GLOBAL REMITTANCES WORKING GROUP

IMPLEMENTING THE CPSS–WORLD BANK GENERAL PRINCIPLES FOR INTERNATIONAL REMITTANCE SERVICES

THE WORLD BANK GROUP

WORKING TOWARD A LEGAL AND REGULATORY FRAMEWORK

IDENTIFYING STANDARD APPROACHES

EXTRACT FROM A GLOBAL SURVEY OF REMITTANCE SERVICE PROVIDERS AND REGULATORS

Special-Purpose Note

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The Global Remittances Working Group (GRWG) was created in February 2009 in response to multiple calls for coordination in the area of remittances received by the World Bank. The GRWG is a multiyear initiative aimed at increasing the efficiency of the remittances market and facilitating the flow of remittances by providing guidance and policy options to the global community.

The GRWG is composed of representatives nominated by the participating countries and chaired by the World Bank Vice President for Financial and Private Sector Development. Its coordinators and a small secretariat facilitate the initiative, and an International Advisory Committee of global experts ensures quality and provides technical guidance.

Four thematic areas covering different aspects of remittances have been established around the seven G8 recommendations. These address data; interconnections with migration and development, and policy; payment and market infrastructure; and remittance-linked financial products and access to finance. The GRWG coordinates discussions in these thematic areas and allows stakeholder organizations and governments to participate in the dialogue through outside specialists. This permits the inclusion of a broad level of expertise in analyzing the identified topics.

This document has been prepared by the GRWG Secretariat in consultation with the members of the Public and Private Partnership on Remittances (Thematic Area 3), and with the contribution of the GRWG's International Advisory Committee.

The document is published as a Special-Purpose Note, and is intended to provide guidance to reform efforts in the remittances arena both nationally and globally. The findings and interpretations presented are those of the GRWG Secretariat, and do not necessarily reflect the views of the World Bank and the GRWG.

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WORKING TOWARD A LEGAL AND REGULATORY FRAMEWORK

Remittances are a global phenomenon of high macroeconomic and social importance for many countries and hundreds of millions of people. Not surprisingly, a wide variety of regulations affecting remittances exists around the world. Remittances are, in most cases, sent from one country to another, and providers of remittance services usually operate across borders. Naturally, regulation of remittances is inconsistent, and operators and legislators struggle to create regulation that meets public objectives while allowing remittance services and markets to function efficiently.

Through the Global Remittances Working Group and its papers, the World Bank coordinates the efforts of different countries and international organizations, including the G8 and G20, to increase the benefits of remittances and reduce their cost. This document seeks to begin a discussion about a standardized legal and regulatory framework for remittances. To do so, it analyzes feedback received from two World Bank surveys of regulators and market participants conducted in, respectively, 2008 and 2009, on regulation of remittances. The document summarizes the main problems identified and establishes an initial set of recommendations as to how remittance regulation could be standardized. This information is presented as a basis for further discussion; it is not intended as guidance in drafting regulation and consequently does not cover all the areas regulation may need to address.

According to the "General Principles for International Remittance Services," remittances are cross-border person-to-person payments of relatively low value, and a remittance service provider (RSP) is an entity operating as a business that provides remittance services for a price to end users.[1] In a regulatory context, remittance services usually fall under the provision of money transmission in general—that is, the transfer of funds from one individual to another. Entities accepting funds for transmission or facilitating funds transfers are regulated in many countries.

Remittances require that a consumer hand money over to a money transfer provider, trusting that the provider will make payment to the recipient in another country. Since the consumer must entrust money to the provider and the provider engages in the financial system of the country, money transfer services are usually regulated. The areas typically covered by regulation of remittance services (and of money transfer services in general) can be broadly categorized as admission to the market (licensing or registration), supervision, financial and operational soundness, consumer protection, and compliance.

[1] Committee on Payment and Settlement Systems and World Bank, "General Principles for International Remittance Services" (2007); available at www.worldbank.org/paymentsystems.

Remittance services are offered by a wide variety of providers, including entities involved in a broad range of financial activities such as banks, nonbank financial institutions (for example, credit unions and microfinance institutions), specialized financial service providers that offer one or more basic financial services (such as foreign exchange houses or check cashiers), entities that specialize in remittance services (money transfer operators—MTOs), and nonfinancial institutions not otherwise involved in financial activities (such as mobile network operators).[2]

Permission to offer remittance services can be granted as part of a wider regulatory regime or as a special regulation for money transmission. Where entities provide different financial services, they are likely to be subject to regulatory requirements and licensing that, in some cases, include permission to offer money transfer services. This is typically true for banks, but can also apply to nonbank financial institutions and financial service providers (foreign exchange houses in particular).

