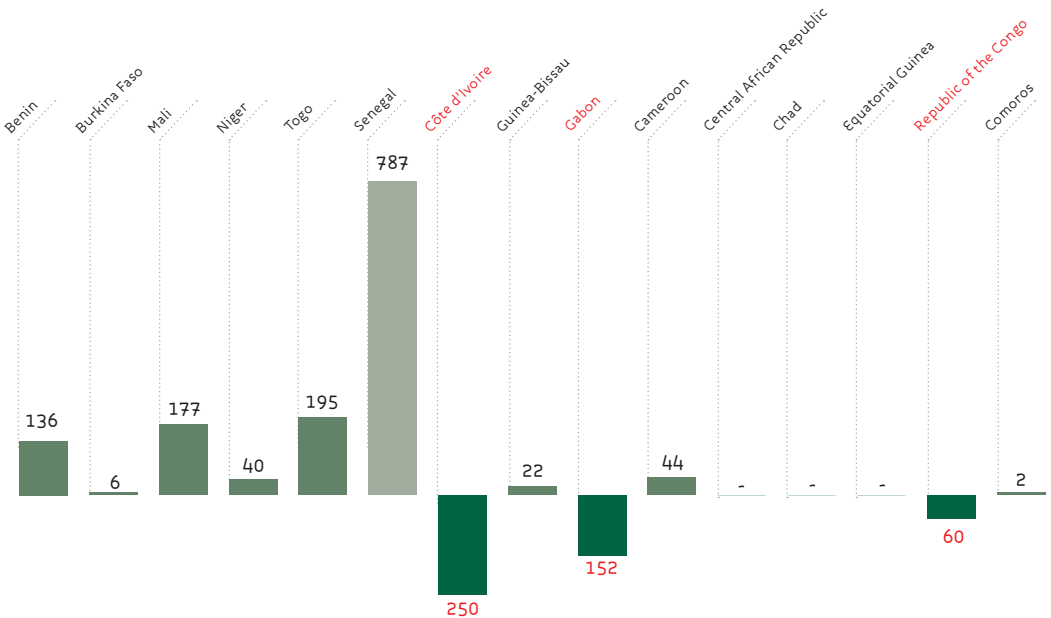
8 As shown in Figure I.2, it is necessary to distinguish between three types of countries:

- Those with a positive balance of inbound remittances,<sup>15</sup> such as Togo, Senegal and Mali.
- Those with a structurally negative balance, such as Côte d'Ivoire<sup>16</sup> and Gabon.
- Those that do not seem to participate in remittance flows,<sup>17</sup> such as Chad, Central African Republic and Equatorial Guinea.

15 The amounts transferred to Comoros are quasi-stable and too small to appear as clearly as others in the graph.

16 Côte d'Ivoire is a somewhat special case because its recorded inbound balance turned positive in 2007; this appears directly related to country's period of upheaval.

17 These numbers may be inaccurate given these countries' economic circumstances and the quality of their statistics.

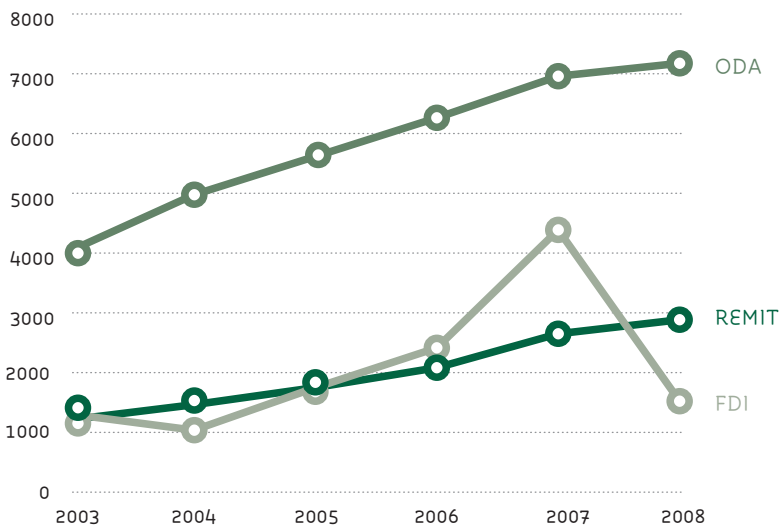


**FIGURE I.2**  
 Net balance of inbound  
 Franc Zone remittances 2003-08 (\$ million)

(Sources: WB, AfDB, OECD)



9 A comparison with two other sources of external financing – official development assistance (ODA) and foreign direct investment (FDI) – gives a better reflection of the volume of remittances (REMIT). Unlike FDI, these transfers increased throughout the period under review.



**FIGURE 1.3**  
Franc Zone – remittances compared to ODA (\$ million)

(Sources: WB, AfDB, OECD)

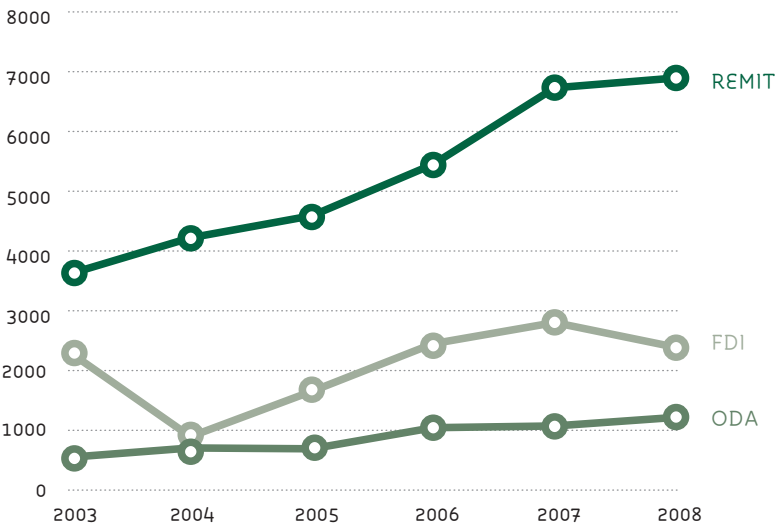
## 1.1 CENTRAL MAGHREB COUNTRIES

10 In the Central Maghreb,<sup>18</sup> remittance flows vary from one country to another. In 2008, Morocco received US\$7 billion, while Tunisia and Algeria each received about \$2 billion. These remittances account for 8 percent of Morocco's 2008 GDP, 5 percent of Tunisia's and slightly over 1 percent of Algeria's. Flow volumes have been increasing in all three countries. Annual growth from 2003 to 2008 averaged \$90 million in Algeria, \$145 million in Tunisia, and \$656 million in Morocco. These dif-

ferences as well as their relative weight in each country's balance of payments, national financial system and economy explain the variations in their respective prevailing national policies and in the strategies used by financial players to harness these resources. As in the Franc Zone, remittances certainly provide more resources than foreign direct investment or official development assistance does, even in Algeria, as shown in Figures 1.4-1.6.

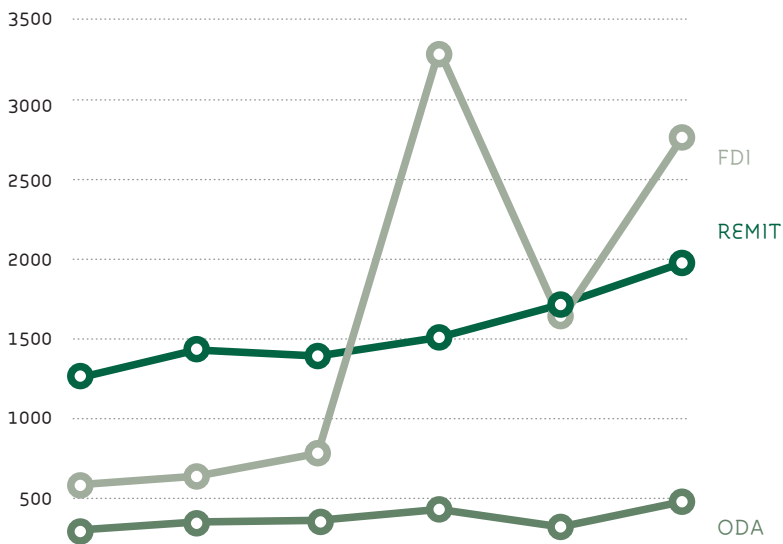
11 Figures 1.4-1.6 show the trend of remittance flows (REMIT) to Morocco, Tunisia and Algeria, highlighting their size and stability compared with foreign direct investment (FDI) and official development assistance (ODA).

18 Algeria, Morocco, Tunisia.



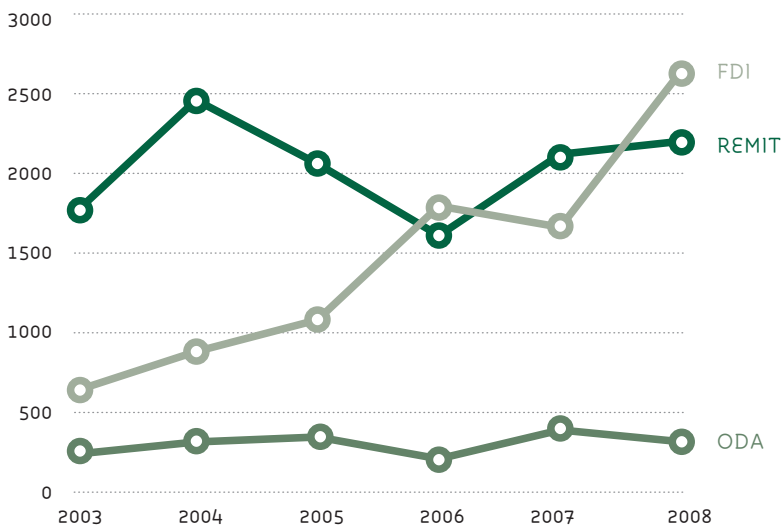
**FIGURE 1.4**  
Morocco – external financing 2003-2008 (\$ million)

(Sources: WB, AfDB, OECD)



**FIGURE 1.5**  
Tunisia – external financing 2003-2008 (\$ million)

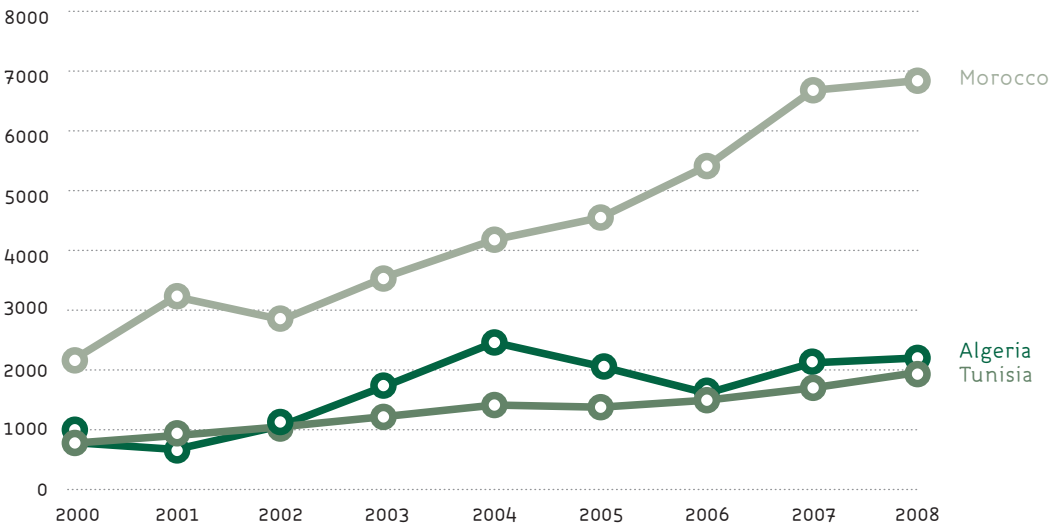
(Sources: WB, AfDB, OECD)



**FIGURE 1.6**  
Algeria – external financing 2003-2008 (\$ million)

(Sources: WB, AfDB, OECD)

12 Central Maghreb countries have recorded positive net inflows over the period under review. Figure 1.7 highlights the strategic nature of money transfers to Morocco and Tunisia. Both countries (especially Morocco) have specific policies in place to encourage and stabilize remittances for their diaspora.



**FIGURE 1.7**  
Central Maghreb – remittance balances 2000-2008 (\$ million)

(Sources: WB, AfDB, OECD)

## 1.2 THE IMPORTANCE OF REMITTANCE CORRIDORS<sup>19</sup>

**1 3** A close look at countries benefitting from international remittances reveals that corridors vary greatly in numbers and volume as well as in age. Some countries, such as Senegal, have multiple corridors (France, Italy, Spain and other countries). By contrast, some countries such as Comoros have just a single corridor, France. In all cases, however, France remains the leading country of origin of remittances. This could be explained by the long history of migration to France as compared to other countries.

**1 4** These different situations offer varying opportunities both with respect to the development of financial intermediaries – such as money-transfer companies (MTCs) – and dedicated financial and technological products and services. These differences also have a direct impact on the cost of transferring money, and on the sustainability, or even the development of the services of informal service providers. In the case of Senegal, the diversification of emigration and money-transfer destinations has evolved over time. Indeed, the population of recent migrants (who are the leading providers of resources meant almost exclusively for household consumption and for emergency needs) remain quite considerable. In such cases, it is essential to pay requisite attention to the issue of remittances sent through money transfer companies.<sup>20</sup> This is less the case in countries like Morocco or Tunisia where the population of recent arrivals remain relatively limited.

**1 5** However, it should be stressed that this report should be useful for all the countries including those with negative net remittance inflows. Indeed, it proposes tools to support a strategy for strengthening the local financial sector, enhancing financial inclusion, reducing domestic money-transfer costs and optimizing remittance allocation.<sup>21</sup> Recommendations concerning the role, the services and products that could be offered by microfinance institutions and banks may be relevant for these markets. The same applies to the solutions proposed, which, if applied to the countries reviewed would improve money-transfer techniques and methods and have an equally positive impact on the domestic money-transfer market, its formalization and the costs involved. Domestic transfers very often involve the same operators and similar practices, including the observance of the exclusivity clause<sup>22</sup> by some money transfer companies. These measures will perfectly fit into a strategy that aims at "bankarizing" as many people as possible, and offering financial education and inclusion to the poorest in the society. In this regard, we can borrow from the experiences of Kenya and a non-African country, the Philippines.

21 This study will be of particular interest for initiatives directed toward financial innovation and microfinance sector strengthening.

22 Exclusivity agreements forbid domestic remittance service providers from using other transfer companies to provide international services to their customers. This was true in Senegal until financial authorities lifted the exclusivity clause; it remains in force in Tunisia, and in many other countries in the Franc Zone.

19 The term "remittance corridor" refers to a pair of remittance sending and recipient countries, such as France and Morocco; see Glossary for details.

20 Resources for basic needs or emergencies in the country of origin are usually sent via money-transfer companies in the form of instant transfers; see *Migrant Remittances, a Development Challenge*, by the African Development Bank (AfDB).







**PART II**  
**MARKET CHARACTERISTICS**  
**IN THE COUNTRIES COVERED BY THIS REPORT**



## MARKET CHARACTERISTICS IN THE COUNTRIES COVERED BY THIS REPORT

**16** The market share and role of money-transfer companies (MTCs) remain dominant in all markets covered by this report. However, the traditional “majors” – Western Union and MoneyGram – are facing increasing competition in the corridors under review. The analysis below focuses on five countries, namely, Senegal, Cameroon, Comoros, Morocco and Tunisia, where discussions were held with the regulatory authorities as well as financial intermediaries.

**17** Each of these markets is different. Non-regulated agents operate in the Franc Zone countries. Part of the remittances transit through traders, transportation companies and travel agencies. In some cases, (as in Cameroon), foreign-exchange bureaux also provide money transfer services. In Comoros, people traveling between France and Grand Comoros often play the role of money-carriers. Such hand-carried cash constitutes an important portion of the picture, although its share of remittance activity is outside the scope of this study. Unregulated money-transfer agents are almost non-existent in Morocco and Tunisia.

yet been fully completed, (several agents having one business name), competition, as provided for in the text that has lifted the exclusivity clause, seems to have fostered the strengthening of local MTCs (Money Express and Money Cash). These companies have a regional presence and have forged partnerships that give them some openings into Europe and the United States. Lifting the exclusivity clause has also encouraged partnerships between local MTCs and microfinance institutions (MFIs);<sup>24</sup> both share an interest in increasing customer loyalty at deposit and payout points with lower commissions, and greater variety of product and service offerings.<sup>25</sup>

**19** In this context, banks continue to play the role of imperative agents and intermediaries<sup>26</sup> for money-transfer operations. Some banks, such as Société Générale de Banques au Sénégal (SGBS), limit their money-transfer services mainly to collecting commissions on such transactions. Today new services and products have been introduced into the market and these include the electronic wallet, the possibility of using mobile telephony to do several banking transactions, especially for domestic transfers (deposits and withdrawals), remote statement consultations, and bill payments. These products are only a few months old and are only limited to the domestic market for the time being. The bank products concern only a small segment of the population: with relatively high and steady incomes (especially senior professionals) The major federations of unions and associations for savings and credit mobilization in Senegal-PAMECAS, Credit Mutuel de Senegal, CMS and the Alliance d’Epargne et de Credit pour la Production (ACEP), follow a similar approach

### II.1 FRANC ZONE COUNTRIES

#### SENEGAL

**18** In Senegal, competition among Money Transfer Companies is overseen and encouraged by the Central Bank of West African States (BCEAO<sup>23</sup>) and the Ministry of Economy and Finance. Even though the opening up of this market to competition has not

<sup>23</sup> Banque Centrale des Etats de l’Afrique de l’Ouest (BCEAO).

<sup>24</sup> This has likely reduced the use of informal channels.

<sup>25</sup> See the Appendix for diagrams of operators and their services.

<sup>26</sup> See Part IV on the market’s legal and regulatory frameworks.

and are developing comparable offerings in the market. These services are likely to be deployed internationally. They seem to lay premium on the use of “linked” bank accounts,<sup>27</sup> such as those offered by the newly arrived Attijariwafa Bank Group;<sup>28</sup> which offers the possibility to its customers residing in Europe to open bank accounts both in their countries of residence and in their countries of origin.

**2 0** Money transfers from Senegal to a migrant’s country of residence could face very strict regulations; money transfers sent outside the CFA Franc Zone require the finance minister’s prior approval, thus limiting the opening of non-resident accounts.<sup>29</sup> This is likely to encourage the use of informal channels, including foreign-exchange bureaux and non-bank retailers.

## CAMEROON

**2 1** In Cameroon, non-approved agents appear to be even more involved in this process than in Senegal, especially for remittances within the CAEMC. Retail merchants have a larger share of the market than in Senegal. They offer a variety of consumer goods to remittance recipients against payment (sometimes deferred) from recipients’ relatives living abroad.

**2 2** The exclusivity clause prevails for transfers via MTCs throughout the CAEMC. In particular, the “majors” impose this rule on most of their agents and sub-agents; they also impose a formula for calculating commissions and fees.<sup>30</sup> Just as in Senegal, Cameroon’s Ministry of Economy and

Finance, in conjunction with the central bank of the CAEMC, the Bank of Central African States (or BEAC<sup>31</sup>), could play an essential role in achieving the lifting of this clause. For now, the central bank has no plans to do so, even though such a move is of crucial importance for payment agents, as well for those who transfer and those who receive remittances.

**2 3** As in Senegal, domestic MTCs are gaining ground in Cameroon. Express Union in particular continues to increase its share of the market,<sup>32</sup> as well as Money Express (of Senegalese origin), and Money Cash, (which belongs to Banque Atlantique).

**2 4** Cameroon is different from Senegal in terms of the profile of its migrant population, which is almost exclusively urban. This may be the reason why the Cameroonian MFIs were less interested than their Senegalese counterparts in the remittance market. In the past, Cameroon’s largest MFI, COFINEST, acted as the sole domestic agent for Western Union. Bankruptcy forced COFINEST to cease operations in February 2011. Its disappearance from the market has probably only marginally benefited Express Union and MoneyGram. Western Union seemed to have anticipated COFINEST’s bankruptcy, using foreign-exchange bureaux as its payout (and deposit) agents; Western Union also increased the number of its own outlets. Express Union has a sizeable network, including mobile outlets, through its Express Union-branded MFI, created to expand its domestic deposit and payout network. An Express Union MFI was also designed to offer products and services to attract and retain low-income customers and those making few remittance transactions.<sup>33</sup>

27 Or “linked-accounts” (or *bibancarisation* in French and sometimes “bi-bankerization” in English).

28 The Attijariwafa Banking Group is a Moroccan financial services company, the first from the region to operate in several European countries, the Franc Zone and in the Maghreb. See Appendix for its service offerings.

29 These issues should be managed at the WAEMU level, as changes to national regulations remain tied to the entire area’s exchange regulations to ensure monetary stability in all member countries.

30 Each MTC keeps half of the commissions charged, splitting the remaining 50 percent between the agent and the sub-agent. This commission schedule varies according to the agents’ and sub-agents’ size and geographic coverage; the sub-agents’ share is smaller. The company requires agents and sub-agents to spend part of the money the MTC pays them on marketing and advertising the MTC.

31 *Banque des Etats de l’Afrique Centrale* (BEAC).

32 Express Union has a network of more than 250 branches spread across Cameroon, compared with just two branches a decade ago.

33 See a diagram of money-transfer operators and their product and services offerings in the Appendix.

## COMOROS

**2.5** The remittance market in Comoros generally remains divided between formal transactions and those occurring via non-bank retailers and various agents; the latter include village associations and some collective social practices, such as the “Great Wedding.”<sup>34</sup> It is still very common practice to carry cash physically.<sup>35</sup> The recent challenges with which the Post Office has had to contend have probably had a negative impact on formal money transfers, to the benefit of other channels of transfer.

**2.6** In general, Comoros’s financial difficulties and the limited nature of its own internally-generated revenues are pushing all operators – especially the newly installed banks in the country and Comoros’s main MFI, Meck-Moroni – to explore the remittance market and offer new financial services.

**2.7** Remittances in the Comoros-Mayotte corridor go mostly through Western Union or via cash in envelopes given to travelers at the airport. The need to keep the village coffers replenished makes the use of informal channels almost inevitable. In the Comoros-France corridor, formal transfers are the preserve of Western Union and the postal service; MoneyGram also has a small market share alongside two new operators, RIA<sup>36</sup> and Coinstar.<sup>37</sup>

**2.8** Comoros’s leading MFI, Meck-Moroni, has recently become interested in the remittance market.<sup>38</sup> It aims to collect resources from the Comorian diaspora living in France to broaden its financial base; since domestic savings have already been strongly mobilized, and banks increasingly compete for the same customers. Comoros’ postal bank, the Société Nationale de la Poste et des Services Financiers (SNPSF) is another remittance service provider; since it holds all civil servants’ current accounts, it enjoys a comparative advantage that allows it to increase the number of its payout points at a lower cost. However, the way it launches products and services without preliminary market research, as well as the way it is managed, may adversely affect its performance.<sup>39</sup>

## RECENT DEVELOPMENTS

**2.9** Recently, new legislation in Senegal lifted the MTCs’ exclusivity clause; other WAEMU member countries are also introducing the same kind of legislation, in compliance with a BCEAO directive. However, despite efforts that have been made, a few agents find it impossible to represent more than one MTC. As has been observed in several institutions in Dakar, many agents continue to work exclusively for one MTC – often one of the two majors, Western Union or MoneyGram. This is partly because of technical limitations, since different MTCs use different computer platforms

<sup>34</sup> A social institution in the Comoros and Mayotte to celebrate one’s marriage by inviting all members of the village community and organizing a great party, often after several years of marriage; expenses often range between €25- 40,000 (\$34,000=\$54,000). See Glossary for more details.

<sup>35</sup> The central bank’s most recent estimates give informal transfers about 25 percent of the market; their share is estimated at 65 percent in 2010, down from 71 percent in 2009 because of the increased presence and number of MTCs. Comparing the value of imported products recorded by customs and those paid via direct bank debits better shows the informal share: total customs imports represent more than twice the value of directly debited imports, KMF 84 billion (\$2.184 billion) versus KMF 35 billion in 2010.

<sup>36</sup> RIA is a money-transfer company founded in New York in 1987; it now ranks third globally.

<sup>37</sup> Coinstar was created in 2007 as a simplified joint-stock company. Headquartered in Paris, France, it operates a franchise in Comoros.

<sup>38</sup> See diagram in the Appendix.

<sup>39</sup> The SNPSF’s management is under prosecution for embezzlement and mismanagement; it was notably accused of opening branch offices in France without prior study.

and systems. Lifting the exclusivity clause could generate additional income for the agent, but it also implies additional expenses, such as hiring more staff and setting up dedicated counters for multiple MTC brands within the same outlet. Therefore, using other money-transfer methods, such as mobile phones, may prove worthwhile and promising if they result in significant cost reductions for the operators and remittance recipients because of lower costs of production and intermediation. They may also result in higher profit margins for the traditional remittance service providers – especially customer-facing agents.

3.0 In the Franc Zone, banks generally tend to be much less well-positioned for remittance payout transactions. They owe a large part of their profits to their status as obligatory intermediaries for MTCs and MFIs. As a result, their market share tends to decline as the number of new banks and pay-out points increases. We note that there is a trend towards a change in the banking landscape with the arrival of new players, such as Attijariwafa Bank recently via its acquisition of Crédit Agricole's subsidiaries, and the earlier arrival of the Bank of Africa and Ecobank. Changes will also come from large MFIs seeking the same intermediary bank status and/or banking partnerships with financial institutions operating in Europe.

3.1 In Senegal, the postal service leads in rapid-transfers, followed by the Attijariwafa Bank Group, which acquired the Compagnie Bancaire d'Afrique de l'Ouest (CBAO). The Crédit Mutuel du Sénégal Group, which had created its own bank, La Banque des Institutions Mutualistes d'Afrique de l'Ouest (BIMAO), takes third place, well ahead of other banking groups, including subsidiaries of French banks.

3.2 In Cameroon, domestic banks such as Afriland First are the most dynamic.

3.3 The same trend is observed in Comoros: a subsidiary of Tanzania's Exim Bank and the Banque Fédérale de Commerce (BFC) seek to supplant their competitors in a very narrow market.

3.4 At the same time, the WAEMU area's large MFIs increasingly dominate as key players in the remittance market; they aim to diversify their range of products and services. The innovative products and solutions proposed in this study should be useful for these and other MFIs, postal banks, retail banks and MTCs; solutions that would better meet the needs and expectations of remittance-sending and receiving customers.

3.5 In the Franc Zone, this trend is generally consistent with the growing role of domestic MTCs, both in the WAEMU and the CAEMC – and even in Comoros. They strive to enter a market long held captive by Western Union and – to a lesser extent – MoneyGram. The flexibility offered by African MTCs, their better understanding of the cultural realities of the actors at the two ends of the remittances chain, the lower cost of their services, their will to tighten their profit margins in order to grow, and their preparedness to embrace innovative technologies make them first-choice partners in a strategy that seeks to reduce the cost of migrant transfers, strengthen local financial systems and reduce the weight of informal transfer channels.

## 11.2 CENTRAL MAGHREB

### MOROCCO

**3.6** In Morocco, most remittances go through banks or the postal network, from one account to another or as a rapid-transfer product. Despite Moroccan authorities lifting the exclusivity clause, Western Union continues to dominate the market. New remittances service providers have recently sprung up but they remain marginal. Western Union still dominates, probably because it has been operating in Morocco for a long time.<sup>40</sup>

### TUNISIA

**3.7** In Tunisia, banks and the postal service remain the only remittance payout outlets. Some foreign-exchange bureaux are marginally involved, but always as agents for banks. In addition, the exclusivity clause still prevails, allowing Western Union to dictate terms to partners who might wish to go around it. It would appear however that both parties abide by the terms of their agreements. In any case, the Tunisian authorities do not appear to be planning to lift the exclusivity clause. In Tunisia, it appears that customers use Western Union mostly for transfers from Tunisia to other countries.

**3.8** In Morocco and Tunisia, banks and the Post Office are the leading partners for MTCs – mainly Western Union and MoneyGram, and, to a lesser extent, RIA in Morocco. In Tunisia, new MTCs are trying to enter the market; however, they remain marginal precisely because of the contract that Western Union imposes on its local partners. In addition, Morocco's and Tunisia's territorial

<sup>40</sup> Overall, Morocco is estimated to have less than one bank account per 1,000 residents. See *Financial Access 2010* by CGAP.

networks and regulatory frameworks exclude MFIs from the remittance market, with a recent exception in Morocco, where the second-largest microfinance association acts as a banking sub-agent on behalf of its parent company<sup>41</sup> as part of a pilot project.

**3.9** The fact that the bulk of remittances are channeled through the banking system makes it easy for both countries to develop linked-account products and services.

## 11.3 SHARED MARKET FEATURES

**4.0** In addition to some diversity in product and service offerings, remittance markets share some basic features:

### RESILIENCE AND PREDOMINANCE OF CASH TRANSFERS

**4.1** In Franc Zone countries with high unbanked populations, most remittances take the form of instant transfers; depending on the country, the transaction occurs either in MTCs' own payout points, or in points belonging to MTC agents or sub-agents – retail banks, microfinance institutions and post offices. Even in Morocco, cash transfers are showing resilience; they still represent 32 percent of remittance flows. Slower bank wire transfers taking a day or more remain marginal, especially since SWIFT<sup>42</sup> fees are higher than fees charged by MTCs for rapid transfers. Postal money orders seem to have disappeared everywhere.<sup>43</sup>

<sup>41</sup> The Fondation Banque Populaire pour le Micro-crédit (FBPMC, or Banque Populaire Foundation for Microfinance) acts as an intermediary in banking operations on behalf of Banque Populaire in a pilot project to distribute Western Union's services in about 200 branches of the FBPMC.

<sup>42</sup> SWIFT is a messaging platform for inter-financial-institution money transfers. See Glossary for more details.

<sup>43</sup> According to the AfDB study, *Migrant Remittances, a Development Challenge* (2008), postal money orders have lost credibility in countries such as Mali and Senegal because of payment delays and uncertainty about the transaction time.

## INCREASING DIVERSIFICATION FOR OTHER MONEY-TRANSFER PRODUCTS

4.2 In the Franc Zone, offers and transactions for account-to-cash and cash-to-account remittance products are increasing. Savings and investment products are very rare, although the offers are on the increase. Remittance service providers are coming up with specific services that take account of the specific circumstances of money-senders.

4.3 Thus, PAMECAS in Senegal offers clients a “home-loan package” that includes administrative support and assistance in monitoring a construction project. In Tunisia,<sup>44</sup> the Banque Internationale Arabe de Tunisie (BIAT) has developed a range of specific services for its Tunisian customers residing abroad.

4.4 Developing alternative or complementary products will help accelerate the use of linked bank accounts; it will also help financial institutions in countries of origin build capacity. BIAT, in Tunisia, does not charge commissions on remittances passing through its branches, hoping to gain new customers and their loyalty by that measure.

4.5 45. Moroccans living abroad hold more than 20 percent of all Moroccan banks’ deposits, and more than one-third of the deposits of two banks, Attijariwafa Bank and Chaabi Group. These two financial institutions have a long history of working with the Moroccan diaspora, offering various linked-account products and keeping money-transfer fees low.

44 We note that in February 2010, the capital and mission of the Union Tunisienne des Banques (UTB) changed, as it became the “Tunisian Foreign Bank” (TFB). Based in Europe, the TFB has a European single-market “passport” and aims to facilitate three types of transaction: remittances sent by Tunisian nationals living abroad, foreign investment into Tunisia, and Tunisian small- and medium-sized enterprise exports to European markets.

## LACK OF PRODUCTS THAT SIMULTANEOUSLY MEET RECIPIENTS’ NEEDS AND SENDERS’ EXPECTATIONS

4.6 With the exception of Moroccan banks, remittance service providers are interested only in money senders, not the recipients. However, even in Morocco, financial institutions target senders only in their marketing campaigns, be it for education or health savings plans.

4.7 Considered within the recipients’ local economic and social context – income level and the seasonal nature of certain expenses, start of school-year, religious festivals and other local social obligations – the characteristics of available banking products further discourage the use of bank accounts by recipients and encourage their preference for cash transfers. They also contribute to the maintenance of the major MTCs, which over the years have acquired both knowledge and market-control, through their dominance of the remittances market.

4.8 The market’s mode of operation has a direct impact on the behavior of the financial operators in it. Overall, they place great importance on money-transfer transactions because of the substantial commissions these generate. They all try either to maintain themselves or to consolidate their position in cash-transfers which are simple, inexpensive, highly profitable and without any risk for those involved in the processing of the transactions, irrespective of whether they are agents or sub-agents. In the Franc Zone – and in Tunisia to a large extent (with the notable exception of BIAT) – operators seem to be involved in the remittance market more out of a desire to capture and earn a monopoly rent from the economic and social needs of senders and recipients.

4.9 Thus, if agents and sub-agents involved in money-transfer transactions plan to adopt lower prices, such a move appears to be driven more by a will to capture, maintain and even increase profits generated by remittances than by a desire to foster the financial inclusion and bankarisation of the recipient populations. However, this observation does not apply to banks in Morocco which are more driven by a desire to nurture customer loyalty.<sup>45</sup> Profit margins are high everywhere, and in that respect, the interests of the MTCs and their agents are one and the same. This seems to be rather amenable to remittance cost stabilization rather than reduction, and provides further grounds for governments to take action at national, European and multilateral (G8, G20) levels to reduce costs.

5.0 The method of commission-sharing as defined by the major MTCs – Western Union and MoneyGram – is another issue to consider. Some banks and agents in recipient countries try to acquire and retain customers by reducing or even eliminating their margins.<sup>46</sup> This is why it is necessary to support efforts to increase the use of linked bank accounts, particularly through specific tax arrangements.

5.1 In such a context, lower costs cannot be achieved only by lifting the exclusivity clause. Cost reduction is dependent on diversifying financial services and the existence of attractive financial and technological products that would better meet the needs of the two key players at both ends of the transaction – migrants and recipients. Indeed, remittances respond to specific requests from the recipients to the migrants and to some specific needs of the latter. Therefore, an offering of services and products customized to the needs of these two groups of stakeholders will be crucial in any remittance-market penetration strategy.

45 This is equally true of BIAT in Tunisia.

46 As do Moroccan banks and BIAT.

5.2 Morocco offers the most comprehensive example of how such a process can work. Government intervention, coupled with the dynamism of Moroccan banks and their long presence in migrants' host countries, has a direct impact on transfer volumes passing through MTCs and on the variety of banking services available. Linked accounts have become common; banks are now taking interest in products which are likely to improve their economic performance and market position, such as mutual investment funds known as Undertakings for Collective Investment in Transferable Securities (UCITS). BIAT follows this approach in Tunisia.

5.3 To ensure proper implementation of the recommendations of the Aquila and Nice G8 meetings to reduce transfer costs by 5 percent by 2014, regulatory authorities will have to intervene at both ends of the money-transfer processing chain, particularly upstream in the countries of residence; the recommendations should not be implemented to the detriment of the recipient countries.

5.4 In general, the desire of remittance service providers, their agents or sub-agents, to capture a share of the profits generated by remittances has had several effects:

- In the Franc Zone, more and new remittance service providers have emerged, including new and domestic MTCs, particularly in Senegal and Cameroon;
- In all countries reviewed for this study, agents and sub-agents have increased their interest in nationals living abroad;
- There has been some decrease in costs;<sup>47</sup>
- Remittance service providers are paying special attention to technological innovations aimed at facilitating transactions; increasing speed, privacy and security; and reducing costs. We emphasize, however, that innovation-related start-up investments remain costly for individual institutions, particularly for transfers via the Internet.<sup>48</sup>

47 See [www.envoidargent.fr](http://www.envoidargent.fr), an Internet site created by AFD for relevant information on this subject.

48 Hence the importance of involving public partners and governments in developing technological infrastructure.

## ASSESSMENT OF THE DEMAND

5.5 At this point, it will be helpful to review the characteristics on the demand side. All of the available studies highlight some very important features concerning products and services:

- From the recipients' point of view, receiving funds on time and with maximum regularity remains essential given that remittances are used to meet basic needs: food, health care and education. This is what makes these resources counter-cyclical. Remittances for basic needs represent up to 90 percent of all transfers; volumes vary during the year, reaching significant peaks during the holidays and at the beginning of the school year. Such expenditures require that transfers be rapid – or instant; they also make savings accounts a prime feature of linked bank accounts. In Morocco, where the use of the banking system is well established, Moroccans living abroad hold more than 60 percent of their funds in current accounts;
- Age plays a part in the trend to save towards an investment in real property or, to a lesser extent, in commercial or industrial activity. After the age of 40, interest in such investments increases. Migrants' descendents have a great interest in such activities<sup>49</sup>
- The most highly qualified socio-professional categories, and migrants' descendents show greater interest in investing in financial products such as treasury bills, mutual funds, or other sovereign bonds.

5.6 Product designers should take these important characteristics into account when testing, developing and distributing new savings or investment products meant for a specific target group, given that no single product can suit all types of customers at the same time under normal political, social and economic situations.

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<sup>49</sup> See the study, *Migrant Remittances, a Development Challenge*. African Development Bank (AfDB) 2008.







**PART III**  
**LEADING FINANCIAL PLAYERS**

## LEADING FINANCIAL PLAYERS

57 Financial service providers are cognizant of the need to diversify their product and service offerings. However, their individual approaches to the market differ, and they rarely resort to partnerships as each one strives to capture as much of the remittance-generated commission as possible. We can distinguish between five different approaches, based on the type of service provider: money-transfer companies (MTCs), microfinance institutions (MFIs), banks, mobile telephony operators, and stock and financial market operators.

### III.1 MONEY-TRANSFER COMPANIES (MTCs)

58 It is useful to distinguish between the “major” international MTCs (Western Union, MoneyGram, etc.) and the local MTCs; the latter are much younger and operate in narrow markets. The former seem to follow a more global approach in their actions. Some of them intend to establish banking institutions in order to broaden the range of their service offerings and thus keep the largest share of commissions they earn from remittances. Others seek to consolidate their networks and offer more services, resorting more to technological platforms for transfers, payments and clearing, in partnership with Visa and MasterCard. They also tend to expand their activities into insecure countries and regions.<sup>50</sup> All MTCs are trying to partner

50 For example, Money Express provides money transfers between northern Côte d'Ivoire and the rest of the country, while Express Union provides money transfers in Cameroon's forested areas.

with banks and/or MFIs to build customer loyalty. For instance, MoneyGram works with Crédit du Maroc to allow customers to top up cash-only debit cards via ATM machines, while Money Express has partnered with Senegal's PAMECAS MFI for the Italy-Senegal corridor.

### III.2 MICROFINANCE INSTITUTIONS (MFIs)

59 Smaller MFIs cannot play a dynamic role in the remittance market because of their limited financial base. At most, they could serve as payout points in isolated areas or where informal channels predominate. This pre-supposes that they are a well-integrated part of the transfer circuit. A strategy to homogenize, group together and consolidate smaller MFIs would be necessary. Such a strategy would aim to endow the MFIs with requisite financial wherewithal as well as with adequate technological and human resources, in order to strengthen their position and diversify their product offerings. This would foster their becoming an effective vehicle for promoting financial inclusion through their participation in the remittance market.

60 Under Morocco's current market and regulatory conditions, MFIs cannot claim any significant role. However, change seems to be in the air following the take-over of the Banque Populaire Foundation by the Zakoura Foundation for Microcredit.

**6.1** In Franc Zone countries, large MFIs with adequate capital bases and relatively dense branch networks have begun to develop various products such as mortgages, capital investment loans and even insurance products. Large MFIs may be valuable potential partners for local development, especially with their customer base<sup>51</sup> and geographic coverage.<sup>52</sup> Express Union, CCA-Cameroon, CMS-Senegal and PAMECAS tend to offer various products that meet the needs of their nationals who live abroad with limited resources. PAMECAS offers its customers technical assistance with their property loans to help ensure that projects are successfully implemented.<sup>53</sup> MFIs' expansion into "mobile-banking" products and services makes them full partners, similar to banks, although these solutions also remain limited. However, we note that Senegal has launched a major project to set up a joint mobile-banking solution for the decentralized financial companies<sup>54</sup> with the financial support of KfW and AFD<sup>55</sup>.

**6.2** In June 2011, the International Network of Alternative Financial Institutions (INAFI) launched an initiative to set up and manage a mobile-phone and Internet-services platform for participating MFIs in sub-Saharan Africa within two years. It will take the form of a Paris-domiciled economic interest group.<sup>56</sup> The platform, which will serve as an alternative to using a money-transfer company's platform, is named "Alliance for Alternative African Money-Transfers" or "Triple A."<sup>57</sup> INAFI aims to have the platform operational by February 2012.

51 Small-business traders, artisans and farmers.

52 Urban peripheries and small rural agglomerations.

53 See service offering diagrams in the Appendix.

54 *Sociétés financières décentralisées* (SFD).

55 *Agence Française de Développement* (AFD).

56 *Groupement d'intérêt économique* (GIE).

57 INAFI publicized the initiative during the February 2011 Social Forum in Dakar. Its first phase rests on 10 large migrant organizations based in various European countries (including the Forum des Organisations de Solidarité Internationale Issues des Migrations (FORIM) in France) and 10 large MFIs in sub-Saharan Africa, of which four from the Franc Zone, including PAMECAS in Senegal. See <http://www.inafi.org>.

### III.3 THE BANKS AND THE POST OFFICE

**6.3** Even though banks in the Franc Zone and Tunisia are very much aware of the importance of, and high stakes involved in, remittance flows, they do not seem to possess the flexibility required to propose attractive products at competitive prices. Migrants hardly find banks' products appealing because the product benefits are poorly communicated and because the products are not specifically tailored to meet customer needs. Therefore, banks also tend to focus more on developing partnerships with major MTCs, or with MFIs in the Franc Zone, so they can position themselves as leaders in mobile-banking products.