[2]Under some national legal systems, execution of money transfers/payments is not strictly deemed a banking or financial activity, since it is not explicitly included in the statutory definition thereof. Thus, an operator providing this service ancillary to other nonfinancial services, such as the sale of air time, is not ordinarily a financial institution. A *nonfinancial institution* is here defined as an entity whose main business is the provision of goods or services that are not of a financial nature and that is not a traditional financial institution or a specialized financial service provider, even though it may be providing a financial service such as remittances. The term *nonbank financial institution* here includes entities such as microfinance institutions or (nonbanking) cooperatives or mutual funds. In some jurisdictions, the provision of payment services is meant to be a banking activity and is only permitted by a financial entity licensed as a bank. The definitions used in this document are intended to capture all these situations by distinguishing among banks, nonbank financial institutions, and nonfinancial institutions according to their regulatory treatment under domestic law. However, since policy concerns on remittance services focus primarily on person-to-person remittances of relatively low value, a bank or bank-like institution's role is captured in principle when it either has a separate business line specializing in low-value remittances, offers a specific remittance product or service catering to low-value transfers, or acts as an agent to an MTO.

MTOs are usually regulated under specific rules for money transmission, which may be simplified versions of the applicable regulation for financial institutions. A provider of a specific financial service that is already subject to regulation but whose regulatory requirements do not cover remittances would typically have to comply with additional, specific regulation for money transfer services.

The same applies to entities that do not offer financial services as their main business but wish to offer remittances. This last case is especially relevant for mobile network operators, which increasingly are offering mobile payment services and are looking to provide money transfers as an ancillary service to the telecommunications services they offer. These operators are usually subject to telecommunications regulation, which does not cover permission to offer payment or money transfer services; they would thus need to comply with special regulations for money transmission or remittances.

Remittances can be transmitted in a variety of ways, depending on how the funds are collected from the consumer for transmission and paid to the recipient, the mechanism used for transfer of funds, and the type of entities involved in the process.[3]

RSPs employ different channels to collect and deliver the money, which is usually handled in cash. They often use external agents such as small stores and other merchants that already have a retail presence in the market but provide nonremittance services or products as their main business. Some RSPs use a network of proprietary branches or offices to collect or deliver remittance

[3]A sender can use different payment instruments, ranging from direct credit transfers to cards or debit instruments, with credit transfers being more common. Remittances can go through traditional banking channels, in which case the sender will usually have some type of existing arrangement with the RSP. Remittances can also be transferred through networks that do not require the opening of a bank account, in which case the sender does not necessarily have an existing arrangement with the RSP.

funds. Payment of remittances is most regularly made via correspondent agreements with banks (and sometimes other parties) in the receiving countries.

The use of physical locations and cash is expensive, and newer remittance services seek to eliminate this expense by using telecommunication services such as the Internet and mobile phones linked to electronic payment methods such as payment cards, prepaid accounts, or electronic clearing houses.

The mechanism used for money transfer has a significant impact on the RSP's operational and financial risk and its ability to comply with anti-money-laundering rules; it is therefore of high importance in the regulation of money transfer services. The mechanism also has a large impact on the operational cost of money transfers and thus on the price charged to consumers.

Regulation controls who can enter the remittance market, determines who can be served, and influences RSP operational procedures and costs. Such controls have a strong and direct impact on competition in remittance markets and on the cost of remittances.

Remittance transfers are usually for small amounts of money and are sent regularly with high frequency. The cost of sending remittances is high in relation to the amounts sent and to the incomes of migrants and their families. Consequently, service fees influence a sender's choice of RSP and frequency of transfers; however, the risk involved in trying a new provider and the trust in the one currently used also play an important role. In any case, lowering the cost of remittances translates into improved living conditions for millions of people who depend to a great extent on these transfers to survive.