**6.4** To expand their networks in the CFA Franc Zone, banks contract out branch counter services to MFI sub-agents. In Senegal, big MFIs acting as bank sub-agents earn significant income from money transfers, sometimes dominating these transactions when they are in control of the bank.<sup>58</sup>

**6.5** In Morocco, the situation is different. Its banks are more dynamic and receive government support and encouragement. Indeed, the government has a comprehensive policy which specifically targets the Moroccan diaspora; and banks also offer nationals living abroad products of an ever-increasing variety. However, these products remain generally limited in scope and impact because they rely on traditional forms of linked-bank accounts.

58 The *Crédit Mutuel de Sénégal* Group (CMS) and its bank, BIMAO, are ranked third nationally, behind the Post Office and Attijariwafa Group's CBAO, for receiving money via MTCs, taking in about XOF 100 billion (\$200 million) out of XOF 638 billion total. Commission earned on international transfers total about XOF 700 million. In addition, CMS has set up its own system for domestic money transfers, earning about XOF 700 million in domestic-transfer commissions. (Sources: CMS; 2009 statistical from Senegal's Finance Ministry Office of Money and Credit.)

### III.4 MOBILE NETWORK OPERATORS

**6.6** In the countries studied for this report, mobile network operators cannot take deposits for legal reasons. They must work with banks as a banking agent, or create their own bank subsidiary where local legislation so permits.<sup>59</sup> However, they have the technical capacity and could easily deploy their expertise to provide simple mobile-banking products, such as opening accounts or managing transactions and transfers.

**6.7** Encouraged by the success of M-Pesa in Kenya, Comoros Telecom is planning to enter the mobile-banking market, but may face opposition from its monetary authorities.

**6.8** In Cameroon, MTN has yet to receive approval from the Central Africa Banking Commission to offer its own products. But it is already operating in the money-transfer market in partnership with Afriland First Bank. As a matter of fact, anyone can make money transfers by opening an account at an MTN sales outlet or through a licensed agent. MTN's "MobileMoney" service charges low commissions and should attract many customers.<sup>60</sup>

**6.9** In general, mobile network operators will probably have to continue their partnerships with banks for regulatory reasons. Alternatively, they may acquire a small bank, or create their own licensed bank subsidiaries specialized in branchless banking, mobile money and payments. Such developments will occur once transactions and volumes reach critical mass.

**7.0** At present, this seems to be the limit of the actions of multinational mobile network operators that are endowed with sufficient financial capacity to create banks in most countries. For now, the mobile payment services market is not

large enough to justify big investments for three reasons: first, with the possible exception of MTN, which would prefer operating alone in the market, mobile network operators appear generally satisfied with their bank partnerships; second, domestic money-transfer market size and international corridor transaction volumes remain immature or insufficient;<sup>61</sup> and finally regulatory constraints outweigh potential gains.

### III.5 STOCK- AND FINANCIAL-MARKET OPERATORS

**7.1** As will be shown later on, stock and financial markets could provide long-term opportunities to mobilize migrants' savings, while these markets could accelerate their own growth by opening up to their diasporas.

**7.2** The stock markets of Casablanca, Tunis and Abidjan (West Africa's Regional Securities Exchange or BRVM<sup>62</sup>) see their development stemmed by a lack of new IPOs and limited products and listings to sustain their growth.<sup>63</sup> They all seek to overcome these limitations by focusing on cooperation with – and, as much as possible, openness to – international markets. Aware of the narrowness of these markets, many large companies and banks resort to European markets to raise much needed funds. NYSE Euronext lists some sub-Saharan and North African companies; it also provides technology and training to some African exchanges, including Casablanca's and Abidjan's. NYSE Euronext lists some quotations for companies in the Maghreb or sub-Saharan Africa and cooperates technically with some stock exchanges, especially the Moroccan and Abidjan stock exchanges. It is open to the idea of expanding its market to Africa in various ways, irrespective of the fact that it does not seem to have any long term strategy in that direction.

<sup>59</sup> See Part IV.

<sup>60</sup> MTN Cameroon has more than 4.5 million customers. Since September 2010, it has offered customers the ability to transfer up to XOF 250,000 (\$500) per transaction for one-quarter to half of the price charged by the MTCs. MTN aims to expand its network based on partnerships with MFIs and MTCs.

<sup>61</sup> By contrast, the Nigerian central bank has approved more than 20 payment companies that use mobile telephony. It recently authorized eight new mobile network operators to provide mobile-banking services (Source: MFW4A Newsletter No. 34, August 2011).

<sup>62</sup> Bourse Régionale des Valeurs Mobilières (BRVM)

<sup>63</sup> See Part V for innovative financial and technological products.

**7.3** All of the stock and financial-exchange managers we met for this study are cognizant of the need to make progress in opening up to international competition, taking into consideration the needs and opportunities that exist in the national economies and in the regional ones as in the case of the BRVM.

**7.4** Currently, some initiatives deserve attention because they demonstrate the exchanges' potential for developing investment products likely to interest their countries' nationals residing in Europe, especially in France.

**7.5** The Casablanca Financial Center with support from the Moroccan government, is launching a major project, "Casablanca Finance City." It aims to become a financial gateway for investors to access markets in the Maghreb and French-speaking sub-Saharan Africa. It will address various aspects of exchange infrastructure, particularly expertise and sub-accounts in foreign currency. In addition, Morocco's supervisory authorities and its capital markets regulator, the Securities Compliance and Ethical Board (or CDVM<sup>64</sup>), are working on upgrading its institutional and legal frameworks to global standards, which will raise it to a level equivalent to any markets, especially in Europe.

**7.6** Although long established, the Tunis Stock Exchange (TSE) has no plans of equal magnitude. However, the supervisory authorities have expressed a desire to upgrade and open the exchange to international markets. The possibility of attracting resources from the Tunisian diaspora could catalyze the exchange's international growth.

64 Conseil déontologique des valeurs mobilières (CDVM).

**7.7** The regional financial exchange, BRVM, which covers eight WAEMU countries is also looking for opportunities for sustainable growth.

**7.8** The situation in Central Africa is more complicated. Indeed, the Douala Stock Exchange (DSX) in Cameroon and the regional Central Africa Stock Exchange (BVMAC<sup>65</sup>) in Libreville, created by the CAEMC to replicate the BRVM, are both suffering from problems related to the existence of two exchanges in a narrow market. BVMAC called for Euronext's assistance in April 2007 for its trading system,<sup>66</sup> but its scope is limited by the DSX, which belongs to the region's largest economy.

**7.9** African financial centers are constrained in their development by the lack of qualified manpower, particularly in financial engineering and supervision. The Central Bank of West African States (BCEAO) and its partners are in fact concerned about the inadequate promotion or even retention of financial expertise required by African financial markets for the development and management of financial products (mutual funds, securitizations, etc.) This shortage of skills will not be helped by the strong threat of termination hanging over the African Center for Advanced Management Studies in Dakar (or CESAG<sup>67</sup>) Master's Programme for Bank Finance, due to a lack of scholarship funding.<sup>68</sup>

65 *Bourse des Valeurs Mobilières de l'Afrique Centrale (BVMAC)*.

66 On April 6, 2007 in Paris, the BVMAC signed an agreement worth XOF 1.18 billion with Euronext to buy its NSC V900 electronic trading system. According to the contract terms, the trading system was operational in November 2007 with funding from the Casablanca Stock Exchange (Morocco). For BVMAC's management team based in Libreville, the system allowed all of exchange members – the six member countries (Cameroon, Central Africa Republic, Chad, Congo, Gabon and Equatorial Guinea) of the Economic and Monetary Community of Central Africa – to meet international standards and stay on the cutting-edge of quote-engine technology. This contact followed deals with Euroclear and Maroclear to acquire usage rights and installation for the SEMS back-office system, featuring settlements and clearing, operational since January 2007; it was the final step in building Libreville's financial market (Source: ICICemac.com, see <http://www.icicemac.com/node/4097>).

67 *Centre Africain d'Etudes Supérieures en Gestion (CESAG)*.

68 A graduate management training center, the CESAG, is affiliated with the Bank of Central African States (BCEAO). It offers professional courses and diplomas, notably a Master's of Bank Finance and of Microfinance.



The background is a solid orange color with a repeating pattern of circular icons. The icons include: a person's head in profile, a mobile phone, a laptop, a classical building with columns, a scale of justice, a credit card, and a stack of coins. Dotted lines connect some of these icons, creating a network-like structure. The text is centered in the upper right quadrant.

**PART IV**  
**FINANCIAL MARKETS' LEGAL  
AND REGULATORY FRAMEWORKS**



## FINANCIAL MARKETS' LEGAL AND REGULATORY FRAMEWORKS

**8.0** The regulatory frameworks for financial markets remain relatively stringent due to a desire to protect the stability of the economies, the national financial systems as well as consumers of financial services. They also aim to ensure compliance with the recommendations of the Financial Action Task Force (FATF).

**8.1** This concern to preserve the stability of the currency (against inflation), protect consumers, financial services (particularly savings), and maintain the stability of the financial system itself, is of structural interest to the populations who aspire to getting safe access routes to formal financial services.<sup>69</sup> This is increasingly becoming the guiding principle for supervisory authorities in both developing and developed countries.

**8.2** However, special attention must be paid to some regulatory provisions in order to guard against the risk of the expansion of informal markets, either by those who are already operating in them, or by those who will join in because they fail to fulfill the conditions required for them to function 'normally' within the context of a regulated system. This applies not only to recipient countries but to both ends of the remittance corridor. For instance, some microfinance institutions (MFIs) prospect for customers in migrants' host countries and even form partnerships with the financial operators in those countries without obtaining or even applying for the required authorizations. Similarly, some money-transfer companies (MTCs) operate on the edge of legality because of limitations imposed by national finan-

cial legislation. For example, some banks offer products that they market in their countries of origin without the required permissions, and by so doing expose themselves and their accomplices to sanctions, including criminal convictions.

**8.3** Financial markets evolve in such a way that they are sometimes ahead of regulators. As a result, when some rules and regulations are enacted, they may impede the development of alternative financial products. This observation is not intended to call to question the prudential rules which are needed to protect customers and preserve financial stability, but it does highlight the challenge of ensuring their observance by operators who are sometimes more interested in financial innovations than in complying with financial regulations.

**8.4** However, we find that laws and regulations are evolving and are being adjusted to keep abreast of new technologies. With innovative prospects in electronic-payment systems offered by mobile telephony networks, there is new hope that deep changes will occur to foster the move away from cash-to-cash transfers.

**8.5** Some regulatory work is still on-going, especially with regard to payments via mobile phones and electronic money.

**8.6** In general, the WAEMU is the region that has undergone the most extensive banking and microfinance regulation reforms in the past two years.<sup>70</sup>

<sup>69</sup> Financial inclusion is a valid objective only when financial services are provided by companies and institutions of sufficiently high quality. Otherwise, customers will always prefer informal channels and providers, such as in-kind savings, savings clubs, tontines, courier cash transport, hawala systems, compensation, and so forth.

<sup>70</sup> On changes to banking and microfinance institution regulation in the WAEMU, see Lhériaux, L., "Chronique de Réglementation Financière," *Techniques Financières et Développement* 101, December 2011, and TFD 102, March 2011.

## IV.1 ELECTRONIC MONEY INSTITUTIONS AND FINANCIAL PAYMENTS INSTITUTIONS

8 7 Standards for electronic money institutions (EMIs), payment institutions, and electronic money and payment accounts are of interest as long as they allow new, non-bank institutions and operators who possess technological solutions to enter the value-adding remittance market. In addition to money-transfer services, these new entrants offer the opportunity to store funds for small savings and future payment transactions. It is important to point out that it was such a marketing package (transfer and storage), in addition to collaboration with a leading MTO, that ensured success for M-Pesa in Kenya and opened doors for its replication in other countries, such as Tanzania and Madagascar.

8 8 These regulatory frameworks are therefore to be assessed in light of their usefulness for payment products in remittance corridors, particularly via mobile phones.

### THE WAEMU: REGULATION ON EXTERNAL FINANCIAL RELATIONS, ELECTRONIC MONEY AND PAYMENT INSTITUTIONS

## ELECTRONIC MONEY AND PAYMENT INSTITUTIONS

8 9 In December 2010, the BCEAO adopted a new classification for financial institutions with banking features<sup>71</sup> in the WAEMU, adding a fifth category, the “payment institution.”<sup>72</sup> This new category is indeed an innovation which seeks to reflect the ongoing revolution in electronic banking, especially with the introduction of new payment services via the mobile phone.

71 *Etablissement financier à caractère bancaire* (EFCEB).

72 *Etablissement financier de paiement* (EFP).

9 0 At this point, one wonders about the provisions of the BCEAO 01/SP/2006 directive concerning the integration of electronic money institutions, which until now were not considered credit institutions.<sup>73</sup>

9 1 It is therefore incumbent on the BCEAO to provide clarifications on certain elements of the legal regime that governs payment institutions in order to ensure consistency with the new regulations concerning WAEMU’s external financial relations (adopted on 1 October 2010) and with the regulations concerning the issuance and distribution of electronic money, which are also to be revised.<sup>74</sup>

9 2 First, WAEMU’s new regulation states that not only “banks,” but also “credit institutions” may be authorized to conduct financial transactions outside the Union. In consonance with this stipulation, one could imagine that payment institutions would be authorized to make transfers to or from non-WAEMU countries.

73 One could note a parallel with a similar evolution in the European Union: Directive 2000/46/EC created electronic money institutions in 2000, and Directive 2007/64/EC established payment institutions in 2007; regimes have gradually aligned or merged since 2009 with procedural Rule 2009/110/EC on the taking up and pursuit of electronic money institutions.

74 According to verbal communications with the central bank; the reform will aim to modernize rule 01/2006/SP on electronic money and EMIs in 2011 or 2012.

9.3 Given pre-existing legislation on electronic money, it seems likely that payment institutions will be allowed to issue and administer electronic money;<sup>75</sup> this is not the same as taking deposits from the public,<sup>76</sup> nor can it be likened to financial intermediation.<sup>77</sup> This would nullify the use of the concept of payment accounts, a much simpler system used by payment institutions in the European Union.<sup>78</sup>

9.4 It is therefore necessary to wait for the review of BCEAO 01/SP/2006 directive, which should more broadly update the “first-generation” provisions regulating electronic-money to meet “second-generation” stipulations.

9.5 From a practical point of view, that would allow a technology operator with a retail network to have control of steps 4 and 5 of the Europe/Africa money-transfer corridor.<sup>79</sup>

75 Under the procedural Rule BCEAO 01/2006/SP, electronic money is defined as “the monetary value of a claim on the issuer which is:

- Stored in an electronic format;
- issued against receipt of funds in an amount not less than the monetary value issued;
- Accepted as payment by companies other than the issuer.”

76 Within the meaning of Article 5 of the Banking Law, “shall be considered as funds received from the public funds that a person receives from a third party, such as deposits, with the right to dispose of for its own account but on condition that it returns them.”

77 As an illustration, Recital 13 of Directive 2009/110/EC states, “The issuance of electronic money does not constitute a deposit-taking activity pursuant to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions in view of its specific character as an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of limited amount and not as means of saving.”

78 Such as in the Directive 2007/64/EC on payment services in the Internal Market and creating “payment institutions” alongside credit institutions. Funds in payment institutions can remain in the system (account) to be used for future payment transactions; they are subject to a simplified prudential protective device – a protected bank account deposit or other form of insurance coverage.

79 The six steps in the France-WAEMU corridor: (1) business and deposit point in France, (2) payment services in France, (3) fund transfer outside E.U., (4) fund reception in the WAEMU, (5) payment services in the WAEMU, and (6) business and payout point in the WAEMU. However, since procedural legislation on non-bank financial institutions (or *établissement financier à caractère bancaire* (EFCB)) payments has not yet been defined, this assumption is only based on: (1) reforms already undertaken, (2) the need for openings in procedural texts to be consistent with reforms, and (3) the latest developments in international practice, an improved understanding of mechanisms used by mobile network operators, the risks involved and the creative power of their contributions

## THE WAEMU: CHANGES IN THE REGULATIONS ON EXTERNAL FINANCIAL RELATIONS AND RELATIONS WITH “NON-RESIDENTS”

9.6 WAEMU 09-2010 regulation on external financial relations, which repealed a 1998 provision, allows any credit institution to be an approved intermediary. This is a significant regulatory innovation that ended the banks’ monopoly of the approved intermediary market.

9.7 While all regulations for implementation have not yet been adopted, notably by the central bank, it may still be possible to send and receive funds outside the WAEMU, in line with changes made by Regulation WAEMU 09-2010, and especially the new, fifth category of “payment institution” included in December 2010.

9.8 This is a significant development, since the “entry price” or minimum capital requirement is set at a lower level for financial institutions than for banks<sup>80</sup>; this could inspire new ideas for mobile banking and traditional money transfers<sup>81</sup>.

## THE CAEMC: ELECTRONIC MONEY INSTITUTIONS

9.9 No significant regulatory change has occurred in the CAEMC since 2009.

1.0.0 The situation remains that banks and electronic money institutions can make electronic banking and payment transactions via mobile phones and other technology systems. However, it appears that monetary authorities are considering restricting EMI status to credit institutions only.

80 Currently, XOF 1 billion (€1.5 or \$2 million) for a company that can operate in all eight member countries, eventually rising to about XOF 3 billion.

81 We refer in particular to the MFIs that could join forces to develop a common tool, capable of directly acquiring a license from Western Union or another MTC, like the BIMAO. Or they could serve as an intermediary for account-to-account transfers toward savings accounts in deposit-taking MFIs.

**101**101. Mobile network operators who would like to launch mobile-phone-based banking services (“mobile-banking”) without having to partner with a bank may find electronic money institutions an alternative. In this way, mobile operators could fully control their services without the risk of a “divorce.” EMIs’ other advantage over banks lies in their lower minimum capital requirements, which facilitates the use of paid-in capital for operations.

**102** At least one of the mobile network operators in Cameroon would like to create its own subsidiary rather than partner with a bank, but the absence of authorization from the Central Bank (BEAC) is hampering progress in this regard. As a matter of fact, BEAC considers that only credit institutions are authorized to issue and administer electronic money.

## COMOROS

**103** Comoros has no specific regulations for electronic money institutions or payment institutions. However, it does regulate MTCs; they are allowed to conduct international activities and serve as reception points for remittances. But it would appear that funds cannot remain stored in their system beyond the completion of the transfer transaction.

**104** It would be useful if the regulations in Comoros could be reviewed to provide for mobile banking, electronic money and remote or branchless banking in general.

## MOROCCO

**105** Notwithstanding current regulations allowing licensed finance companies to provide all means of payment and administer them for customers,<sup>82</sup> Morocco has no specific regulation allowing for “storage” of monetary values in a system, in payment accounts or in electronic wallets.

**106** Deliberations on reforms to the banking law N° 34-06, have been on-going for several years; but these, for the time being, have not led to any changes with regard to the notion of electronic money or final payment accounts. As a result, mobile banking solutions are necessarily dependent on deposit accounts in the banks; the MTCs and their networks act as intermediaries for banking transactions. To date, only one product has been launched by an MTC, with the support of Attijariwafa Bank and the Chaabi Bank.

**107** This system creates some legal and commercial insecurity for the medium and long term given that the MTCs, as intermediaries for banking operations, are limited in their capacity to control the system from the legal, commercial and financial points of view (see IOB below)

## TUNISIA

**108** Tunisian banking law does not provide for EMI’s or for financial payment institutions; nor does there appear to be any plan to change this situation in the near future.

**109** The concepts of payment account or electronic money do not exist, either. Mobile-banking transactions are bank-payment transactions, “cousins” to debit cards; they take place entirely through the banks, including for counter services. (See banking agents in Tunisia developments below.)

<sup>82</sup> Bank Al Maghrib Circular 20 G 2006: The minimum capital requirement is 10 million dirhams (about €1 million) for finance companies licensed to perform operations making all means of payment and their administration available to customers.

## IV.2 BANKING AGENTS, RETAILERS AND PAYMENT SERVICE PROVIDERS

**110** Retail merchants are essential middlemen for banks and branchless banking. When it comes to migrant remittances, retailers may play several roles:

- Conclude a transfer transaction with the customer, reducing the latter's hidden costs incurred through lost time, transportation expenses, and so forth.
- Register new customers and perform counter services (deposits and withdrawals). This allows customers to store money in the banking system – money that would otherwise be kept in cash centers the formal banking channel as savings. The M-Pesa mobile-phone payment and transfer system in Kenya has collected the equivalent of tens of millions of dollars in this way.

**111** Intermediaries, no matter what they are called, work as agents for approved financial institutions. They are essentially used for performing counter services.

**112** Therefore, retailers are essential in two areas:

- For traditional inbound transfers, they bring counter services closer to the customer, whether for an account-to-account transfer or for rapid fund remittance.
- For branchless banking, they are indispensable aids in leveraging the activities of financial institutions and mobile-network or other technology operators.

## REFORM OF THE CATEGORIES OF AGENTS OF BANKING OPERATIONS IN THE WAEMU<sup>83</sup>

**113** For the first time ever, BCEAO Directive N° 015-12/2010 sets out the conditions for conducting bank-agent activities under the Banking Law.<sup>84</sup> Innovations in banking-service distribution channels are doubtless at the origin of this reform. The banking agent has traditionally been a consumer-goods' distributor, selling goods (cars and others) on credit via loans often granted by a credit institution. Until recently, a banking agent could also be a retail outlet (or "sub-agent") for rapid money transfer services. The growth of branchless banks that make use of many major integrated or franchised networks of merchants, such as gas stations, telecommunications agencies or members of the liberal professions (such as pharmacists) certainly calls for a strengthening of the conditions under which they operate to extend their scope beyond regulating the distribution of electronic money.

83 Procedural Rule BCEAO n° 015-12/2010/RB sets conditions for pursuit of banking agent activities, in application of Articles 38, 105 and 13 of the Bank Law. (Source: Lhériaux, L., "Chronique de Réglementation Financière," *Techniques Financières et Développement (TFD)*, 102, May 2011

84 Banking Law, Article 105: "Any person or entity other than a credit institution, whose usual profession is to serve as a middleman as a broker or otherwise, by bringing business to credit institutions operating in the WAEMU or abroad or operating on their behalf, even as an ancillary activity, cannot do business without the prior approval of the Minister of Finance. The central bank determines the procedures for authorization applications."

**114** This Directive does not radically change the rules set out in the Banking Law, where each individual banking agent, whether a corporation or an individual,<sup>85</sup> must be authorized. Such a system may be cumbersome to manage when it involves networks with hundreds – or even thousands – of banking-agent corporations and other entities.<sup>86</sup> Similarly, each banking agent must provide specific activity reports to the central bank and the national finance ministry.

**115** Banking agent operations are limited “to bringing credit institutions together with customers for banking transactions.” The imprecise term “bringing together”<sup>87</sup> should probably be understood as per the definition in Article 105 of the Banking Law, which provides that banking agents can “operate on their behalf” and per the definitions for sales middlemen – including brokers – in commercial law. However, only banking transactions are possible; this excludes, for example, introducing new insurance product distribution channels via these clauses.<sup>88</sup>

**116** The Directive provides for setting up a guarantee system for the funds entrusted to the banking agent by either party for the banking transaction, even in the absence of funds.<sup>89</sup>

**117** According to the legal definition, “any person ... other than a credit institution” working for the latter must comply with the procedural rule and provisions of Article 105. Decentralized financial institutions operating for credit institutions – particularly when operating as sub-agents for money-transfer companies – should therefore be covered by the authorization. If so, decentralized financial institutions have an obligation to guarantee funds, even when very often they are usually institutions that receive deposits from the public and/or from their members, and the biggest among them come under the oversight of the BCEAO and Banking Commission.

**118** The Directive does not distinguish between principal agents and sub-agents, even though it seems possible to do so since the rule mentions this principle.<sup>90</sup> Branchless banking sometimes uses such a distinction.<sup>91</sup> We must assume that all agents are banking agents acting directly on behalf of credit institutions. Not distinguishing between a primary banking agent and a secondary sub-agent makes it harder to address issues related to determining accountability allocation for functional necessities, such as training middlemen, or for legal liability if something goes wrong.<sup>92</sup>

85 In licensing documents and information, an appendix to procedural BCEAO Directive N° 015-12/2010 requires “notarized statutes developed in accordance with the provisions of the Organization for the Harmonization of Business Law in Africa (OHADA) Uniform Law on the right of corporations and economic interest groups.” We do not know if this means that cooperative societies – also governed by OHADA – and associations are excluded, or if it is an oversight.

86 By way of comparison, in Morocco the central bank (Bank Al-Maghrib) requires only a detailed list of credit institution agents (including necessary details) pursuant to Article 126 of the Banking Law: “Credit institutions are required to send Bank Al-Maghrib the list of middlemen that they have appointed to carry out the activity covered by this chapter” according to terms set by the central bank.

87 Or *rapprochement*.

88 This is logical since distributors of insurance products are also regulated by the Inter-African Conference on Insurance Markets (CIMA) Insurance Code. CIMA brings together 14 countries that are also members of the WAEMU and the CAEMC.

89 Requires a minimum deposit of XOF 15 million (\$10,000) or a liability insurance policy with specifically allocated pro-rata refund of money held temporarily. The banking agent not contracted to hold funds must put up a bond or proof of liability insurance for at least XOF 5 million; BCEAO may raise the minimum amount “based on activity volumes.”

90 Rule 011-12-2010, Article 6: “Every agent of a banking agent or principal with this status...must hold a professional certificate issued by the contracting bank(s).”

91 We can cite three examples:

(1) Through its umbrella organization (a union), a cooperative financial system governed by laws regulating decentralized financial systems signs an agreement with a bank to distribute money-transfer services. The agreement was signed by the union, which becomes the banking agent, but local entities provide the financial services to clients as sub-agents and banking agents.

(2) A bank contracts an oil company to use its service stations as counter-service points for deposits and withdrawals. The oil company and banking agent will probably have wholly owned stations (included in the agreement) and franchised stations (indirect agents); the latter will also be banking agents that should be licensed and should have a direct contractual relationship with the credit institution.

(3) A bank contracts with a telephone company to operate mobile-banking services for account-to-account transfers using the Safaricom and Equity Bank in Kenya model (see Lhériau, *Techniques Financières et Développement (TFD)*, 100 cited above) or one used by other banks and mobile network operators in Morocco. To the extent that the transactions are truly account-to-account and not electronic money distributions, the mobile network operator would be the principal agent and banking agent, and some of its franchisee network would be sub-agents and banking agents.

92 However, we can imagine a contractual relationship between the three parties – the bank, principal banking agent and banking agent sub-agent.

**119** The BCEAO is not in favor of using exclusivity clauses to define the relationship between the contracting credit institution and the banking agent.<sup>93</sup> This probably does not mean that such clauses are absolutely prohibited, in observance of the provisions of the OHADA General Commercial Law on commercial middlemen.<sup>94</sup>

**120** Finally, this Directive is not explicit about the possibly cumulative application of provisions relating to banking agents and those relating to electronic money distribution; we may assume that the planned reform of Directive N° 01/2006 will address this issue.

### BANKING AGENTS, RETAILERS AND DISTRIBUTORS IN THE CAEMC

**121** At present, the concept of banking agent exists under banking law in the CAEMC, but appears not much used for branchless banking; given that mobile-banking projects have difficulties taking off. Indeed, reviews of authorization applications slowed in 2008-09, partly because of internal challenges faced by the Bank of Central African States.

**122** The concept of an electronic money distributor also exists, but has not been the subject of recent reforms.

93 Rule 2010, Article 4 section II: A banking agent “may agree to new contracts to represent other credit institutions ... the agent’s other contractors must be informed of contracts with other credit institutions.”

94 See in particular Lhériaux, L. p. 100 *Techniques Financières et Développement (TFD)*, 42, “Clauses d’exclusivité dans la relation mandant/mandataire,” in *Le droit et la technologie au service de la bancarisation: focus sur la banque à distance et l’Acte Uniforme relatif au droit commercial general* (modified December 2010), Articles 218 and 219.”

### RETAILERS AND DISTRIBUTORS IN COMOROS

**123** The notion of banking agent does not specifically exist in Comoros. However, banking law “also considers as financial institutions all persons or entities that typically act as financial intermediaries as a commissioned agent, a broker or otherwise for investment, credit, securities or currency exchange transactions.”<sup>95</sup> A banking agent’s activity falls under the credit institutions’ monopoly, at least for some transactions.

### RETAILERS AND DISTRIBUTORS IN MOROCCO

**124** The concept of banking agent exists under Moroccan banking law, with a very flexible mechanism for credit institutions to register “delegates” and send their lists of banking agents to the central bank.

**125** In addition, the Moroccan central bank, Bank Al-Maghrib, supports operations with a contractual (but not regulatory) hierarchy that distinguishes between a principal banking agent, such as a mobile network operator, and secondary banking sub-agents, such as franchisees, contracted by the principal banking agent.

**126** A genuinely liberal interpretation allows for the acceptance of a variety of banking-agent types, since the risks are controlled by the principals (the contracting credit institutions) and their authorized agents, especially in terms of managing the sales outlets, information systems and administration, and so forth.

95 Banking Law, Article 2.

**1 2 7** We also note that Morocco’s second-largest MFI, the Fondation Banque Populaire pour le Micro-crédit (or FBPMC) has operated for the past two years (including a pilot phase) as a banking agent for its parent company, Banque Populaire. FBPMC offers savings account services, doing due diligence for new accounts, deposits and withdrawals. It is in the process of installing and deploying Western Union money-transfer products through its network of more than 200 agencies. Its partnership with Western Union will further expand and fill in FBPMC’s retail network, reducing the distance between customers and point-of-service terminals. This will make it easier for customers to receive funds and transform them into savings with Banque Populaire.

**1 2 8** FBPMC’s example paves the way for other microfinance associations.

**1 2 9** The banking-agent concept, coupled here with a partner MFI’s branch network, allows further penetration of the “traditional” money-transfer market and makes transfers a more valuable, strategic remittances vector for the Moroccan banking sector, for:

- Savings accounts;
- Reception of account-to-account funds transfers;
- Future Western Union money-transfer products, such as those being developed with the French postal bank.

**1 3 0** However, the banking-agent concept reaches its limit in mobile banking (see below, V.2.6.) since the mobile network operator cannot obtain a better legal status for itself or for a subsidiary that it controls.

## RETAILERS AND DISTRIBUTORS IN TUNISIA

**1 3 1** The concept of banking agent does not exist in Tunisian banking law. The central bank’s uncontestable interpretation is that a credit institution may not delegate or outsource any of four basic functions provided for in Article 2 of the Banking Law: savings, credit, foreign-currency exchange and means of payment.<sup>96</sup>

**1 3 2** As a result, it is impossible to set up networks of retailers – gas stations, pharmacies, dedicated businesses or even MFIs – and promote transformational<sup>97</sup> branchless banking services, particularly electronic money transfers or electronic wallet services.

**1 3 3** Therefore a Tunisian mobile network operator and a domestic bank would limit any mobile-banking project to electronic banking services via mobile phone, for customers who already have a bank account and who – in any case – would have to go to the bank to register for the service, and make deposits or withdrawals. In most other countries, non-bank retailers may be used for all or part of these transactions, which completely changes the scope and impact of the systems.

96 Law 2001-65, Article 2 “Is considered to be a credit institution, any entity that has banking as a regular occupation. Banking includes: Receiving deposits in all forms from the public; extending all forms of credit; acting as an intermediary for foreign-currency exchange; and managing and making means of payment available to customers.”

97 See Phase 1 Report. “Branchless banking” literally means without a bank branch office. Branchless banking is called “additive” when it merely adds to the range of choices – mobile, Internet, cards – or enhances the convenience of existing customers of mainstream financial institutions. It is “transformational” when it extends to customers who would not be reached profitably with traditional branch-based financial services. (See CGAP, in Focus Note No. 43, January 2008 <http://www.cgap.org/gm/document-1.9.2583/FN43.pdf>)



## BANK DATABASE OWNERSHIP AND THE BANKING AGENT <sup>98</sup>

**134** When a mobile network operator is not authorized to perform banking transactions but may be a qualified banking agent and allowed to intervene on behalf of a credit institution (usually a bank), certain consequences may create some tensions. When a mobile network operator acts on a bank's behalf, it means that:

- All customers have bank accounts, at the least for payments;
- All transactions are recorded in the bank's books, possibly at the end of the day;
- The bank-customer database is the property of the bank and certainly not of the mobile network operator; the latter may not use a bank-customer database protected by data privacy laws for other business.

**135** The question arises about the ownership of the mobile-banking business assets – brand name, customer database, and marketing, sales and customer-retention know-how: Can a banking agent have its own “mobile-banking business” independent from the bank's business?

<sup>98</sup> See Lhériaux, L. “Le droit et la technologie au service de la bancarisation: focus sur la banque à distance,” *Techniques Financières et Développement (TFD)*, 100, September 2010, p. 30.

**136** This is often the case in practice: sometimes a mobile network operator uses a mobile-banking product name very similar to its own brand name, unrelated to the brand of the bank(s), and controls the technology solution and the customer relationship. Therefore, it is understandable that the mobile operator might claim ownership of the mobile-banking business, although such ownership is highly questionable under commercial<sup>99</sup> or banking law.<sup>100</sup>

**137** A fundamental point to consider is where the ultimate responsibility to customers and the regulator lies. A bank is necessarily responsible for its agent's technical failures because the agent operates on behalf of the bank; this may be risky and costly for the bank.<sup>101</sup>

**138** Yet, for a leading non-bank mobile network operator, not authorized to perform banking transactions, owning the mobile-banking business proves strategic; the operator can strengthen its negotiating position and change bank partner(s) if needed.

<sup>99</sup> A “commercial agent” works under contract with a principal. The exact legal nature of an agent's position varies: a broker middleman or a sales-agent middleman. For example, Article 105 of the Uniform Banking Law in WAEMU member countries states that a banking agent is “every natural or legal entity (...) whose usual profession is to serve as an intermediary as a broker or otherwise, by bringing business to credit institutions operating in the WAEMU or abroad, or who operates on credit institutions' behalf as an incidental activity.” Beyond a broker, who operates independently of the parties and connects them, the sales-agent middleman operates under contract to and at the behest of the credit institution.

<sup>100</sup> Ownership of a banking business by an unauthorized institution is not allowed under the banking law, even though the banking agent may be a legally recognized actor.

<sup>101</sup> One concern is that malicious computer hackers manage to introduce money into the system; for instance, the bank issues €50 million, and the hackers add €25 million then use the funds to purchase goods, or they take sums out in paper money before the fraud is stopped. Banks would be responsible and would have to pay out €75 million. In this case, the guarantee covering funds entrusted to the banking agent may not necessarily work, since the entrusted funds were not stolen; rather, new money was surreptitiously added to the system.

**139** Does general commercial law allow a mobile network operator to go that far? Assuming the mobile network operator acts as a “commercial” or sales agent<sup>102</sup> or a broker<sup>103</sup> for the bank, under OHADA laws (which are strongly influenced by French law) nothing indicates that a sales agent may be entitled to compensation from the principal for breach of contract. French Supreme Court stresses that a sales agent who is a simple representative under contract cannot be the substantive holder of a business' goodwill<sup>104</sup>; this is consistent with the fact that the sales agent trades on behalf of the principal and not for his or her own account – the principal's business is an essential element in the agent's ability to buy and sell.<sup>105</sup> Despite some nuances in the legal texts,

the solution could be the same under OHADA law,<sup>106</sup> even if all commercial middlemen – commissioned agents, brokers and sales agents – are retailers.<sup>107</sup>

**140** The same solution appears applicable for a broker, who “cannot buy or sell for his or her own account, either directly or indirectly, under the name of another person or proxy.”<sup>108</sup> One cannot be the substantive owner of a business' goodwill if one does not buy or sell.

**141** This does not remove the agent's right to receive compensation for breach of contract in certain circumstances. However, in the scenario where a mobile network operator wants to take the lead, this solution remains unsatisfactory. The mobile network operator's challenge revolves around being able to leave with “his” customers, “his” goodwill and “his” business database. This appears to contradict the mobile operator's status as a “commercial agent” – a banking agent for a bank. It leads to the conclusion that a mobile network operator doubling as banking agent and a sales agent will not be viable in many countries; the mobile operator will find the situation unsatisfactory in the medium to long term. In such cases, it is appropriate to preemptively address such situations through contracts and – more broadly – allow mobile network operators to create their own financial subsidiary, free of internal conflicts.

<sup>102</sup> Under OHADA Uniform Act Relating to General Commercial Law Article 216, “The commercial agent is a professional contracted to negotiate and possibly enter into contracts of sale, purchase, lease or service delivery, in the name of and on behalf of producers, industrialists, retailers, or other commercial agents, without being bound to them by an employment contract.”

<sup>103</sup> Under OHADA Uniform Act Relating to General Commercial Law Article 208, “The broker is a professional that connects people to facilitate or lead to the conclusion of agreements between them.”

<sup>104</sup> Source: Mainguy, D. and Respaud, J.-L. “Contrat de distribution: l'agent commercial, simple mandataire, ne peut être titulaire d'un fonds de commerce et n'a pas la qualité de commerçant; au sujet de Com.,” 26 February 2008, *Bulletin civil, semaine juridique*, ed. G., 14 May 2008, No. 20, p. 38-40. Cited by Serge Braudoï, Honorary counselor to the Versailles Court of Appeals on <http://www.dictionnaire-juridique.com/definition/agent-commercial.php>.

<sup>105</sup> What would be left of their business? The mobile network operator certainly owns his or her brand, but notwithstanding its commercial value, it is not sufficient to create a business because a business obligatorily includes customers and a brand or trade (OHADA Uniform Commercial Law, Articles 103 and 104). The technological solution also has value, but it does not “capture” a customer. Having a customer means having carried out a transaction with a customer; such customers are customers of the bank. So one possible analysis may be that the mobile network operator leaves with a smaller business, limited to its trademark, without “customers” or customer database, both the latter being bank property and subject to data privacy laws – the mobile network operator cannot fully own a database it cannot use or sell.

<sup>106</sup> Under OHADA law, sales agents are retailers (Uniform Commercial Law, Article 138), therefore buying and selling (Section 3). However, the broker does not buy and sell for him or herself (OHADA Uniform Act Relating to General Commercial Law Article 179: “The broker can not perform commercial transactions for his or her own account, either directly or indirectly, under the name of another person or proxy.” The sales agent acts on behalf of the principal so his or her acts of buying or selling are deemed to have occurred between the contracting credit institution and the customer.

<sup>107</sup> OHADA Uniform Act Relating to General Commercial Law Article 170, Section 1: “The sales agent is a retailer, subject to the conditions of Articles 6 to 12 of this Uniform Commercial Law.”

<sup>108</sup> OHADA Uniform Act Relating to General Commercial Law Article 211.

## BANK PRODUCT DISTRIBUTION AND BANKING AGENTS IN FRANCE

**1 4 2** France’s Monetary and Financial Code (or COMOFI<sup>109</sup>) provides for the concept of banking agent.<sup>110</sup> France updated the concept and extended it to payment institutions when the European Commission’s Directive on Payment Services<sup>111</sup> was implemented.

**1 4 3** We note that even before updating the concept, at least one money-transfer company – Flouss.com/E-Floussy – used a stored-value card solution (MasterCard) and was established and operated as a banking agent for the Accord Bank.

### IV.3 TOWARD LIFTING THE EXCLUSIVITY CLAUSES FOR MTC PRODUCTS<sup>112</sup>

**1 4 4** Money-transfer companies contract with domestic financial institutions (mostly retail banks) for worldwide consumer product distribution. However, exclusivity clauses often accompany agency contracts between the worldwide leaders – Western Union, MoneyGram – and their primary agents in countries. These clauses prohibit the distribution agent or its sub-agents from distributing the same rapid-transfer products via competitors.<sup>113</sup> Sometimes institutional arrangements or practices ensure de facto exclusivity, rather than the contracts.

<sup>109</sup> Code Monétaire et Financière (COMOFI).

<sup>110</sup> COMOFI Article L519-1 “1. Intermediation in banking and payment services is the activity that consists of presenting, proposing or helping to conclude a banking or payment services transaction, or to carry out any preparatory work and advice for such transactions’ execution. A banking or payment services agent is any person who usually exercises intermediation in banking and payment services transactions for remuneration or some form of financial gain, without *del credere* agency.” We stress that Article L 519-2 allows for operating as a banking sub-agent.

<sup>111</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007.

<sup>112</sup> The products are generally distributed via bank counter services, postal banks and, in developing countries, via microfinance institutions.

<sup>113</sup> These clauses do not cover slower account-to-account bank transfers that assume current accounts are connected to worldwide payments systems at both ends of the transaction.

**1 4 5** Even if exclusivity clauses are not necessarily anti-competitive under the law as an abuse of dominant position or a restrictive practice, in most cases these clauses pose a barrier to competition; they prevent money-transfer cost reductions and ensure a sometimes high margin for MTCs and their agents, particularly in monopolistic or oligopolistic situations.

**1 4 6** We are broaching issues concerning exclusivity and other related clauses from a legal standpoint since they create obstacles to lowering margins on rapid money transfers.

## SENEGAL AND THE WAEMU

**1 4 7** Given the WAEMU’s regulations on foreign-currency exchange, an agent licensed for rapid-transfer products is a bank or – since October 2010 – a credit institution that has received an additional authorization as an “approved intermediary.”

**1 4 8** The Senegalese Ministry of Finance has been pressing for the removal of exclusivity clauses from MTC contracts for the past two years,<sup>114</sup> referring to competition law. Apparently, the MTCs concerned acceded to the ministry’s request. The ministry’s strong action helps protect consumers by decreasing money-transfer costs

<sup>114</sup> According to oral communication with the Money and Credit Office. The legal basis appears to draw on the Law 94-63 of Aug. 22, 1994 on prices, competition and economic disputes. If a leading international MTC imposes the clause on an economically inferior domestic bank or MFI, it probably comes under restrictive practices (Articles 24 and 25) or abuse of dominant position.