THE NEED FOR STANDARDIZATION

Principle 3 of the General Principles recommends, among other things, that remittance services be supported by a sound, predictable, nondiscriminatory, and proportionate legal and regulatory framework in relevant jurisdictions. It also recommends that standardization should be attempted in cooperation with the private sector. This cooperation will improve the regulator's understanding of the market and permit sharing of best practices without unduly limiting the autonomy of national authorities to regulate the sector.

Remittances typically involve two jurisdictions, one in the sending country and one in the receiving country. RSPs may be located in a third country and hence involve a third jurisdiction. Further, because remittances may be subject to different policy objectives—including those involving the treasury, foreign exchange, financial stability, consumer protection, and migration—each jurisdiction may have different policies and different regulations supporting these policies.

Policy makers need to understand the international rules applicable to remittances being sent from, or received by, their country. Given that remittances are sent globally and almost all countries are either sending or receiving countries (if not both), it is impossible to consider all applicable rules. Rather, what is needed are common principles for remittance regulation and a mutual understanding of the implications for consumers, private sector providers, and policies.

Fortunately, most countries agree on the principal objectives of remittance policies, as is demonstrated by the General Principles: **remittance markets should function efficiently at low prices for the mostly poor migrants and their families who send them**; also, **they should be sent through formal regulated channels** to ensure that the financial system can generate the benefits, and is protected against the risks, of remittances.

Given the multiplicity of legal and regulatory frameworks in existence, General Principle 3 does not rec-

ommend universal harmonization of laws and regulations, as this would be extremely difficult to achieve. Instead, it advises that national authorities and RSPs participate actively in the implementation of the General Principles and the development of regulation, and possibly encourage the industry to develop codes of conduct or measures of self-regulation under a common understanding of basic principles. Although it does not call for the establishment of a specific or new legal regime for remittances, this may be necessary in certain jurisdictions given the number of risks, infrastructural weaknesses, and public policy issues that exist in connection with remittances.

National authorities have the difficult task of neither overregulating the sector, running the risk that remittances will be driven into uncontrolled informal networks; nor underregulating it, leaving public policy issues unaddressed. They need to fully respond to the specificities of the local market in order to achieve nondiscriminatory regulation, ensure competitive market conditions, and treat RSPs consistently with other payment service providers, thus allowing them to compete fairly. Regulators further need to consider barriers to market entry—especially those regarding licensing and admission requirements—and whether to allow smaller players such as nonbank financial institutions to offer remittance services. Regulators need to ensure that RSPs comply with anti-money-laundering and counterfinancing of terrorism (AML/CFT) requirements; and that consumers are adequately protected, particularly in relation to the funds they entrust to the RSP and the transparency of conditions and charges.

Standardizing regulatory approaches through the use of several shared guiding principles to be individually applied across all RSPs and remittance markets will help regulators and policy makers. It will also significantly improve the soundness and predictability of the legal and regulatory framework for remittances; facilitate bilateral or regional agreements; and further operational and contractual standardization by the private sector, reducing the cost of remittance services.

SURVEYS

At their recent summit in L'Aquila, the G8 heads of state pledged the following:

> to make financial services more accessible to migrants and to those who receive remittances in the developing world…[and]…to achieve in particular the objective of a reduction of the global average costs of transferring remittances from the present 10% to 5% in 5 years through enhanced information, transparency, competition and cooperation with partners, generating a significant net increase in income for migrants and their families in the developing world.[4]

In light of this commitment and in accordance with the agreed activities of the Global Remittances Working Group, the World Bank has been asked to provide the G8 and other interested countries with an analysis of what policy options are appropriate for legal and/or regulatory changes to implement General Principle 3—and in particular to achieve a cost reduction of 5 percentage points over the next five years (the "5x5 objective").[5]

The World Bank surveyed stakeholders in both the private and public sectors to consider existing practices, identify shortcomings, and make recommendations for improvement. Their responses are a useful starting point for a discussion on the standardization of remittance regulation. The remainder of this section presents information on how these responses were captured and summarizes general findings.

[4]"G8 Leaders Declaration: Responsible Leadership for a Sustainable Future," L'Aquila Summit, July 2009.

[5]The 5x5 objective applies globally, not nationally. Thus, it does not suggest that all countries reduce their costs 5 percentage points, but that the overall reduction in costs worldwide amounts to 5 percentage points on average.

Public Sector: 2008 Questionnaire to National Authorities and Global Payment Systems Survey 2008

A questionnaire on the legal and regulatory frameworks for remittances was sent to regulators in all Latin American and Caribbean countries to assess the implementation of General Principle 3. In parallel, the Global Payment Systems Survey 2008, answered by 142 countries, provided information on frameworks for payment systems, including for remittance services.[6]

A country-by-country analysis shows that national regulatory and legal frameworks affecting remittances generally fall into three categories:

- In some countries, **the provision of payment services (including remittance services) is part of the defined scope of a bank**, and is sometimes considered to be similar to or associated with the opening of deposit accounts. Consequently, institutions not licensed as a bank or nonbank financial institution are prevented from offering remittance services of any kind (unless these activities are outsourced to them under certain conditions).
- In other countries, **remittance services are regulated individually**, and regulation applies depending on the specific activities involved when providing a financial service. If applicable, RSPs are required to register or obtain a license for money transfers or payment services and possibly for some other ancillary services.[7]
- In a third set of countries, **no regulation exists regarding remittance services**. Authorities only oversee such activity when executed by banks or other financial institutions under their general banking or financial services license. Other entities providing remittance services are not regulated; they are permitted to execute remittance services but are not subject to licensing, supervision, or any other requirements. It should be noted that this regulatory scenario is not in compliance with the recommendations of the Financial Action Task Force.[8]

The responses to the questionnaires underscore the fact that RSPs that are not financial institutions mostly access payment systems as indirect participants via regulated financial institutions; this is because, in most countries, only banks can access the national payment and settlement systems directly.

Some countries reported having consumer protection regulations covering transparency of charges for remittance services. Dispute settlement mechanisms or ombudsman schemes, usually established in the context of a financial consumer act, may provide further protection for consumers if the service provider is covered under the act.

Frequently, several public authorities are involved in the regulation of RSPs. For instance, the supervisory authority in charge of registration and licensing of RSPs is located outside the central bank, although oversight of national payment systems (specifically retail payments) is the responsibility of the central bank. In another example, the country's consumer protection body is the competent authority for pricing and transparency issues, while the central bank is responsible for licensing. In some cases where the central bank is generally in charge, registration or licensing of RSPs might be the re-

[6]http://siteresources.worldbank.org/INTPAYMENTREMMITTANCE/Resources/Global_Survey_Book.pdf.

[7]For example, when the remittance service is envisaged to include payment transfers through the storage of monetary value in electronic devices, a provider may be considered an "e-commerce institution" under relevant legislation and would need to be licensed as such. This licensure might involve minimum requirements, yet not necessarily be consistent with those of other financial institutions providing payment services.

[8]See Financial Action Task Force, FATF IX, Special Recommendation IX at www.fatf-gafi.org/dataoecd/8/17/34849466.pdf.

sponsibility of the supervisory division, while oversight of retail payments is handled by the operations division. This may give rise to inconsistency and a lack of coordination among the different authorities involved.

Private Sector: 2009 Global Questionnaire to the Remittances Industry

RSPs are on the front line of remittances, experiencing on a daily basis the limits, constraints, and opportunities of the regulatory frameworks within which they operate and of the varied approaches taken by the different countries in which they work. Their opinions on legal and regulatory frameworks are thus valuable; and their inclusion via survey is in line with General Principle 3 ("the remittance industry should be consulted when designing the regulation of remittances to help ensure that the regulation is proportionate and effective").

The World Bank specifically designed a questionnaire for the private sector and sent it to RSPs operating across the world (see appendix). More than 60 responded. The RSPs surveyed represented a diverse array of market participants from both receiving and sending countries, ranging from leading international companies in the market—the largest MTOs worldwide, international banks, and the major card networks—to small- and medium-size RSPs operating in a single corridor.

In terms of instruments used to provide remittance services, the respondents were also quite diverse and included traditional cash-to-cash, account-to-account, and account-to-cash service providers as well as card-based and mobile payment operators. Overall, the respondents accounted for more than 50 percent of the market for remittances worldwide. The coverage of the survey and the geographical and operational diversity of the respondents ensured that the responses received are representative of the sector.

In general, the responses largely confirmed those received from the regulators. Private sector respondents confirmed that they access payment systems as indirect participants through the services provided by direct participants, in particular banks. Some large RSPs mentioned this as a major limitation to their operations and a disadvantage in the market, since this intermediation increases their operational costs and makes them dependent on banks with which they may also compete.