**149** It is interesting to note that the BCEAO aims to share the legal experiment started in Senegal, and to monitor the situation via inspection missions in order to ensure that the exclusivity clauses are effectively removed from the contracts not only in form, but also in practice; it will also look for anti-competitive business practices, such as collusion or abuse of dominant position, even in unwritten forms.<sup>115</sup>

## THE CAEMC

**150** Although the same basis for lifting exclusivity clauses exists under competition law in the CAEMC,<sup>116</sup> financial regulatory authorities have not pressed MTCs to lift them.

<sup>115</sup> BCEAO seems determined to extend the Senegalese approach to other WAEMU countries, probably based on the community's competition law and because the central bank oversees the financial sector in conjunction with the Banking Commission and the eight member states' finance ministries. The Treaty of WAEMU, Article 88 states that "One (1) year after this Treaty takes effect, the following shall be automatically prohibited: a) agreements, associations and concerted practices between undertakings aiming to or restricting or distorting competition within the Union; b) all practices of one or several companies that amount to an abuse of dominant position in the common market or a significant portion of it." Under Article 88 of the Treaty, WAEMU regulations do not exempt the financial sector from the competition law.

<sup>116</sup> Convention Governing the Central Africa Economic Union (1996), Article 23: "In order to achieve the objectives defined in Article 13 paragraph c of this Agreement, the Council of Ministers states that within a period of one year after the latter takes effect, by a qualified majority and with a proposal by the Executive Secretary, the regulations shall take effect relating to:

- a) prohibition of agreements, associations and concerted practices between undertakings, aiming to or having the effect of restricting or distorting competition within the CAEMC community;
- b) the prohibition of any practice of one or more undertakings constituting an abuse of dominant position in the common market or a significant part of it;
- c) a ban on state aid liable to distort competition by favoring certain undertakings or certain products.

These regulations specify the prohibitions and may provide limited exceptions to accommodate specific situations. At the expiration of the period mentioned in paragraph one, any natural or legal entity is entitled to the principles listed in paragraphs a, b and c, before the competent national tribunals and subject to the jurisdiction of the community's court of justice."

## COMOROS

**151** The Comorian financial regulatory authorities have not moved toward lifting the MTCs' exclusivity clauses.

## MOROCCO

**152** Bank Al-Maghrib, as a bank supervisory authority, pressed for removal of systematic exclusivity clauses for rapid money transfers several years ago; this appears to have made the MTCs waive such clauses.

## TUNISIA

**153** The issue of lifting exclusivity clauses does not appear to be a priority for the Tunisian financial regulatory authorities.

## EUROPE AND FRANCE

**154** European and French competition law covers anti-competitive practices – cartels, abuse of dominant position – allowing competent regulatory authorities or interested private parties to take action when they see a violation.

**155** In France, the postal bank, La Poste, appears to have an exclusive relationship with Western Union since it is the postal bank's only MTC for rapid money transfers, but the reverse is not true – Western Union even has its own sales outlets in France. Furthermore, in addition to the Western Union money-transfer product, La Poste offers others – account-to-account transfers, money orders and express money orders.

#### IV.4 TOWARDS A STRENGTHENED AND MORE CREDIBLE MICROFINANCE SECTOR?

**156** Microfinance institutions and their regulation demand attention for several reasons:

- MFIs function as payout points for MTCs (Western Union, MoneyGram, RIA, Money Express and others) and as banking sub-agents; including in Morocco;
- MFIs take deposits for themselves or for banks, collecting the sliver of remittances saved by families. These savings can be used by MFIs or banks to grant loans. They therefore contribute to the consolidation of the financial sector and business funding;
- Some mutual MFIs control, or are strategic shareholders in, local banks.<sup>117</sup> Therefore, they are well positioned to contribute towards addressing some of the challenges raised by remittances.
- Individually and collectively, MFIs are already part of this business. They are investing in the sending end of the Europe-Africa money-transfer corridors. Their objective is to benefit from these corridors; this is the case with PAMECAS and an alliance of MFIs set up with the support of the International Network of Alternative Financial Institutions (INAFI).

**157** MFIs' credibility, regulatory adequacy and supervisory quality are even more important now than they were two years ago (during phase 1).

**158** In the past two years, some significant retail bank regulatory and supervisory developments have taken place in some regions.

117 BIMAO by Crédit Mutuel du Sénégal (CMS), UCB by Cameroon Cooperative Credit Union League (CAMMCCUL), Banque Malienne de Solidarité (BMS) by MFIs from Mali, and various start-ups or takeovers in sub-Saharan Africa.

#### DECENTRALIZED FINANCIAL SYSTEMS IN THE WAEMU

**159** In 2007, the WAEMU Council of Ministers adopted a new uniform law and a standard decree regulating the so-called “decentralized financial systems” (or DFS) – that is, microfinance institutions, cooperatives, and savings and loan associations. So far, the law has been passed by six of the eight WAEMU member countries.<sup>118</sup>

**160** The central bank's new procedural directives for DFSs, adopted in June, August and December 2010, supersede previous directives dated March 10, 1998; the BCEAO clearly intended to significantly strengthen the microfinance sector's soundness and foster its consolidation. The rules formalize the central bank's and the Banking Commission's supervisory authority over DFSs that have total savings or loans exceeding XOF 2 billion (€3 or \$4 million), as referenced in Article 44 of the law.

**161** As a result, WAEMU member countries are heading toward:

- A considerable strengthening of the selected DFSs and their supervision;
- An increase in all DFSs' capital structures, now subject to solvency standards;
- Enhanced quality, for geographic information systems and procedures.

**162** After a restructuring and consolidation phase that is expected to last for several years, it is likely that the microfinance sector and particularly DFSs supervised by the central bank and Banking Commission will emerge stronger than before. In the medium term this will allow DFSs to take a greater share of the following types of business<sup>119</sup>:

118 All member countries have voted on the law, except for Benin and Côte d'Ivoire. Togo was the last, voting in May 2011.

119 See Appendix: *Analysis of microfinance institution regulation in the WAEMU*, based on Lhériaux, L. “Chronique de Réglementation Financière,” *Revue Techniques Financières et Développement*, No. 101 and 102, Dec. 2010 and March 2011.

- Traditional money transfers, at the payout point;
- Linked bank accounts, as deposit-taking financial institutions that offer loans to Senegalese residing abroad;
- Mobile-banking services;<sup>120</sup>
- As investors in the sending-end of the European corridors – for example, with a payment institution(s).

## MICROFINANCE INSTITUTIONS IN THE CAEMC

**1 6 3** In the CAEMC, the regulation of entities known as “microfinance institutions,”<sup>121</sup> started in 2002 and gradually took effect over subsequent years.

**1 6 4** Over the past several years, the Central Africa Banking Commission (or COBAC<sup>122</sup>) has worked to progressively take over supervision of MFIs, reducing their number, particularly among small, scattered, unaffiliated cooperative entities. The recent bankruptcy of a large, “category one” cooperative MFI located in Douala shows how difficult it is for the CAEMC’s regulator – like its U.S. peer<sup>123</sup> – to intervene before bankruptcy occurs.

**1 6 5** The CAEMC regulations, largely outpacing those of the WAEMU until the reforms of 2007-10,<sup>124</sup> have not undergone any updating recently. CAEMC regulations have not progressed to a higher level of legal or financial security, especially with regard to protecting deposits when a MFI fails.

120 Senegal and the decentralized MFIs launched a “mutual mobile-banking” project, financed by Germany’s KfW Banking Group, adding to some Senegalese decentralized MFI projects.

121 *Établissements de microfinance (EMF)*.

122 *Commission Bancaire d’Afrique Centrale (COBAC)*.

123 In 2009-10, regulators closed 140 to 150 local or regional deposit-taking banks per year in the United States.

124 In particular, it imposed a 10 percent funding ratio on audited accounts for the largest entities, and supervision by COBAC rather than by national finance ministries.

**1 6 6** Consequently, with rare exceptions, it does not seem possible that MFIs in the CAEMC will play a role in expanding linked bank accounts, notwithstanding some MFIs’ commercial and institutional initiatives to create – as a group – entities in Europe to control the sending-end of the money-transfer chain. MFIs in the CAEMC will mostly remain banking sub-agents for MTCs, serving as rapid-transfer payout points.

## DECENTRALIZED FINANCIAL INSTITUTIONS IN COMOROS

**1 6 7** In Comoros, microfinance institutions are called “decentralized financial institutions”<sup>125</sup> (or DFI) and regulated under the Banking Law<sup>126</sup> by Decree No. 04/69-PR<sup>127</sup> and various central bank procedural rules. A DFI may be set up as a corporation, an association or a company with fixed or variable capital.

**1 6 8** The Comorian central bank supervises DFIs.

**1 6 9** Comorian DFIs consist mainly of two cooperatives: the Meck network, and the Sanduk network (composed of three entities, one per island). Both received official development assistance from AFD and the International Fund for Agricultural Development (IFAD), as well as support from technical operators, at start-up and for several years.

**1 7 0** Questions about the sector’s performance and DFIs’ ability to serve as money-transfer reception points appear unrelated to regulation, except regarding maximum allowable interest charges that negatively impacts DFIs’ financial viability; the country’s situation and the banking supervisor’s ability to positively influence the industry prove more important.

125 *Institutions financières décentralisées (IFD)*.

126 Law No. 80-07 regulating banks and financial institutions.

127 Decree 04-069/PR of 22 June 2004 regulating decentralized DFIs.

**171** Despite at least one failed attempt by a French bank to forge a strategic partnership with some decentralized DFIs for remittances, the microfinance sector does not appear to be a major partner in implementing innovative solutions for Comorians living abroad.

## MICROCREDIT AND MICROFINANCE ASSOCIATIONS IN MOROCCO

**172** Bank Al-Maghrib, Morocco's central bank, took over supervision of microfinance institutions known as "microcredit associations,"<sup>128</sup> following a reform to Banking Law, 34-06. However, authorizations and sanctions remain within the purview of the Ministry of Finance.

**173** Since 2008, the MFI sector has experienced a repayment crisis, causing significant but uneven damage among microcredit associations:

- The Zakoura Foundation for Microcredit's bankruptcy, which was concealed by a merger; it was the second-largest Moroccan MFI in spring 2009;
- Zakoura's merger with the FBPMC was finalized legally at the end of 2010; we note that none of Zakoura's creditors suffered losses; the FBPMC took on all liabilities;
- Impaired loans increased to high levels, but are now declining sharply.

**174** The establishment of a private credit bureau for the banking sector in Morocco, in which microcredit associations seem to participate, provides a better measure of swaps and debt levels.<sup>129</sup>

<sup>128</sup> *Association de microcrédit (AMC).*

<sup>129</sup> We note that five large and medium-sized microcredit associations, Al Amana, Zakoura, FBPMC, FONDEP and ARDI, already had sufficient information about their risk levels since they exchanged their client files even before the repayment crisis, through a service provided at Al Amana. This did not prevent them from allowing swaps to reach excessive levels, as history has shown, greatly contributing to the repayment crisis. We also note that FBPMC had one of the highest levels of swaps, and was one of the most impaired, indicating that repayment depends on multiple factors.

**175** The Law 18-97 governing microcredit associations was reformed by Bill No. 53-10 to:

- Allow the microcredit associations to create and hold stakes in microfinance subsidiaries through joint stock companies authorized as credit institutions;
- Govern mergers between microcredit associations.<sup>130</sup>

**176** Next, the regulatory authorities will have to ensure consistency in their regulations, allowing the effective entry of limited companies in the MFI sector (through creating new subsidiaries or entities) and particularly removing existing barriers related to credit institutions' interest rate ceilings (usury rates).<sup>131</sup>

**177** The FBPMC example – where it operated as a banking agent for its parent company for savings-related services and account-to-account transfers, as well as for rapid transfers in a Western Union pilot project – shows that some microcredit associations are not far from achieving bank-level techniques and organizations. However, it seems that the Moroccan monetary authorities do not approve of this development and would like to limit microfinance associations to being non-deposit-taking financial institutions that do not offer savings accounts<sup>132</sup> to their clients.

**178** Meanwhile, the microcredit associations may help as much as they can to valorize remittances by acting as banking operations intermediaries.

<sup>130</sup> The merger between FBPMC and Zakoura took place through a gradual liquidation of Zakoura; FBPMC took on some branches and employees, then it took on the overall net liability, then the Zakoura Foundation's authorization was withdrawn, and it became an empty shell.

<sup>131</sup> Otherwise, there would probably no candidates; microcredit associations generally charge higher annual percentage rates (APRs) than credit institutions' maximum rate of around 14 percent.

<sup>132</sup> This is an unwritten position, clearly in step with the repayment crisis that recently shook the industry, and in line with some microcredit associations' organizational limits, especially in terms of management information systems, internal controls and branches demand deposit accounts. Therefore, potential candidates must make technical and financial upgrades, notably with support from a United States Agency for International Development (USAID) programme, the Millennium Challenge Account Agency of Partnership for Progress. They must determine their strategy and sell the supervisory authorities on their business plan, organization, financial viability and shareholder quality by incorporating bank shareholders into new corporations, and so forth.

## DEVELOPMENTS IN THE LEGISLATION AND REGULATION OF MICROCREDIT INSTITUTIONS IN TUNISIA

179 Tunisia's microfinance institutions are composed exclusively of microcredit associations (Law 1999-67) of varying levels:

- One microcredit association, ENDA Inter-Arab, produces about fifty per cent of all outstandings and is managed according to international best practices;
- The other half of the sector is made up of about 288 microcredit associations that partner with a public-sector bank, Banque Tunisienne de Solidarité (BTS), which provides a state-backed refinancing line. These microfinance associations face significant challenges because of their methods and roots as “financing tools of the old regime,” which do not encourage repayment efforts on the part of borrowers.

180 The non-deposit-taking microcredit associations play no role in domestic or international money transfers or savings; at present, they do not necessarily have the technical capacity to do so. This does not diminish the value of deliberations under way about customer needs for these services.

181 Tunisia's National Conference on Microfinance, held on April 20-21, 2011, confirmed a willingness to make major changes in MFI practices and size. Legislators are preparing a decree-law, replacing Law 1999-67; the government should adopt it before the end of the transition period, when the constituent assembly takes over legislative authority. A series of implementing legislations will be adopted next.

182 However, it seems likely that this reform will not result in MFIs being able to take deposits or issue and manage payment means in the immediate future, nor will it shift supervisory authority to the central bank. An independent authority to supervise microfinance institutions should be created for the sector.

183 In the medium term, after the restructuring of the banking and microfinance sector, a second reform will be necessary to enable MFIs to fully play their role as transfer payout points, banking the unbanked and getting value from migrants' savings.

## V.5 LINKED BANK ACCOUNTS

184 Interest in linked bank accounts or “linked accounts” – one in the customer's country of origin and another in the country of residence – has gained momentum in recent years. Known as *bibanclarisation* in French (sometimes spelled *bi-bankarization* in English), linked accounts function via formal or sometimes informal cooperative oversight agreements between two banks so that a migrant or immediate descendant can remotely (from his or her country of residence) open a bank (or MFI) account in a country where he or she no longer resides and/or in a country where he or she is not a permanent resident. The accounts may be in a foreign currency, depending on national regulations; the accounts may be domiciled in two banks belonging to the same banking group, or two otherwise unrelated banks. French banks have notably championed linked accounts with foreign banks to improve service to first-generation immigrants and their descendants.

185 As indicated in the Phase 1 report, it will be necessary, when it is not already the case, to formulate cooperation agreements between the prudential supervisory authority and bank and microfinance supervisors in the South to guide this movement and allow, whenever the said authorities in the North or the South deem it necessary, for the organization of joint/coordinated inspection missions, especially of transnational banking groups.<sup>133</sup> This recommendation particularly targets relations with Tunisia.

<sup>133</sup> That is, banking groups with licensed bank, microfinance and/or payment institution subsidiaries in European country, Maghreb country and the Franc Zone regardless of the parent company's residence and licensing country.



**186** In some cases, where bilateral cooperative oversight agreements already exist, it would be helpful to strengthen coordinated and/or joint supervision procedures in a formal framework – for example, adding recipient countries’ microfinance institutions (decentralized or centralized) when such MFIs are shareholders in European financial subsidiaries.

**187** Below we explain the issues surrounding the use of linked bank accounts in remittance-receiving countries and in one remittance-sending country, France

### LINKED BANK ACCOUNTS IN REMITTANCES RECIPIENT COUNTRIES

**188** The concept of linked bank accounts refers to:

- A migrant’s, or his or her immediate descendant’s, ability to open a bank account in his or her country of residence and remotely open a second, non-resident bank account in his or her country of origin while in the country of residence, with the banks domiciling the accounts in each country “linking” the two accounts via a cooperative oversight agreement;
- The account holder’s ability to manage both bank accounts;
- The account holder’s ability to obtain a mortgage loan(s) or, if the account holder creates a business, a commercial loan(s).

### THE WAEMU (SENEGAL)

**189** It would appear that the main stumbling blocks to the expansion of structured linked-account strategies, other than the sector’s relative lack of dynamism in the migrant sector of the market, have to do with the under-utilization of the possibilities of opening ‘non-resident’

accounts. Apparently, the system is bringing pressure to bear on Senegalese residing abroad to open accounts in CFA. The problem does not lie so much with exchange rate risks (especially vis-à-vis the Euro), but rather with the major difficulties encountered afterwards in repatriating the funds back to the country of residence.<sup>134</sup> This would oblige the Senegalese migrant residing abroad to have an ‘artificial’ domicile in Senegal to open bank accounts, even though they could do so through a ‘bank branch’ lodged in a Senegalese consulate abroad.

**190** In the anti-money laundering and combatting the financing of terrorism AML-CFT) Law N° 2009-016, Article 9 *inter alia* provide that bank accounts may be opened remotely via a documented request from a domestic credit institution. Other financial entities, including some MFIs, are opening accounts based on documents submitted by another person(s) residing in Senegal who can attest to the documents’ authenticity.

**191** For credit management, and in the case of loans made by credit institutions in Senegal and backed by French revenue sources, no law or rule prevents banks from setting up agreements for permanent money transfers from the French checking or savings account of a Senegalese customer residing abroad. A loan application review conducted in Europe can be regulated through the banks’ bilateral oversight agreement on linked accounts; the final decision to grant or refuse credit always remains with the credit institution in Senegal.

**192** It is to be noted that some financial institutions, particularly microfinance institutions are not authorized to undertake international operations outside of the WAEMU; the regulations also govern equity investments in subsidiaries.

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<sup>134</sup> Curbs on transferring money outside of Senegal remain: only 25 percent of an account’s total value may be sent from a Senegalese resident account and prior authorization is required.

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## THE CAEMC

**193** There are no legal constraints on this matter.

**194** We note that some financial institutions, especially MFIs, are not authorized to carry out international (non-CAEMC) operations; their equity investments in other subsidiaries are also regulated.

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## COMOROS

**195** There are no legal constraints on this matter.

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## MOROCCO

**196** The problems for linked accounts in Morocco are essentially the same as in the WAEMU. While linked accounts are easy to implement practically, customers find it difficult to use non-resident foreign-currency or dirham-convertible accounts (Apparently their practical implementation does not raise any difficulties).

**197** Agreements for opening and managing linked accounts are possible. Such agreements work effectively with French banks, within a single bank group or even between different bank groups.

**198** It is possible to outsource AML-CFT-KYC due diligence required at the time of opening the account and during the life span of such accounts to credit institutions in Europe, under the responsibility of the Moroccan bank.

**199** It should be emphasized that Moroccan banks interested in Moroccans living abroad (and even in migrants from other countries who that are living in Europe) have established subsidiaries long ago and use facilities offered under the rules of the “European passport”<sup>135</sup> to carry out transactions by setting up branches or operating freely, that is, without setting up a branch in each country.

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<sup>135</sup> The European single-market “passport” allows a bank licensed in any member state to operate freely across the European Union region.

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## TUNISIA

**200** We did not detect laws or regulations blocking linked bank accounts in Tunisia. We note that from the beginning of 2004, resident and non-resident Tunisians have the right to open foreign-currency accounts, provided the funds come from outside Tunisia.

**201** However, Tunisian residents sending funds abroad must contend with significant restrictions. As part of the foreign currency-control measures, the authorities cap the amount of money Tunisians may spend on holiday trips abroad or for paying the fees of children's schooling in Europe. The possession of bank accounts abroad also comes under very close scrutiny.

**202** This general context is not amenable to the idea of reciprocity that could be envisaged for the promotion of linked accounts and communication between financial markets, especially equivalent financial markets.

### LINKED BANK ACCOUNTS IN REMITTANCE-SENDING COUNTRIES<sup>136</sup>

**203** The legal limits to linked bank accounts could be tighter in Europe

**204** Two scenarios are possible:

- A European bank, from France, for example, sells “French” banking products or services to a migrant in France to finance an investment project in his or her country of origin;
- The French bank sells products offered through a partner outside the European Union, that is, in the country of the remittance recipient.

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<sup>136</sup> French banking law is largely derived from European Union (E.U.) norms. However, each country has some legal latitude. We have based this legal analysis on French law, broadly representative of other European countries' standards.

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## SCENARIO 1: THE SALE OF FRENCH BANKING PRODUCTS

**205** This scenario primarily concerns loans, such as for real estate. These are traditional French bank products used by many people every year – not just migrants living in France but also Europeans who wish to buy a second home or make a real estate investment for renting in Morocco, Tunisia or Senegal.

**206** The only potential legal problems for the bank include:

- Taking out a mortgage or other collateral in a country where the bank will need a to have a local partner, such as a subsidiary, partner bank or simply a representative office empowered to process the mortgage, the collateral security and – if need be – to repossess the asset in case of default by the borrower;
- Repatriation of proceeds from sales;
- Relying on an effective legal system for the execution and sale of assets.

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## SCENARIO 2: PROSPECTION FOR AND SALE OF FINANCIAL PRODUCTS FOR A NON-EU BANK

**207** The rules and regulations do not prevent credit institutions from carrying out account-opening formalities for an account in a non-European bank, as long as the account opening is validated, at least from the legal point of view, by the non-European bank.

**208** However, the regulations governing financial intermediaries and marketing do not expressly authorize advertising, soliciting or sending unsolicited proposals to sell banking or stock-market products:

- By non-European banks that do not operate under a special license;
- For financial products unauthorized for sale in Europe (see below).

**209** It is worth noting that banking law seeks to protect bank customers. French regulatory and supervisory authorities do not oversee non-E.U.

banks, irrespective – in some cases – of bilateral cooperative oversight agreements with their prudential regulatory and supervisory peers in other countries, as between France and Morocco, France and the WAEMU. These so-called markets are not necessarily recognized as having an equivalent level of consumer protection, particularly for deposits.<sup>137</sup> Thus banking law must be strictly interpreted for the customers' benefit; this would prohibit marketing and sales operations in France.

**210** In practice, however, legal borders can be overstepped by:

- Bilateral linked-account cooperative agreements that allow proactive rather than strictly passive sales systems in Europe;
- Policies of E.U. banks – possibly the subsidiaries of non-European banking groups – that allow marketing and sales of such products or services in their French branches;
- Consulates that carry out banking transactions, using their embassy's bank accounts as pass-through accounts. The U.S. government recently suspended banking in the U.S. consular offices of 17 African countries; thus demonstrating the risk of such practices, which may also facilitate money-laundering (an issue that apparently weighed on the U.S. decision);

**211** However, non-European banks and MFIs have been seen selling products in various European countries:

- Via partnerships, either through their representative offices or through subsidiaries licensed as banks in Europe;
- By sending representatives to Europe to market and sell products, sometimes in partnership with a bank;
- Through the Internet, which nowadays changes borders for advertising; some banks and MFIs in recipient countries offer remote account-opening services specifically targeted to migrants residing abroad, particularly in France, putting sales materials, instructions and applications online.<sup>138</sup>

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<sup>137</sup> They sometimes lack a deposit-insurance system, or offer thresholds well below E.U. (or French) standards.

<sup>138</sup> In such cases, a relative or other person close to the migrant must appear at the bank in the country with a written request from the migrant.

## **Linked Bank Accounts and the Limits of the Monopoly of Banks: Focus on some aspects of jurisprudence and doctrine.**

Banking law is applicable throughout a territory; and banking transactions carried out on France's national territory are subject to French banking law.

This raises a question of the eligibility of the place of transaction as regards migrants remittances and investments

This question especially concerns:

- Deposit-taking operations (collecting savings)
- Loan and credit operations

The border line is sometimes debatable.

Some linked-banking initiatives sometimes exceed the legal limits to canvassing and the positive objectives justifying a change in regulation. The fact that a regulation is bypassed is neither a necessary nor sufficient argument for modifying it. Rather, it calls for setting up stricter controls if one considers that regulations (as emphasized in this report) are created to protect depositors in France.

**212** The situation is therefore legally unsatisfactory, with:

- On the one hand, transactions that are not sophisticated and do not sell speculative products; it is a question of opening demand or term deposits, and even loan accounts for investments in the South (the sale of stocks presents other risks [see below] or the sale of health insurance products for families that have remained in the country of origin, or insurance for body-repatriation in case of death for the migrant (the insurance company being in the country of origin), and so forth.
- On the other hand, a ban on marketing that may be justified but which, in the present case, will impede and even further curtail the bankarisation initiatives that are otherwise economically and socially positive, by bringing to bear a legal and regulatory risk on the agreements and practices.

**213** It would be appropriate to clarify the situation in certain European countries with;

- The strengthening of oversight, if need be, in order to ensure that regulations are accurately followed, and any breaches ascertained.
- A better definition of what is allowed and what is not permissible in bankarisation; the current situation sometimes gives rise to legal uncertainties.

## QUESTIONS AND LEGAL ISSUES SURROUNDING “PEER-TO-PEER” LENDING

**214** The development of mechanisms known as “peer-to-peer” lending, especially the internet site KIVA in the United States (sponsored by former President Bill Clinton) and Babyloan in France, should be examined from the legal and supervisory points of view.

### CREDIT MECHANISM

**215** The underlying principle is to resort to an individual who is willing to lend to a micro-entrepreneur in his country or abroad. They meet through a specialized internet site. And the relationship will be free and consensual “between peers. For the lender, this transaction might be free or for profit.

**216** The practice involves various mechanisms, intermediaries and filters:

- The beneficiary of the loan is usually introduced by a MFI who examines the loan application against payment.
- Often, the lender grants a loan, not to the final beneficiary but to a MFI which now on-lends to the micro-entrepreneur. Money is fungible and the borrower may already have received his loan.

### LEGAL QUALIFICATIONS

**217** Depending on the option chosen:

- A quasi-monopoly situation might arise whereby a saver who regularly lends with interest to people would, out of habit, become a professional banker;
- Or sometimes, at the limits of a loan securitization mechanism, not from the legal viewpoint since no securities are issued, but from an economic standpoint, since loans are moved off the balance sheet of the finance professionals, and funded by a host of lenders, while preserving the management of the portfolio and part of the profits.

**218** When money is legally lent to the MFI, this pre-supposes that:

- The MFI is authorized to receive funds from the public in its country; this is not always the case, especially in Tunisia and Morocco;
- The MFI can receive funds from non-professionals who are European residents; this wholly concerns the legal matters surrounding bi-bankarization. Can an actor in France promote a non-European financial institution (in this case the MFI) in France and facilitate money transfers to such an institution?

### HOW CAN THIS ACTIVITY BE REGULATED?

**219** To guarantee the legal compliance of the operation and ensure the transfer transaction, some operators work with one or two banks:

- One in France for the transfer;
- The other in the country of origin for the transfer (when the MFI does not have direct access to international payment facilities), or sometimes to secure the loan for the MFI (when the MFI does not have the right to receive funds from the public; it can only borrow from the regulated financial sector).

**220** In France, Article L. 511-6 of the COMOFI was amended in 2010 to allow microcredit associations to obtain more than two-year refinancing funds from lenders who are well informed on the risks. The legal formula used avoids calling such funding a public savings offering; that would have required microcredit associations be equated to banks and placed under prudential regulation and supervision in accordance with international and European standards – a prudential regulation that microcredit associations find practically impossible to comply with.

**221** Thus, the lenders are neither covered by prudential regulations of the borrower, nor by the deposit-guarantee fund. Although lenders are individuals, they are (or are expected to be) cognizant of related risks.

**2.2.2** This opening offered by French legislation comes at a time when the amount of money lent in the context of microcredit operations is marginal when compared to the credit outstanding. However, the same is not true for the microfinance sector in many recipient countries.

**2.2.3** The peer-to-peer lending mechanism is operating at the border between two worlds and in a potentially dangerous, under-regulated zone because of the following factors: its almost monopolistic position when it comes to savings and credit, its similarity to unregulated credit securitization, and its international banking activities. This system straddles a grant (non-reimbursable and regulated by the recipient NGO's), and a bank savings deposit (reimbursable, regulated and under prudential supervision)<sup>139</sup>

#### IV.6 UPDATING LAWS ON INFORMATION AND COMMUNICATIONS TECHNOLOGY AND CIVIL LIBERTIES

**2.2.4** In Senegal, the law on civil liberties and information and communication technology (ICT) has been updated with two laws on cybercrime and personal databases; a personal data protection commission<sup>140</sup> was set up. More recently, Cameroon has taken similar measures. These updates echo the E.U.'s overall regulatory modernization, vital for implementing linked bank accounts and remote payments by banks.

<sup>139</sup> See some thoughts about regulating peer-to-peer lending in the Appendix.  
<sup>140</sup> *Commission de Protection des Données à Caractère Personnel* (CPDPCP).

#### UPDATING WAEMU ICT LAWS AS TRIGGERED BY SENEGALESE LAWS

**2.2.5** Professional confidentiality is provided for under Banking Law; and Law 2008-47 in the case of microfinance institutions.<sup>141</sup> Measures concerning personal data processing and storage are clarified and strengthened by the personal database regulation; this regulation takes account of traditional standards inspired by European norms. The law provides for the establishment of a new database regulatory body, the Personal Data Commission, or PDC.<sup>142</sup>

**2.2.6** Law 2008-11 on cybercrime supplements this legislation; it introduces into the penal code new offenses related to ICT developments.

**2.2.7** The personal data commission that has been established should have become operational in 2011. The project team noted that some international banks had already approached it, wanting to send Senegalese customer data<sup>143</sup> to their parent companies in Europe. There is therefore no doubt that the law would be effectively implemented for the DFIs and particularly for the project and credit analysis bureaux, as well as for up-coming mobile banking operations; it should confer a satisfactory level of protection of personal data privacy – better than in Kenya, where some significant gaps have been observed.

<sup>141</sup> Law 2008-47, Article 28, Section 2: "The persons concerned with the administration, monitoring, guidance, management, or operation of decentralized financial systems are bound by professional secrecy, subject to the provisions of Articles 37, 43, 44 and 58 of this Act." (Exceptions are related to internal controls, and external control by the BCEAO, the Banking Commission, the Ministry of Finance and the judicial authority acting in criminal proceedings, without prejudice to the specific communication of information to the National Financial Intelligence Processing Unit as part of AML-CFT monitoring.)

<sup>142</sup> *Commission des Données Personnelles* (CDP).

<sup>143</sup> Base exports are covered by a special legal regime.

## THE CAEMC: ICT LAW UPDATE BASED ON CAMEROON'S LAWS

**2.2.8** The development of a digital economy entails the updating of the laws that are necessary to secure transactions and suppress new deviant behaviors connected to information and communications technology. It is therefore noteworthy that Cameroon recently updated its business laws, and enacted three new laws on Dec. 21, 2010.<sup>144</sup> This update is part of an ongoing process to harmonize regulations within the CAEMC as part of a so-called “e-CAEMC” strategy.<sup>145</sup>

**2.2.9** We review some of the salient aspects of these new laws below, even though not exhaustively.

144 Laws 2010-012, 2010-013 and 2010-021 on electronic commerce, electronic communication and cybercrime.

145 Countries in the CAEMC adopted the following: Decision No. 45/08-UEAC-133-CM-18 establishing a technical committee for the regulation of electronic communications (November 2008), Directive No. 10/08-UEAC-133-18-CM harmonizing procedures for establishing and monitoring electronic communications services rates (November 2008), Directive No. 09/08-UEAC-133-CM-18 harmonizing legal systems for electronic communications activities (November 2008), Directive No. 08/08-UEAC-133-CM-18 on interconnection and access networks and services electronic communications (November 2008), Directive No. 07/08-UEAC-133-CM-18 setting the legal framework for protecting the rights of users of networks and electronic communications services (November 2008), Directive No. 06/08-UEAC-133-CM-18 establishing the regime of universal service in the electronic communications sector (November 2008), Regulation No. 21 août-UEAC-133-18-CM harmonizing regulations and regulatory policies for electronic communications (November 2008). Original texts available on <http://www.cemac.int>.

**2.3.0** **Law 2010-012 on cyber-security and cyber-crime.** These measures on cyber-security include:

- Setting up certification systems: accreditation of certification authorities is processed by the National Agency for Information Technology and Communication<sup>146</sup> (or ANTIC<sup>147</sup>) and signed by the Minister of Telecommunications. ANTIC is the core government certification authority. The certification authorities may be held liable for damage caused to people who rely on their certificates, and must therefore have a financial guarantee or maintain adequate liability insurance;
- A secure electronic signature, which “has the same legal status and effects as a handwritten signature”;
- Safety-related obligations for information systems operators;
- Obligations for service providers;
- Obligation to respect personal privacy and confidentiality of information.

**2.3.1** The law also provides for some criminal procedures and for international cooperation and judicial assistance; it defines a number of new offenses relating to cybercrimes. These include:

- Illegally collecting and storing personal data;
- Hacking into and the falsification, interception, alteration or destruction of databases or communication networks;
- Using Trojan viruses and causing serious disruption or interruption to electronic communications networks or terminal equipment, including through denial-of-service attacks;
- Divulging confidential information in the name of ANTIC missions or security audits, or, on the other hand, refusing to submit confidential information to or withholding information from ANTIC;
- Breaching personal data privacy using ICT;
- Using ICT for child pornography, pedophilia, or racially or religiously-motivated hate crimes.

146 The agency was originally created by the Decree 2002-092 of April 8, 2002; it operates under the technical supervision of the Presidency of the Republic. ANTIC is now officially established by Law 2010-013 Article 96 and sees its powers strengthened: it is responsible for regulating electronic security. See [www.antic.cm](http://www.antic.cm)

147 Agence Nationale des Technologies de l'Information et de la Communication (ANTIC).

2 3 2 Depending on the seriousness of the offenses, penalties may include up to 10 years of imprisonment and a fine of CFA 100 million.

2 3 3 **Law 2010-013 governing electronic communications** is now the legal basis for the establishment of the Telecommunications Regulation Agency (or ART<sup>148</sup>) and ANTIC; the latter's powers are growing, particularly with regard to criminal prosecution.

2 3 4 Setting up and/or operating networks and providing electronic communications services fall under one of the following regimes: (1) authorization via a concession, licensing or approval, or disclosure.

2 3 5 A law on entitlement to universal service was enacted.<sup>149</sup> Universal access to services and the development of electronic communications depend particularly on operators. A Special Telecommunications Fund was set up mainly through a 3% levy on turnover, net of the taxes from electronic communications users and services.

2 3 6 ART is charged with monitoring interconnection and network access rights for legal entities doing business in the CAEMC; ART also oversees compliance with competition laws.<sup>150</sup>

148 Agence de Régulation des Télécommunications (ART).

149 Law 013-2010, Article 4 states that "Everyone has the right to benefit from electronic communications services, regardless of their location on the national territory." This right becomes a reality through "the possibility for any person to be connected to the public networks and have access to basic electronic communications services" (Article 27).

150 Law 2010-013, Article 42 (1): "The operators of electronic communications networks open to the public are required to grant, in an objective, transparent and non-discriminatory way, requests for interconnection and access to the network of any operator of electronic communications services open to the public that holds a concession, license or certification."

2 3 7 Standards have been introduced for protecting consumers of electronic communications services.<sup>151</sup>

2 3 8 Operators and service providers of electronic communications networks open to the public are required to identify subscribers and terminals at the time of service subscription. They must also keep subscriber lists updated.<sup>152</sup> This increasingly prevalent requirement aims to fight organized crime; it also affects payment services, including payments via mobile phone where an individual's identification is most often required under AML-CFT directives. However, shortcomings in the generalized issuing of national identity cards to all and sundry often make it difficult to apply this standard.<sup>153</sup>

151 Law 2010-013, Article 52: "The consumer of electronic communications services has the right to:

- Access electronic communications services, with standards of quality and consistency inherent in their nature, all over the country;
- Freedom of choice of service provider;
- Non-discrimination in access and conditions for using the service;
- Adequate information concerning the conditions of supply of services, rates and other charges;
- The inviolability and secrecy of communications, except to meet legal and regulatory requirements;
- On request, to non-disclosure of his login identification;
- The non-suspension of the service, except for non-compliance with contract terms;
- Advance information on the terms of suspension of the contract;
- Refer complaints against the service provider to the Agency and consumer protection agencies;
- Responses from the service provider regarding complaints;
- Receive compensation for damages resulting from a breach these rights."

152 Law 2010-013, Article 55 (1).

153 A person without an identification card may request another person to buy a SIM card for him or her; the end-user's identification will be imperfect, unless systems are set up to periodically validate and/or confirm identity – for example, by asking the SIM cardholder to text the ID card number to the operator.



**239** Law 2010-021 on electronic commerce is the last in this series; it:

- Acknowledges contracts made through electronic means,<sup>154</sup> subject to some exceptions;<sup>155</sup>
- Takes into account some consumer protection considerations, such as prohibiting undesired “spam” messages and providing a 15-day retraction right for electronic contracts, in some cases;<sup>156</sup>
- Spells out the electronic money issuer’s and user’s responsibility and liability in case of theft or fraud involving electronic payments;<sup>157</sup>
- Sets standards for providers’ and middlemen’s liability, particularly for storing content that might be illegal;
- Institutes the principle of using electronic certificates and digital signatures for electronic commerce, when issued by equivalent certification authorities in other countries.

154 Law 2010-021, Article 9: “The conclusion of electronic contracts is permitted subject to the regulations of the laws and regulations in force.”

155 Law 2010-021, Article 10: Exceptions include “contracts that create or transfer rights in real property, except for rental rights;

- Contracts for which the law requires the intervention of courts, public authorities or professions exercising public authority;
- Security agreements and guarantees provided by persons acting for purposes which are outside the scope of their professional or commercial activity;
- Contracts governed by family law or inheritance law.”

156 Counted from the date of contract signature for services or delivery for goods.

157 Law 2010-021, Article 28 (1): “The holder of the electronic means of payment is required to notify the issuer of the loss or theft of the means or instruments that allow its use and of any misuse thereto which he has knowledge.

(2) The issuer of an electronic payment instrument shall determine the appropriate means of notification in the contract with the holder.”

Article 29 (1): “Notwithstanding the fraud, the holder of electronic means of payment:

- Until notification to the issuer, is responsible for the consequences of the loss or theft of the payment means or its fraudulent use by a third party;
- Is relieved of all responsibility for the use of electronic means of payment after notification is sent to the issuer.

(2) The use of electronic means of payment without presenting the means of payment and identification via electronic means does not commit the holder.”

## MOROCCO

**240** The legal and regulatory situation in Morocco has not undergone substantial changes since the Phase 1 report in 2009 and the adoption of Law 09-08 on personal-data processing and privacy protection.<sup>158</sup>

**241** We did not find evidence that a Moroccan data-privacy commission had been created as of spring 2011, two years after the data-privacy protection law was passed.

## TUNISIA

**242** A law on e-commerce was passed in Tunisia<sup>159</sup> and another on personal data protection.<sup>160</sup> The latter’s application to the financial sector seems rooted in tradition, as illustrated by an article posted on the site of the Professional Association of Tunisian Banks and Financial Institutions (or APTBEF<sup>161</sup>).

## IV.7 FINANCIAL AND STOCK MARKETS

**243** The primary issue is the sale to any migrant professional investor or individual living in Europe and interested by these other countries of financial instruments – bonds, stocks, mutual or alternative funds – invested in a remittance recipient country.

158 Law No. 09-08 on the protection of individuals with regard to the processing of personal data promulgated by Decree No. 2-09-165, dated May 21, 2009 and published in the Official Bulletin No. 5744 of June 18, 2009.

159 Law 2000-83 of Aug. 9, 2000 on electronic trade and commerce; Law No. 2005-51 of June 27, 2005 concerning the electronic funds transfer.

160 Organic Law No. 2004-63 of July 27, 2004 on the protection of personal data.

161 Association Professionnelle Tunisienne des Banques et Etablissements Financiers (APTBEF).

244 In addition to the current marketing practices in Europe, which are sometimes at the limit of legitimacy, the objective is to complement money transfers, and the supply of bi-bankarization products, with stock exchange products.

## REVIEW OF CURRENT EUROPEAN STANDARDS

### EUROPEAN STANDARDS AND MARGINS OF MANOEUVRE AT THE NATIONAL LEVEL

245 Sales of financial products in Europe are subject to logical regulatory constraints, particularly for products targeting the general public (migrants). Financial scandals that came to light during the global financial crisis, especially the sale of Bernard Madoff's Ponzi-scheme funds to the European public through the Luxalpha fund in Luxembourg, would naturally not encourage the liberalization of the sale of opaque funds that are too sophisticated and speculative or the sale of similar funds to the general public, which includes almost all migrants living in Europe.

246 These constraints are tied to European directives on UCITS, and AIFM as spelled out in the Monetary and Financial Code (COMOFI). These Directives:

- Establish new European standards for UCITS (mutual funds);
- Facilitate the sale of UCITS created in one country in another in order to achieve a single market for UCITS;
- Regulate "non-UCITS" or AIFM investment funds;
- Strictly limit the sales of AIFM funds to the general public in the fund's country of authorization and elsewhere; only a country's regulatory authorities may decide to allow, by a waiver, the marketing of an AIFM fund to retail investors;
- Prohibit marketing and customer solicitation in Europe of products from non-European markets or that are not recognized as equivalents.

### OBSERVED PRACTICES, ESPECIALLY REGARDING MARKETING AND SOLICITATION

247 Rules prohibiting the solicitation and marketing of "non-authorized" products do not prevent:

- The sale or private placement of some recipient countries' Treasury bills in some consulates;
- Structured and sophisticated sales of UCITS and other financial instruments issued in one of the countries concerned by this report, by a bank from that country via the bank's representative office in Europe. However, (i) the bank does not seem to use public advertising for these products, and (ii) the migrant makes the purchase via his or her bank account in the country of origin, so there is no transaction within an European bank account. This means that such purchases can be made only by high-profile clients who already have linked bank accounts, which is unlike the typical migrant.

248 We are not criticizing or excusing these practices; rather, we wish to point out the differences that sometimes exist between the law and usual practice with a view to recommending in-depth thinking about the possibilities of officially and legally selling to the non-specialist public in Europe, such as shares from developing countries, bonds and other simple debt products (Treasury bills) issued in developing countries, and common investment funds/UCITS, issued and managed, or at least invested in developing countries.

## WHAT GUIDELINES FOR AN INNOVATIVE STRATEGY AND REGULATORY ENVIRONMENT?

**2.4.9** European and French regulatory standards are general and concern:

- Regulated markets for public offerings, and
- Products (stocks, bonds, UCITS or AIFM funds).

**2.5.0** The goal is to sell securities from developing countries (migrants' countries of origin) or invested in these countries to the non-specialist retail investor. We will consider two activities in this context; (i) the sale of a product issued or listed on NYSE Euronext in Europe, and (ii) sales in France of products issued in migrants' countries of origin.

**2.5.1** For each activity, three issues come to mind:

- Recognition of the stock exchanges of countries covered by this study as being equivalent to European exchanges;
- Adoption of a statutory exception for an investment fund issued and managed by one or more banks and development agencies authorized for such operations in Europe, in line with the AIFM Directive;
- Development of stock and bond cross-listings via public offerings in Europe, notably through NYSE Euronext.

## SALES OF A PRODUCTS ISSUED OR LISTED IN THE EUROPE OR ON NYSE EURONEXT

**2.5.2** Products issued and/or listed in Europe or on NYSE Euronext may include:

- A company listing, if necessary a dual listing on its home -market or on NYSE Euronext;
- A debt issue in one of the currencies used by NYSE Euronext Paris, either the euro or the dollar;
- Sale of UCITS-type funds (available to retail investors);

- Sale of AIFM funds (unavailable to the public according to French legislation), irrespective of the openings left in the AIFM Directive: (i) for supra-national financial institutions or international organizations (e.g., ECB, EIB, World Bank, AfDB) or (ii) by national waiver in one's own country (without a European passport).

## Issuing stocks or bonds in France

**2.5.3** French common law covers the legal issues for any company wishing to be listed or to make a public offering in France, especially when publishing a 'prospectus' in accordance with the norms set by the Financial Markets Authority<sup>162</sup>.

**2.5.4** From the technical viewpoint, in case of dual listings, issues arise concerning the clearing and central depository bank for settlement, and liquidity (sufficient volumes) of securities issued in both markets.

**2.5.5** It is also preferable that listing rules be harmonized between markets, particularly the rules on the suspensions of rates when there is a great difference between prices (plus/minus 20%).

**2.5.6** So far, only a small number of African companies are listed on NYSE Euronext Paris. Listings should be encouraged, if need be, when applicant companies are supported by bodies sponsored by public development aid organizations.

**2.5.7** Similarly, issuing African countries' sovereign bonds or African development banks' bonds in euros on NYSE Euronext Paris via public offerings would be more useful in valorizing migrants' savings than using more 'offshore' European markets and targeting a small group of specialist buyers. Bonds "allocated to a given country" could also be a relevant commercial approach.

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<sup>162</sup> Autorité des Marchés Financiers (AMF).

## Creating a mutual fund invested in developing countries

**2.5.8** Mutual funds or UCITS that specialize in developing countries already exist. However, introducing a mutual fund invested in the shares of remittance-recipient countries' companies into the French market assumes that such a fund meets UCITS standards, particularly in terms of liquidity (enough units are listed and traded on a regulated market), asset quality (credit rating) and risk diversification. The latter implies a certain depth in the domestic market, which cannot be taken for granted in developing or the least developed countries – that is, in sub-Saharan Africa.

**2.5.9** It appears that a European Union UCITS fund manager is not prohibited from delegating fund management to a regulated asset-management company in a remittance-recipient country – for example, a Moroccan asset-management company approved by the CDVM; this would facilitate the fund's management.

**2.6.0** In practice, UCITS standards require mutual funds to specialize in:

- Large companies listed in Europe;
- Bonds issued in Europe or on an equivalent market, such as bonds issued by AFD, the World Bank, EIB and others;
- A small number of secondary market stocks;
- A very diluted – a less than 10 percent share – of non-credit-rated, unlisted, illiquid shares from developing countries.

**2.6.1** This is inconsistent with an inclusive business objective of creating an UCITS either entirely or partially dedicated to one or more countries of origin that their migrants could invest in (we assume a Tunisian migrant, for example, would be uninterested in investing in Senegal, nor a Senegalese migrant in Tunisia). Except for companies in sufficiently large emerging markets – such as Mexico, Turkey, South Africa and possibly Morocco – a UCITS fund manager specializing in the countries covered by this study will probably not be able to find and buy enough eligible securities.

**2.6.2** Discussions that took place some years ago at Paris Europlace<sup>163</sup> about creating an investment fund specializing in microfinance – when, with two exceptions we know of,<sup>164</sup> MFIs were not listed companies – perfectly illustrates the limits of developing country-focused mutual funds for the public:

- In France, such a fund would be necessarily qualified as an alternative investment fund and therefore be unavailable to retail investors;
- To sell such a product to retail investors, the fund manager would have to list and sell it via other E.U. countries, notably Luxembourg.

**2.6.3** Realistically, one cannot base a strategy to create a retail mutual fund based on a European UCITS-style fund invested in the countries covered by this study; this means we must look at individual securities or an alternative investment fund, or for recognition of the countries' stock markets as equivalent to E.U. stock markets (see below).

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## SELLING ALTERNATIVE INVESTMENT FUNDS AND A PROPOSAL FOR A LOW-RISK ALTERNATIVE FUND FOR RETAIL INVESTORS

### Regulatory barriers

**2.6.4** Setting up a non-UCITS, therefore an alternative fund targeted at retail investors is banned in France, and understandably so; in principle, alternative investments are inappropriate for unsophisticated, non-professional investors, particularly the archetype of non-specialist investors – most migrant workers.

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<sup>163</sup> An association representing the global finance, investment and related business community of Paris.

<sup>164</sup> Compartamos in Mexico and SKS in India.

**265** However, we would argue that in terms of risk, supervisory authorities should distinguish between:

- Genuinely speculative, highly leveraged and very volatile securities, such as derivatives;
- Funds invested in securities classified as alternatives within the AIFM Directive, and/or in securities that must be highly diluted in a UCITS fund, comprising less than 10 percent of the fund's total value. Such securities are classified as alternatives because they represent securities from developing countries and/or are illiquid, lack a credit rating and so on. We suggest that they are not necessarily high-risk speculative assets, and would argue that they simply do not fit normal criteria for inclusion in higher concentrations in UCITS products.

### **Proposal for specific regulations for a diaspora-oriented “hybrid alternative” fund for retail investors**

**266** With a goal of promoting reasonable development through foreign direct investments made by the general public, we suggest further thinking might be possible about the legal aspects of a recipient-country(ies) and diaspora-oriented “hybrid” fund primarily invested in alternative securities and in compliance with the standards of the AIFM Directive; under this assumption, banks would sell the diaspora-oriented “hybrid” alternative/UCITS fund units to retail rather than professional investors; bilateral and multilateral development donors – such as the AfDB, the World Bank, EIB and/or AFD – would set up and manage the fund (see Part III).

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## **FRENCH SALES OF SECURITIES ISSUED IN DEVELOPING COUNTRIES**

**267** Another hypothetical would address French sales (by banks or asset-management companies) of individual securities (rather than a collective fund) issued in migrants' countries of origin; this would involve countries that have a securities exchange or share at least one financial market.

## **Securities sales without marketing or solicitation**

**268** In principle, when there is no solicitation or advertising of a security in the E.U., there is no marketing in the E.U., therefore no obligation to follow E.U. consumer-protection standards for publishing a prospectus in accordance with regulatory standards, or for presenting marketing materials (or anything else) to supervisory authorities for approvals.

**269** In practice, it seems that securities are sold in France (and in some other E.U. countries) when invested monies come from a bank account in a country of origin, provisioned with funds by a migrant via an account-to-account money transfer. This makes the transaction less visible and less classifiable as marketing an unauthorized country's unauthorized products for sale in the E.U.

**270** Marketing and sales over the Internet are also subject to France's regulatory control by the Financial Markets Authority (AMF), although practical implementation is not always self-evident.<sup>165</sup>

**271** However, the limit of legality is reached very quickly – for example, when a bank puts up a poster in a French branch office, as do some European subsidiaries or representative offices of some recipient-country banking groups. Consulates also present such posters, even though they are not supposed to engage in commercial activities under the Vienna Convention.<sup>166</sup>

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<sup>165</sup> Marketing quickly crosses borders, which has led the French authorities to react by adopting specific standards for Internet marketing, legally subject to the same disclosure requirements – prospectus, etc. – as products sold through bank branches.

<sup>166</sup> The United States' recent blocking of 17 African countries' bank accounts in the U.S. on the grounds of transactions that appeared unjustified by consular activities illustrates the monetary authorities' and AML-CFT potential for action and repression. Although in this case, the purpose was to stop capital flows into the United States to launder African money, rather than to block inbound funds from the sale diaspora bonds or remittances toward migrants' country of origin.

272 Thus, some practices skirt the edge of legality, weakening financial consumer protections in France (and the European Union).

### **Authorization to market and sell in the European Union a UCITS fund issued and managed in a country of origin**

273 Hypothetically, a UCITS issued and managed in a recipient country might be authorized to be marketed and sold in the European Union, although we have never seen such a case. AMF Rule 2005-01 does not anticipate it, since the rule is limited to E.U. countries. However, it seems that AMF General Regulations, Article 411-60 provides for this possibility and would overrule the more restrictive AMF 2005 procedural rule.

**AMF GENERAL REGULATIONS  
ADOPTED BY ORDER ON MARCH 28, 2011  
SUBSECTION 2 - OTHER FOREIGN UCITS  
ARTICLE 411-60**

For marketing UCITS mutual funds from a State that is not a Member State of the European Community or a State that is not party to the European Economic Area Agreement, or UCITS from other Member States of the European Community and other States that are parties to the European Economic Area Agreement but which do not receive mutual recognition approvals under the EEC Directive 85/611 of 20 December 1985, a file must be submitted to the AMF for prior authorization, in accordance with an AMF procedural rule.

This statement sets out the procedure and the information to be provided following approval for marketing and sales.

274 In practice, a UCITS can be authorized for sale in the E.U. if it meets E.U.-style conditions: issued in a sufficiently regulated, supervised and technically secure financial market – that is, a market that could be recognized or almost recognized as an equivalent to a E.U. market (see below); the UCITS would need to comply with E.U. investment regulations regarding liquidity, risk diversification in a deep-enough market and so forth. It would also need to meet E.U. standards for quality and management. Without intending to denigrate any emerging financial market covered in this study, we find that only the Casablanca financial market could meet these standards and conditions at present.

275 As it stands, it would be simpler to succeed by looking at creating an E.U.-based UCITS that invests in recipient countries' securities; the funds' management could be delegated to an asset manager in a country of origin,<sup>167</sup> under an E.U. asset manager's responsibility. Such a fund's feasibility would still be subject to the reservations and limitations mentioned above. This option would still require further thinking about setting up, marketing and selling an alternative investment fund to overcome the hurdles of setting up and running a UCITS fund.

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<sup>167</sup> Delegating investment fund management to a country where the funds are invested brings management closer to the market; the fund's managers are able to call on local market specialists.

## RECOGNITION AS AN EQUIVALENT MARKET

**276** Recognition of a recipient country's financial market as an E.U.-equivalent market may be bilateral – for instance, by the French Minister of Finance guided by the AMF – or multilateral, through the European Securities and Markets Authority (ESMA).

**277** This implies:

- Candidate markets would work to upgrade their financial exchanges' legal, technical and institutional – especially supervisory – standards to European levels;
- Sufficiently deep markets to ensure liquidity;
- Bilateral political will, since mutual recognition may drive developing-country capital flows to Euronext (Paris). While this is not an outcome sought by this report, we see that authorities must accept taking a political risk.

**278** We note that beyond legal and institutional recognition, investors make the market, judging it on their own terms – safe or not, liquid or not, stable or not, risky or not.

**279** We review specific aspects of some developing financial exchanges below.

### CASABLANCA (MOROCCO) FINANCIAL MARKET AND PROJECTS

**280** **Casablanca Finance City.**<sup>168</sup> The Moroccan authorities have launched a project to develop Casablanca into a regional financial hub for the Maghreb and sub-Saharan Africa, “Casablanca Finance City.” It aims to be for French-speaking Africa what the Johannesburg Stock Exchange is for Southern, English-speaking Africa. The project includes dirham-convertible products for non-residents and building the market operators' competencies and expertise.

<sup>168</sup> Casablanca Finance City is built on land reclaimed from Casablanca's former airport, conveniently located within the city limits; it is intended to accommodate new market players.

**281** Law N° 44-10 concerning the status of Casablanca Finance City:

- Establishes a “Casablanca Finance City” legal status for financial services companies and non-financial companies and their employees working regionally or internationally; this status will entail various benefits, including future tax benefits (Articles 1 and 14);
- Creates a company to steer and promote Casablanca Finance City, the “Moroccan Financial Board”; the Bank Al-Maghrib holds 20 percent of the company's capital.

**282** **Casablanca securities market upgrade.** Morocco's Securities Compliance Board (CDVM), a member of the Madrid-based International Organization of Securities Commissions (IOSCO), and the Moroccan government are working to reform legislation to achieve unequivocal recognition of Casablanca's securities market as being on par with European and French technological and legal standards.

**283** Since the 1990s, the Casablanca Stock Exchange (CSE) has used the quote engine that had been utilized by the former Paris Stock Exchange; the CSE quote engine remains compatible with the current Euronext Paris system. It appears that CSE's clearing and settlement system, through Euroclear and Maroclear, is also compatible with that of Euronext Paris.

**284** The legal update involves several aspects, in particular:

- Bill N° 53-08 to increase the independence of the supervisory authority, the Moroccan Capital Markets Authority (or AMMC<sup>169</sup>);
- Bill N° 54-08 about information required of corporations making a public offering

<sup>169</sup> Autorité Marocaine du Marché des Capitaux (AMMC).

**BILL 53-08 ON THE MOROCCAN  
CAPITAL MARKETS AUTHORITY**

(EXTRACT FROM THE EXPLANATORY  
MEMORANDUM)

The bill will establish the Moroccan Capital Markets Authority (AMMC), which will replace the Dahir N° 1-93-212 that instituted the Securities Compliance Board (CDVM) and the information required of corporations making a public offering; Bill 53-08 is intended to ensure the CDVM's independence and to strengthen its accountability in carrying out its mission.

In this regard, it should be noted that the regulatory authorities' independence and accountability are among the fundamental principles adopted by the International Organization of Securities Commissions (IOSCO), used to judge the quality of a country's financial regulation.

IOSCO's second principle for financial regulation states that "the regulator should be operationally independent and accountable in carrying out its duties and powers."

Independence means the regulatory authority's ability to take measures to regulate and enforce decisions without outside political or commercial influence. Accountability means that in its use of its powers and resources, the regulatory authority must be subject to appropriate supervision and review.

Strengthening the independence and responsibility of the CDVM made the redesign of Dahir N° 1-93-212 cited above necessary, changing the governance of its Board of Directors, expanding its mission, improving its civil-sanction function and instituting mechanisms for its supervision by the government.

In addition to and for the sake of better visibility on the monitoring missions of this organization, it will be considered appropriate to change the name of the CDVM to a name that explicitly refers to the notion of authority. The choice centers on the "Moroccan Capital Markets Authority." This change will involve substituting AMMC for CDVM in all laws and regulations.



**BILL NO. 54-08 ON THE INFORMATION  
REQUIRED OF CORPORATIONS MAKING  
A PUBLIC OFFERING**

(EXTRACT FROM THE EXPLANATORY  
MEMORANDUM)

The main contributions of this bill will be as follows:

- It will define the concepts of advertising, soliciting and financial intermediaries;
- It will give the AMMC the ability to request that an initiator of a public offering commission an independent expert to conduct, on behalf of and at the expense of the offering company, technical verification of the information provided by the latter in its prospectus;
- It will grant the AMMC the ability to withdraw the approval of the prospectus at any time during a public offering, but before the latter has been concluded, if it is found that the prospectus contains false or misleading information, or omissions likely to mislead the public.

**285** In addition to legal and institutional updating, two basic elements must be considered: economic policy and supervisory effectiveness to ensure market liquidity.

**286** Strategic economic policy choice. E.U. recognition of the Casablanca Stock Exchange as an equivalent market would open the latter to investors residing in Europe (not only migrants); this could be a very important source of capital for the Moroccan economy and – more broadly – for Morocco’s regional financial-hub project and its currency-trading market.

**287** However, reciprocity implies the risk of Moroccan capital flight to Europe, at least initially; the Moroccan authorities must take on and manage this risk as it would, for example, any foreign-exchange liberalization.

**288** **Supervisory effectiveness to ensure market liquidity.** Beyond regulations, Morocco’s supervisory authorities should demonstrate their ability to ensure the CSE’s financial order and liquidity, notably to allow companies who want to de-list to do so. This cannot be decreed and results from global investors’ confidence.

**289** The proposed regional hub and E.U. recognition would serve as the Casablanca Stock Exchange’s two strategic strengths, part of a coherent and ambitious overall strategy for the Casablanca financial market and the economy more broadly that includes:

- A Royal Air Morocco airline hub in Casablanca for Europe and sub-Saharan Africa;
- The overall strategy of Attijariwafa Bank and other Moroccan banks with subsidiaries, or created or acquired banks in Europe, Tunisia and sub-Saharan Africa (the WAEMU/Senegal, Mali, Guinea, Central African Republic, Cameroon, etc.).

**290** This financial and economic project would offer attractive and alternative solutions to migrants residing in Europe who want to invest in Morocco and/or other countries reviewed in this study (including Franc Zone countries); if the project comes to fruition, it would help channel migrant remittances into productive investment.

**291** According to CDVM representatives, it is not possible to know whether the Casablanca Finance City project will be completed in the short term (one year), medium term (two-three years) or long term (five or more years).

## TUNISIA

**292** The Tunisian stock market is a long-established one, and the Tunisian Financial Market Council (or CMF<sup>170</sup>) signed an agreement to cooperate and exchange information with France's AMF on July 4, 1997.

**293** As part of the Union for the Mediterranean, a “charter for a partnership of securities regulators from both sides of the Mediterranean” was signed on March 26, 2009 by securities regulators in Morocco, Algeria, Tunisia, France, Spain and Italy.

**294** The charter's operational objectives include:

*“4- (...) establishing harmonized working methods and adopting common business processes to bring its members' supervisory frameworks into alignment. It aims to facilitate cross-border cooperation for regulation and allow mutual recognition agreements between the signatories to be developed.*

*5 - As a prerequisite to implementing these operational objectives, members commit to achieving the common goal of complying with international standards and the European Union's regulatory framework.”*

**295** Following the Union for the Mediterranean charter, the CMF became a member of IOSCO in December 2009, joining its multilateral agreement for consultation, cooperation and information exchange in January 2010.

**296** However, the Tunisia Stock Exchange's technical compatibility with Euronext and Euroclear is not guaranteed, unlike Casablanca's, which uses the European exchanges' technological solutions. This does not prevent some processes, such as dual Tunisia/Euronext stock listings, but it would require a clearing bank that could ensure custody and settlement with Euroclear and its Tunisian counterpart.

**297** Currency regulation and economic policy choices. Curbs on taking or transferring money out of Tunisia pose hurdles that must be overcome for the recognition of an equivalent market; the latter entails free, bilateral capital flows. This economic policy choice means that Tunisia's balance of payments must be addressed first.

**298** More broadly, there is no structural project to make the capital city, Tunis, a financial hub so that the Maghreb and sub-Saharan African can connect to Europe and the Gulf States. Yet Tunisia has many strong points, including:

- A geographical and political position consistent with neighboring Algerian companies' needs currently, and Libyan companies' needs in the medium term;
- A long-established stock market;
- Past work to make Tunisia a financial hub;
- A center for training and expertise.

**299** The Tunisian government would have to revive an ambitious project to develop Tunis as a financial center to attract capital from Europe and the Gulf States, deepening the market to the east, west and south.

## THE WAEMU AND THE CAEMC

**300** The WAEMU and BRVM. The BRVM was created in December 1996 and started operations on Sept. 16, 1998 with the acquisition of securities listed on the Abidjan Stock Exchange.

**301** BRVM has branches in WAEMU member countries. Following Cote d'Ivoire's upheavals, management was temporarily transferred to Bamako, Mali, before returning to Abidjan.

170 Conseil du Marché Financier (CMF).

**3 0 2** BRVM boasts a regional market status, but its member countries' economies lack depth, limiting the exchange. This does not preclude WAEMU companies from listing on NYSE Euronext (Paris). Sixteen African companies from six countries do so – Cameroon, Côte d'Ivoire and Gabon each list one; Morocco and Senegal, three each; and South Africa, seven – for a total capitalization of \$90 billion.<sup>171</sup>

**3 0 3** The CAEMC and BVMAC. A regional stock exchange in the CAEMC is not yet fully fledged; the Central Africa Financial Exchange (or BVMAC<sup>172</sup>) aims to be to Central Africa what BRVM is for West Africa. However, it faces unresolved issues between Cameroon and Gabon; BVMAC, based in Libreville, Gabon, competes for listings with the Douala Stock Exchange (DSX) in Cameroon.

**3 0 4** This part of our report has shown the way toward developing alternative products in the future, and possibly creating a diaspora-oriented “hybrid” investment fund for retail investors. It highlighted the potential of developing countries' financial markets and calls for further thinking and cooperation to reach the stage where financial markets in Morocco, Tunisia, Senegal, Cameroon and/or Comoros could achieve equivalent status with European markets, a goal that only Casablanca has set itself for the near term.

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<sup>171</sup> Senegalese listings include: West African Breweries and Financial West Africa. Côte d'Ivoire lists the Equatorial Forest. Source: <http://fr.allafrica.com/stories/20101240136.html>.

<sup>172</sup> Bourse des Valeurs Mobilières d'Afrique Central (BVMAC).

The background features a repeating pattern of various financial and technological icons, each enclosed within a light green circle. These icons include a mobile phone, a laptop, a classical building facade, a person's silhouette, a credit card, a stack of coins, and a pair of scales. The circles are interconnected by a network of thin, dotted lines, creating a sense of connectivity and flow. The overall color palette is a range of green tones, from light to dark.

# PART V

## INNOVATIVE FINANCIAL SERVICES, PRODUCTS AND TECHNOLOGIES

## INNOVATIVE FINANCIAL SERVICES, PRODUCTS AND TECHNOLOGIES

**305** This study examines five types of financial services, products and technologies that meet migrants' and remittance recipients' expectations for money transfers.<sup>173</sup> This analysis draws on conversations with market participants in each country and their understanding of customer expectations; it also draws on research conducted by other institutions and researchers.<sup>174</sup> The five types of products and services are the following:

- Products and services using information and communication technologies (ICTs) to transfer money from residence to origin countries: (i) Mobile banking; (ii) Stored-value devices and electronic banking (e-banking).

- Products and services to improve “traditional” money transfers: (i) Cash transfers to a relay account, where part of the funds may be taken out in cash and part sent on to a savings account; (ii) Cash made available via a direct debit on a bank account.
- Products and services for linked bank accounts: (i) Remote opening of a non-resident account in a migrant's country of origin; (ii) Mortgage granted in a country of residence for a residential property acquisition in a country of origin; (iii) Savings products in a country of residence for other investments in a country of origin; (iv) Savings products in a country of origin for non-residents, especially house-down-payment savings schemes.
- Services for collective investments by migrant associations.
- Products for migrants' long-term financial investments – equities, bonds, loans, money-market products, and others.

<sup>173</sup> We do not address insurance products for remains repatriation, life or health and so forth because they do not require linked bank accounts and because they are specific products that deserve separate treatment. Currently, migrants are most likely to buy remains repatriation and a form of life insurance to help their families. The supply of such products grows constantly, offered by all banks and large MFIs in countries of origin. Comoros is one notable exception; its relative delay in this area may be a result of the importance of Comorian migrants supporting collective village-oriented entities in addition to supporting relatives, coupled with a narrow market.

<sup>174</sup> See *Migration and Remittances Household Surveys Sub-Saharan Africa: Methodologies, Aspects and Main Findings*, by Sonia Plaza, Mario Navarretti and Dilip Ratha, World Bank (March 2011); see also *Migrant Remittances, a Development Challenge*, by the African Development Bank (AfDB) (January 2008); and *Migrant Workers and Remittances*, by IFAD (2007). *Que disent ces études*, by EM. Mouhoud, L.Miotti and J.Oudinet (Université Paris 13).

## V.1 PRODUCTS AND SERVICES TO IMPROVE MONEY TRANSFERS

### TECHNOLOGICAL INNOVATIONS FOR MONEY TRANSFERS

#### MOBILE PHONES

**306** Branchless banking multiplies the number of money-transfer service points through networks of retailers, and it does this more quickly and easily than what can be done via traditional bricks-and-mortar bank branches. A first solution for a branchless-banking payment system uses mobile-phone devices and mobile-network (or other) operators. In this report, “mobile banking” and/or mobile money, mobile payment, mobile transfer and mobile wallet refer to local and/or international payment services usually (but not always) operated under prudential financial regulation and performed from or via a mobile phone. Mobile-banking solutions basically work as follows:

- A customer goes to a retail outlet – often a vendor of rechargeable phone cards or SIM cards – that registers the customer’s contact information (name, telephone number) in a computer system (usually that of a mobile network operator).
- This adds one or more banking functionalities – such as storing, sending and receiving money – to the customer’s mobile phone.
- To store money, the customer can credit funds to a “mobile wallet” in his or her mobile phone; this functionality uses the same system as pre-paid mobile-airtime cards.
- The customer can send money to another person’s mobile phone if the latter is registered on the computer system, just as a customer might send another person mobile-airtime credits.
- To convert mobile-account funds into cash, the customer can either go to a central-bank-authorized retailer for a cash-out transaction, or send funds to another person’s phone to exchange for cash.

- To the extent that making payments and storing funds via the computer system is similar to taking deposits from the public, most often a financial institution provides legal and regulatory cover for the transaction. The mobile (or other) network operator’s banking partner may be a bank, an electronic money institution or a payment institution; the latter may be a subsidiary of the network operator.

**307** This type of domestic mobile-banking solution could be used for international remittances that do not require handling cash in the sending country; this remittance method would reduce costs and save migrants’ and recipients’ time. A proposed solution would directly debit the funds to be sent from a migrant’s bank account in Europe and transfer them to a recipient’s mobile phone in the migrant’s country of origin. The recipient may: (i) decide to keep the funds stored in his or her phone; (ii) convert the funds to cash via an authorized agent; or (iii) use the funds to make purchases via his or her mobile phone from merchants equipped with a mobile-banking terminal.

**308** This payment method would allow even faster money transfers than via current means because the migrant would not have to go to a money-transfer company (MTC) or bank outlet. This solution could operate wherever there is mobile-phone coverage, 24 hours per day and seven days per week, at a marginal cost once the initial technology investment and customer-education expenses are amortized.

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## CURRENT MOBILE-TRANSFER OFFERINGS

**3 0 9** Franc Zone countries see an increasing use of mobile phones as an alternative transfer and payment means. Mobile-network operators have recently introduced mobile-payment and money-transfer services in Senegal (operated by Orange) and in Cameroon (operated by MTN and Orange); they also plan to launch such services in Comoros. These mobile-banking services remain restricted to domestic use; they are usually based on partnerships between a mobile network operator and a bank or a microfinance institution (MFI): Société Générale de Banques au Sénégal (SGBS) or Crédit Mutuel du Sénégal (CMS) in Senegal; Afriland First Bank, Banque Internationale du Cameroun pour l'Épargne et le Crédit (BICEC) and Express Union in Cameroon.

**3 1 0** Kenya has been a pioneer in this area since the launch of the M-Pesa mobile-banking service in March 2007; more than 90 percent of Kenyan mobile-phone users use M-Pesa for savings, payments and money transfers. Mobile payments to countries are becoming more widespread; they are also available in Tanzania and Madagascar, for example. International mobile-transfer services exist between Britain and Kenya. Western Union offers mobile transfers to Kenya<sup>175</sup> from agents in 45 countries. The potential for using ICT for mobile-banking services, including money transfers from developed to developing countries, looks promising, even though there are very few mobile corridors open as yet, and Internet-based money transfers struggle to gain traction.

**3 1 1** A banking agent in Belgium has opened mobile-payment corridors to Morocco, Kenya and the Philippines. The Belgium-Morocco corridor does not seem to work yet for lack of customers, or perhaps because of a lack of advertising, unsuitable pricing and/or the need to first credit a stored-value device (e-wallet) in Belgium, which strips any comparative advantage from the service.

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<sup>175</sup> Western Union also offers mobile transfers to the Philippines, Malaysia and Canada.

**3 1 2** Extending mobile-transfer services to regional money transfers in the Franc Zone and internationally would undoubtedly lead to more remittance recipients opening bank accounts; it would also significantly reduce money-transfer costs<sup>176</sup> and informal-channel flows.<sup>177</sup>

**3 1 3** To achieve this, product designers would have to study mobile-network and bank-transfer software compatibility, factor in an automated clearinghouse and ensure compliance with anti-money-laundering (AML) procedures.<sup>178</sup> One solution to these concerns may lie in setting up a common platform for mobile network operators for use by multiple banks and banking agents.

**3 1 4** Such a platform could be used to boost the use of linked bank accounts in remittance-receiving countries, especially if resulting transfer costs were lower or nil for bank-account holders in their country of residence.

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## RECHARGEABLE PREPAID CARDS

**3 1 5** Another solution for a branchless-banking payment system uses rechargeable prepaid cards. These are similar to bank debit cards; a bank-account holder can purchase one issued by his or her bank, and give it to a user who is not required to have a bank account. Each prepaid card is equipped with a chip that recognizes an access code and provides information about the amount of available money stored on the card.<sup>179</sup>

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<sup>176</sup> Infrastructure for this service exists and is used by mobile network operators to transmit email; the extra operating cost is marginal. For Safaricom Kenya, the cost per transfer is less than €0.30, up to six times less than other transfer modes. Several mobile network operators in Kenya have asked the central bank to help create a clearing house so it would cost less to send transfers via more than one operator; currently, transfers are sent via SMS text messages.

<sup>177</sup> Kenya, where the use of mobile transfers and other bank transactions is highly developed, provides an excellent example of this effect.

<sup>178</sup> We stress that MTCs, even the majors, apply know-your-customer (KYC) procedures required by AML laws with great leeway. Anti-money laundering issues are even more pressing with mobile phones, particularly for payments in some countries where not everyone possesses identification documents and/or where such documents are easily forged.

<sup>179</sup> MasterCard offers customers the ability to use ATMs to transfer cash from one card to another; this assumes that the money sender and the recipient each have a bank account. Transfers take two business days to complete, and the issuing bank determines the transaction cost.

The prepaid-card user can make withdrawals from automatic teller machines (ATMs) or pay merchants equipped with dedicated terminals for goods or services. Prepaid card solutions basically work as follows:

- A migrant goes to his or her bank in the country of residence and purchases a prepaid card. The bank issues the prepaid card to the migrant's choice of card user in a country of origin, via a subsidiary or correspondent bank in that country.
- The card owner can use the money stored on the prepaid card for cash withdrawals or electronic payments, up to and including the value stored in the card.
- The migrant bank-account holder can recharge the prepaid card remotely, from his or her country of residence, by requesting a simple transfer of funds from his or her bank account to the prepaid card, via Internet or through instructions to his or her bank branch.

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## CURRENT PREPAID-CARD OFFERINGS

**3.1.6** Many banks offer their customers the possibility of giving remotely rechargeable smart-chip prepaid cards to whomever they wish in a country of origin.

**3.1.7** These prepaid cards are available from all banks in Morocco, from BIAT in Tunisia, and from Afriland First Bank and Société Générale de Banques au Cameroun (SGBC) in Cameroon. The BFC and the postal bank are in the process of launching the product in Comoros.

**3.1.8** In April 2011, France's postal bank, La Poste, partnered with Western Union to offer customers a related prepaid card; in addition to making payments and cash withdrawals, it can transfer money through Western Union's worldwide network.

**3.1.9** Many banks in countries of origin consider rechargeable prepaid cards a flexible alternative to other forms of money transfers, allowing card-issuing banks to reduce the cost of money transfers. However, rechargeable prepaid cards have had little commercial success so far.

**3.2.0** The limited interest of customers in such cards may result from pressure brought on account holders in France. They may feel socially obligated to replenish the card whenever its stored value runs out. Also, the card user must have a certain level of education and familiarity with banks to be able to use ATM machines for cash withdrawals. In many countries of origin, and especially in rural areas and city outskirts, culture dictates that banks remain reserved for middle- to higher-income groups.<sup>180</sup>

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## LEGAL ISSUES

**3.2.1** New, innovative players using ICT for money transfers would benefit from having the following elements available:

- Electronic money institution and/or payment institution;
- Electronic money (e-money) and/or payment account;
- Banking agents and other electronic-money distribution agents and/or payment services.

**3.2.2** Finally, the importance of appropriate national legal and institutional frameworks for electronic commerce and data protection is worth noting.

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<sup>180</sup> Cameroon's Afriland First Bank seems to have had success with rechargeable prepaid cards.



## IMPROVING “TRADITIONAL” MONEY TRANSFERS

3 2 3 Improvements to traditional money transfers aim to better meet migrants’ obligations and recipients’ expectations. Two types of transfers may be made:

- **Cash transfers to a relay account, where part of the funds is sent to a savings account and used for partial cash-out payment.** This solution meets the needs of migrants who want to improve remittance scheduling management, including for emergencies. Such services must allow the migrant bank-account holder to gradually build up his or her personal savings. Such savings may come in handy for later uses, such as for a trip to the country, or for a substantial investment, such as in residential property, migrants’ number one choice.

Implementation involves the migrant opening a personal account in his or her country of origin. At present, this requires that the migrant be physically present for account opening process and that the service provider has at least one counter for transfer operations to complete account-opening formalities.

The Banque d’Escompte (BDE) in France makes money transfers one of its core businesses. It has set up ATMs that can make cash-to-account rapid transfers; it offers this service to the Comorian diaspora through the Comoros Development Bank (or BDC<sup>181</sup>), to the Cameroonian diaspora through Express Union, and to the Senegalese diaspora through Banque de l’Habitat du Sénégal (BHS).

Moroccan and Tunisian banks have offered this service to their customers for many years; however, customer interest remains low because of costs and administrative delays.

All financial intermediaries in the Franc Zone involved in payouts seem to want to develop this solution to strengthen their position in this market segment.

In the face of rising competition, two Senegalese MFIs have started offering such options in the past few months instead of overseeing transfer operations, thus showing their better understanding of migrant needs; they aim to build customer loyalty, allowing a migrant to open a current or savings account alongside his or her usual “remittance-relay account,” which is used solely to receive and cash-out transfers. PAMECAS promotes cash-to-savings-plus-some-cash-out services to customers residing in Italy, in partnership with Money Express. According to PAMECAS, the service is successful because it ensures complete confidentiality regarding a migrant’s assets in the country of origin. It also allows the account holder to manage exceptional requests from his or her usual beneficiaries while building up savings for future projects or in-country trip expenses.

In all these countries, cash-to-savings-plus-some-cash-out transfers remain limited because of remittance recipients’ lack of interest; it takes a relatively long time to receive transferred funds, from 48 hours to 3-4 days.

However, observers expect transfers to grow rapidly elsewhere, such as in Comoros where the service can benefit remitters. Comorian migrants, as well as their descendants, are expected to regularly contribute to the coffers of their local village association, to finance “Great Weddings” or collective expenses not met by the government.

181 Banque de Développement des Comores (BDC).

- **Direct-debit orders for international cash-out:** Migrants with bank accounts in their country of residence<sup>182</sup> can set up a direct-debit order on their bank account for a cash-out payment made to a recipient in a country of origin via a partner remittance service provider in the Franc Zone or in the Maghreb countries.

In the Franc Zone, the banks concerned do not accept this solution because they consider it uncompetitive compared to transfers via MTCs in terms of time and cost. However, BDE provides this service to its customers, and considers it promising.

Moroccan banks offer this service to their customers, without great success, probably because MTCs offer cheaper and faster money transfers. In general, customer uptake for direct-debit orders for international cash-outs has proven poor because of the expense and constraints; recipients must go to a predetermined bank branch to cash-out the transfer. Innovations springing from mobile-banking systems could help boost this kind of service. For example, the Banque Centrale Populaire (BCP) in Morocco offers a 48-hour money transfer from the French postal bank via an interbank payment order, costing only 3 Euros. The BDE also partners with several African banks to provide this service.

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## LEGAL ISSUES

- **3 2 4** essential challenge to developing these products lies in:
  - Developing quality networks of bank and MFI branches that operate as banking agents (see developments related to the suitability of MFI regulation and supervision);
  - Increasing competition (exclusivity law and agreements' terms and practices).

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<sup>182</sup> The debit transaction cannot yet originate in developing countries.

## V.2 PRODUCTS AND SERVICES FOR TRADITIONAL LINKED BANK ACCOUNTS

### CURRENT LINKED-ACCOUNT OFFERINGS

**3 2 5** Classic linked-bank-account products and services seek to enable remittance senders to carry out all banking and financial transactions in their country of origin from their country of residence, similar to remote banking. To do this, the customer must set up two bank accounts, one with a bank in the country where he or she works and/or resides, and a second, with a bank in his or her country of origin.

**3 2 6** Thus, migrant customers can access electronic-banking, savings and investment products available to residents, enjoying each country's domestic costs, interest rates and borrowing conditions. Among the range of products (debit cards, current accounts, savings accounts, mortgages, consumer credit, commercial loans, etc.) – the mortgage facility remains in high demand by most migrants.

**3 2 7** Currently, linked-account products and services aim to facilitate the remote management of accounts and assets in the country of origin; ultimately, they speed up planning and carrying out investment projects, mainly residential property investments.

**3 2 8** Linked bank accounts begin when the migrant remotely opens a bank account, either a savings or a current account, in his or her country of origin.

**3 2 9** Setting-up and accessing bank accounts and other products in the non-resident country of origin may occur in one of three following cases:

- Firstly, the two banks where the accounts are domiciled – one in the country of residence and the other in the country of origin – belong to the same banking group, for example, Attijariwafa Bank, with its subsidiaries in France and in several Franc Zone countries.
- Secondly, the two banks where the accounts are domiciled enter into a bilateral partnership, as is the case, for example, between the BCP in Morocco and BRED Banque Populaire in France; Express Union Finance<sup>183</sup> in Cameroon, BHS in Senegal and BDC in Comoros, with BDE in France.
- Thirdly, the bank in the country of origin opens a representative or branch office in the country of residence. For instance, the Comoros postal bank opened representative offices with partners in France; BHS Senegal has opened a branch office in the United States; and Société Tunisienne de Banque (STB) from Tunisia has opened one in France.

**3 3 0** These three arrangements assume that each financial institution complies with banking laws and financial regulations regarding setting up and administering a bank – in particular, the right to operate, anti-money-laundering legislation, and regulatory controls on marketing and soliciting. The European Directive on payment institutions paves the way for expanding the third arrangement to create a payment institution's subsidiary. However, assuming a European "passport" may be obtained, the cost of establishing and managing a new subsidiary can be high, making this option less profitable than a joint venture. The latter provides existing infrastructure and branches, and allows for cost- and profit-sharing between the partners. However, according to interviewees at several Franc Zone financial institutions, partners tend to impose relatively drastic remuneration conditions, leaving the

other partner with small sales commissions. Both partners agree to cut down these commissions in order to maintain competitiveness with money-transfer companies.

**3 3 1** However, this raises a question about the account's status in the country of origin: Is it a resident or non-resident account? Legislation in a number of countries, such as Senegal, imposes curbs on non-resident nationals opening non-resident accounts; this leads to problems when migrants want to access their money in times of need.<sup>184</sup> Cameroonian migrants can open non-resident accounts in Cameroon. Comoros's Exim Bank has received authorization to open non-resident accounts, but each new account must receive prior approval from the central bank, sharply limiting the number opened. Yet Exim Bank says it aims to lay the foundation for a range of financial products for the Comorian diaspora, especially in France. BIAT in Tunisia and Moroccan banks offer non-resident account opening possibilities to their nationals living abroad.

## EFFECTIVE IMPLEMENTATION IN THE COUNTRIES STUDIED

### OPENING A BANK ACCOUNT REMOTELY

**3 3 2** Offers to remotely open a bank account in Senegal are relatively recent; Attijariwafa Bank Group offers such an option. Attijariwafa Bank will probably extend the offer to Cameroon. Although they have the capacity to do so, other banking groups do not offer the service – not even the Société Générale despite having a dedicated branch in Paris. Some large Senegalese MFIs entrust remote account-opening procedures to partner money-transfer companies in Italy; the MFIs plan to do the same in Spain. non-resident account applications are submitted during a money-transfer transaction in the country

<sup>183</sup> Express Union Finance is the MFI arm of the original Express Union money-transfer company.

<sup>184</sup> The problem arose for Senegalese migrants during the last financial and economic crises, in 2008-09.

of residence and formally concluded when the migrant next visits his or her country of origin. In the interim, the account is activated when the application is sent to and approved by the MFI's headquarters. In Comoros, the postal bank<sup>185</sup> and Exim Bank plan to offer remote non-resident account-opening services soon, through their partner and bilateral cooperative oversight agreement on money transfers. Two French banking groups, Banque d'Escompte (BED) and the BRED Banque Populaire, provide remote non-resident account-opening services for accounts in North African and several Franc Zone countries.