Perhaps contrary to accepted wisdom, licensing and registration requirements were not mentioned often as a major issue for competition in the market, nor are licensing and registration requirements considered by RSPs as a major factor in driving up prices. However, because the respondents were mainly RSPs already established in the market, licensing for them creates protection from new competitors rather than being an issue of concern. Discussions with potential market entrants usually highlight concerns over tedious requirements to access the market.

Many RSPs did mention requirements for AML/CFT compliance, or their interpretation by authorities, as a source of difficulty and major operational expense. These requirements seem to pose a burden, particularly for smaller providers; larger RSPs reported fewer problems in complying with regulations and dealing with administrative procedures. These larger RSPs noted, however, that they feel they are under more stringent scrutiny by the authorities than are smaller RSPs.

RSPs of all types and sizes seemed to agree that prices had dropped in the last two years and that competition was the major factor in driving prices down.

STANDARDIZATION OF REGULATORY APPROACHES

The following sections attempt to combine the findings about legal and regulatory frameworks that emerged from the 2008 public sector surveys with the major needs, complaints, and recommendations coming

from the market in the 2009 survey. The conclusions and recommendations presented here are substantiated by specific examples of best or worst practices according to the operators' views and specific issues raised by them. The intent is to identify some areas for standardization that would improve the quality of regulation for remittances, enhance competition, and—consequently—reduce prices.

1. Remittance Services as Part of the Payment System

Some regulators mentioned that they see remittances as part of the retail payment system, which is a sound interpretation. Remittances are payments from and to individuals, involve small amounts typical of retail payments, and use the same channels and payment processes as other retail payments. As a first step in standardizing regulatory approaches, national authorities should consider remittance services part of overall retail payment services and consequently include them in their payment system oversight. The express inclusion of remittance services as part of the retail payment system will allow financial and nonfinancial payment service providers to be considered together within a consistent framework, thus ensuring a level playing field.

2. Market Access

Private sector respondents pointed out that regulatory requirements to offer remittance services differ depending on the type of institution offering the service, particularly bank versus nonbank providers. They report that discrimination exists in both directions. Nonfinancial institutions are frequently restricted in terms of the services they can provide, or they are required to operate via financial institutions. Financial institutions may be subject to more demanding regulation than nonfinancial entities for the same service. Market participants feel that this differentiated treatment unfairly obstructs the development of the market, with a measurable effect on competition and prices.

Market participants are also concerned about ambiguity in regulatory requirements and regulatory responsibility, in particular regarding new payment media such as cards and mobile devices. Providers wishing to offer new and innovative services worry about the uncertainty of regulatory requirements and of regulatory risks they cannot determine.

The Philippines was mentioned as an example of a good practice. Here, service providers reported that the central bank, as the regulator of financial services, has a strong understanding of the new electronic payment and remittance channels and has developed proportionate regulation for such payment operators. A circular issued by the central bank in October 2009 creates a specific authorization for providers of electronic payment solutions such as issuers of prepaid cards or telecommunications providers that offer mobile wallet payments.[9] Market participants expect that this will facilitate the development of new, highly efficient payment services which can be used for remittances.

Several MTOs regarded regulations as discriminatory in favor of banks. One example mentioned was that in the Dominican Republic, licensed nonbank RSPs must pay an annual tax of 1 percent of their total assets, while banks are required to pay 1 percent of their fixed assets only. Since MTOs usually hold large liquid assets overnight, they feel they are paying disproportionately higher amounts than banks.

Many RSPs reported that they use or would like to use nonbank financial institutions to expand their payment networks. According to the General Principles, nonbank financial entities should be allowed to participate in remittance services. Those that already offer payment services or handle cash such as microfinance institutions, savings cooperatives, and foreign exchange bureaus seem particularly suited to do so,

[9] Circular No. 649 of 2009, Bangko Sentral ng Pilipinas.

provided the risks of AML/CFT are mitigated and appropriate consumer protections put in place. Many RSPs reported that they also use nonfinancial entities such as merchants under correspondent agreements because they are well placed to collect or pay remittances. In Brazil, for example, banks have increased the number of their service points to 90,000 through the use of nonfinancial institutions as correspondents.

Similarly, post offices participating in the questionnaire requested that they should be permitted to provide remittance services since they tend to have a well-developed network in the rural areas from which many migrants come and already offer payment services such as money orders. An operator of a post office in Latin America complained that, despite being the RSP offering the lowest cost in that market and having a large network in rural areas, legislation did not allow him to work with institutions abroad other than post offices, thus severely curtailing the RSP's remittance operations.

These examples indicate that regulating the remittance market *by function* rather than *by type of institution* is preferable in that it treats remittance services as a whole, ensures a more consistent framework, and avoids discrimination between different types of RSPs. General Principle 3 suggests that the legal and regulatory framework for remittance should be equally applicable to different types of RSPs insofar as they are providing equivalent services. Where a functional approach cannot be fully adopted, regulation by function should be the benchmark for any policy decision.

Suggested Recommendations

2.1 National authorities should carefully evaluate the features of different remittance services and the role RSPs play in the process in order to reduce discrepancies based on type of institution providing the service or payment instruments used.

2.2 National authorities should acknowledge that financial institutions and other entities may wish to—and may be appropriate to—provide remittance services, and should aim to create remittance regulation that enables them all to participate in the remittance market.

2.3 All operators able to provide remittance services should be permitted to do so directly if they are reasonably able to satisfy all due requirements.

2.4 Regulation for consumer protection, including transparency and redress measures, should apply to all RSPs.

2.5 AML/CFT rules should be generally applicable, in conformity with existing international standards. These already allow a degree of flexibility.

Within the European Union (EU), substantial progress has been achieved through the November 2007 adoption of the Payment Services Directive, which lays the legal foundation for an EU-wide single market for payments.[10] The directive addresses various issues related to remittances. It establishes a unified licensing system for payment institutions covering a variety of services, including remittances, which grants authority to operate in all member states. Payment institutions—which include MTOs—have to make fees and other conditions such as transfer time and charges to the recipient fully transparent to customers. In line with Special Recommendation VI of the Financial Action Task Force, the Payment Services Directive provides a mechanism whereby entities that are unable to meet all the requirements to become payment institutions may be allowed to operate nationally under a simplified licensing or registration regime adopted by the country in which they are domiciled.

[10] Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC Text with EEA relevance.

3. Coordination between Different Regulators and with the Industry

RSPs operating in countries or areas where they are subject to regulation by different authorities complained about conflicting regulation, unclear interpretation of the requirements by different authorities or examiners, and the cost of maintaining various licenses.

RSPs that operate in more than one state in the United States, for example, mentioned that they are subject to regulation by each state in which they operate and, in addition, need to maintain a registration with the Internal Revenue Service, a federal agency. RSPs operating nationwide in the United States thus must obtain and maintain 48 state licenses and 2 state registrations in addition to their federal registration. While this may be reasonable if the RSP has agents or branches in the various states, it seems inefficient and burdensome for RSPs that use the Internet or mobile phones to service their customers and have no operations outside the state in which they are domiciled. The Uniform Money Services Act of 2000 provides a template for the joint regulation of various payment services, including remittances, and a tool for harmonization of regulations for money transfers across the 50 states.[11] Various states have adopted parts of the act or have drafted their regulation based on provisions of the act, but RSPs operating in different states remain subject to similar requirements and examinations from a variety of states.

As noted above, the Payment Services Directive in the EU has established a license for payment institutions whereby payment providers, including RSPs, can obtain a license in their home country and use it to operate in all countries in the Euro area.

Small and perhaps less sophisticated operators reported that they sometimes have difficulty in identifying the relevant national authority (or its competent division) and in understanding the applicable regulation; they believe this puts them at a disadvantage with larger operators, which can better afford the necessary expertise.

The provision of a "one-stop shop" for regulatory issues was proposed by some operators. Such an operation would enable RSPs to access all relevant information from a single point (licensing/registration requirements, reporting and AML guidelines, tax regulations, and so on). The Japanese Financial Services Authority was cited as a best practice example in this regard. It has implemented the No-Action Letter System under which private sector enterprises can publicly consult with the authority about legal aspects of a new product before offering it. Responses are posted on the authority's Web site so that new entrants to the market can access previous responses from the regulator.[12]

Various operators suggested a public-private partnership or remittance forum involving representatives from relevant authorities as well as industry to facilitate a dialogue between the industry and the regulators and to allow smaller operators direct interaction with regulators. The U.K. Remittances Task Force was men-

[11] http://ssl.csg.org/terrorism/umsa2001final.pdf.