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## CURRENT BANK PRODUCT OFFERINGS

3 3 3 In Senegal, BHS offers a home-savings-scheme account to nationals living abroad, in partnership with residential property developers. The SGBS offers mortgages and personal loans – for example, to cover furnishings – as well as various types of savings and investment accounts. In Tunisia and Morocco, banks have offered effective linked bank accounts and these types of services; however for a long time customer uptake of products other than mortgages remains limited.<sup>186</sup> In Morocco, the product offer tends toward diversification. Banks have recently introduced house-down-payment savings schemes and share-buying schemes similar to those offered in France; the down-payment schemes feature accounts where the migrant invests a minimum amount over a set period with a pre-determined interest rate and periodic additional payments. At the end of the scheme's contract term, the account holder can use the saved funds as down payment to buy a residential property, and take out a new mortgage loan at a guaranteed, predetermined interest rate.

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<sup>185</sup> The difficulties faced by the Comoros Post Office may postpone implementation of this service.

<sup>186</sup> Recent studies confirm the primacy of the real estate investment; see *Que disent ces études*, by E.M. Mouhoud, L. Miotti and J. Oudinet (Université Paris 13).

3 3 4 In all the countries, the trend is to offer nationals residing abroad products available locally under the same prices and conditions, whether traditional savings and loan products, or more recently introduced services such as advice or low-cost remote account management.

3 3 5 Transfers are made to accounts domiciled and managed in the country of origin; the banks and MFIs in the country of origin assume responsibility for monitoring them and their risk. Banking group transfers, such as those of Attijariwafa Bank, may be subject to contractual provisions relating to the regularity of payments and therefore, of transfers. Nonetheless, risks remain the sole responsibility of banks in the country of origin; they are somewhat reluctant to tap into this market segment. Attijariwafa Bank Group appears the most dynamic. Moroccan banks have shown that the risk of loan losses remains slight, since the amounts borrowed compared to deposited remain low – too small to have a significant impact on a bank's assets.

3 3 6 Except in Morocco, traditional linked-account products that use bank accounts in countries of residence as simple transfer remittance-relay accounts seem to garner limited interest in all of the countries we studied. There are several reasons for this:

- Migrants consider the loan interest rates for real property investments<sup>187</sup> too high compared with prevailing European rates, particularly those in France. For example, Cameroonians living abroad prefer to borrow for short-terms in their country of residence, financing their projects in Cameroon in stages; they are certainly not the only migrants doing so. The number of uncompleted buildings that belong to Comoros migrants living in France and buildings at different stages of works are proof of this state of affairs.

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<sup>187</sup> Banks in migrants' countries of origin offer consumer loans, property loans, home mortgages and emergency loans, but do not lend for business start-ups.

- On the other hand, it is not easy for a migrant to monitor a building project from a distance; using a family member or friend to do the work often leads to stress, delay and defects in construction, and misuse of funds that are hard to replace. To address this issue, PAMECAS in Senegal offers a homebuilding-loan package that includes technical supervision of customers' projects. However, this loan package offering is too new to fully assess its impact.
- The third factor is the perception of traditional recipients; a sustained and continuous investment means an availability of funds. This most often results in increasing demands from beneficiaries.
- In addition, the role and pressure of migrant associations for many in their country of residence. These associations traditionally collect funds to address community needs and social requests in their countries of origin. They also play a role of "wholesale agent" by collecting individual remittances before making transfers through MTCs to reduce each individual migrant's transfer costs; individual transfers rarely exceed €200 per month and cost 10 to 15 percent of the total. In general, bulk money transfers cost less.<sup>188</sup>

**3.3.7** In spite of the importance of these products, they generally do not make it possible for a migrant to take out a loan in his or her country of residence to invest in a project in the country of origin. This further limits the scope for savings and investment.

<sup>188</sup>Cost depends on transfer speed (from less than one hour, up to three days) and the transfer mode – debit (or prepaid)-card-to-cash, cash-to-cash, and account-to-cash, and so on. Generally, the higher the sum transferred and the longer it takes, the lower the cost.

**3.3.8** In Morocco, the relative success of linked bank accounts has historical antecedents: Moroccan banks have long been established in migrants' host countries, and Moroccan migrants residing abroad were practically obliged to use Moroccan banks to make remittances. Also, the Moroccan government has tried to promote more productive investments than residential property to the Moroccan diaspora, offering substantial subsidies and very advantageous lending conditions: a non-refundable 10-percent deposit, bank financing for up to 65 percent of a project's cost, up to 15-year loan terms and three-year grace period for repayments. However, customer uptake for these loan products has been poor and far below expectations.

**3.3.9** The limited success of traditional linked accounts and their potential for further development in current economic and social conditions call for proposals for alternative forms of linked bank accounts: products aligned with "inclusive development" goals.

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## LEGAL ISSUES

**3.4.0** Legally secure linked-bank-account implementations must address two issues:

- The ability of financial institutions in countries of origin to open accounts remotely in compliance with anti-money-laundering/know-your-customer (AML-KYC requirements, the migrant's domicile in the country), depending on the country concerned; this generally poses no problem in the countries covered by this study;
- The limits of the banks' monopoly and notions of soliciting or marketing in Europe.

## V.3 INCLUSIVE LINKED BANK ACCOUNTS

**3 4 1** The new concept of “inclusive” linked bank accounts is based on the principle of mobilizing migrants’ funds for injection in their countries of origin according to practices that provide maximum guarantees to depositors, and more social empowerment. A migrant’s primary concern is to be able to access credit securely and sustainably so he or she can think about saving even more. For the migrant savers, inclusive linked bank accounts would work alongside traditional linked bank accounts, providing more safety for migrants’ deposits, greater flexibility in how the funds may be used, more social empowerment in the migrants’ communities of origin. Policymakers, decision-makers and remittance service providers on both ends of a corridor must be willing to work together to implement inclusive linked bank accounts, sharing a common approach. The primary concern of migrants is to have access to credit in secure and sustainable conditions that would encourage higher savings.

## LOAN ACCOUNTS

**3 4 2** Loan products seek to meet migrants’ financing needs for a specific project. Given that a migrant will need a loan in the future, banks propose that the migrant invest in an insurance product that could eventually be used as guarantee.<sup>189</sup>

189 Afriland First Bank Cameroon successfully introduced this type of loan product, supported by an insurance product, “As Millennium.”

## HOUSING LOANS

**3 4 3** No matter how migrants save money in their country of residence, they show strong demand for mortgages to finance residential property purchases in their country of origin. Once most first-generation migrants reach age 35, their remittances go toward acquiring residential property after paying for food, health and education expenses; the next generation – the migrants’ offspring – choose real property as their prime target for remittances.<sup>190</sup> We note that migrants’ behavior hardly differs in their countries of residence; in France, for example, housing makes up 73 percent of all individuals’ financial and non-financial assets, a percentage that rises continuously.<sup>191</sup>

**3 4 4** A bank in the migrant’s country of residence could provide a mortgage loan, such as one normally offered to clients. The sole difference is that this loan would be meant for a property acquisition in a migrant’s country of origin. The bank in the country of residence would partner with a bank in the country of origin, which would act as the lead bank’s local agent, assisting in reviewing the loan application through loan acceptance or denial. The local bank would also act as the lead bank’s agent in case of default or a need for repossession.

**3 4 5** In general, mortgage interest rates in the country of residence are lower than those in the country of origin, making such an arrangement a win-win situation for all parties – both the bank and the borrower

190 See *Migrant Remittances, a Development Challenge*. African Development Bank (AfDB), 2008.

191 Source: “Épargne et patrimoine des ménages: données macroéconomique et données d’enquête.” INSEE: Paris.

**3.4.6** The primary interest in this type of lending is to enable the migrant to have an account in a financial institution in the country where he or she resides and receives regular paychecks; the bank would understand the migrant's borrowing capacity better and can help plan financing for his or her project. Most migrants' building projects are self-financed and can often go on for 10 years or more; in such cases, they have a smaller impact and ratchet effects on local economies in countries of origin. These mortgage loans' second advantage could be seen in the way they help develop relationships between banks in both countries; these relationships may lead to the development of other products or of riskier loans, such as lending to companies. The third advantage would be the way they help reduce the use of informal remittances. In many cases, a large share of migrants' resources now goes through informal channels; for social reasons, the money does not go through family members out of fear the funds will be used for other purposes.

**3.4.7** This type of product may be packaged as part of a residential property development financed by a country-of-residence bank, or apply to individual home purchases or new home construction. Such residential property developments may be part of broader infrastructure projects in countries of origin, such as urban. Banks in countries of origin may introduce banks in countries of residence to these kinds of large or small financing opportunities. For example, a bank has prepared background files those who want to finance residential property purchases in Morocco; it introduces these to its partner-bank, the Banque Populaire Group (BPC) in Morocco, who then pays a commission for the new mortgage business.

**3.4.8** This type of product could be interesting for all of the countries studied here. In Cameroon, for example, there is a demand for residential property in urban areas, but potential investors from the do not borrow from local banks because of exorbitant interest rates much higher than those in their country of residence.

**3.4.9** When developing these products, financial partners should ask the following questions:

- What loan guarantee and repossession mechanisms will be set up in the country of origin in case of default, and how will they be implemented?
- How can the project's technical compliance be monitored during construction?<sup>192</sup>
- How can overall building and project completion be monitored?
- How much will it cost<sup>193</sup> to set up a profitable loan that covers country risk and other risks at an attractive price?
- How can significant local-market distortions be avoided in countries with high emigration rates, particularly with regard to the interest rate differential between Europe and Africa?

**3.5.0** Partnerships with specialized agencies, such as the European Guaranty and Bond Company (or CEGC<sup>194</sup>), may be useful to consider. The setting up of similar entities will be an additional asset, and bilateral and multilateral development finance institutions could use them to leverage the promotion of the development of markets and financial-systems in countries of origin.

**3.5.1** For inclusive development, the main advantage of this type of product is that it could help develop a foundational sector for local economies likely to encourage the creation of many building- and housing-related trades as well as small and medium-sized companies. Individual migrant's needs may be met through property-development programmes for single homes and/or apartments.<sup>195</sup>

.....  
 192 Changes to plans occur during construction, and may impact costs, completion dates and the migrant's mortgage repayment capacity.

193 To keep costs low, guarantee costs must be kept low, interest rates attractive and insurances competitively priced.

194 *Compagnie Européenne de Garanties et Cautions* (CEGC).

195 A similar, commercial loan could be used for industrial properties having strong positive externalities for the country of origin.

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## SMALL-BUSINESS LOAN ACCOUNTS

**3 5 2** We note that migrant investments in goods or services companies remain small – a tiny fraction of money transfers. Such investments interest only a few – usually first-generation migrants’ descendants from upper socioeconomic groups and professional classes. Investments in business start-ups also remain marginal, and mostly for projects based on the migrant’s partial or sometimes permanent return. In general, they cater to a need to find long-lasting solutions to money transfers. In most cases, such investments are self-financed and rarely use either incentives for foreign direct investment or specially designed incentives offered by origin-country governments.

**3 5 3** The banks show little interest in this market segment; almost none offer small-business loans. Banks see such loans as low-volume products, since the vast majority of migrants are not any more entrepreneurial than the rest of the population.<sup>196</sup> In addition, remote entrepreneurship is difficult, particularly in countries that migrants left 10 or 15 years earlier. Nor have banks seen many success stories;<sup>197</sup> in general, investments are low-value, small- or very-small businesses with high failure rates, making small-business loans very risky. Business coaching and mentoring would be as indispensable as financial incentives, prerequisites for reducing the risk of default. Setting up inclusive linked-account small-business loans must include access to business incubators to help the migrant borrower-in-

vestor; these must straddle two countries – the country of residence during the project-planning phase and the country of origin for its execution. However, such structures are usually lacking or insufficient in countries of origin, or when they do exist, are incapable of meeting local needs.

**3 5 4** Business loans could be structured along the same lines as non-resident migrant mortgage loans. A bank in the migrant’s country of residence is ready to provide a loan 12 months at minimum,<sup>198</sup> based on the borrower’s business and financial plans; these would be reviewed by a recognized expert in the country of origin. The loan would be funded and monitored in partnership with a country-of-origin bank; the latter would oversee the business project’s start-up and operations, assisted by local business-mentoring organizations,<sup>199</sup> if needed.

**3 5 5** The small-business loan terms must be sufficiently attractive to the migrant, involving commitments from public authorities in both countries to support the migrant entrepreneurs with incentives, (such as market interest rates,<sup>200</sup> graduated payments, grace periods, property tax abatements, partial or total duty and income-tax exemptions for the business’s early years). The authorities allow the entrepreneur to maintain his or her residency status until the business is up and running. This is an important psychological element to reassure the entrepreneur during the first year, when his or her physical presence is required in the country of origin, and when it may also be necessary to return to the country of residence to consult with bankers and other support organizations.

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196 Moroccan banks in the E.U. provide the best example since they promote property to Moroccans living abroad. They do not offer small-business loan products to create or support productive investment; only the government does.

197 The few success stories mentioned in the countries often hide a large number of failures that are rarely identified because they result from self-financed projects. A recent estimate found that business investment projects represent less than 5 percent of Moroccan remittances, and such projects’ two-year failure rate exceeds 30 percent. (Source: A. Alaoui presentation at April 4, 2011 seminar organized by the Conseil de la Communauté Marocaine à l’Etranger (or CCME, Moroccan Foreign Community Council) on the topic of: “Financial Transfers from the Moroccan Community Residing Abroad: What Contribution to Morocco’s Development?”

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198 The minimum time needed to complete business and other plans.

199 Such as business incubators, professional associations, small-business development agencies, banks and others.

200 The loan interest rate is an important element for this mechanism; earned interest is tax exempt. Inclusive linked bank accounts could play an important role, justifying and determining lower rates that those normally available in the countries of origin. Small-business loan interest rates in most African countries exceed 15 percent per year; this makes such investments’ viability uncertain, unless the entrepreneur focuses on the short-term and on highly profitable activities, such as importing low-end consumer products.



**3 5 6** The small-business loan would involve mainly entrepreneurs who would like to return to their countries of origin part- or full-time, with better opportunities and faster or higher returns on investment. Such opportunities may be found in traditional sectors, such as light industry, trade and tourism, and emerging sectors based on technology, communications, e-commerce or importing.

**3 5 7** In developing this type of product, financial partners should ask the following questions:

- How can partnerships between banks and business promoters in the country of residence be developed?
- How can the business start-up be monitored and supported?
- What loan guarantee and repossession mechanisms will be set up in the country of origin in case the business fails and the borrower defaults?
- What incentives and financing arrangements are needed?
- How can partnerships be set up between the supervisory structures in both countries?

**3 5 8** It is helpful to distinguish between two types of small-business projects: those aiming to create small and very small businesses, and those aiming to create medium-sized companies. The chance of survival and success of larger companies is much greater, and their monitoring and start-up are much simpler because both the entrepreneur and his or her bankers have a relatively high level of business expertise; the entrepreneur must also put up a higher level of initial capital. Banks should give these larger small-business investment projects more attention than smaller ones.

**3 5 9** Several countries with many emigrants have offered incentives to attract investments from their diasporas. However, they have met with very little success despite offering some relatively<sup>201</sup> attractive conditions. A programme recently launched in Morocco is an illustration; the government created a specific migrant-investment attraction mechanism with the following characteristics:

- 25-percent capital contribution in foreign currency;
- Up to 10-percent subsidy from the Moroccan government;
- Up to 65-percent loan provided by the bank;
- 7- to 15-year loan terms;
- 2- to 3-year grace period;
- €100,000 minimum investment.

**3 6 0** This programme has not produced the expected results; there are various reasons for this – local governance problems, lack of local versions of national investment promotions,<sup>202</sup> and lack of advertising to Moroccans living abroad. The programme may have had a greater chance of success if it went by the approach advocated above that is, partnerships between banks and entrepreneurship-supporting organizations in both migrants' countries of residence and in Morocco.

**3 6 1** However, migrants' small-business investments remain marginal as a share of overall remittances; the current economic and financial situation may further diminish migrants' interest in business start-ups. As a rule, safer investments – such as real property – or more efficient ones, such as stocks and bonds, take prime position, depending on the migrant's socio-professional status, amount of savings and time spent overseas.

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<sup>201</sup> The interest-rate differential (lower loan rates in the E.U.) issue remains open.

<sup>202</sup> Source: A. Alaoui presentation at April 4, 2011 seminar organized by the Conseil de la Communauté Marocaine à l'Étranger (or CCME, Moroccan Foreign Community Council) on the topic of: "Financial Transfers From the Moroccan Community Residing Abroad: What Contribution to Morocco's Development?"

**3.6.2** While based on the importance of inclusive linked bank accounts, promoting investments in assets other than real property would call for an integrated approach that goes beyond banks. An African Development Bank (AfDB) study highlights the elements of such promotions; that study provided the basis for this proposal in the appendix.<sup>203</sup>

**3.6.3** The idea of creating a dedicated private-equity fund to support business projects – financed by banks in countries of origin and residence with support from bilateral and multilateral development finance institutions – must also be considered and treated alongside other financial products.

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## COLLECTIVE INVESTMENT LOAN ACCOUNTS

**3.6.4** The migrant's desire to address the needs of his or her village community in a country of origin – infrastructure and social needs that the national government only partially satisfies, if at all – serves as the cornerstone of migrant associations' tontines and contributions to village coffers. Migrants contribute funds to their villages, paying for rural roads, school classes, teachers and scholarships for college students; they also help build and maintain primary health care clinics, and underwrite patient care. Their contributions also build markets and multipurpose facilities for sports, meetings, weddings and other activities, and so forth.

**3.6.5** Some of these projects are financially viable, provided they are structured as a public-private partnership (PPP) or as a completely private-sector project. Examples include creating a transport company to connect an isolated locality to others, or building rural guesthouses to promote local tourism. Currently, the lack of technical-support organizations and willing lending institutions hinders their progress.

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<sup>203</sup> In Appendix, see "Support for the Establishment of Businesses." The Appendix was prepared based on observations, conclusions, recommendations and proposals in the AfDB report, *Migrant Remittances, a Development Challenge*. (2008)

**3.6.6** In France, a "cooperative society of collective interest" (or SCIC<sup>204</sup>) may be an interesting model to promote within migrant communities, especially since SCICs cover a variety of industries in many regions. A SCIC is formed as a corporation or limited liability company,<sup>205</sup> bringing together stakeholders from different backgrounds (volunteers, consumers, businesses, local-government authorities) to work on a single project. This is a commercial venture (a limited (Ltd) company). The SCIC concept could be adapted to promoting collective investments.

**3.6.7** A bank in the migrants' country of residence could partner with another bank in the country of origin to financing for the initiatives presented above:

- Open a bank savings account in the name of the migrants association in the migrants' country of residence, where regular deposits could be made;<sup>206</sup>
- Conduct a pre-feasibility study for the proposed project, financed by a development aid institution (such as the multilateral Migration and Development Fund located at the African Development);
- Pre-finance part of the project's business plan and the conditions for its implementation;
- Provide a loan backed by the association members' personal surety (joint liability) and the association's savings;
- A rebate and possible exemption from taxes for the first years of activity in the country of origin;
- Engage a bank in the country of origin to manage resources and disbursements during project execution or implementation, and to repossess collateral for non-payment, if required.

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<sup>204</sup> *Société coopérative d'intérêt collectif* (SCIC)

<sup>205</sup> SCICs were created in the wake of three French public initiatives dating back to 1997, the "New Services/Youth Jobs," an Alain Lipietz report on a new form of social enterprise, and "Regional Meetings of the Social Solidarity Economy."

<sup>206</sup> The regularity of deposits is an important element to ensure the collective is strong and well established.

**368** To do this, migrants should form a solidarity group (economic interest group or corporation), for implementing and managing the project in their country of origin, the dimensions of which are over and beyond their individual's capabilities as designed to meet a specific collective need.

**369** A collective investment loan should be used only with a financially viable project in the form of a PPP (e.g., to create a transport company, rural housing, local energy-generation plant or household waste-processing unit). Alternatively, it may take the form of a private-sector project, (a local water-treatment plant, hospital or health-care center, school or vocational training school). In the case of a private-sector project, the village's national or local government would need to contribute also, ensuring the sustainability and viability of the investment, based on the "take or pay" principle.<sup>207</sup>

**370** Even though projects may differ, members of the borrowing association would remain jointly liable for the loan's repayment. Depending on the nature of the project, they could receive a loan guarantee from a specialized agency that supports inclusive-development initiatives.<sup>208</sup> A project carried out in Senegal, and supported by PAISD provides an interesting example. It focused on creating a passenger-transport company to access isolated areas and provide the basis for their development. Linked-account collective loan products create opportunities for migrant associations to channel financial aid to their communities. Such loan products will appeal primarily to where attachment to the community of origin remains strong, such as Senegal, Mali and the Comoros. Other countries may be less interested, such as Cameroon; according to interviews with representatives from financial institutions, Cameroonians living in France (according to institutions interviewed) appear more inclined to invest in personal rather than collective projects.

<sup>207</sup> A provision written into a contract that states that one party has the obligation of either taking delivery of goods or paying a specified amount.

<sup>208</sup> Programme d'appui aux initiatives de solidarité pour le développement (PAISD).

We believe collective loans would certainly interest isolated areas in North Africa. In Comoros, such loans could help address the village-coffers issue, progressively imposing more rigorous management and more focus on using migrant remittances to finance useful investments rather than expenses for exclusively social and cultural functions.

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## LEGAL ISSUES

**371** Commercial development of collective loan products are related to the legal issues surrounding linked bank accounts and their eligibility constraints.<sup>209</sup>

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## COMMUNITY INVESTMENTS

**372** Mexico has launched a very successful programme called "Tres por Uno" or "Three for One" to encourage, assist and supervise the investments of Mexican migrants living in the United States and in Europe directed toward relevant Mexican community projects, (building health clinics). The programme is based on the principle that for every dollar contributed by migrants, both the Mexican government and local authorities contribute as much, thereby tripling the amounts likely to be invested. This programme rests on four essential elements: (1) Mexican village associations that are actively involved in local management,<sup>210</sup> (2) the government's good governance of the programme, (3) migrants' trust in Mexico's government, and (4) the availability of additional resources to supplement migrants' contributions. This type of investment could be the centerpiece and complement to the collective loans discussed above. Implementation requires partnerships between banks in the country of residence and country of origin, and with migrant associations, village associations and public authorities; nongovernmental organizations as well as bilateral and multilateral development finance institutions may also be involved.

<sup>209</sup> See Part IV.

<sup>210</sup> They must be able to help manage local investment programmes. In Mexico, village associations are well established.

A savings product proposed below, the Solidarity Savings Account, may serve as a framework for mobilizing collective funds for collective investments; accounts would be opened in the migrant association's name rather than an individual's, and members would pledge regular deposits over a specified minimum term.

## COLLECTIVE FORMS OF SUPPORT TO FINANCE PROJECTS

### PEER-TO-PEER LENDING

**373** “Peer-to-peer lending” has steadily grown over the years. The objective is to provide micro-entrepreneurs in country A resources from country B through an intermediary Internet site. Generally, the borrower is identified to the lender; the latter monitoring the former's performance. When the borrower's project is successful and he or she pays back the loan, the lender can either keep the money or put it back into another loan or into a fund to support another micro-entrepreneur. The best-known and largest peer-to-peer lending site is Kiva.com, sponsored by former U.S. President Bill Clinton. The peer-to-peer approach is based on the British concept of “business angels,” bridge the gap between rich people and young entrepreneurs who have difficulty accessing traditional bank financing.

**374** The French peer-to-peer lender, Babyloan, offers two products: zero-percent interest loans to MFIs in developing countries,<sup>211</sup> and loans to approved, microcredit associations in France (the Right to Economic Aid Association)<sup>212</sup> following the modification of article L 511-6 of the COMOFI by law in 2010.

<sup>211</sup> Although credit is fungible, it is “allocated” by the lender to a designated entrepreneur.

<sup>212</sup> Approvals mainly come through the *Association pour le Droit à l'Initiative Economique* (ADIE, or the Right to Economic Initiative Association) since the amendment of Article L 511-6 of COMOFI by law in 2010.

**375** Babyloan features direct and indirect development projects via MFIs in Tunisia, Morocco, the CFA Franc Zone; and through its subsidiary sites in Tunisia and in West Africa. The target borrower population includes recipients of remittances from France, given the locations of the loan-seeking projects.

**376** Although marginal today in terms of MFI-lending volumes worldwide, peer-to-peer lending could grow, provided that legal issues around it are addressed;<sup>213</sup> such a method may be a means of using potentially significant amounts of migrants' savings for solidarity lending in the medium term.

### PROMISSORY LOAN

**377** In France, an unsecured loan based on a borrower's simple promise to pay – a promissory loan – is a product that could inspire other products – for example, encouraging migrant associations to partner with banks, acting as guarantors for potential borrowers.

**378** Promissory loans fill a need when new entrepreneurs lack seed capital for micro-enterprises and other ventures; such loans help entrepreneurs get in a position to qualify for a bank loan. Promissory loans may have a low- or even zero-interest rate for a limited time; their initial amount usually varies between €3,000 and €15,000. In France, various organizations offer this type of assistance – France Initiative, France Active or the *Entrepreneurs Network*; teaming up with them would be useful. Their activity comes under a French Ministry of Labor, Employment and Health initiative<sup>214</sup> to create and transfer companies in partnership with the French *Caisse des Dépôts*.

<sup>213</sup> See thoughts on legal frameworks for peer-to-peer lending: Lhériaux, L. “La réglementation de la microfinance: entre réalisme et considérations sociales,” in *La Microfinance: du Microcrédit au Social Business*, (ed.) LexisNexisCommercial Law News Collection No. 28, 2010.

<sup>214</sup> *The Nouvel Accompagnement pour la Création et la Reprise d'Entreprise* (NACRE, or New Support for the Creation and Transfer of Companies).

**379** Currently, migrants residing abroad directly assist their relatives; the money sent also indirectly helps their villages of origin, creating jobs. Creating a system whereby migrants' associations would act as guarantors of promissory loans could draw out more funds, reinforcing efforts of remittance senders and improving their savings capacity through repayment mechanisms by the beneficiaries.

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## DIASPORA-ORIENTED PRIVATE EQUITY INVESTMENTS

**380** An American private equity fund dedicated to diasporas, Homestrings, works internationally to facilitate migrants' investments in projects in their communities of origin.<sup>215</sup> Homestrings selects projects that best meet the migrants' desires while guaranteeing a return on investment. It is open to investors who have a minimum net worth (including real property) of \$1 million and an annual income over the previous three years of at least \$250,000. Homestrings has some similarities with the initiatives mentioned above; it fills a funding gap, financing projects in migrants' countries of origin. It is different because, as a private equity fund, its priority centers on return on investment, thus the thresholds defined for access to these funds in terms of income and project size.

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<sup>215</sup> Homestrings' shareholders include Actis, Ecobank and Summit Development Group; the latter is a fund that invests in sub-Saharan financial institutions that lend to medium-sized, small and very small enterprises that do not have sufficient collateral for traditional bank loans. See [www.homestrings.com](http://www.homestrings.com).

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## LEGAL ISSUES

**381** Many important regulatory issues must be resolved.<sup>216</sup> They concern varied financial concepts and regulations.

**382** For example, it would be necessary to modify France's amended COMOFI Article L 511-6 of 2010,<sup>217</sup> an initial although incomplete regulation for this type of product. It would be useful to carry out in-depth thinking on these products at the global level, within clear, ethically and financially regulated frameworks acceptable to financial authorities in countries of residence and origin; we recommend focusing in particular on establishing procedural rules and informing lenders of their rights and risks.

## SOLIDARITY SAVINGS ACCOUNT

**383** A prudentially regulated "solidarity savings account" would be based on a passbook savings account paying compound interest at favorable rates similar to other passbook savings accounts<sup>218</sup> in France. Once the account value reaches a certain level, the account holder may use these resources for private projects. In the meantime, it helps to finance development projects in migrants' countries of origin: roads, slum upgrades, and health care or education services. It could be used as support to collective investment programmes in migrants' areas of origin.

.....  
<sup>216</sup> Namely, issues related to: securitization, initial public offerings, taking deposits; money transfers, foreign exchange, banking and financial solicitation by non-E.U.-authorized financial institutions and so forth.

<sup>217</sup> Article L511-6, 5, Section 2 now includes the following: "These associations and foundations are not allowed to make capital offerings to the public. They can finance their activities with resources borrowed from credit institutions and institutions or services mentioned in Article L. 518-1 as well as with resources from individuals, duly informed of the risks. Loans from individuals do not earn interest and may not be for less than two years."

<sup>218</sup> *Livret d'épargne*. As part of France's legacy of state-owned banks, the public's savings-account holding may be "directed" to specific bank loans, such as for community development projects.

**3.8.4** Banks in migrants' countries of residence would market these solidarity savings accounts, helping migrants save for future expenses or investments. Equally, these resources could be made available for the financing of co-development projects for local development or for the promotion of a sector with high levels of outsourcing (road infrastructure, renewable energy projects) in the country of origin. This account could be provisioned through fixed periodical payments or by way of punctual payments matched with a minimum guarantee interest rate.

**3.8.5** Tax deferrals or other fiscal advantages could apply to interest income on the savings. Once the account value reaches a certain amount (interest and principal) after a specified term, the account holder would be entitled to take out a bank loan for his or her own project in either country – origin or residence.

**3.8.6** It may be possible to come up with an incentive to guide the migrant's funds toward a priority country of origin or sector, in consultation with the authorities in the country, such as a direct cash contribution or tax exemption for a certain time period.

**3.8.7** Unlike the “co-development savings account” launched in 2006,<sup>219</sup> and following the example of French passbook savings accounts, the account would have no early withdrawal penalty, so the migrant's savings remain fully available. Although a regulated product, the solidarity saving account would not have the same dissuasive features and oversight as the co-development savings account. The latter's implementation and management have suffered from red tape – notably, annual audits of participating banks and savers' eligibility criteria for annual compliance reports based on a questionnaire completed by the account holder. The latter was subject to heavy penalties for even a partial withdrawal of funds, or for using the funds for purposes other than the pre-selected projects. Banks also found it difficult to secure guarantees for projects in Africa.<sup>220</sup> Another problem was that migrants who were bi-nationals were excluded from having a co-development savings account since the product was fundamentally aimed at encouraging migrants' returns to their countries of origin. However, permanent return is imaginable only once a capital-investment project is successful, not at its beginning. We propose that bi-national migrants be allowed to open solidarity savings accounts to mobilize resources that support migrants' collective efforts to help their countries of origin develop; it also meets the need for safety as well as a good return for their savings and ultimately their personal projects.

.....  
219 The co-development savings account has not garnered as much enthusiasm as expected from financial institutions or migrants because of its €50,000 cap and tax abatement. The French Caisse d'Épargne savings bank that had committed to sell it renounced its contract, leaving only one Tunisian bank – Union Tunisienne de Banques, with only three branches and 11,000 customers – to market the product, starting in June 2009.

220 This issue is ameliorated by inclusive linked bank accounts.

**3.8.8** From a practical point of view, implementing a solidarity savings account requires:

- Operating in conjunction with specialized financial institutions in the country of origin with proven experience, such as BHS in Senegal for housing; and with partners with unimpaired loan portfolios (their level of good governance is a fundamental requirement).
- Collaboration with financial guaranty agents with the requisite knowledge and experience, such as public-sector savings banks or national development finance banks. In the Franc Zone, regional institutions such as the West African Development Bank may prove an interesting partner for mobilizing savings for development purposes.
- Bilateral and multilateral development finance banks – such as the AfDB and the EIB acting as counterparties to guarantee this solidarity financing mechanism.<sup>221</sup>
- Banks interested in marketing the solidarity savings account in the country of residence, as well as public-sector savings banks involved in project implementations in the countries of residence should be involved in the operational design of the product; governments in the countries of origin should also be involved to increase the product's attractiveness via tax breaks or other incentives.

**3.8.9** For the solidarity savings account product to be successful, the following questions would need further study:

- What guarantee and repossession mechanisms should be put in place in the country of origin in case of default, and how?
- How can the project's compliance with the purpose of the loan be ensured?

.....  
<sup>221</sup> Bilateral and multilateral development finance institutions supporting financial-sector and private-sector development act as guarantor of last resort in many investment projects. Their involvement reassures investors and other market participants.

- How can the project's implementation and satisfactory execution be monitored?
- How much will it cost to set up a loan that is both profitable and attractive to the lender and the borrower, taking into account country risk and other sectoral risks?

**3.9.0** Some of these questions could be answered by setting up a partnership involving private-sector and public-sector savings banks, such as France's Caisse des Dépôts et Consignations, in countries where the public-sector savings banks exist;<sup>222</sup> where these banks or the requisite guarantees are lacking, a national development finance bank and/or a supporting regional development bank may invited as partner(s).

**3.9.1** Stakeholders should work out the details of the solidarity savings account's commercial and institutional features, assuming that it would be a regulated, interest-bearing, capped savings account dedicated to the account holder's choice of country (Morocco, Senegal, Tunisia).

**3.9.2** Solidarity savings accounts may fit with the Innovative Financing Steering Group's research and promotional work, particularly its conclusions reached at the May 2009 meeting in Paris.<sup>223</sup> The resources mobilized could be used to fund various programmes, in the area of housing as well as in health or infrastructure. This account's implementation would require a consumer-awareness campaign, clear explanation of its *modus operandi* and the strong involvement of the participating financial institution in its marketing.

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<sup>222</sup> Morocco and Senegal have such institutions; Tunisia and Cameroon plan to.  
<sup>223</sup> See Appendix.

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## LEGAL ISSUES

**3 9 3** Regardless of its location in the European Union, the solidarity savings account requires:

- A statutory basis (in case of associated tax benefits) via the adoption of legislative and regulatory measures.
- Contractual agreements between the lead and other financial institutions in Europe, and national or regional development finance institutions in recipient countries;
- A legal engineering instrument in migrants' countries of origin and residence, and for North-South relations.

**3 9 4** This is more a proposal than a recommendation, since it touches on the fiscal sovereignty of countries and needs further clarification to be operational.

### V.4 FINANCIAL AND STOCK-MARKET PRODUCTS

#### SECURITIES

**3 9 5** Institutional investment products that could be created, such as securities, must overcome the hurdle of limited offering. Stock and financial markets in the countries of origin remain narrow and undeveloped; investor access to financial exchanges is restricted to investors of certain potential instruments, the stock market.

**3 9 6** Brokerage and asset-management companies do most of the trading on the WAEMU's regional stock exchange, BRVM,<sup>224</sup> and only within the regional market. However, some banks with asset-management arms could offer new products if regulations made it possible to do so – for example, allowing these firms to work with recognized partners or with their subsidiaries or head offices domiciled in Europe<sup>225</sup>

**3 9 7** Opening developing-country-focused securities to non-Franc Zone residents could help grow the market. However, that would require regulatory changes allowing non-residents to invest. Its success equally depends on the fostering of close cooperation with stock and financial exchanges in the Europe; eventually to be listed in the European stock exchanges.

**3 9 8** In Morocco, banks already offer securities products to non-residents who like the products and who appear to have made up the majority of individual investors in the 1990s. However, losses made in 2001-02 led to a distrust and rejection of such financial products. To boost their popularity, the supply of securities must be diversified, and new products with principal- and minimum-return guarantees must be introduced. With the exception of a few dual listings of companies in Casablanca, and in Europe (Euronext or the London Stock Exchange), upgrading the CSE so it could be recognized as an equivalent market in Europe would help; the authorities are working on this and modifying regulations, aiming for mutual recognition with some other stock exchanges. A central question remains concerning the raising of capital on the CSE to buy securities from other financial markets. This issue will determine the formal offering dynamics of stock market products proposed in European markets.

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<sup>224</sup> Bourse Régionale des Valeurs Mobilières (BRVM).

<sup>225</sup> We note that in limiting our mission in the CFA Franc Zone to Senegal, and not including Côte d'Ivoire and Togo, we were not able to meet some key players for securities and/or long-term financing; we did not meet with representatives from the Regional Securities Exchange (BRVM), the Regional Council of Public Savings and Financial Markets (Conseil Régional de l'Épargne Publique et des Marchés Financiers (CREPMF)) or the West African Development Bank (BOAD).



**399** The Tunisian stock market remains at a very modest level in its development because of the narrowness of the domestic market. Tunisians living abroad have shown no interest in domestic securities; this is not likely to change in the near future.

## GOVERNMENT DIASPORA BONDS

**400** Governments issue fixed-interest-rate bonds redeemable at predetermined maturities to finance development or cover long-term deficits, paying interest coupons during the life of the bond. Government bonds are considered safe, long-term (five years or more) investments. Instead of or in addition to other forms of internal and international borrowing, some governments issue bonds that specifically target their diasporas, in the belief that their migrant nationals residing abroad have the financial capacity to purchase such bonds and that they could contribute to solving the problems of their country of origin.

**401** Government diaspora bonds are given greater attention because of the effects of economic and financial crisis in some countries, such as Greece.<sup>226</sup> Recent World Bank research on financial innovation<sup>227</sup> has also increased interest in diaspora bonds, as has their expanding availability. Several African countries, such as Nigeria and Kenya, see them as a means to finance the debt burden or large projects (mainly infrastructure projects).

<sup>226</sup> See article March 28, 2011 article in *The Guardian*.

<sup>227</sup> "Development Finance via Diaspora Bonds Track Record and Potential," by Suhas L. Ketkar and Dilip Ratha 2007. "Development Finance via Diaspora Bonds," in *Innovative Financing for Development*. (Eds.) Suhas Ketkar and Dilip Ratha. Washington, DC: The World Bank; and Dilip Ratha and Ngozi Okonjo-Iweala, "The Potential of Diaspora Bonds," *New York Times* March 11, 2011, cited in <http://africaunchained.blogspot.com/2011/03/potential-of-diaspora-bonds.html>.

**402** Diaspora bonds have been successfully tested by many countries several times, particularly Israel since the 1950s, and India in the 1990s.<sup>228</sup>

**403** Several other countries have recently introduced diaspora bonds, while others are making plans to do so. In June 2010, Nepal issued diaspora bonds to finance infrastructure products, targeting Nepalese residing in some countries of the Middle East. In September 2010, Greece announced a diaspora bond issue and initiated talks with U.S. financial authorities to offer the bonds to Greeks residing in the USA. Nigeria is equally working towards issuing its own bonds. In 2009, Ghana launched its Golden Jubilee Savings Bond; while not exactly a diaspora bond, Ghana promoted it to the Ghanaian diaspora living in Europe and the United States, a move that seems to have contributed to the bond's success. Ethiopia and, more recently, Kenya have also issued such bonds, with mixed success.

**404** The success of India and Israel with diaspora bonds stems from three factors: on the one hand, their migrants' patriotism and sense of belonging to a community following events in the second half of the twentieth century; on the other hand, their diasporas' size and occupational composition, which includes high-income earners with consistently available savings (a key factor); and thirdly, the bonds' high yields, competitive with other investment choices. Financial markets' globalization, as well as international economic and financial crises and their impact on Israeli and Indian diasporas, may now alter such bonds' success, just as other variables may make them less attractive: inflation that erodes gains and migrants' lack of trust in the governments of their countries of origin. Past motivations, such as a feeling of national belonging or patriotism, may now play less of a role in purchase decisions<sup>229</sup>

<sup>228</sup> See Ketkar, S.L. (2006) "Diaspora Bonds: Track Record & Potential." Nashville TN: Vanderbilt University. <http://www.vanderbilt.edu/econ/conference/gped-conference-06/papers/s-ketkar.pdf>

<sup>229</sup> See Sonia Plaza, "Ethiopia's new diaspora bond: will it be successful this time?" at <http://blogs.worldbank.org/category/tags/diaspora-bond>. See also Aaron Terrazas, "Diaspora Investment in Developing and Emerging Capital Markets." USAID/MPI (2010) at <http://www.migrationpolicy.org/pubs/diasporas-markets.pdf>.

**4 0 5** Individual investors with often-small savings are usually more cautious; their enthusiasm – or lack of it – for diaspora bonds is an indicator of their trust in their governments and governance in the medium to long term. In post-conflict or poorly governed countries, the cost of issuing diaspora bonds in developed countries with many migrants and long issuance procedures may exceed the income the bonds can provide. A diaspora bond issue's success ultimately rests on migrant investors' perception of country risk, influenced by the opinions of credit-rating agencies and financial experts in the migrants' country of residence.<sup>230</sup>

**4 0 6** In the Maghreb and Franc Zone countries, the promotion of this type of product would do well to take on board the previously stated factors and variables. Of course, a preliminary market survey is necessary to better assess potential interest and to explore the issue of trust in country-of-origin governments. Also, net returns on these investments (compared to other competing products) are major elements to be given due consideration.

## DIASPORA ORIENTED VENTURE FUNDS

**4 0 7** Investment funds that may target migrants correspond to various forms of investments in large, well-known companies but which remain undeveloped in Africa. Such migrants could help drive these companies' growth via investments managed by specialized emerging-market asset managers, who take temporary stakes in struggling young businesses that have proven growth potential. - Capital creation and capital development are two of these initiatives.

**4 0 8** Developing-market and venture-capital investment products centered on countries of origin are valuable for three reasons: venture investments' relatively high returns appeal to wealthier migrants who may place less value on national belonging because of their social position and integration in their country of residence; it offers investment possibilities to existing potential entrepreneurs in the countries of origin or entrepreneurs of the diaspora; and venture investments help revitalize local financial markets and exchanges.

**4 0 9** Venture-capital funds targeting migrant investors must be able to operate in the migrant's country of residence, or at least comply with the same regulations and rules to gain the migrant's trust and to take advantage of financial and technical support. This helps make the funds competitive with other investments available in the country of residence; it also allows the venture-capital fund to offer the same security as do emerging-markets.

**4 1 0** Creating a venture investment fund focused on countries of origin would require the individual opinion of participants and managing underwriters. Banks in migrants' countries of residence would be likely to take the lead, particularly those with subsidiaries in developing countries. Bilateral, multilateral and regional development finance banks would play a key role in advocacy and mobilization during capital raises. Development finance banks may provide equity, guarantees or loans to the investment fund's portfolio companies; their involvement would reassure banks and other investors, (such as pension or funds-of-funds managers). This could take the form of buying shares in and ultimately loan guarantees to companies concerned.

<sup>230</sup> In Tunisia, remittances fell by nearly 25 percent in the first half of 2011 because of instability following the political changes in January – that is, a time when the Tunisian diaspora's patriotic sentiments seemed the highest.

## REMITTANCE SECURITIZATION

**4.1.1** Remittance securitization with a guarantee mechanism may be another investment product worth exploring. Securities based on regular migrant money transfers would use a portion of remittances for investments in countries of origin; such funds could strengthen businesses operating in high-potential market niches or sectors. In Morocco and Tunisia, migrants' savings lodged in their accounts for more than three years is high, representing more than a third of all deposits. In Morocco, 10 percent remains in accounts for more than five years. These resources may be transformed into long-term funding, which would make it possible to use them in a remittance securitization fund, expanding the ability of participating financial institutions to finance further development.<sup>231</sup>

**4.1.2** However interesting, remittance securitization would be hard to imagine in the current climate of financial instability and market volatility.

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<sup>231</sup> See Aaron Terrazas, "Diaspora Investment in Developing and Emerging Capital Markets." USAID/MPI (2010) at <http://www.migrationpolicy.org/pubs/diasporas-markets.pdf>.

## ALTERNATIVE INVESTMENT FUND

**4.1.3** This type of fund may be considered for mobilizing foreign direct investment (FDI) for development, raised by way of public subscriptions and in line with the AIFM norms. It would be invested primarily in alternative assets related to interventions by multilateral development finance banks (the African Development Bank (AfDB), European Investment Bank (EIB) and the World Bank), and would include country or sector investment focuses, (infrastructure, private-sector small business).

**4.1.4** The hybrid fund would comply with risk-limiting norms (asset quality and good visibility even if companies are unrated, not listed or unsophisticated). The fund would operate with a system of liquidity provided by and under the supervision of the AfDB or the EIB, or via a multi-donor facility.

**4.1.5** One or more of the multilateral development finance banks could set up the fund on the basis of Article 2.g of the E.U.'s AIFM Directive. Bilateral agencies, (such as KfW or AFD) may participate through derogation and "assimilation by the purpose and mission."

**4.1.6** Current French legislation could admit this investment fund by derogation (in accordance with the AIFM Directive) for sale to retail investors. Initially, this would make possible its marketing to migrants living abroad. At the same or a later time, it could include other target populations, opening the path for ethical mutual funds similar to a North-South development fund, *SICAV Avenir Durable*, offered to any investor interested in the development of African countries.

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## LEGAL ISSUES

- 417 All of these securities are affected by:
- Limits to the banking and financial solicitation of non-European-securities products in Europe;
  - Difficulties obtaining external funds authorized for inclusion in European UCITS, at least for those countries covered by this study with the assumption that certain stock exchanges in the South will achieve in the near future equivalent recognition status.
  - The assumption that certain laws governing securities in European countries will change to exceptionally allow a UCITS/alternative fund, if it meets certain criteria, such as being issued and managed by authorized development finance banks, to make public offerings in the Europe.



The background features a repeating pattern of various icons enclosed in circles, all connected by a network of dotted lines. The icons include: a person's profile, a mobile phone, a laptop, a classical building with columns, a scale of justice, a credit card, and a stack of coins. The overall color scheme is a solid orange.

# PART VI

## CONCLUSIONS AND RECOMMENDATIONS

## CONCLUSIONS AND RECOMMENDATIONS

**4.1.8** This report was prepared with the collaboration of regulatory and supervisory institutions and financial intermediaries in the Franc Zone, Morocco and Tunisia, who helped to identify the current dynamics and future prospects for international remittances.

**4.1.9** Generally, we note an increasing interest in migrants' international money transfers. Countries and companies consider remittances as a means to strengthen their finances and make substantial profits. This is illustrated by various initiatives that seek to get a hand on these flows and control the largest share of the market.

**4.2.0** In this context, the role of financial regulatory and supervisory authorities is essential for ensuring compliance, particularly regarding marketing, soliciting and fair competition. The authorities also have a responsibility to create the conditions necessary for product diversification to better meet remittance senders' and recipients' needs, the expectations of remittance senders and recipients, and the aspirations of receiving countries to optimize harmonious development and their domestic financial services sectors.

**4.2.1** This report underscores the variety of situations encountered and the progress made by some countries and regions with regard to advancements in their financial regulations and supervision.

**4.2.2** The report also highlights avenues that could be explored to expand and strengthen the supply of bank and non-bank products.

**4.2.3** We propose organizing a meeting to present this report similar to the meeting held in January 2000 following the presentation of the results of the study undertaken by the AfDB with French funding. The proposed meeting would respond to one of the main recommendations of participants at the AfDB meeting for in-depth thinking about innovative financial products and how they may be implemented. We provide an outline of the proposed meeting in the Appendix.

**4.2.4** The recommendations resulting from this study are organized around five themes:

- Expanding MTCs' role in managing emergency transfers, increasing competition, reducing informal remittance transfer flows and strengthening market competition.
- Consolidating traditional linked bank accounts as a tool to bank the unbanked and to promote financial inclusion in migrants' countries of origin, mobilizing their savings;
- Promoting inclusive linked bank accounts as an instrument for enhancing migrants' integration in their country of residence and mobilizing the savings of nationals abroad for development projects in their countries of origin and for their own personal projects;
- Strengthening the use of ITC for linked bank accounts to facilitate remittances and banking: mobile banking, e-banking and more importantly branchless banking as a tool for facilitating money transfers and bancarisation.
- Promoting financial and securities products as a means of mobilizing the savings and know-how of diasporas with the aim of strengthening the financial systems and economies of their countries of origin and improving their integration into the global economy.

4 2 5 These innovations often involve modifying existing products and allowing new players to enter the remittance market to participate in inclusive development. Often, they bring up the legal, regulatory and supervisory challenges that should be addressed.

## VI.1

### EXPANDING MTCs' ROLE AND REDUCING INFORMAL REMITTANCE FLOWS

4 2 6 In the first part of this report, we pointed out the essential and mandatory role of MTCs in remittances, including in countries with relatively well-banked populations. The special place given to major MTCs and their historical role have allowed them to maintain some exclusivity clauses with their agents in countries of origin, even as market circumstances have changed. These clauses curb competition and impact visible costs (fees) and invisible ones: (travel time to MTC outlets, waiting time at counters). Senegal and Morocco (through their finance ministries and central banks) have successfully lifted the major MTCs' exclusivity clauses, as they were anti-competitive, collusive and an abuse of dominant position. This was an important step in promoting competitive markets, allowing new players to emerge, lowering money-transfer costs and fostering reasonable profit margins. More competition and lower costs have definitely contributed to product diversification and innovations, such as transfers via prepaid or debit cards; they have also reduced informal remittance flows. Countries in North Africa and in the Franc Zone would benefit from adopting the G20's recommendations on the subject and contributing to their implementation.

4 2 7 However, lifting the exclusivity clause is far from being a panacea for reducing remittance costs. Although significant, the impact will remain limited because managing cash remains expensive and risky in remittance-sending and receiving countries. The search for significantly lower costs calls for promoting other transfer modes, including linked bank accounts and mobile banking; it also involves strengthening the role of MFIs, especially by merging small ones, often located in isolated areas. The Global Partnership for Financial Inclusion's work deserves the attention of countries covered by the study; these countries would benefit from participating in the GPFI's work. At the same time, the GPFI would benefit from understanding the importance of remittances as a vector of financial innovation and inclusion.

#### RECOMMENDATION 1

In countries where exclusivity clauses still hinder competition the authorities should draw from other countries' success stories, even if exclusivity clauses do not constitute a clear infringement of competition law. Authorities should fully implement the G20's recommendations and step up cooperation with the GPFI. Special workshops on these topics would allow participants to share experience and expertise; the workshops could take place in the first half of 2012. Collaboration with the Association of Working Groups operating under the auspices of the G20 on this issue would be desirable. The AfDB and AFD are best placed to lead this initiative.



## RECOMMENDATION 2

Financial authorities in Franc Zone countries should work on merging small MFIs to improve their market position and make them play a more active role in using remittance transactions to promote financial inclusion. This would require an overall strengthening of regulatory and supervisory frameworks; it would also mean increasing the MFIs' professionalism and consolidation. The authorities should seek and pursue cooperation with the GPFI to take advantage of lessons learned and best practices. A workshop on these topics could be organized by AFD and the AfDB in the second half of 2012, in partnership with central banks; preparations should also involve the GPFI.

## VI.2 TRADITIONAL LINKED BANK ACCOUNTS AS A TOOL FOR FINANCIAL INCLUSION

### THE PRODUCTS

4 2 8 Traditional linked bank accounts are made to facilitate money transfers, ensuring that the needs of migrants' relatives in countries of origin are met while helping migrants set up and implement personal projects. These projects mainly involve building or buying homes and sometimes saving for retirement. As a result, most of the extra resources that migrants transfer are kept as current or demand savings accounts that earn little or no interest.

4 2 9 The first two constraints faced by nationals abroad in opening and managing their accounts are:

- **Residency status:** Many countries still restrict migrants living abroad from opening non-resident accounts, even though the African (especially Algerian and Moroccan experiences) and international (Indian) experiences show that the overall balances in these accounts remain largely positive and provide their country of origin with resources with stable and strong currencies.
- **Conditions for opening and managing an account remotely.** The opening of such accounts in the country of origin should be done in person with formal identification, and proof of residence outside the country of origin.

4 3 0 In many cases, these conditions deter migrants from opening a second linked bank account in their country of origin, hindering account linking. Thus, it is recommended that the financial authorities in these countries should amend banking regulations to facilitate opening non-resident accounts in strong currencies and nurture partnerships between banks in the migrants' countries of residence and origin for the opening of mirror-accounts. The development of e-banking also goes towards strengthening and promoting traditional linked banking.

4 3 1 Except for some corridors where migrants have used well-established linked bank accounts for a relatively long time, electronic banking may complement or partially substitute for sending remittances; however, branchless banking remains poorly understood and underutilized. It would therefore be appropriate to ensure branchless the expansion of branchless banking by encouraging partnerships between banks and mobile network operators in origin and residence countries;<sup>232</sup> large-scale advertising to targeted potential customers.

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232 An example of the way forward may be seen in the working groups formed between banks in developing and developed countries as part of the Union for the Mediterranean.

### RECOMMENDATION 3

Take on, in the Franc Zone, the question of non-resident migrant accounts on their agenda and raise the issue with authorities in their countries of origin to facilitate account opening and management procedures. Sharing the experiences and know-how of Morocco and Tunisia with the Franc Zone countries would be helpful. The Association of African Central Banks could be invited to ensure the wide use of this practice in the continent as a whole. This recommendation could be included in the present work of the GPFI.

### REGULATORY FRAMEWORKS

**4 3 2** Traditional linked-bank-account operations basically concern the opening a bank account for migrant persons resident in France, and securing loans in countries of origin without bank-to-bank cooperation. These operations can run into legal difficulties when the account is opened from France, and may conflict with prohibitions on marketing non-European bank products in France.

**4 3 3** In this case, there is a need for in-depth thinking on the ways and means of securing certain safeguards, specifically with regard to linked bank accounts, and this within the framework of similar banking regulations, building on harmonized cooperation between banking managers and AML-CFT with regard to low-risk basic banking products.

### RECOMMENDATION 4

Clearly define and change – if necessary – actions and operations conducted by credit institutions in France for non-European establishments under bilateral oversight agreements for linked bank accounts, introducing additional monitoring standards as necessary. This recommendation could be further discussed at the working group meeting on this study's presentation to be held in February 2012.

### VI.3 INCLUSIVE LINKED BANK ACCOUNTS AS A TOOL FOR MIGRANTS AND THEIR COUNTRIES OF ORIGIN

**4 3 4** This report's evaluation of traditional linked-bank-account products showed a strong trend toward product diversification and increased use of mobile banking. However, this assessment indicated that these products are unlikely to mobilize large amounts of resources. Morocco's deeply rooted experience – and, to a lesser extent, Tunisia's and Senegal's (through BHS) – highlight the growth limits for traditional linked accounts. The primary impediments to growth include the interest rate differential (between rates in countries of origin and those in countries of residence), migrants' preferred projects (primarily residential property) and their social ties. Therefore, other forms of linked accounts should be found that would allow migrant diasporas to contribute to their country of origin's development, helping to finance economies and to fulfill their individual or collective projects under the best conditions.

4 3 5 Inclusive linked bank accounts that offer products and services are likely to better meet the expectations of migrants. They would also help the integration of migrants into their country of residence; migrants would no longer have to manage expenditures for their future projects remotely, and would be freed from past uncertainties. At the same time, inclusive linked bank accounts could help establish lasting cooperation and mutually beneficial partnerships between financial institutions in remittance-receiving and sending countries.

#### RECOMMENDATION 5

Organize a theme workshop during the presentation of the study in February 2012, and set up a working group for this purpose. The workshop will discuss the best ways to disseminate and implement the report's proposals. Participants should include banks and other financial institutions or banking agents and representatives from central banks attending the feedback meeting.

#### PRODUCTS

4 3 6 Various products have been considered in this report; each is subject to specific terms and conditions. However, their implementation requires some the existence of some technical conditions, including:

- Tax incentives in the country of origin;
- Guarantees and counter-guarantee mechanisms to reduce the risks associated with project implementation. These can take many forms, such as creating a public savings banks like the Caisse des Dépôts et Consignation, creating a surety and guarantee company, and/or opening guarantee lines with bilateral and multilateral development banks such as Proparco, AfDB, EIB or AFD.

- A favorable business climate, particularly for enacting guarantees. Governance remains central to both migrants and financial partners and should be the cornerstone for authorities of in the countries of origin.

#### RECOMMENDATION 6

Encourage participants at the February 2012 meeting to set up a working group to examine inclusive linked bank accounts. Working-group participants should include financial institutions, banking agents, supervisors and regulators in France, North Africa and the Franc Zone; they should work on the financial engineering and regulatory provisions needed to implement the report's recommendations for inclusive linked-account products.

#### RECOMMENDATION 7

Identify one or more countries willing to participate in pilot projects to develop and test priority products, such as individual and/or collective and loan accounts that prioritize migrants, their countries of origin and their development partners in migrants' countries of residence. The seminar on this study and the ensuing workshops should help to identify and define the contributions of partners (February 2012).

## REGULATORY FRAMEWORKS

**4.3.7** Strengthen legal safeguards for linked bank accounts in Europe

**4.3.8** Some inclusive linked-accounts activities entail efficient cooperation between banks from different continents because banks can soon run up against bans on marketing of non-European products in France; such products need systematic regulatory oversight cooperation between banks. Existing regulations related to linked accounts need to strengthen existing regulations for linked accounts specifically address linked-accounts issues, particularly low-risk basic bank products and AML-CFT concerns.

**4.3.9** These mechanisms should particularly focus on licenses for second-generation linked-bank-account operations.

- Granted to international banking groups on both sides of the Mediterranean
- Provide an unsophisticated range of products (savings, loans, payment facilities) to residents in Europe, knowing that these products would call for the involvement of African banks.
- And this is (i) due to the unsophisticated nature of these products and (ii) because joint supervision of these groups by European and African regulatory authorities is possible.
- In exchange, credit institutions in France should commit to more consumer protection measures, including due diligence, deposit insurance protection levels<sup>233</sup> and others (to be defined) to prevent a marked deterioration in the levels of such safeguards in Europe.

<sup>233</sup> As a useful comparison, Article L312-17 of COMOFI states: "As long as they are not covered by a guarantee scheme of their home state, branches of credit institutions domiciled in a member state of the European Community other than France are required to apply the French deposit-security scheme according to conditions set by the Minister for the Economy."

## RECOMMENDATION 8

Set up additional safeguards to protect migrants' money saved and/or mobilized in their country of residence and/or deposited in banks in their country of origin. This would include having a deposit guarantee mechanism in place in case the financial institution go bankrupt. The implementation of this recommendation should be one of the agenda items to be addressed during the report presentation workshop (February 2012).

## VI.4 BRANCHLESS BANKING AND MOBILE BANKING AS TOOLS TO FACILITATE REMITTANCES AND LINKED BANK ACCOUNTS

**4.4.0** Fieldwork analysis carried out during the mission showed the lack of enthusiasm for new ICT services and identified the causes. The reasons have been given in the preceding paragraphs. Albeit, such services are undeniably promising and all they require is further support. At the same time, some WAEMU-member countries have outpaced those in the CAEMC and the Maghreb in offering mobile-phone-based domestic money transfers. We have set out below some proposals for branchless banking.

## LAUNCH INITIATIVES TO PROMOTE FINANCIAL INNOVATION

### FRANCE

**4.4.1** Recent experience shows that governments play a vital role in promoting and regulating innovative mobile-phone-based financial products and solutions, such as the development of mobile banking in East Africa, especially in Kenya, with the help of British authorities, and the older experience in Senegal that led to the establishment of the Credit Mutuel du Senegal thanks to an initial contribution from France. States have a crucial role to play in the promotion and supervision of innovative solutions and products. The establishment of a payment institution specialized in North/South money transfers via mobile banking, account-to-account, or account-to-e-wallet, is essential for a rapid attainment of the goal of reduced remittance costs in conformity with the decision of the Cannes G20, ensuring increased flows, and helping to improve financial inclusion in developing countries.

#### RECOMMENDATION 9

Support a business initiative in France to set up a payment institution specializing in international mobile account-to-account or account-to-mobile-wallet money transfers. Invite AFD and the AfDB (through its Migration and Development Fund) to support this initiative. This recommendation could be considered during the feedback meeting (workshop).

**4.4.2** An outline of the possible form of this initiative is featured in the Appendix.<sup>234</sup>

<sup>234</sup> See "A basis for the terms of reference for a feasibility study on setting up a payment institution specializing in international mobile banking between developed and developing countries" in the Appendix.

## WAEMU AUTOMATED PAYMENTS SYSTEMS PLATFORM

#### RECOMMENDATION 10

Support setting up an electronic-banking platform for mobile banking for use by microfinance institutions and banks, especially those in the WAEMU, by:

- Studying, and drawing from, the product that is currently being launched in Senegal (a KfW-financed shared mobile-banking platform for decentralized microfinance institutions);
- Connecting the mobile-banking platform to a bank or other financial institution that would serve as a payment hub, ensuring receipt of money transfers from Europe. During the seminar to present the study, identify and discuss with partners who are likely to commit to this initiative and ensure that the AfDB's Migration and Development Fund will support them.

#### REWORKING REGULATIONS FOR BRANCHLESS BANKING

### THE WAEMU

#### RECOMMENDATION 11

Support the BCEAO and give it a leading role in sharing its experience in:

- The recast of Directive BCEAO 2006-2001 on electronic money and decentralized financial institutions;
- Amendments to supplement provisions governing financial payment institutions.

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## THE CAEMC

### RECOMMENDATION 12

Clarify the concepts related to electronic money and enhance dialogue among supervisory authorities, mobile network operators, experts and telecom operators.

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## MOROCCO

### RECOMMENDATION 13

Introduce the concept of final payment account into banking law, allowing secure electronic-money storage in order to facilitate the development of mobile-phone-based payment solutions.

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## TUNISIA

### RECOMMENDATION 14

Introduce new concepts and actors into banking law, including:

- A new category of financial institution – the payment institution;
- The concept of final payment account, allowing secure storage and use of funds for payments and their reutilization for other transfer operations or as a secure storage wallet, an alternative to deposit accounts.
- The concept of banking agent for credit institutions. Further thinking about the regulatory and institutional progression of the microfinance sector.

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## COMOROS

### RECOMMENDATION 15

Support the introduction of new concepts and actors into banking law, including:

- A new category of financial institution – the payment institution;
- The concept of final payment account, allowing secure storage and use of funds for payment operations and their reutilization for other transfer operations or as a secure storage “wallet,” an alternative to deposit accounts;
- The concept of banking agent for credit institutions.

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## MAGHREB, COMOROS AND THE CAEMC

### RECOMMENDATION 16

Organize in 2012, with the support of the AfDB and AFD, regional workshops on using mobile phones and the conditions required for implementation by drawing from experiences in WAEMU and other African countries, notably those of the most advanced countries: Kenya, Tanzania and Madagascar.

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## FRANCE

443 Legislative and regulatory reforms concerning payment systems and services and e-money have been implemented following the Payment Services Directive passed in 2007, or are on course as a result of new European norms (a 2009 directive). Therefore there are no specific recommendations on this subject other than the furtherance of European norms.

## VI.5 FINANCIAL EXCHANGES AND SECURITIES PRODUCTS TO MOBILIZE DIASPORAS' SAVINGS, STRENGTHENING COUNTRIES'- OF-ORIGIN FINANCIAL SYSTEMS, ECONOMIES AND INTEGRATION INTO THE GLOBAL ECONOMY

4.4.4 Discussions about this report in Morocco and France revealed how current laws and regulations limit what securities exchanges, asset managers and brokers can do to mobilize the diasporas' savings and know-how. It would be advantageous to help these actors exploit this investment capacity and increase the diasporas' familiarity with international investment products. In line with the goals of savings mobilization, financial systems strengthening and economic integration. In the same vein, the following proposals have been made.

## ENHANCED COOPERATION AND COMPATIBILITY AMONG FINANCIAL EXCHANGES

### RECOMMENDATION 17

Drawing on the technical cooperation model used by French and Moroccan markets, further the development of relations between French facilities and stock markets (Euronext and Euroclear) and current markets or those in the making in beneficiary countries, in order to enhance their technical and legal compatibility. This recommendation should be considered in the workshop slated for February 2012.

### RECOMMENDATION 18

Promote expanded cooperation agreements and information exchanges among representatives of the French stock-market authority, AMF, and representatives from all supervisors of securities markets in migrants' countries of origin.

### RECOMMENDATION 19

Seize the opportunity provided by the report-feedback meeting to encourage the setting up of a working group to:

- Facilitate strategizing on achieving mutual-recognition status among stock exchanges in the countries under review (not only with Euronext but also with their counterparts in Africa for those aiming to become regional financial hubs in Africa);
- Explore the possibility of creating an "alternative fund", specialized in development and which could, by derogation, be accessible to a large non-expert public.

4.4.5 No matter the options chosen, it is crucial to develop and stabilize the financial and securities markets in the countries of origin.

4.4.6 Concrete steps should be taken, such as the preservation of the Master's Programme on Banking/Finance of the CESAG in Dakar, threatened with closure because of a lack of scholarship funding.

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## DEVELOP AND STABILIZE FINANCIAL MARKETS IN MIGRANTS' COUNTRIES OF ORIGIN

### RECOMMENDATION 20

Request that AFD and the AfDB, through its Migration and Development Fund, support high-level training programmes in recognized centers of financial engineering and market expertise (securitization, collective funds, innovative banking products, etc.) wherever there is potential, particularly:

- In the Franc Zone (CESAG's Master's Programme on Banking Finance);
- In Tunisia for the Maghreb countries and the Franc Zone (Training Institute of the Tunis Stock Exchange, or IFBT<sup>235</sup>).

Financial support could take the following forms:

- Scholarship funding, vital for balancing training institutions' operating budgets;
- Funding to pay external experts (market actors, banks, banking and stock-exchange supervisors) to teach these courses when the local expertise on the subject being considered so justifies.

235 Institut de Formation de la Bourse de Tunis (IFBT).





The background features a repeating pattern of light gray circular icons on a light gray background. The icons include: a profile of a human head, a mobile phone, a laptop, a classical building with columns, a stack of coins, a pair of scales of justice, and a credit card. These icons are interconnected by a network of thin, dotted lines, creating a web-like structure. The word "APPENDICES" is centered in the upper right quadrant of the page.

# APPENDICES

## APPENDICES

### APPENDIX 1: DISSEMINATING STUDY FINDINGS, SHARING KNOWLEDGE AND BUILDING CAPACITY

447 As the authors shared aspects of this report during interviewee feedback meetings and informal conversations, they saw how the report aroused the interest and expectations of their interlocutors in the countries reviewed. All the representatives of the institutions we met with stressed that it would be important to disseminate and share the analysis and findings of the report. They called for the organization of regional and/or national workshops to ensure that the report is properly disseminated to enable interested parties could capitalize on its findings. They also recommended that working groups be set up to examine the technical and regulatory issues involved in introducing innovative financial products and services.

448 Considered within its historical context, this report also responds to the expectations of different institutions that participated actively in a seminar held to present the findings of a study undertaken by the African Development Bank in 2007 on migrant remittances. The seminar, which took place at the French Ministry of Economy and Finance, brought together more than 200 representatives from many institutions and agencies committed to the issue of migrant remittances. Participants also highlighted the necessity of exploring new financial products and services to meet the needs of migrants in their countries of residence and of origin.

449 This work expands analysis from a preceding project phase that ended with two workshops on November 16 and 19, 2009 respectively in Casablanca for the Maghreb region and in Bamako for the Franc Zone. During these workshops, participants from banks, MTCs, MFIs, mobile network operators, and financial regulatory and supervisory agencies recommended that efforts should continue, particularly to identify financial products that are being launched or about to be launched as well as the legal and regulatory conditions for their use. Workshop participants also recommended capacity development for regulatory and oversight agencies through knowledge-sharing about these products and services.

450 Considered in the context of the work of the G20, the proposals made in this document could contribute to progress in the on-going efforts concerning resilient growth and financial inclusion. The proposals and key findings may help develop a toolbox for promoting financial innovation and strengthening microfinance institutions. A public release of the report could be presented as the contribution of France and the member-institutions on the Steering Committee (AFD, AfDB, EIB, IFAD) to the on-going G-8/G-20 partnership initiatives, of 'Making Finance work for Africa', and the Global Remittances Working Group, on subjects concerning migrant remittances and financial inclusion.

451 On the basis of the foregoing, we wish to recommend the organization of the following events:

- A presentation of the outcomes of this study following a plan similar to that used for the AfDB-France study in January 2008;

- Regional thematic workshops (in the Maghreb, WAEMU, CAEMC and Comoros);
- Setting up working groups based on this report's recommendations.
- The use of ICT to promote the uptake of linked bank accounts and reduce remittance costs; implementation conditions.

## FEEDBACK MEETING

**4 5 2** A feedback meeting will be an opportunity to make a general presentation of the study and its findings. The format of the meeting will be addressed in a separate note.

**4 5 3** The meeting will provide an opportunity to announce the organization of the thematic seminars and the formation of working groups. It could also afford a forum for interested stakeholders (especially the regulators and supervisors) to agree on the detailed content of the workshops on experience-sharing and mutual capacity-building to be organized after the presentation of the study.

**4 5 4** We propose that the working groups be launched at this time and that resource persons present be contacted for the organization of future workshops.

**4 5 5** The meeting will also be an opportunity to informally explore with the representatives of countries in attendance the likelihood of hosting pilot projects for the introduction of some financial products and services.

## WORKSHOPS

**4 5 6** The workshops will cover the following topics:

- The MTCs' exclusivity clause, modalities for its repeal, and the results expected from such a move;
- Non-resident accounts in countries of origin, their advantages, modalities for their introduction, and results expected therefrom;
- Traditional and inclusive linked-bank-account products, and general conditions for their introduction;

**4 5 7** In order to exchange experiences on these issues, we propose conducting at least one workshop per region (Maghreb, WAEMU and CAEMC) and one for Comoros. The recorded outcomes of these workshops will later serve as a 'tool-box' to support decision-making and management.

**4 5 8** These workshops will give regulators, supervisors and other stakeholders from each region the opportunity to build on discussions started at the Casablanca and Bamako workshops, and to start thinking about measures and arrangements to be effected in the short run to facilitate a rapid reduction of costs and higher mobilization of remittances through the diversification of financial services and products.

## WORKING GROUPS

**4 5 9** The implementation of some of the recommendations contained in this study will require some financial and legal engineering. This will call for the active involvement of both financial and non-financial actors. To this end, we propose that three working groups be set up. These groups will need to receive support and assistance from development-finance partners to ensure that they function properly and work in consonance with the recommendations of the G20.

**4 6 0** The three working groups will address traditional and inclusive linked bank accounts, non-bank financial products, and recourse to Information and Communications Technology for remittances and other banking operations.

**4 6 1** Each group will be required to define its working method, meeting schedule and funding arrangements.

**4 6 2** The content of the working groups is addressed in a separate appendix.

## **APPENDIX 2: IMPLEMENTATION OF RECOMMENDATIONS AND WORKING GROUPS**

### **WORKING GROUP 1: TRADITIONAL AND INCLUSIVE LINKED BANK ACCOUNTS**

#### **PURPOSE**

**4.6.3** Working Group 1 will strategize about and define basic financial and legal engineering elements to support the proposals in this report. It will address the issue of the prioritization of products to be promoted, and examine any technological, regulatory and legislative obstacles impeding their introduction, and determine modalities for the necessary cooperation between supervisory and oversight authorities.

#### **COMPOSITION**

**4.6.4** Working Group 1 will comprise representatives from the ministries of Finance, central banks and other supervisory bodies, banks and financial intermediaries from countries of origin and countries of residence, national and sub-regional development banks, as well as representatives from bilateral and multilateral development finance institutions.

### **WORKING GROUP 2: NON-BANK FINANCIAL PRODUCTS**

#### **PURPOSE**

**4.6.5** Working Group 2 will review the recommendations contained in this report and determine the terms and conditions for implementing the products recommended and solutions proposed. It should focus particularly on issues concerning those financial products that could be attractive to migrants and the conditions for marketing them in Europe.

#### **COMPOSITION**

**4.6.6** Working Group 2 will be composed of representatives from stock exchanges, stocks and securities regulation agencies, ministries of finance, bilateral and multilateral development finance institutions, and possibly sub-regional development banks.

### **WORKING GROUP 3: E-BANKING AND M-BANKING. (BRANCHLESS BANKING)**

#### **PURPOSE**

**4.6.7** Working Group 3 will think through technical, legal and regulatory issues affecting the implementation of this report's recommendations on branchless banking; it will also examine the proposal for the establishment of a North-South payment institution.

#### **COMPOSITION**

**4.6.8** Working Group 3 will mainly be composed of the competent regulatory authorities (representatives from banks, telecommunications and civil liberties groups, and the banking profession, professional associations, and mobile telephony).

**APPENDIX 3:  
THE MAGHREB: EXECUTIVE SUMMARY  
OF THE REPORT ON THE NOVEMBER  
2009 WORKSHOP<sup>236</sup>**

**BACKGROUND AND CHALLENGES**

**A**

**469** It is necessary to first stress the strategic importance of remittance flows at the macroeconomic level, and of their considerable share in the transactions of financial institutions in Morocco and Tunisia (with the threat of a systemic risk if the resources were to dry up); Algeria might be an exception because of the different nature of its balance of payments.

**B**

**470** For the financial sector, one could distinguish between three levels of banking situations:

- European banks with a presence in the Maghreb through subsidiaries or strategic equity participations;
- Maghreb banks with a presence in Europe or with a South-South presence (Attijariwafa Bank present in both Tunisia and Senegal);
- European and Maghreb banks with no presence on their opposite sides of the Mediterranean.

<sup>236</sup> In 2009, the French authorities and the AfDB requested that Epargne Sans Frontière investigate regulatory frameworks and financial products in the Maghreb. Appendix 3 presents key findings from that investigation, which formed the basis for the November 2009 Casablanca meeting of representatives from banks, MTCs, MFIs, mobile network operators, and financial regulatory and supervisory agencies.

**C**

**471** The Moroccan authorities and banks are very dynamic in their effort to harness remittance flows.

**D**

**472** Transfers made via MTCs – primarily Western Union and MoneyGram – even though very expensive, dominate the remittance market. Account-to-account transfers also prevail in some corridors.

**E**

**473** In addition to remittances, there is also the issue of linked bank accounts or bi-bankarization. This means that a banking transaction or an operation to sell financial products is carried out in Europe or in the Maghreb by an approved operator on behalf of a bank located on the other side of the Mediterranean (for example, mortgages). This would positively affect the financial sector and facilitate the realization of investment projects for migrants in their countries of origin.

**F**

**474** Morocco's primary challenges include:

- Systematizing and supplementing the existing mechanisms, especially to improve access to the corridors for Moroccan banks;
  - In the short term, stemming the decline in remittance volumes destined for Morocco following the European economic crisis;
  - More structurally, “bankarizing” all or most Moroccans living in Europe, and expanding the use of linked bank accounts.

- Increasing market penetration in Morocco by continuing to increase the number of bank branches and the expansion of the network the traditional way, but particularly by making use of new, less expensive methods that inspire greater confidence in the un-banked populations; multi-service retail outlets (i.e. non banking agencies), and establishing agencies for the money transfer companies, promoting pre-bankarisation through some micro-credit associations (beginning of the FBPMC/Banques Populaires' pilot experiment), and even the development of banking services via mobile telephony (e-project under review).
- Establishing links with public and semi-public authorities in Europe to improve money-transfer methods, flows and co-development mechanisms.

## G

**475** The specific issue facing Tunisia in the short term is to have a better entry access to remittance corridors for Tunisian banks that are neither subsidiaries nor commercial partners of European or Moroccan banks, through a more optimal utilization of the UTB or the establishment of payment institutions in Europe.

**476** The medium term challenges, in our opinion, would be:

- Reaching a level of systematization of arrangements comparable to what obtains in Morocco, including for bi-bankarization;
- Developing branchless-banking mechanisms and mobile-payment services to make a quantitative and qualitative leap forward both for remittances and for bancarization in Tunisia;
- And/or taking control of the “financial corridor”<sup>237</sup> entry point.

<sup>237</sup> The entry points are primarily banks, electronic money institutions and banking agents. Transposing E.U. Directive 2007/64/EC into French law will provide more flexibility for payment institutions.

## H

**477** Whether or not the global financial crisis will make it harder to pursue operations dedicated to developing the systems mentioned above – particularly linked-account projects – remains an open question. However, we believe that, on the one hand, strengthening international supervisory cooperation is fully consistent with one of our recommendations. On the other hand, we believe that potential risks would rather reside in the conditions that will be required for selling Maghreban financial products in Europe.<sup>238</sup>

## AVENUES FOR ADDRESSING REGULATIONS AND INSTITUTIONAL PLANS

## I

**478** **Regulatory categories and industry development.** Diverse regulatory and institutional situations exist. Morocco probably has the most sophisticated regulatory frameworks and financial-sector institutional development, although there is still room for improvement. Both public and private actors in Morocco are eager to find innovative solutions. Tunisia has a strong banking sector and regulatory framework that could be diversified, if need be, by drawing on some concepts and successful experiences in Morocco. Subject to further verifications, the situation seems to be the same in Algeria.

<sup>238</sup> The aim is for banks to be able to sell low-risk Maghreb-issued savings and other products to migrants residing in the E.U., to complete the linked-bank-account process. Our proposal assumes that regulatory authorities would adapt – not just relax – marketing and solicitation standards so such products could be offered under certain conditions. However, because of losses caused by the Madoff Ponzi scheme, the trend runs toward tightening standards for marketing non-E.U. products.

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## J

**479** **Regulatory facilitation of transfers.** Tunisia and Morocco have shown that regulatory barriers to the formalization of migrant remittances can be removed. This could inspire Algeria to change its foreign-exchange regulations and financial products for its diaspora.

**480** The lifting of the exclusivity clauses imposed by some MTCs, based on competition laws, is also a positive move which could lead to greater transparency and reduction in remittance costs.<sup>239</sup>

**481** In order to promote competition and diversify the range of actors operating under more flexible conditions, it would be useful for the regulations in Tunisia and Algeria to permit the setting-up of companies specializing in means of payment as financial institutions, with appropriate operating rules, or as money transfer companies/payment and e-money institutions, and by so doing, fall in line with on-going or achieved progress in Morocco.<sup>240</sup>

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<sup>239</sup> To the extent that a remittance service provider that develops competing products leads companies with technology solutions to lower their costs.

<sup>240</sup> Morocco has already relaxed its regulations to allow MTCs, and is considering adapting regulations on electronic payments, particularly payments via mobile phones.

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## K

**482** North/South, South/North banks. Even though some financial actors in the South have difficulties establishing approved financial institutions in the North, it does not seem relevant to revisit the respective conditions for the creation of licensed financial intermediaries in either region.

**483** However, it might be useful to deepen and validate the plans for bi-bankarization within the framework of global banking groups and in the context of partnerships between independent groups, under joint and cooperative oversight, bearing in mind two areas of focus;

- Using bank partnerships to distribute and manage each other's credit and other products, operating under the concepts of "banking agent" and "banking salesperson";
- Redesigning inclusive savings and investment products that are better suited to the realities and needs of remittance-recipient countries;<sup>241</sup> this product redesign in Europe would be done in consultation with some institutional actors in the Maghreb.<sup>242</sup>

**484** For product sales and marketing, it would be useful to monitor the UTB business plan, capital structure, and strategic partnerships for lessons that might benefit new entrants to the market.

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<sup>241</sup> This would mean including other stakeholders (especially Morocco's Caisse des Dépôts et de Gestion) and redefining the co-development savings account; it would also involve thinking about new savings products that mix savings and capital-investment projects. This thinking should keep in mind that the migrant may be interested by long-term national investments other than personal real property (often rental property by default) if such investments are secure and profitable.

<sup>242</sup> Sufficiently flexible regulatory conditions for creating subsidiaries – particularly electronic-payment-institution subsidiaries, if they can make transfers to the Central Maghreb – are justified.



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## L

**4 8 5 Joint and/or coordinated oversight.** It is useful to first underscore the importance of joint supervision with a view to fostering linked bank accounts and so systematize or consolidate bilateral cooperation agreements between supervisors in Europe and in countries of the Maghreb.<sup>243</sup>

**4 8 6** To facilitate bi-bankarization, it will be necessary to thoroughly consider the underlying legal issues affecting the control of financial agents who operate as banking agents on behalf of banks located abroad, and if need be, to remove the regulatory barriers in return for increased coordination and/or joint supervision.

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## M

**4 8 7 Branchless banking and ICT-Money.**

It would be useful to define an overall regulatory and institutional strategy for “transformational” branchless banking using mobile telephony as a payment and value-storage tool, facilitating the removal of any eventual barriers concerning:

- Data bases of banks/technology companies, such as a telecom;
- Some of the AML-CFT due diligence being carried out by external retailers acting as banking agents;
- E-commerce regulations for banking transactions;
- Coordinating the various supervisory authorities for banks, telecommunications companies and databases.

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<sup>243</sup> French, Tunisian and Algerian supervisory authorities have no cooperative oversight agreements in place.

**4 8 8** For mobile banking, it is preferable to take into account the objectives of competition along with the need to allow for the development of profitable initiatives. In other words:

- Planning early for technical interoperability at all levels, e.g., technical standards between mobile phones, cards, and other means of payment and clearing houses. Managing competition by, if necessary, allowing new, private systems to develop commercially for a limited time period, (end of the exclusivity clause programme in the medium term, similar to the lifting of the exclusivity clauses for financial messaging-solutions).

**4 8 9** Finally, we recommend starting a Europe/Maghreb dialogue with a view to making trans-border (Europe/Maghreb) mobile payment solutions feasible and truly operational.<sup>244</sup>

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<sup>244</sup> To the extent that the Maghreb would be interested in talking with their E.U. peers about mobile banking, and that the problems in the E.U. would be the same, regardless of the country.

**APPENDIX 4:  
FRANC ZONE:  
EXECUTIVE SUMMARY OF  
THE NOVEMBER 2009 WORKSHOP<sup>245</sup>**

**BACKGROUND AND CHALLENGES**

A

**4.9.0 The regions under review (WAEMU, CAEMC and Comoros) share features that support the formalization of remittance flows:**

- Their currency peg to the euro at parity ensures perfect predictability for the amounts of remittances received, a good visibility into the short term rates, and the maintenance of value for medium term savings. It also limits any commissions on the black market;
- The existence of a type of bi-bancarization due to the presence of French bank subsidiaries that focus on the clientele of migrants from the region, and the presence of banks from the Franc Zone under “multi-brands”;
- The emergence of microfinance institutions (MFIs) that play an important role in the banking of populations with, depending on the countries, a client volume (or service points) which greatly exceed the number of banking clients. Many MFIs act as banking sub-agents for MTCs, and offer proximate, neighborhood services to migrants through their local branch networks;

- Monetary authorities are making significant efforts to promote linked bank accounts and to develop national, regional and international payments infrastructure; entitlement to having an account, updating the payments mechanism, promoting interbank cooperation and electronic banking, and boosting and structuring microfinance;
- The growth of migrant remittances is also being supported by new strategic alliances that are being formed at the national and international levels between MTCs, banks, MFIs, MTCs’ rapid transfers distribution outlets, and mobile telephony companies via banks’ prepaid remotely rechargeable cards;
- On the corridors where the migrants in France (and Europe) contribute most to the national economies, the financial windfall from remittances in the recipient countries drives emerging financial intermediaries from these regions (having limited access to long term resources and in markets that are already highly competitive) to set up operations in Europe, especially in France; this is in order to control the entry point to the corridors, capture migrants’ savings, and sell the financial products from the parent company to the migrants. This is particularly true of Senegal, Mali, Comoros, and – to a lesser extent – Cameroon.

.....  
<sup>245</sup> This summary covers the main elements of the work of Epargne Sans Frontière in 2009 on regulatory frameworks and financial products in the Franc Zone, as requested by French authorities and the AfDB. The summary is based on a document that took stock of the issues and served as the foundation for a meeting among, regulators and supervisors, held in Bamako in November 2009.