[12] This system grew out of a March 27, 2001, cabinet decision, "Regarding the Introduction of Prior Confirmation Procedures on the Application of Laws and Regulations by Administrative Agencies," which stated that "With respect to fields experiencing the risk creation of new industries and new products and services, including information technology and finance, in order to increase a private enterprise's ability to predict whether a certain action would conflict with laws and regulations, administrative agencies will arrange so that a private-sector enterprise can inquire in advance as to the relationship between the action concerned and the provisions of certain laws and regulations. In addition, in order to ensure the fairness of administration and promote the increase of transparency, the contents of the inquiry concerned and the administrative agencies' responses will be made public." The cabinet established guidelines with regard to the above fields "…for procedures in which a private enterprise, etc. confirms in advance with the administrative agency having jurisdiction to enforce certain laws and regulations whether specific actions in connection with business activities that the enterprise, etc. seeks to realize are subject to the provisions of the regulations concerned, such agency responds, and the response is made public."

tioned as an example of such a partnership. Here, the U.K. Department for International Development took the lead in starting up a working group composed of industry and public sector participants to deal with issues regarding remittances. The task force was responsible for several breakthroughs in the remittance sphere, such as the self-regulated remittances customer charter.

Suggested Recommendations

3.1 Where different national authorities are involved in the regulation and oversight of remittance services, roles and responsibilities should be clearly defined to avoid regulatory gaps and overlaps.

3.2 These responsibilities and the legal and regulatory requirements to provide remittance services should be clearly stated and made available to the public.

3.3 Multiple layers of overlapping regulation and licensing or registration requirements should be avoided, and regulators should cooperate to offer an efficient regulatory framework.

4. Access to Clearing and Settlement Systems

In almost all cases, the settlement of remittances requires access to clearing and settlement systems such as a clearing house. In general, RSPs can access settlement systems directly—for example, by becoming a direct participant in the system—or indirectly through a bank, which is a direct participant and offers services based on this access to its clients.

Direct access to national settlement systems is often only available to banks or other regulated financial institutions. One example mentioned by survey respondents of direct or guaranteed access of an MTO to clearing and settlement systems was Haiti. Here, because of liquidity needs, the central bank has allowed the major licensed nonbank RSP to hold an account with it and to access the clearing and settlement systems as a direct participant. This is an ad hoc measure and, as such, cannot be replicated. The Central Bank of Costa Rica allows any person to open a settlement account with it to use the automated clearing house and participate in the foreign exchange market.

Indirect access to national clearing and settlement systems requires, at a minimum, access to bank accounts. RSPs reported that, in some countries, AML concerns—or the lack of or poor guidance by regulators—have made banks extremely reluctant to offer bank accounts to RSPs. An often-cited example was the U.S. Office of the Comptroller of the Currency. This regulator of nationally chartered banks issued guidance in 2004 that banks that provide banking services to RSPs should not only do due diligence on each RSP but should also monitor the RSP's money transfer activity. Since this would have meant that banks were required to monitor the many thousands of transactions their RSP clients were processing, many banks simply closed the RSPs' accounts. The guidance was later amended, and some banks have resumed serving RSPs; but many are still unclear about their responsibilities and, consequently, do not serve RSPs at all.

In the EU, the Payment Services Directive statutorily bans restrictions on access to nondesignated payment systems that are deemed unreasonable because they are not clearly based on the underlying risk.

Similarly, nonbank providers of payment or processing services to RSPs have expressed a concern that regulators do not always understand the distribution of operational roles and responsibilities between the payment service provider and the RSP, and that regulators therefore sometimes assume that the remittance regulation would apply to the payment service provider in addition to the RSP.

Suggested Recommendations

4.1 Authorities should recognize the important role RSPs play in providing low-cost remittance services and should ensure that banks make facilities available to them.

4.2 RSPs should be able to outsource portions of their operations as do other companies. Where they do, RSPs should be held responsible for the actions of their subcontractors. Direct oversight of these subcontractors should only be required where their role in the remittance operations makes this necessary, even if they are nonfinancial entities.

4.3 Remittance operations pose a risk of money laundering and terrorist financing, necessitating special monitoring of remittance activity. Such monitoring should primarily be the responsibility of the RSP, and not of a bank or other payment service provider offering services to the RSP.