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**B****4.9.1 Other common factors hinder or bar the formalization of remittance flows:**

- In the Franc Zone generally, (and more so at the country level), markets are very narrow; the African migrant population in France accounts for barely one-tenth of the population classified as “immigrant” by the INSEE, about 540,000 persons <sup>246</sup> This penalizes remittance service providers focused on a single corridor and inversely favors those able to develop a multi-corridor strategy (in several European countries and/or towards several countries in the Maghreb or in sub-Saharan Africa);
- The Franc Zone is characterized by a low level of bancarisation (very often with a high concentration of bank branches in the towns), a greater preference for cash and a nascent or fledgling infrastructure;
- Migrant remittances (irrespective of their attractiveness) are not included as one of the key variables for easing exchange constraints, even though they contribute to the maintenance of the balance of payments;
- Regulation of the new and evolving microfinance sub-sector, which is undercapitalized and poorly supervised, has not allowed the sector to be consolidated, benefitting the most robust MFIs;
- Upstream of the corridor, regulations limit the possibility of licensed credit institutions to carry out international transfer transactions; these institutions have a justified aversion to cash operations because of the risks (and the cost involved). This situation could change if new payment institutions were to be created following the provisions of the European directive 2007/64 establishing the category of “payment institution”.

.....  
<sup>246</sup> Source: INSEE 2004 census of immigrants: total does not include dual national or “undocumented” (illegal) immigrants.

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**C****4.9.2 The Franc Zone is not at all homogeneous in terms of regulation, remittance-flow dynamics, or financial sector development and infrastructure.** This means that we must make national, regional and international distinctions, while keeping in mind the following specificities:

- Regulations governing national and international money-transfer operations differ between the WAEMU, and CAEMC regions and Comoros;
- Financial infrastructure development varies by country (bank windows, MFI windows, integration of multi-service e-payments systems). Migrant remittances’ contribution to the GDP or balance of payments also vary, with one country (Comoros) where 80% of the balance of payments depends on remittances. The WAEMU region is structurally a net beneficiary (with some countries very dependent), and another region (CAEMC) has a mix of deficit and surplus countries;
- Knowledge assimilation and appreciation of remittance flows’ strategic importance vary between countries’ central banks, finance ministries and government departments; a few countries have dedicated remittance-oriented ministries;
- Post offices offer diverse services ranging from the ‘traditional’ financial services (postal money order, financial messaging service, deposit accounts and even partnerships with financial credit institutions) with varying levels of service quality, some suffering from a lack of institutional recognition to the total absence of financial or even postal services. This is important given that financial services through the post office traditionally play a key role in migrant remittances. Post offices are mainly distributors of international transfer products for MTCs (Western Union, Money Gram). Microfinance sectors are not homogeneous across countries. Each country has one or more leading national MFIs that serve more than two-thirds of the market; some of these achieve the same levels of compliance with prudential standards as banks do.

493 Development of remittance markets could build on, and strengthen, emerging trends and changes in recipient countries' financial infrastructure, as well as increase integration with the European financial system. For this to happen, regulatory and institutional assistance must be in place, particularly to strengthen oversight effectiveness in the Franc Zone.

494 In addition, an increase in flows and the formalization of international remittances would depend on a comprehensive analysis and understanding of the main corridors in any given area; national, regional and intra-regional flows are essential and should be mainstreamed into public and private strategies.

### STRENGTHS AND WEAKNESSES OF THE FINANCIAL ACTORS INVOLVED

495 Three types of remittance service providers operate in the remittances market:

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#### MONEY-TRANSFER COMPANIES (MTCS)

496 These are commercial companies whose sole business is international and domestic money transfers; Western Union and MoneyGram are the "majors."

##### Strengths:

- Expertise
- Extensive networks of outlets in sending and receiving countries
- Potential partnerships with other financial institutions

##### Weaknesses:

- High cost
- Lack of financial services

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#### MICROFINANCE INSTITUTIONS (MFIS)

497 Microfinance institutions offer low-value savings and loan services, aiming at two objectives: financial profitability and social impact.

##### Strengths:

- Proximity to customers
- Understanding and knowledge of customers
- Savings and loan services

##### Weaknesses:

- Lack of international experience
- Heterogeneity of the various institutions

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#### BANKS

##### Strengths:

- International money-transfer expertise
- Possible presence on both sides of the border
- Range of financial services
- Capital base
- Experience working with financial supervisory and regulatory authorities

##### Weaknesses:

- High cost (sometimes)
- No extensive branch networks in the Franc Zone
- Reluctance to serve customers with little savings

## AVENUES TO ADDRESS REGULATIONS AND INSTITUTIONAL PLANS

**4 9 8** To improve the performance of formal transfers and co-development mechanisms in the Franc Zone, we suggest further thinking on the following topics:

### A

**4 9 9** **Involvement of government authorities.** It would be appropriate for the most specifically concerned monetary authorities and governments to become more involved in:

- Streamlining and measuring migrant remittance flows by setting up statistical monitoring devices and collaborating fully with bodies that collect and use this data (central banks, finance ministries and customs) in order to overcome the present passiveness through a coherent and dynamic policy;
- A better understanding of what drives the desire of a whole range of financial institutions to capture and channel these flows, supervised efficiently by central banks/banking commissions.<sup>247</sup>

### B

**5 0 0** **Regulatory Categories and Development of the Sector.** Various regulatory and institutional situations coexist; MFIs remain substantially involved in banking and remittance processing. In addition to supplementing the regulations on certain categories of agents, (especially electronic payment and electronic money institutions and MTCs) priority should be given to ensuring that the MFIs involved in the transfer chain, and particularly those that claim to provide financial products for migrants and their families in the Franc Zone, attain a high level of security and reliability.

<sup>247</sup> In particular, provide better support and oversight for MFIs so they are safer and capable of offering simple products, tailored to each situation in the name of social and productive investment.

**5 0 1** The innovation of transfers through mobile phones brings in telephone operators as a new category of actors in the remittances value chain and calls for pre-emptive measures towards the regulatory supervision of their operations in collaboration with the monetary authorities of the countries concerned.

### C

**5 0 2** **Regulatory reforms to facilitate money transfers to recipient countries.** The remittance market could become more fluid and less expensive if the following measures were taken to foster competition and develop economies of scale:

- Systematically apply competition laws to lift exclusivity clauses, particular in MTC-agent contracts;<sup>248</sup>
- Use appropriate regulatory measures to promote new competitors' market- entry by drawing on new concepts provided for in Europe and elsewhere, such as electronic payments, electronic money institutions and MTCs;
- Improve the interconnection between payment mechanisms in the WAEMU and the CAEMC so that they can function as a single payment system, facilitating intra-regional money transfers.

<sup>248</sup> Senegalese authorities challenged exclusivity clauses under the auspices of the Ministry of Finance in consultation with stakeholders.

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## D

### 5 0 3 Banks in countries of origin and residence.

It would be useful to request French and/or European and/or Franc Zone regulatory authorities for assistance in expanding the number of possible combinations of linked bank accounts and in addressing the issue of MFIs that would like to position themselves on the sending end of a corridor directly or through partnerships. The request for assistance should specifically highlight the following:

- Setting up a more appropriate and sufficiently solid regulatory mechanism for MFIs in the Franc Zone; the mechanism should center on no- or limited-risk transactions (at the minimum) and on marketing directly to migrants;
- Promoting linked-bank-account services for migrants. This would involve European and Franc Zone financial institutions cooperating to select the criteria and conditions for supplying and/or promoting financial products and services to migrants.

### 5 0 4 This request could also be examined by:

- Understanding the new rules governing payment institutions, if financial institutions have not already sufficiently adapted to the framework;
- Deepening or widening banking-agent and financial-soliciting regulation in the Franc Zone and in France;
- In return for the strengthening of the supervision in the parent company in the Franc Zone and for coordinated supervision mechanisms.

5 0 5 For banks in the Franc Zone, we would recommend:

- Clearly defining and securing their operations in France, notably under the approval of the Company of International Banks in Paris (CBIP<sup>249</sup>) and the Banque d'Escompte. We also recommend implementing practical and concrete measures to better enforce the small-savings customer's right to a bank account, particularly those customers ousted by some major, overly liquid banks that are not inclined to having a strategy to channel flows.<sup>250</sup>

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## E

### 5 0 6 Strong joint supervision and coordination in the Franc Zone.

In order for financial institutions in the Franc Zone to have more representation in Europe, they must:

- Strengthen MFI-specific regulation to raise MFI standards to levels consistent with their status as deposit-taking institutions that offer money transfers from France via linked bank accounts. These new conditions might require a drastic increase in minimum capital to achieve a critical mass; they might also affect solvency standards (in the WAEMU, at least), the quality of internal control mechanisms and geographic information systems, and the use of deposit-insurance funds (at least for those who receive migrant funds);
- Set up specific joint supervision arrangements involving the French Banking Commission, targeting the MFIs and other financial institutions that may be present or represented in Europe;

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<sup>249</sup> *Compagnie de Banques Internationales de Paris (CBIP).*

<sup>250</sup> South Africa passed the psychological barrier of 50 percent of adults having bank accounts by using a special bank account, the Mzansi, and adapting personal identification means to fit low-income customers' reality (Napier and Beghin, 2006).

- Jointly identify operational, reputational and systemic risks for money transfers and financial-product marketing for each type of financial institution likely to operate in the transfers and savings markets of each country of origin and residence; this should include determining selection standards for such institutions, if need be;
- Increase the involvement of the banking commissions in the WAEMU and the CAEMC in the supervision of MFIs.<sup>251</sup>

## F

**507 Branchless banking.** To make the best use of existing technical solutions and bolster emerging mobile-payment partnerships, such as the one between Orange E-money and BNP Paribas, it would be helpful to:

- Increase the clarity and safety of national mobile-payment-transaction terms and conditions;
- Ensure that banking, telecom and database supervisory authorities can fully cooperate to make mobile-banking solutions secure and bring them in line with international transfer modalities, particularly payments sent from migrants' residence to recipient country in anticipation of future developments. This would mean setting up talks between stakeholders in the Franc Zone and in Europe;<sup>252</sup>
- For electronic banking systems, strengthen new regional initiatives to promote bank-interoperability, such as the WAEMU Interbank Electronic Banking Group (or GIM<sup>253</sup>); this would leverage non-elitist bancarisation and substantial South-South flows;

251 The Banking Commission should initiate supervision of the 50 largest decentralized financial systems, including actions to clean up the sector, if needed.

252 To the extent that Franc Zone countries are interested in talking with E.U. regulatory authorities, and that the E.U. problem is the same for all Franc Zone (or for all E.U.) countries.

253 *Groupement Interbancaire Monétique de l'Union Economique et Monétaire Ouest Africaine* (GIM).

- For CAEMC and WAEMU, remove the legal obstacle to direct transfers by using compatible technologies for real-time, automated transfer and settlement systems: STAR<sup>254</sup> in the WAEMU and SYGMA<sup>255</sup> in the CAEMC.

**508** We specifically suggest the following measures per region:

### **509 The CAEMC**

- Strengthen conditions for creating electronic money institutions to avoid fragmentation; provide effective oversight via the COBAC;
- Ensure effective access to banking services for small-savings customers;
- Consider creating separate regulatory definitions and robust operating conditions for payment institutions and for electronic money, replacing the current “electronic money/microfinance institution” definition used for these institutions.

### **510 WAEMU and Comoros**

- Finalize implementation of the new regulatory framework for MFIs in the WAEMU – in particular, the rules needed to increase the solvency of large and medium-sized institutions<sup>256</sup> and their effective supervision by the Banking Commission and the BCEAO;
- Central banks should make more active efforts to capture remittance flows, given the flows' considerable size and importance;
- National and international coordination remains essential.

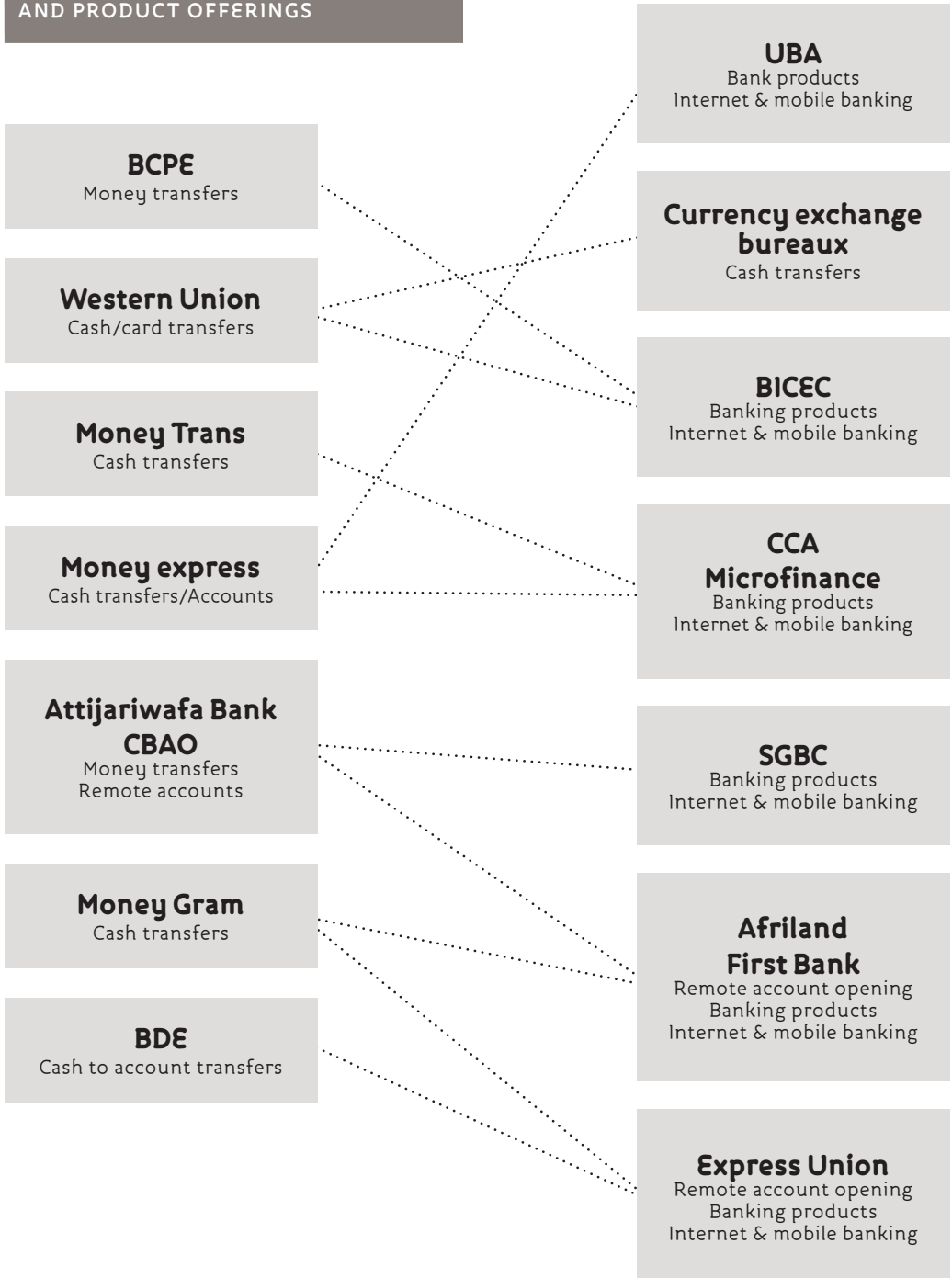
254 *Système de Transfert Automatisé et de Règlement* (STAR).

255 *Système de Gros Montants Automatisé* (SYGMA).

256 These should include defining solvency standards, creating a deposit-insurance fund, setting up banking commission supervision for the 50 largest decentralized financial systems, cleaning up the sector and strengthening internal management tools, including geographic information systems, internal control mechanisms and accounting audits and certification.

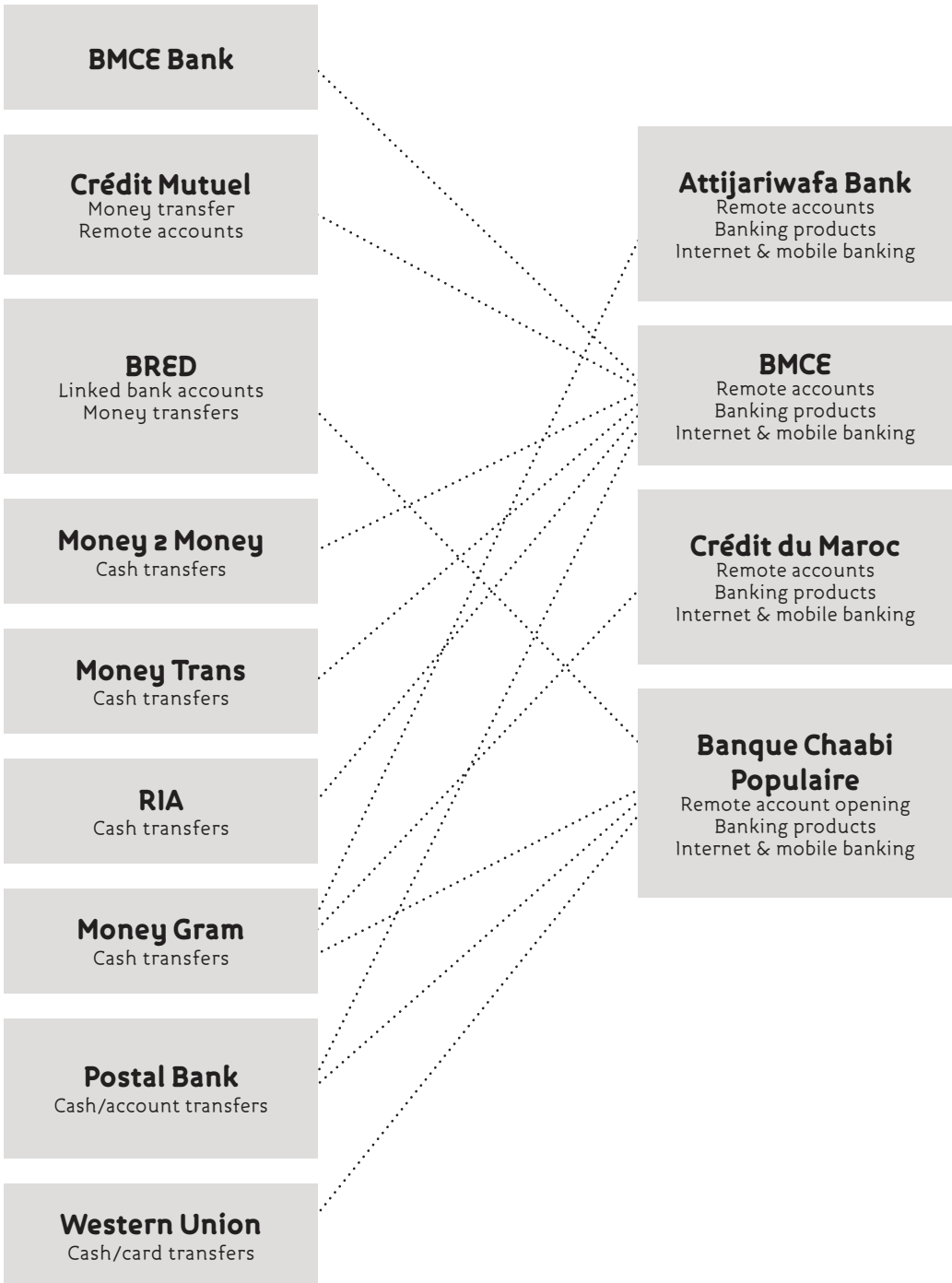
**APPENDIX 5:  
FINANCIAL SERVICES  
AND PRODUCT OFFERINGS**

**CAMEROON**



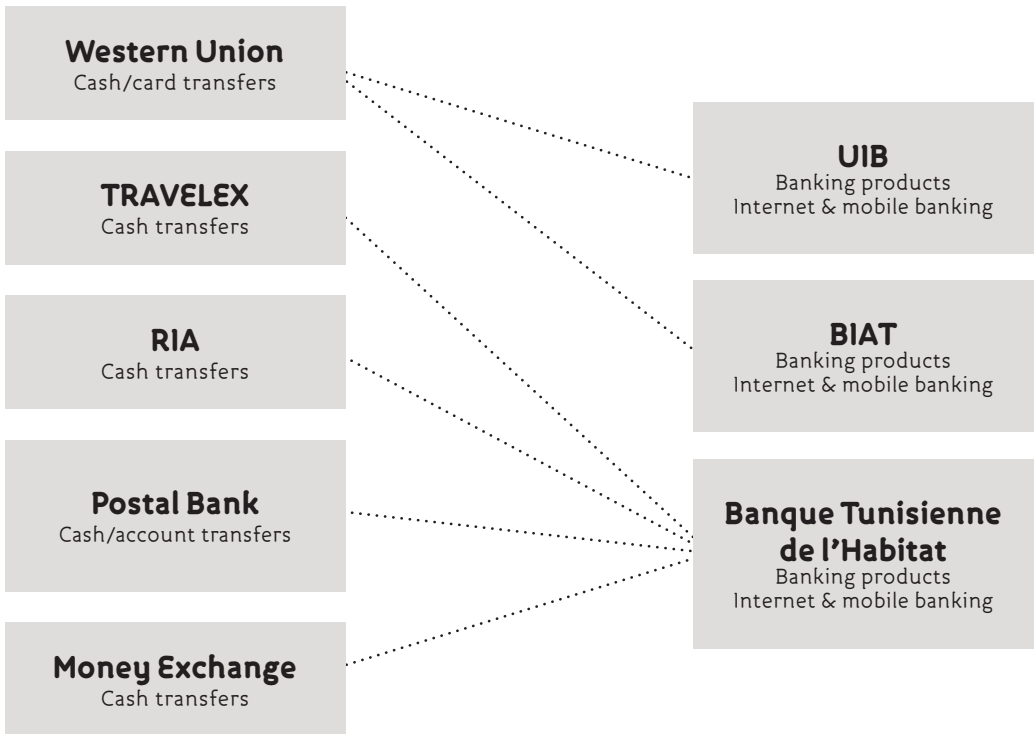


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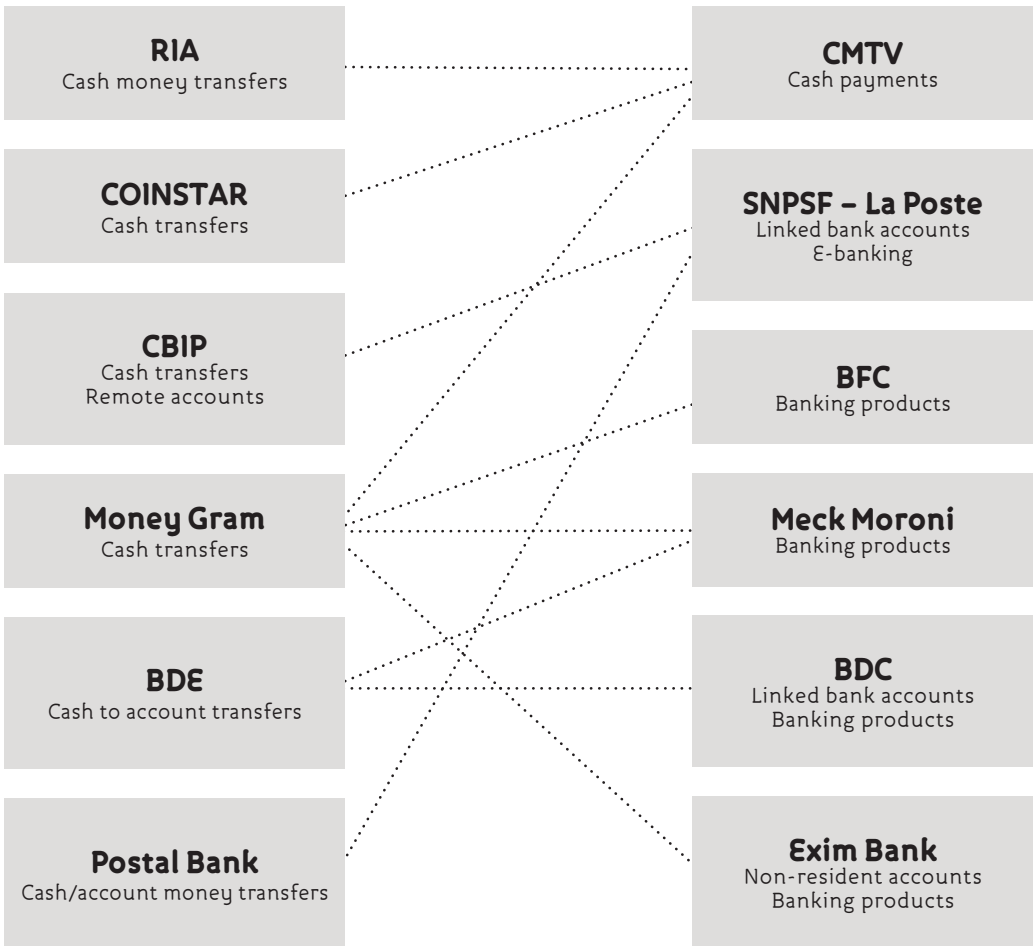
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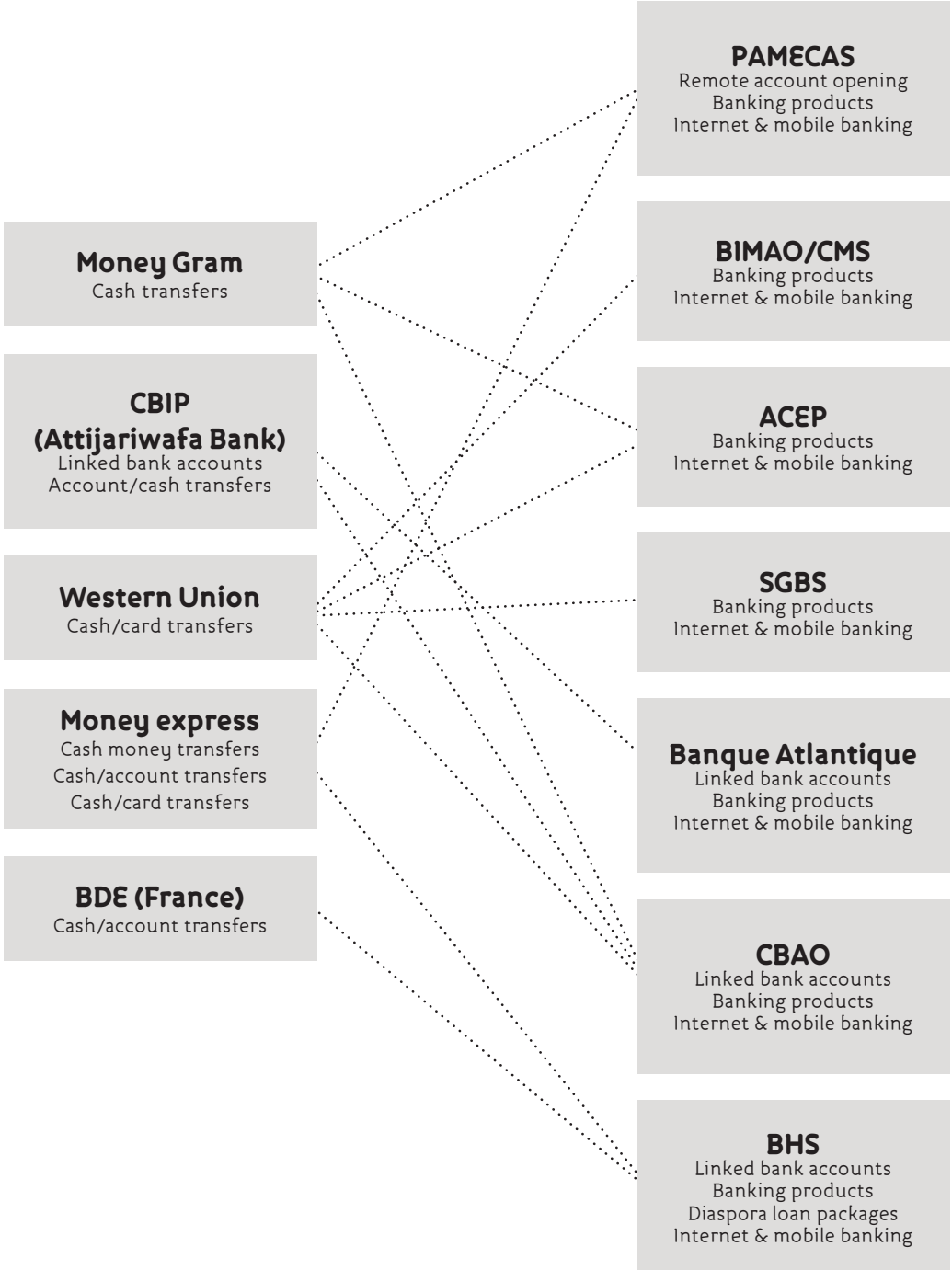


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COMOROS



SENEGAL



## APPENDIX 6: BASIS FOR THE TERMS OF REFERENCE FOR A FEASIBILITY STUDY ON SETTING UP A PAYMENT INSTITUTION FOR “MOBILE-BANKING CORRIDORS”

5.1.1 Which innovative solutions can be found to drastically reduce the cost of rapid money transfers on the France-Morocco and France-Senegal corridors?

5.1.2 Below, we set out a basis for strategizing about a targeted, radically innovative initiative for remittances in France and Europe.

### KEY FINDINGS

5.1.3 More than 95 percent of legal migrants working and residing in France have a bank account in France (including postal bank accounts), irrespective of whether they have become French citizens or not. Workers must have a bank account to receive salary payments.

5.1.4 Account-to-account money transfers from France to Morocco (in particular) are highly developed and inexpensive, running alongside the flourishing financial-messaging market dominated by Western Union, MoneyGram and others. The MTCs' services are expensive; they charge between 8 percent and 15 percent of the amount transferred. This cost relates to:

- Cash-handling
- Rent-seeking (at times)

5.1.5 Mobile-phone-based money-transfer technologies offer solutions no more complicated than sending air time between mobile phones. Mobile-network operators have no technical or financial problems crossing national borders or currencies; they have gained much experience from operating international roaming calls charged in multiple currencies.

5.1.6 On some corridors, such as between Japan and the Philippines, international mobile money-transfer services are operational and have customers. Other corridors, such as Great Britain/Kenya, are testing such services before adopting them. The product also exists on the Belgium-Morocco corridor. It would appear that it is not properly parametered (in terms of user-friendliness and cost) and there are hardly any customer requests for it.

5.1.7 Mobile-network operators – often subsidiaries of French telecom companies – in Senegal, Niger, Morocco and Cameroon are launching mobile-banking solutions, such as e-wallets and payment/transfer services:

- Orange offers such services in Senegal (under implementation after Côte d'Ivoire, Mali and Niger);
- Maroc Telecom in Morocco (with equity participation of Vivendi).

5.1.8 Chaabi Bank's customers in France can already operate their bank accounts via mobile phones to send money to an account in Morocco in the same Banque Chaabi (Crédit Populaire de Maroc Group).

### ISSUES

5.1.9 The development of payment solutions by mobile phone is more than likely in the medium term.

5.2.0 Moreover, the technical complexity and financial cost of handling cash in France hamper operators; this is why any innovative, lower-cost solutions must be cashless, without any cash handling in France

5.2.1 For the time being, global mobile network operators in migrants' countries of origin are testing and validating national mobile-banking solutions before looking at international money-transfer solutions.

5.2.2 We propose reversing the process, using remittances to accelerate solutions launched in Senegal and Morocco, based on Safaricom’s outstandingly successful M-Pesa solution and slogan in Kenya: “Send your money home.” (Safaricom is part of the Vodafone Group.) We note that Kenya received funding for the M-Pesa solution from the DFID, which provided support for the preparation, financing and implementation of the project.

## PROPOSED SOLUTION

5.2.3 We propose accelerating a process that would naturally grow into full bloom in a few years by setting up a technology and financial platform for transfers from France to Morocco and Senegal. The platform would have the following features:

- Legal form: ‘Société Anonyme’ (a public limited liability company);
- Financial regulation: Authorized as a payment institution and backed by a bank partnership for purely regulatory reasons – that is, for the right to access payments outside the so-called Single Euro Payment Area (SEPA);
- Shareholding:
  - The presence of the French telecom operators (SFR and Orange) already operating in the targeted countries would be ideal since it would facilitate a commercial partnership;
  - Due to the innovative and trail-blazing nature of the telecom product and echoing the M-Pesa project, one could envisage the use of public funds to speed up its development and marketing, (in the form of capital development, innovation subsidy, marketing-support subsidy) and targeting the Moroccans and Senegalese living in France;
  - Banks and banking groups in France or in remittance recipient countries may see an interest in participating in the project;
- Purpose: Migrants’ remittance transfers from their accounts in France to accounts, email accounts or cash-relay accounts in Morocco or Senegal;
- Technology solution: Interoperable with any mobile phone or operator: Orange; SFR, Bouygues Telecom, Free and Internet-based operators;
- Charges for network access: Negotiated with mobile operators;
- Transfer mode:
  - A migrant orders a money transfer using his or her mobile phone;
  - Via a direct debit from the migrant’s usual bank account;
  - To a very limited number of pre-registered recipients in the recipient country (no un-registered transfers);
  - For a maximum amount; (€500/month. This is the average transfer per person, and would cut across all the migrants). Reception in Senegal and Morocco: Ideally, on a mobile banking solution via Orange Mobile Banking or Morocco Telecom (and partner banks, Crédit Populaire and Attijariwafa Bank in Morocco).
- Reciprocity may be possible with the same constraints (for instance, money transfers from families of students living in France).

5.2.4 Migrants’ preference for cash remittances will be overcome by:

- Greatly reduced costs;
- Increased speed and ease of use – (anywhere, anytime, any day);
- Customized advertising campaigns and outreach.

525 Setting up a single platform with a trade agreement between mobile network operators:

- Would not be an anti-competitive agreement, but rather a new participant in the highly competitive global money-transfer market;
- Would provide technical service of the highest-quality and interconnectivity to customers;
- Would facilitate setting up essential technical and commercial pricing agreements in recipient countries and gaining access to a pivotal banking actor, such as a mobile network operator's bank group;
- Could be of interest to mobile network operators because:
  - Consistent with their long-term strategy;
  - A growth accelerator;
  - Minimal risk (growth capital + start-up public funding)

526 Although money-transfer costs may not decrease drastically at first, especially because of the amounts committed by development partners to create and promote the platform and the fact that in the recipient country, the beneficiary would like to convert his book money into currency, in the very short run the initiative will:

- Eliminate cash handling (source of high costs in transfers);
- Enhance user-friendliness for the beneficiaries at the two ends of the chain (use of mobile phones in private, discrete bank account debits without a middleman, pre-registered numbers);
- Ensure instant transfers.

527<sup>527</sup>. The role of development partners would be to:

- Act as catalysts for this initiative;
- Support marketing and advertising campaigns to Senegalese and Moroccans;
- Support setting up, if necessary, a venture capital fund to start up the mobile-platform company;
- Promote, in the medium term, the extension of the company's platform to other countries.

## APPENDIX 7: ANALYSIS OF MICROFINANCE INSTITUTION REGULATION IN THE WAEMU<sup>257</sup>

528 In the eight WAEMU-member countries, regulation of so-called “decentralized finance systems” (DFSs) (microfinance, in fact) – has undergone some developments that are likely to make the sector more professional and focused. These developments mainly include:

- A new Uniform Law regulating DFSs; the law has been passed in five of the eight WAEMU-member countries;<sup>258</sup>
- New procedural rules from the BCEAO that will gradually supplement or replace rules in force since March 10, 1998. In June and August 2010, the BCEAO adopted five new rules,<sup>259</sup> which we examine in the following pages.

529 **General guidelines of the Law and the first procedural rules**<sup>260</sup> This legislation marks a general trend towards consolidating the sector, after a phase of exponential growth marked by serious problems in some entities. The most significant changes include:

- A permanent license is now granted to all legal forms of DFS (limited liability companies, cooperatives or “IMCECs”, associations with subdivisions depending on whether the DFS collects savings or not);

257 Source: Lhériaux, L. “Chronique de Réglementation Financière,” *Techniques Financières et Développement (TFD)*, 101 December 2010 and TFD, 102, March 2011.

258 In late November 2010, Côte d'Ivoire, Togo and Benin had not passed the Uniform Law. Togo has passed the bill related to it in May 2011.

259 Rule No. 004-06-2010 on the withdrawal of the recognition for savings and credit groups operating in the Member States of the; Rule No. 005-06-2010 determining the components for DFS files requesting approval in the Member States of the; Rule No. 006-06-2010 on statutory audits of the DFS in the Member States of the; Rule No. 007-06-2010 on mechanisms to control and punishment of DFSs by the BCEAO and the Banking Commission; Rule No. 010-08-2010 on prudential rules applicable to DFSs in the Member States of the.

260 Texts available for download from [www.lamicrofinance.org](http://www.lamicrofinance.org).

- The BCEAO must give its consent to each authorization, regardless of the DFS's size, generally tightening approval conditions to counter the trend toward a very large number of very small entities; these become impossible to monitor because they are so numerous. The rules also ensure that large mutual association networks do not expand so much that they impact their robustness;
- Supervisory and sanctioning powers are transferred to the BCEAO and the Banking Commission for DFS coming under "Article 44" – that is, DFS that exceed a size threshold set by the BCEAO;
- A stronger obligation to structure and make financial networks coherent organizationally and financially; this involves members' oversight ability and an annual inspection requirement, along with new solvency standards and an internal security or solidarity fund.

**530 Rule 004-06-2010.** This rule deals with the terms for withdrawing approvals and liquidating a class of financial institutions known as GEC-CCM<sup>261</sup>; the new law eliminated these very small cooperative or mutual savings and loan associations. The GEC-CCM must file an application for approval to operate as a DFS within 18 months of the law's effective date. They must cease all activity if they do not receive an approval within 24 months, in which case their dissolution may be voluntary or ordered by the Ministry of Finance, which oversees the liquidation. This procedure will affect more than 300 small savings and loan associations in Senegal, the only country to have used this provision under the previous law.

261 Groupement d'Épargne et de Crédit à Caractère Coopératif ou Mutualiste (GEC-CCM).

**531 Rule 005-06-2010.** This rule makes conditions significantly harder, indicating an undisguised desire to increase the professionalism and financial strength of the DFS sector. The file is submitted to the Ministry of Finance, and then transferred to the BCEAO for assent before the finance minister grants approval. We note that the paperwork covering procedures and forms,<sup>262</sup> including money-laundering statements, are now required to be in the applicant's file to ensure they exist and are correct.

**532** There is no provision setting a minimum capital requirement for DFS's, even for corporate forms; this means that the BCEAO can assess the consistency between a DFS's capital investment and its business plan on a case-by-case basis.<sup>263</sup> Capital should now be fully subscribed and up to 25 percent paid in when filing for approval, and fully paid in prior to receiving an approval. The BCEAO also requests information to assess the quality of reference shareholders.

**533 Rule 006-06-2010.** The so-called "Article 44 DFSs" – as well as unions, federations and confederations must now appoint an auditor to certify their financial statements. The Banking Commission must approve the auditor and his or her deputy.<sup>264</sup> The auditor's certification covers internal controls, management-information systems, risk management and compliance; this goes beyond a certification based simply on reviewing superficial accounts and bypassing structural problems that may encumber the financial statements' transparency and reliability.

262 Procedures for savings, loans, administration, budgets, accounting, financial, IT, internal controls, AML-CFT, elements of human-resource management (job descriptions, etc.), method for calculating annual percentage rates (APRs) and so forth.

263 Especially with regard to capital requirements and medium- and long-term commitments, and given the initial investment costs before reaching break-even, based on a three-year (minimum) business plan.

264 The appointment of an auditor is optional for other DFSs; the Minister of Finance must approve auditors.



**534 Rule 007-06-2010.** The BCEAO has set the threshold at which it and the Banking Commission intervene in (Article 44 DFS) at CFA two (2) billion in deposits or loans for the previous two fiscal years; for savings-and-loan-association networks, this standard is assessed on a consolidated basis (parent company or affiliates). In addition, the BCEAO and the Banking Commission may intervene in other DFSs “after consultation with the finance minister.”<sup>265</sup> In fact, the BCEAO can oversee most of the DFS sector, down to the level

of medium-sized DFSs, depending on its capabilities; it can also follow up on significant problems brought to its attention without any impediment to its action or being held responsible for the multitude of small or very small entities.

**535 Rule 010-08-2010.** This rule presents a major overhaul of prudential standards, modifying most existing ratios and adding new ones. The authorities have decided to place the entire DFS sector under prudential supervision, notwithstanding the absence of deposit-taking or systemic risk among some DFSs. This reflects the resolve to push the sector towards more professionalism and profitability.

<sup>265</sup> An interesting question is whether the BCEAO can override the Minister of Finance’s negative opinion. To the extent that the BCEAO sets its own threshold for intervention, we can assume this is a procedural rule, the Finance Minister’s opinion a courtesy, and that the BCEAO can indeed override a negative opinion.

TYPE	FORMULA
<b>R1</b> Limiting risk volumes	Assets/Liabilities ≤ 200 %
<b>R2</b> Coverage for MLT commitments	MLT Assets/MLT Liabilities ≤ 100 %
<b>R3</b> Loans to officers, staff and related persons	∑ loans and bank guarantees/NE ≤ 10 %
<b>R4</b> Risk mitigation	Maximum risk/NE ≤ 10 %
<b>R5</b> Liquidity	Current assets/liabilities ≥ X % X = 100 % for unaffiliated deposit-taking DFSs X = 80 % for affiliated mutual DFSs X = 60 % for “other non-affiliated non-deposit-taking DFSs”
<b>R6</b> Diversification	Amount spent on operations other than savings and loans/ ∑ (loans, investments and securities) ≤ 5 %
<b>R7</b> General reserves	(Retained earnings + net loss) × 15 %
<b>R8</b> Solvency (capitalization)	NE/net assets (unweighted) ≥ 15 %
<b>R9</b> Equity investments	∑ investments (excluding in CI and DFS)/NE ≤ 25 %

CI: Credit institution

NE: Net equity Note that the definition does not distinguish between items included in core and supplementary capital (subordinated debt, investment subsidies, etc.), unlike international banking standards.

The capital structure could therefore contain mostly items usually defined as supplementary capital.

MLT: Medium and Long Term

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## ADDITIONAL NOTES AND COMMENTS ON THE RATIOS:

**536 R1:** The recovery ratio changes from a 1998 ratio, typical of internal standards that restrict loans to members to a percentage savings (credits/savings  $\leq x\%$ ), using a “savings before credit” rational. The ratio expands the numerator and denominator with the addition of net equity and financial sector debt, excluding resources. Given the calculation method, it would be hard for a DFS to not comply with this ratio; its utility for prudential supervision purposes is not clear.

**537 R2:** The recovery ratio applicable to the IMCEC since 1998. Note that the medium term begins at one (1) year, which is usual in microfinance regulation.

**538 R3:** The ratio that covers all elected officers and employees is much more stringent than the one previously imposed on the IMCEC. It could impose lower loan limits on targeted individuals in small entities, especially credit unions or cooperatives.

**539 R4:** The ratio favors large and highly capitalized organizations; this ratio is very flexible for large corporate DFSs, but very strict for small IMCEC. It encourages mergers and pushes small local DFSs toward becoming mere agents of larger and better-capitalized ones.

**540 R5:** Calculating the current ratio now requires geographic information systems that can provide aging schedules for assets and liabilities, each using a less-than-90-days formula for residual durations. Not all DFSs have this capacity at present. Moreover, unlike many banking standards, the demand deposit accounts are 100 percent included in the liabilities calculation; this is very strict and will require deposit-taking DFSs to keep larger, otherwise unproductive reserves or make low-yield investments in less than three-month loans, or in short-term money-market certificates and the like.<sup>266</sup>

**541** We also note that rates differ depending on risk levels – with or without savings – and whether or not branch networks supposedly support the DFS.

**542 R6:** This ratio offers a small tolerance, aiming to prevent a DFS from doing anything other than its main business, such as commodities trading. We note that other transactions relating to savings and credit, such as payment means and safe-deposit-box rentals, would be included in the ratio. We assume we must retain diversified assets in parallel with the denominator based on assets. There might be significant non-banking products that would not appear in the assets; this could limit the ratio’s effectiveness.

**543 R8:** This ratio is a key innovation that fills a gap in the previous regulation. It has many necessary consequences, including an indirect obligation for the DFS to be financially balanced to avoid a loss of net equity. Many DFSs do not currently comply; they have two years to recapitalize.

**544 R9:** This ratio includes only part of the standard bank ratio ( $\leq 25\%$  of equity capital) but does not prohibit non-financial firms from holding a majority share of capital.

.....  
<sup>266</sup> Generally, a fraction of demand deposit accounts is considered stable; the liquidity ratio of banks in the WAEMU takes only 75 percent of demand deposit into account, and only 15 percent of special savings accounts that are available on demand or in up to three months.

**5 4 5 Unconsolidated standards.** A final important consideration is the lack of consolidation of prudential norms for networks – there is a “delegated” supervisory element, but not a consolidated one. This indicates that the supervisor does not have enough confidence in the networks’ performance and cohesion to exempt each affiliate from complying with the ratios.

**5 4 6** We also wonder about the effect of certain ratios when applied to umbrella organization – particularly vis-à-vis risk-sharing applied to loans to members of a union or federation.<sup>267</sup>

**5 4 7** After adopting this first set of rules in June and August 2010, the BCEAO then continued by adopting Rule No. 016 at 021-12-2010 for DFSs as follows:

267 Appendix IV to Rule No. 010-08-2010 defines risk as “the outstanding loans and funding commitments and guarantees given to members, beneficiaries or customers” of an (IMCEC) union or federation member. Limiting the loans to each member of a union to only 10 percent of its equity – that is, 1.5 percent or a little more of its balance sheet – would block networks with few members (10 or 20 or so); it would counter the network’s liquidity objective, as ensured by one or more of the holding company entities. By comparison, CAEMC Regulation 2002/08 provides that COBAC EMF 2002/08 says that the standard risk division “does not apply to assistance granted by the umbrella entity to its affiliates.”

**5 4 8 Rule No. 016-12-2010 on financing fixed-asset and equity investments by the DFS.** This is a complement to standards adopted on August 30, 2010, including coverage of medium- and long-term commitments with stable resources. The formula is defined as net assets<sup>268</sup>/net equity  $\leq 100\%$ . In addition to the flexible definition of capital already noted,<sup>269</sup> we note that this ratio – essential for curbing the sometimes lavish real property ambitions of mutual networks – does not impose a capital reserve beyond that invested in fixed assets; this allows buildings to be purchased with subordinated debt and capital-investment subsidies. It would have been more prudent to impose a gradual transition from 100 percent to 75 percent and then 50 percent.

268 After deduction of “non-prudential values” – that is, expenses and fixed assets, including set-up costs, and shares in other credit institutions or DFSs; deducted from net capital.

269 See “Chronique de Réglementation Financière,” in *Techniques Financières et Développement* (TFD), 101. The formula for calculating capital does not distinguish between the “core” capital base and supplementary capital – that is, subordinated debt, investment subsidies, etc. This could lead to an over-representation of these lower-quality assets in the composition of capital, in contrast to the trend found in the Basel Committee that seeks instead to increase the share of core capital. Certainly, many DFSs have unbalanced capital structures, with insufficient retained earnings and/or reserves; calculating the norm favors compliance with the ratio; however, remedial solutions exist, at least in mutual DFSs, to increase capital with each new loan and maintain a sufficient level of capitalization.

**549 Rule No. 017-12-2010 on the organization of internal controls within the DFS.** In its appendix, this rule repeats the basic principles of internal controls within a financial institution.

**550** We basically see:

- Progress in terms of direct dialogue between the DFS auditor and the supervisor via an annual pre-inspection notice, subsequent inspection reports<sup>270</sup> and the annual inspection report;
- A practical question about the ability of a mutual DFS's supervisory board members to perform their duties when they are less-easily-mobilized volunteers, and usually have no academic background that would help them achieve their mission;<sup>271</sup>
- Another practical question about the sometimes oversized provisions for corporate governance;<sup>272</sup> in any case, such stipulations may require that extra support be given to DFSs that do not have certain tools;

- A lost opportunity in that the rule does not go so far as to impose the BCEAO's assent as a requirement for the appointment and dismissal of the audit director,<sup>273</sup> at the very least for Article 44 mutual DFSs;<sup>274</sup>
- The scope of prudential supervision and internal control does not explicitly cover some entities.<sup>275</sup> However, these aspects should be included in the code of ethics that each DFS must now adopt;<sup>276</sup> the supervisor should look closely at these aspects in the code and inspections.<sup>277</sup>

270 The reports cannot be changed by the DFS's managers when they are involved; this legally allows the BCEAO to benefit from unedited reports. The obligation to tell the supervisor about each inspection report was already covered by Article 40 of the Uniform Law on DFS regulation.

271 Some major mutual DFSs would likely benefit from thinking about the socioeconomic profile of their supervisory board members and the need to select them from among customers according to proven competencies, or via a recruitment exercise.

272 Annex to Rule Section 2.4. All DFSs (not just the major Article L44 entities) are required to have a business plan, a way of monitoring their budget, "tools for measuring, forecasting and simulating to test the vulnerability and sensitivity of the DFS to internal and external shocks"; the development of stress-test and credible business continuation plans have been an issue for banks since the global financial crisis, and their a posteriori credibility has not always proven realistic, as seen in the Irish banks. The DFSs must also have "codes of ethics covering relations with customers and suppliers of goods and services" (among other things) and an AML-CTF system that complies with current legislation – an obvious obligation, of course, but one worth remembering. Presumably, some of these provisions could have been applied only to the larger DFSs; it would also be useful for the BCEAO to make boilerplate tools available for items such as a code of ethics, a collection of AML-CFT procedures that could be adapted to the DFS's size and operational complexity, among other items.

273 This would give the BCEAO more independence than that already granted by law, especially vis-à-vis managers in the general directorate of a mutual DFS.

274 DFS covered by Article L44 of the Uniform Law on the regulation of DFSs are subject to the BCEAO's and Banking Commission's supervision. These are DFSs whose deposits or loans exceed XOF 2 billion; see Lhériaux, L., "Chronicle of Financial Regulation," *Techniques Financières et Développement*, 101.

275 Some entities, such as subsidiaries, come under the scope of BCEAO's supervision; in the same way, loans to upper managers and elected officials are monitored through constant supervision. Criminal activity could therefore move to more subtle fraud operations, such as with entities unrelated to the DFS or its officers, for contracts that are "only" more expensive for the business, or for non-supervised grant or sponsorship activities.

276 Appendix to Rule No. 017-12-2010, Article 2.4, Corporate Governance: A DFS must adopt "codes of conduct including on relations with customers and suppliers of goods and services and the obligations to shareholders, managers and staff." In particular, the code should also provide rules for conflicts of interest and managers' statements; entities receiving grants or sponsorship contracts should commit themselves to being audited by the DFS directly, and by the monetary authority indirectly, to verify the expenditure.

277 Such as contracts for services or grants from the DFS, so that the otherwise-supervised DFS cannot have its assets embezzled through foundations, building societies, "sponsored" sports clubs or temporary employment service companies gravitating around the DFS or its management.

**5.5.1 Rule No. 018-12-2010 on the obligation for the DFS to produce an annual report.** Reporting requirements have been strengthened, in comparison with the now-repealed rules No. 07 and 08 of March 10, 1998. Surveillance has increased for some sensitive elements in mutual DFSs, such as details of elected officials' expenses, and details on executive compensation, donations and social welfare programmes. Moreover, the detailed information requested for operations means that the DFS must have a robust management-information system capable of recording and synthesizing qualitative information; some software upgrades will probably be necessary.

**5.5.2 Rule No. 019-12-2010 on setting up a deposit-insurance fund or solidarity collateral pool (fund) within the credit unions and cooperatives networks.** This obligation is required under Article 114 of the Uniform Law on DFS regulation.<sup>278</sup> The rule specifies the fund's purpose, related both to solvency (provision of capital to members who do not observe the 15 percent capitalization ratio), liquidity and "exogenous shocks such as would likely jeopardize the DFS's financial viability".<sup>279</sup> The fund is established as a specific account integrated with the umbrella organization's equity.

**5.5.3** A mandatory non-refundable fee of 2 percent of assets in the first year<sup>280</sup> finances the fund; this fee increases with average asset fluctuations in subsequent years. As a result, it significantly impacts members' equity and results the first year.<sup>281</sup> Donors may also contribute to the fund, under the supervisory authorities' oversight. The fund must be increased at the supervisor's request, "according to an assessment of the network's financial position"; this applies, for example, when a significant number of local savings and loan associations are unprofitable and/or undercapitalized.

**5.5.4** This mechanism calls for two fundamental comments:

- It represents a major change in terms of implementing effective financial solidarity within the networks,<sup>282</sup> laying the foundation for partially consolidated financial supervision. For the confederations of networks of credit unions and cooperatives in the WAEMU – at present, there are two, the CCMAO and the CIF – it might even represent a change of type. Indeed, this fund is the materialization of solidarity at the highest levels of the networks.<sup>283</sup> But, it is not yet clear whether the members of the two confederations intend to show financial solidarity or its counterpart – that is, blatant interference in the management such as an assisted DFS. Henceforth, the rules of the game have been changed.

278 Uniform Law, Article 114: "Once it is established, every union, federation or confederation shall set up a deposit insurance or solidarity collateral pool or fund for dealing with risk management. The rules for financing this fund are determined by Central Bank procedural rules."

279 There is a parent-child relationship with France's COMOFI, Article L512-86-1, which states that The parent company for the savings banks and credit unions referred to in Article L. 512-106 has to have a collateral pool to guarantee the liquidity and solvency of their networks of savings banks, which, if used, the holding company may decide to ask other savings banks for necessary contributions."

280 Rule 019-12-2010, Article 5, states that "2 percent of average gross assets and signed commitments" of member institutions.

281 For example, an institution at break-even using the standard cap of 15 percent will end the first year with a less than 2 percent return on assets (ROA), a 13 percent solvency ratio and an equity loss of 13.33 percent.

282 As such, it aims to solve the problem of some technically and financially deficient networks; in the best cases, such local banks or credit unions resign from the network to avoid using the network's solidarity fund.

283 Article 1 specifies that the fund is constituted "in networks (unions, federations and confederations)."

- We question the twin objectives of liquidity and solvency. The fund seems set to cope with solvency shocks; however, a liquidity crisis requires a near-immediate reaction,<sup>284</sup> usually in the form of short-term liquidity,<sup>285</sup> and potentially for far greater amounts than such funds can cover.<sup>286</sup> Thus the fund's effectiveness will be quite relative in this context; it should not be the only mechanism available to satisfy the Law's Article 115<sup>287</sup> that requires liquidity mechanisms backed by the cash available in the network or even bank refinancing.

**555 Rule No. 020-12-2010 on key indicators that the DFS must periodically submit to the Minister of Finance, the BCEAO and the Banking Commission.** These indicators of portfolio quality, scope, entity profitability and balance-sheet management must be submitted on a monthly basis for Article 44 DFSs, and quarterly for others.

**556** We wonder if it is possible for a DFS to artificially minimize its PAR 30,<sup>288</sup> one of the most important measures for a bank supervisor or risk manager to monitor:

- The WAEMU's DFS accounting framework provides that "writing down outstanding debt is optional if the unpaid period is between 0 and three months;<sup>289</sup> this will enable the PAR 30 to be limited only to loans with an unpaid com-

ponent of more than three months (and other unpaid installments of 30 days or more) It is not clear whether the ratio of PAR 30, 90 and 180 includes only bad and doubtful debts<sup>290</sup> or if it also includes capitalized accounts receivables.<sup>291</sup> The non-inclusion of outstanding balances is a technique often used in micro-finance to distort the ratio.

**557 Rule No. 021-12-2010 defining the type of DFS authorized to apply a lighter version of the primary basis of accounting.** This rule applies mainly to DFSs with total deposits and loans of less than CFA 50 million;<sup>292</sup> it also applies to the "GEC-CCM"<sup>293</sup> DFSs (that the new legislation eliminated) during their authorization or liquidation period.

**558 Future developments.** The BCEAO will pursue enacting additional standards, including one to set up a deposit-guarantee mechanism for customers in WAEMU, first for banks, then a similar system for DFSs.

**559** Some countries may eventually decide to promote consistency in taxing different forms of DFSs, in accordance with the principle of neutrality for government aid, particularly fiscal aid.<sup>294</sup>

<sup>284</sup> And without waiting for: a reorganization plan, prior authorization from the holding company's board of directors, prior approval for the recovery plan and cash-flow plan by the holding company's supervisory, a formality required under BCEAO Rule No. 019-12-2010, Article 6.

<sup>285</sup> Subordinated debts tend to be medium to long term. In addition, a cash-flow crisis requires giving a lender new money rather than capital-intensive subordinated debt.

<sup>286</sup> Requiring support equal to 10 percent to 20 percent or even 30 percent of the member institution's balance sheet in a liquidity crisis event involving savers' large cash withdrawals at counters does not seem unlikely since the bulk of deposit-taking DFS liabilities consists of customers' saving deposits.

<sup>287</sup> Law regulating DFSs, Article 115: "The unions, federations and confederations shall ensure balance in their financial structure as well as in institutions and their affiliates and, if any, their financial agencies. They must respect and uphold the standards the Central Bank procedural rules set, and take corrective action if necessary." This means that the unions, federations and confederations must try to keep their members' liquidity levels sufficiently high, particularly vis-à-vis the liquidity ratio.

<sup>288</sup> Portfolio at Risk (PAR) for loans in arrears more than 30 days (s).

<sup>289</sup> Source: *Financial reporting for DFS in WAMU*, 1<sup>st</sup> edition (August 2009), page 141.

<sup>290</sup> [] Line item 292: ≤ 6 months in arrears, 293: ≤ 12 months in arrears, 294: ≤ 12 months in arrears, ≤ 24 months. (Source: *Financial reporting for DFS in WAMU*, 1<sup>st</sup> edition (August 2009), page 141).

<sup>291</sup> [] 291 is the line item for, healthy, performing loans following the repayment of past due payments, rescheduled payments, loans that have been renegotiated or reorganized by creditors and whose settlement terms have been met (Source: *Financial reporting for DFS in WAMU*, 1<sup>st</sup> edition (August 2009), page 141). In addition to the rescheduled payments, we find it would have been better to include refinanced debt, including offset for old loans, those assumed impaired, and a new loan; while retail banks in developed countries often use debt consolidation loans, such a technique is strongly discouraged in microfinance or at least must appear clearly as outstanding debts on MFIs' balance sheets.

<sup>292</sup> Approximately €76,225 or \$103,000.

<sup>293</sup> The *Groupeement d'Épargne et de Crédit à Caractère Coopératif ou Mutualiste* (GEC-CCM) are "recognized" but do not have a specific legal status.

<sup>294</sup> Under Article 118 of the Banking Law, only the IMCECs and their umbrella organizations (unions, federations, confederation) benefit from tax exemptions on their savings and loan activities with their members; other legal forms of DFSs – corporations, associations – do not get the same tax break. In addition, IMCEC members receive exemptions on dividend and savings interest income, and interest paid to IMCEC. Legislative reform is required to make taxation consistent; we note that tax matters come under the authority of governments and national parliaments more than under the WAEMU's powers.

## APPENDIX 8: SUPPORT FOR THE ESTABLISHMENT OF BUSINESSES

5 6 0 Since the 1970s, France and other European countries have instituted programmes to help migrants return to live in their countries of origin, focusing on the unemployed, the poorest or students finishing their studies. All such programmes aimed to turn these migrant populations into entrepreneurs who created very small businesses; this was supposed to help the migrants reintegrate, meet a demand for goods and services, and serve as a development model in the countries. The programmes rarely achieved these objectives, especially since the migrants targeted were mostly unqualified for the task, and because the vast majority of business start-ups fail in their early years, impeding the migrants' reintegration. However, individual successes were certainly reported here and there in the local press, which presented the best-managed and most innovative companies as success stories.

5 6 1 In light of this experience, we propose that effort be focused on individuals capable of backing a real business project – those with the necessary technical, management, human, financial and networking abilities. An analysis of entrepreneurial development experiences in Africa, Latin America and Asia results in the following selection criteria.

## ENTREPRENEUR IDENTIFICATION

5 6 2 The first challenge lies in spotting the best project developers (10% of the candidates, according to expert estimates). This group will generally share the following social, educational and financial traits:

- Education levels that allow them to benefit from capacity-building and business-incubation programmes (this usually means high-school graduates with at least three years of college);
- Middle-aged individuals (35-45 years old) who combine professional experience with goals for the future;
- Professional experience acquired either as a businessman in the country of residence, or as an employee or consultant for large-or medium-sized national or international company;
- Financial assets in the form of loan guarantees or 15 percent of initial required capital at minimum, a secure employment situation, and sufficient economic integration in the country of residence to be able to take risks;
- Strong desire to achieve personal goals – an essential quality for navigating the complexities of remote entrepreneurship;
- Weak social ties with relatives in the country of origin to reduce their demands on the migrant's income and savings. These social ties lessen when the migrant has lived abroad for many years, or when the individual is a descendant of a first-generation migrant and may be a dual national;
- The latter have fewer complexes about their country of origin and often prove more disconnected from traditional social pressures, which helps their success rate. For example, more than 80 percent of first-generation migrant Vietnamese failed, whereas second- and third-generation offspring saw a success rate of more than 70 percent.

563 Migrant associations rarely count potential entrepreneurs among their members. Rather, entrepreneurial migrants think like other entrepreneurs in their country of residence, talking primarily to banks and regional organizations that assist business start-ups, such as local or international chambers of commerce, regional development agencies, professional organizations and so forth.<sup>295</sup> However, these entities have no specific tools to help entrepreneurial migrants, so it would be useful to set up a system to identify and help such individuals, in conjunction with business-focused organizations in migrants' countries of residence and origin.

564 A system involving banks and start-up support organizations could usefully center on the most affected regions of France: Ile de France; Rhône-Alpes; Provence, the Alps and the Côte d'Azur; Upper Normandy; Aquitaine and North Pas-de-Calais. To identify qualified migrants, centers with jurisdiction over a geographical area should be set up. These centers should be able to legitimately offer expertise and assistance to international migrant entrepreneurs, with resources from the French trade commission, Ubifrance, and the International Chambers of Commerce, regional councils and development agencies, inter-city and other councils, large municipalities, professional and trade associations, and other French business-promotion initiatives.

565 Such centers must remain completely independent from non-profit, non-business-oriented groups, or else this initiative could quickly find itself at the center of a power struggle between migrant associations and nongovernmental organizations totally cut off from their main target – entrepreneurial migrants.

.....  
<sup>295</sup> Some French organizations include the *Confédération Générale des Petites et Moyennes Entreprises*, *Centre des Jeunes Dirigeants d'Entreprises*; the International Chamber of Commerce in Paris has started such a programme, too recently to draw any conclusions about its effectiveness.

## ENTREPRENEUR SCREENING AND SUPPORT

566 Screening could be done on the basis of migrants who respond to a call for candidacies and who show their interest by submitting a business plan. The plan would be assessed according to conventional criteria – project relevance, maturity, available capital, market knowledge and so forth. There should be a submission fee – even if small – to reduce the number of immature plan submissions.

567 Successful applicants should be eligible for cost-sharing as they finalize their business plans. Experts from the diaspora or from universities and technical schools could be invited to assist in the study of the proposals. (This type of cooperation exists between Ghana and the United States)

568 The cost-share-based support will cover costs for feasibility studies covering legal, administrative, financial, technical, property, competition and marketing aspects, as well as for travel to the country of origin and so on. Cost-sharing should also apply to subsequent steps in starting up a company and continue over its first two to three years, to cover legal assistance, recruitment, bank reviews, accounting and financial-management information systems, and so on; these studies and subsequent assistance should draw on professional organizations and entities in both countries, residence and origin.



## APPENDIX 9: JURISPRUDENCE AND DOCTRINAL ELEMENTS ON THE BORDER OF THE BANK MONOPOLY AND SANCTIONS FOR CROSSING IT

569 Banking law is national in its application: banking operations carried out in France are subject to French laws.

570 This raises the question of where a remittance transaction – an inherently transnational operation – takes place, and where a migrant’s investment in a fund takes place.

571 This question specifically concerns:

- Taking deposits from the public;
- Credit transactions.

572 Sometimes the boundary is debatable.

### EXAMPLE 1

573 A financial institution from a developed country wants to capture migrants’ savings. It uses intermediaries in Europe to promote its products, if need be, with an office in an area with a high concentration of its target-clientele. It also has a website with some pages clearly aimed at migrants residing in France, and remotely opens accounts for them, by correspondence.

574 In any case, the funds are sent to deposit accounts in the financial institution through the formal money transfer circuit (account-to-account bank transfer or cash-to-cash by express delivery, or cash-to account). The institution does not therefore carry out the transfer transaction by itself in Europe. But it has set up a reception and communication mechanism in the recipient country for funds from European residents.

### EXAMPLE 2

575 The same financial institution provides mortgage loans for homes bought in a migrant’s country of origin; the loan product is advertised in Europe. The loan application is reviewed in Europe by a representative of the financial institution, and signed in Europe, for a loan to be disbursed in the South for a property to be purchased in the South.

576 More broadly, the representative solicits new customers,<sup>296</sup> offering advice and help with financial matters, for very simple, unsophisticated transactions.

### EXAMPLE 3

577 A non-European bank authorized to operate in France offers its customers in France financial or investment products and services that are not authorized for sale under French norms. The bank’s stance is not purely passive; it is not simply executing an “unsolicited” order from its client. It advertises such products and services – at least inside its own premises.

### Bank monopoly, bank and financial soliciting, sale of unauthorized investments

578 These practices clash with the idea that the European authorities can protect banking and investment customers in Europe. Sometimes a non-European-approved bank envoy, or a correspondent, or a French bank that is a partner to a non-European bank, transacts on loans and other financial products.

296 COMOFI Article L341-1 states: “Banking or financial solicitation includes any unsolicited contact by any means whatsoever with an individual or a corporation to obtain his or her or its agreement to (...)” conduct a bank transaction or an investment. The Article continues: “No matter the person or the approach, being physically present in people’s homes, workplace or in places not intended for marketing products, financial instruments and services, for the same purpose [of selling] also constitutes a banking or financial act.”

579 Of course, in the two cases one can argue that the banking transaction – receiving money from the public or lending – is performed in the country of origin<sup>297</sup> because the cash is received or disbursed in that country.

580 Nonetheless, this set of operations provokes a feeling of fraud vis-à-vis French Banking Law; viewed as an overall strategy, such operations suggest that non-European banks and MFIs are allowed to reach and serve a European clientele, operating in Europe, between banks and other financial institutions. This violates the national bank monopoly; even if each transaction is in compliance with French Banking Law, the overall effect is not.

581 Thus, one may consider redefining where a banking or stock market transaction is completed; at least it could be deemed that non-authorized banking and financial services solicitations take place in the E.U., as do unauthorized advice and assistance.

582 Such activities are particularly noticeable in sales of non-E.U.-authorized equities marketed in France; in violation of COMOFI Article L. 341-10, 4.

583 Whether banking or investment products, the underlying economic and social problem lies in lower levels of customer protection in France; bank customers have fewer rights, lower insurance levels for their savings, lesser quality prudential supervision and lower quality stock market products, and so forth. This poses problems since such situations run counter to prudential regulation that aims to protect customers in France.

297 Where does receiving funds from the public begin? At account opening, or the first euro (or other currency) deposit? If receiving public funds starts at account opening and the opening of account in a country of origin is made from France, can we consider that the non-E.U. institution receives funds from the public in France and thus violates the credit institutions' monopoly in France? And, subsequently, is the entity that facilitates the account opening in France complicit?

## **Sanctions against foreign financial institutions are weak according to the Plenary Session of the Court of Cassation, March 5, 2005**

584 What risks would financial institutions from the South face in practice should they breach banking monopoly in France, or at least, the standards for soliciting and product marketing?

585 It appears that in practice they do not risk criminal sanctions, since they and their assets are located in a European jurisdiction; criminal proceedings against them would be pursued randomly if at all.

586 For these financial institutions, what is most important is that any agreements entered into in violation of the rules concerning the regulation of the banking profession remain valid, as asserted by the Plenary Assembly of the Court of Cassation in 2005; this point of law was in fact underscored in an article published by a leading business newspaper in Morocco, apparently for the attention of Morocco's credit institutions "just in case."

## **Criminal sanction possible against French accomplices: Cass. Crim., March 19, 2008**

587 In practice, the main risk falls on those in France who are complicit in these acts. The Criminal Chamber passed an unambiguous judgment on 19 March 2008 based on the fact that despite the nature of the offense of illegally practicing the profession of banker, providing assistance to a single illegal operation is enough grounds for conviction.

588 This decision is particularly interesting because it is in line with the theme of this report; the person was convicted for sending funds to Colombia for Colombian workers living in France.

589 Thus, individuals and even more so corporations, irrespective of whether they are simple “associations” or “groups” or approved financial institutions in France, should be particularly careful about the legal risk they face through linked bank account agreements or practices with non-European-authorized financial institutions for actions and complicity in covering or helping with such acts.

590 This does not run counter to the legal safety and development of transparently linked bank accounts.

## CONCLUSION

591 The boundary of monopoly is reached no doubt very quickly in law and in practice by some actors in France:

- When making transactions in France that involve a non-European bank operation, such as taking deposits from the public, even if the money goes through a legal means of payment; loans in countries of origin, payments made in France, such as sending tools to France to perform transactions on a foreign account.
- When soliciting business or offering financial advice and assistance in France for financial institutions in the South.

592 For more information, see:

- Plenary session, March 4, 2005;
- Articles about legal doctrine and comments in the October 2005 edition of *l’Economiste*.
- Cass. Crim., March 19, 2008;

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## BANK - APPROVAL - ACQUISITION - FAILURE - PENALTY - REVOCATION (NON)<sup>298</sup>

*Plenary Session, 4 March 2005,*

*Bull.N° 2, BICC n°621, p.3*

*Mssrs.Paloque’s report and de Gouttes’ opinion*

593 Since a number of professional activities are regulated, the question arose about the possible consequences of a failure to comply with these regulations on the validity of contracts concluded by the professionals involved.

594 This question has received different answers from the chambers of the Court of Cassation; the First Civil Chamber holding that the improper exercise of a profession did not affect the validity of agreements. This solution was adopted for various professionals – bankers, bailiffs, notaries. The Commercial, Financial and Economic Chamber found that loans made by a banker exercising his profession illegally were null and void. The Criminal Division considered that breaches of Banking Law only affect the public interest and the banking profession, implying the inadmissibility of the application to join proceedings as a civil party.

595 Meeting in a Plenary Assembly, the Court of Cassation decided on March 4, 2005 that the failure by a credit institution to comply with the requirement of getting an approval in respect of Article 15 of the Law 84-46 of 24 January 1984, codified in articles L. 510-10, L. 511-14 and L. 612-2 of the Monetary and Financial Code, subordinating its activity, is not likely to result in voiding its contracts.

596 Moreover, the Court of Cassation examined the internal banking law’s compatibility with the Community law’s approval requirement in force at the time. The Commercial Division had asked the European Court of Justice if it was possible for one State to subordinate the activity of a bank from another Member State to its obtaining the

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298 See *Bull. 2; BICC No. 621, p. 3, report of M. Paloque and opinion of M. de Gouttes; text on [http://www.courdecassation.fr/jurisprudence\\_2/assemblee\\_pleniere\\_22/communiqu\\_422.html](http://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/communiqu_422.html).*

approval. It was shown under what conditions this requirement could be consistent with the Second Directive No. 89/646/EEC of the Council of 15 December 1989 then applicable. Considering these conditions were met, the Commercial Chamber ruled that the requirement for a Belgian credit institution to obtain such approval was compatible with Community law and reversed the previous Court's decision. The Court of Appeals resisted the doctrine of the Commercial Division, so the Plenary of the Court of Cassation had to decide this issue.

597 It decided that since the appellate court found that dismissal of the bank in question met the prudential requirements similar to French rules and was subject to a supervisory authority that had an obligation to collaborate with the competent authorities of other Member States, the bank's obligation to set up a bank on French soil – a necessary condition for obtaining a license – misinterpreted Community law as interpreted by the Court of Justice. Indeed, as the Court observed, requiring a permanent establishment conditioned by obtaining a license under French domestic law was a denial of the freedom to provide services guaranteed by the Treaty, and such a requirement would be necessary to achieve the goal of protecting consumers. But the appellate court noted that the foreign bank setting up a branch in France would not have ensured greater protection to the borrower. The court inferred that the internal law went beyond what was necessary to protect the borrower and was therefore incompatible with Community law then in effect.

598 This decision was made on the General Counsel's findings.<sup>299</sup>

299 Source: Department of Documentation and Studies

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## AN UNEXPECTED OPENING FOR MOROCCAN BANKS?!<sup>300</sup>

L'ECONOMISTE

*The first economic daily of Morocco*  
Edition N°2133 of 19 October 2005

599 A thunderbolt in the French banking sky! Banking operations concluded in violation of the French bank monopoly are valid! That, in essence, is the brutal lesson to be drawn from a ruling by the plenary session of the Court of Cassation last spring – 4 March 2005 to be exact. It is unclear whether or not this ruling will influence Moroccan legal doctrine. In any case, given the deep links between the two countries, it is important to address this shift: even when performed outside the bank monopoly, banking operations are valid.

### Foreign bank interest

600 In other words, a foreign company may, for example, validly grant loans in France to French residents, even though it is not licensed as a bank, without the risk of the granted loans being voided. Therefore, the only risk is in exposing the undertaking and its manager to criminal penalties: three years in prison and a €375,000 fine. However, this risk seems theoretical since the authors of such an offense to the bank monopoly bank are not

300 Article copied from: Gauvin, A. L'Economiste, October 19, 2005, Issue 2133. See <http://www.leconomiste.com/article/une-ouverture-inattendue-pour-les-banques-marocainespar-alain-gauvin>.

established on French soil. This French Court of Cassation decision, in its most solemn formation, deserves some comment. At the outset, it should be noted that this decision will not fail to arouse the interest of foreign banks that offer banking and financial services performed abroad to “their” nationals residing in France without benefiting from absolute legal assurance that they are not violating the French bank monopoly. First, note that the Court of Cassation was not required to examine whether or not a contract in violation of the monopoly was valid for a simple reason: in this case, it held that the loan in question violated no bank monopoly. Therefore, it was not necessary for it to rule on the validity of a loan that the Court considered did not affect the bank monopoly. So we should see in this decision a principle likely to make case law.

### A mini-revolution

**601** Next, in its plenary session the Court of Cassation reversed a decade of case law, overturning its Commercial Division’s rulings. Indeed, for more than ten years the Commercial Division has determined that loans by unauthorized institutions are void. The Commercial Division was careful to justify its position by noting that the ban on non-registered credit institutions “...protects not only the public interest and that of the [banking] profession, but also that of private signatories who are then eligible to litigate the voided agreements...” The plenary session, meanwhile, was not bothered by its explanations to justify its decision that “... only the disregard of [...] the requirement for approval, in respect of which section 15 of Law 84-46 of January 24, 1984, became the articles L. 511-10, L. 511-14 and L. 612-2 of the Monetary and Financial Code, makes the exercise of its business,

is not likely to invalidate contracts...” A prominent author, Professor Jean Stoufflet, indicates that this decision reflects a particular interpretation of the bank monopoly – one that had already been adopted by the First Civil Chamber, based on a public policy of management and not on a public policy of protection. In other words, when the Commercial Division, receives a void action filed by a borrower, based on the interest of “private signatories,” it targets the public policy of protection. However, when the First Civil Chamber decided “... that the offense of illegal exercise of the banking profession [...] only affects the public interest and that of the banking profession that the law sought to protect, it is not likely to result in voiding the loan agreement,” it was based on the public policy of management that did not exclude, moreover, the Commercial Division.

### What is the risk of lending in France?

**602** Two questions come to mind: which court is right – the Commercial Division or the First Civil Chamber approved by the plenary session? In other words, how much does public management, or public protection, or the two, depend on the bank monopoly? In the absence of voidance, what civil risk do foreign companies without approval under French law expose themselves to by granting loans to French residents?

**603** First, there seems to be no doubt that the purpose of the bank monopoly is to protect the public interest, the banking profession, and customers, signatories and banks. Banking oversight seeks to ensure the reliability of the banking system by ensuring the quality of each of its component institutions candidates for the banking profession and constantly monitoring

them throughout their lifetime. This aim is in the public interest and helps the banker as we have already stated.<sup>301</sup> This objective of satisfying the public interest, if not national (and European), is consubstantial, no doubt, with public policy management. However, should we limit the bank monopoly to the banks' interest only and consequently exclude the protection of individual interests? Certainly not. The Commercial Division must be approved if it decides that the law also aims to ensure the personal safety of those who use the services of credit institutions. As proof, the body of stringent prudential rules governing banks aims to ensure their solvency so that they are able, for example, to return the deposits entrusted to them and also to raise the funds they have committed to lend. Moreover, the soundness of the banking system (public management) and the preservation of customers' interests (public protection) are closely intertwined. So, in our view, these two public policy demands deserve legal protection.

604 Second, the sanction of voiding illegal loan contracts, which could lead to the Commercial Division's jurisprudence, could certainly be criticized. It may be considered unfair to allow a borrower to take legal action to void a loan he took out before the loan matures. Indeed, if the judge ruled for the borrower, such a revocation could have the effect of requiring the lender to refund interest and charges on the canceled loan. The borrower takes a particularly unfair advantage in voiding a loan: the benefit of a free loan. But one could consider the unfairness of such an advantage to the borrower was tempered by the bad faith of the lender knowingly acting in violation of bank monopoly. Thus, the penalty was a deterrent.

## What would the Banking Commission say?

605 Whereas now that violating the bank monopoly can no longer be penalized by voiding contracts, what are the risks for foreign companies that violate the monopoly? On the civil side, the risk results from action for compensation for damages suffered by the borrower and civil action by the Banking Commission. We affirm that this risk is more than theoretical. Indeed, as regards the action for damages, it is still necessary for the borrower to demonstrate the injury and the causal link between that damage and the breach of monopoly. However, while the Criminal Chamber of the Court of Cassation has recognized the admissibility of the civil party on behalf of clients, it has been reluctant to grant them a right to compensation. The decision of the plenary meeting of March 4, considering that the purpose of a bank monopoly is not to protect customers' interests, should now lead the Criminal Division to dismiss civil parties. Regarding the likelihood that the Banking Commission constitutes a civil party, it would still have to have knowledge of illegal loans. However, in practice, most of these loans are made in a parallel – if not underground – market whose existence has little chance of being brought to the attention of the Banking Commission, reducing the risk of action on its part. Under criminal law, what is the deterrent value of punishment which, although pronounced, cannot be executed because the lenders involved, most often located abroad, cannot be physically apprehended? A final unintended consequence – positive for foreign banks – should result in turn from the position of the Court of Cassation plenary session: the provision of banking and financial services, made abroad, by foreign banks with “their community” living in France now seems immune to any legal challenge.

301 See *L'Economiste*, November 13, 2003, December 3, 2003, June 15, 2004, March 25, 2004 and September 22, 2004; [www.leconomiste.com](http://www.leconomiste.com).

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## ACCOMPLICE IN ILLEGALLY PRACTICING THE BANKING PROFESSION<sup>302</sup>

Comments on CASS. CRIM., March 19, 2008

606 Despite the nature of the offense of illegally practicing the banking profession, it is sufficient to provide assistance to a single illegal operation to be condemned.

607 An individual was prosecuted for being an accomplice in the offense of illegal exercise of the banking profession, for transferring funds credited to an account at a U.S. bank on behalf of a Colombian currency exchanger. The individual was actually helping a person who regularly repatriated funds belonging to Colombian nationals working covertly in France.

608 Sentenced to seven months of imprisonment with parole, the individual challenged the classification adopted by explaining that complicity is dependent on the principal offense, and that when it is a habitual offense it usually consists of several wrongdoings, the accomplice of a crime shall be convicted only if he has participated in the commission of at least two illegal acts.

609 However, the Criminal Chamber dismissed the arguments “*to be punishable, the accomplice of a habitual crime usually does not require the aid or assistance of the accused in at least two acts of the principal offense.*”

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302 See [http://www.lefebvre-avocats.com/newsletter.htm?PRMC\\_num=5](http://www.lefebvre-avocats.com/newsletter.htm?PRMC_num=5).  
Cass. Crim., March 19, 2008, No. 07-85054, F-P + F

**APPENDIX 10**  
**LIST OF INSTITUTIONS**  
**ENCOUNTERED DURING THE MISSION**

.....  
**CAMEROON**  
 .....

BEAC-COBAC  
 SGBC  
 Afriland First Bank  
 UBA  
 Express Union  
 CCA  
 AFD Cameroon  
 French Economic Mission  
 Ministry of Finances  
 ACEP

.....  
**FRANCE**  
 .....

AFD Headquarters  
 AMF  
 Banque d'Escompte (BDE)  
 BNP Paribas  
 Euronext  
 Banque Postale  
 Ministry of the Economy,  
 Finance and Industry  
 Ministry of the Interior  
 Ministry of Foreign Affairs

.....  
**SENEGAL**  
 .....

ACEP  
 BCEAO  
 CBAO  
 (Attijariwafa Bank Group)  
 CDP  
 CMS  
 Ministry of Finances  
 PAMECAS  
 SGBS

.....  
**COMOROS**  
 .....

Comoros Central Bank  
 Meck-Moroni  
 Sanduk-Moroni  
 SNPSF-Poste  
 AFD Comoros  
 Comores-Telecom  
 PNUD  
 PAFICA  
 Comoros Development Bank  
 BFC  
 BIC  
 Exim Bank  
 Comores-Express (Coinstar)  
 MCTV (RIA-Money Express)  
 CIDR  
 Commissariat au Plan

.....  
**MOROCCO**  
 .....

Attijariwafa Bank  
 Bank Al-Maghrib  
 Banque Populaire (Chaabi)  
 BMCE  
 CDG  
 CDVM  
 FBPMC  
 Ministry of Finances  
 Maroc Telecom

.....  
**TUNISIA**  
 .....

African Development Bank  
 Ministry of Finances  
 BIAT



**APPENDIX 11  
FURTHER READING  
ON BRANCHLESS BANKING**

**CGAP  
FOCUS NOTE NUMBER 72  
JULY 2011**  
*“Emerging Lessons  
of Public Funders  
in Branchless Banking”*  
<http://www.cgap.org/gm/document-1.9.52408/FN72.pdf>

**CGAP,  
FOCUS NOTE NUMBER 66  
SEPTEMBER 2010**  
*“Branchless Banking 2010 :  
Who’s Served? At What Price?  
What’s Next?”*  
[http://www.cgap.org/gm/document-1.9.47614/FN66\\_Rev1.pdf](http://www.cgap.org/gm/document-1.9.47614/FN66_Rev1.pdf)

**CGAP,  
FOCUS NOTE NUMBER 64  
SEPTEMBER 2010**  
*“Protecting Branchless Banking  
Consumers: Policy Objectives  
and Regulatory Options”*  
[http://www.cgap.org/gm/document-1.9.47443/FN\\_64\\_Rev.pdf](http://www.cgap.org/gm/document-1.9.47443/FN_64_Rev.pdf)

**CGAP  
FOCUS NOTE NUMBER 63  
JULY 2010**  
*“Émetteurs non bancaires  
de monnaie électronique:  
approches réglementaires  
pour protéger les fonds  
des clients”*  
[http://www.cgap.org/gm/document-1.9.48406/FN63\\_FR.pdf](http://www.cgap.org/gm/document-1.9.48406/FN63_FR.pdf)

**CGAP  
FOCUS NOTE NUMBER 51  
DECEMBER 2008**  
*“Going Cashless at the Point  
of Sale: Hits and Misses  
in Developed Countries/  
Nouveaux moyens  
de paiement: succès et échecs  
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