4.4 Care should be taken to ensure that RSPs that are nonfinancial institutions are not subject to lesser AML/CFT controls than other RSPs to prevent them from introducing significant risk to clearing and settlement systems.

5. Compliance with AML/CFT Requirements

Many RSPs report that activities related to achieving compliance with AML/CFT requirements can represent a high cost, and that they would benefit from guidance on the interpretation of the requirements.

Identification requirements for senders have often been mentioned as a problem. Operators (and even some regulators) have reported that regulation regarding the types of identification documents RSPs can accept is often not sufficiently clear and does not take into consideration the types of documents that are actually available for the population most likely to use remittance services. RSPs mentioned that their customers are often migrants who have identification documents from their home countries but no access to the identification documents issued by their host country that are required by regulation. The combination of onerous identification requirements with a lack of identification documents creates incentives for remitters to send money using another person who has the required documents—thus increasing the risk of undetected money laundering. Some RSPs operating in Africa reported that people with the requisite identification documents run businesses of collecting and sending remittances on behalf of other people without proper documents.

RSPs suggested that lesser identification requirements be put in place for small amounts or lower-risk transactions; some regulators expressed agreement with this. The Financial Action Task Force recommends that financial institutions "may determine the extent of such [identification] measures on a risk sensitive basis depending on the type of customer, business relationship or transaction."[13] Some countries have eliminated identification requirements provided that other risk measures such as transaction monitoring are in place. In the United States, for example, remitters do not need to provide identification for transactions smaller than $3,000, but RSPs are obliged to monitor all transactions for suspicious patterns and report potentially suspicious activity to the regulators.

Suggested Recommendations

5.1 AML/CFT compliance requirements should be proportionate to the risk involved in remittance transfers.

5.2 Identification requirements should be proportionate to the risk of the remittance transaction

[13] Financial Action Task Force, Recommendation 5: Customer due diligence and recordkeeping.

and consider what identification documents are available to the population most likely to use remittance services. Regulators should also consider risk measures other than identification.

5.3 Regulators should provide guidance for RSPs as to how compliance requirements apply to remittance services.

6. Consumer Protection

Consumer protection for remittance services revolves around disclosure of terms of the service—in particular, price, delivery time, and foreign exchange rates. Issues of consumer protection typically arise in the country from which the remittance originates, because the contract to purchase the service is entered into there and is thus subject to the jurisdiction of the sending country.

One option for consumer protection is statutory regulation that includes requirements for remittance services. An example mentioned by some RSPs for an effective means of protecting general consumer rights and ensuring proper disclosure of terms of service and complaint procedures is Brazil's Código de Defesa do Consumidor (Consumer Protection Code). The Dodd-Frank Wall Street Reform and Consumer Protection Act that became effective July 22, 2010, in the United States contains extensive consumer protection rules for remittance services covering the disclosure of fees and exchange rates, complaint procedures, receipts, and other areas.

Regulators may control prices and other terms of remittance services by making them part of the reporting requirement for registered or licensed RSPs. For instance, an RSP in East Asia mentioned that, for countries with specific licensing regimes for RSPs such as Malaysia, Singapore, and Thailand, disclosure of fees and foreign exchange rates is required as part of the licensing condition. Many U.S. states make fee reporting part of the ongoing reporting requirements for licensed RSPs.

National authorities can also control contractual terms through oversight. In some countries—particularly, receiving countries—central banks reported that they require RSPs to submit their agreements with correspondents and consumers for approval. On this point, RSPs reported delays in the approval process and were concerned about limited understanding of contractual details by the regulators.

Self-regulation via an industry code of conduct or a best practices code for remittances is another option for achieving consumer protection.[14] An example of regulation by the market mentioned by RSPs is the U.K. Remittances Customer Charter.[15] It was created by the U.K. Remittances Task Force, which includes several RSPs and public sector parties; to date, the charter has been adopted by 16 RSPs, representing more than 50 percent of remittance locations. In Uruguay, a new regulation (Circular 2016) mandates nonbank RSPs to comply with a best practices code established for banks.[16]

An example of self-regulation by a trade association is the master agreement and service-level schedule for "fair value" remittances adopted by the World Savings Bank Institute, an international association of deposit-

[14]Regulation by the market may involve a self-regulatory organization—that is, one that exercises some degree of regulatory authority over an industry or profession. For more information on the workings of a self-regulatory organization for remittances, see Global Remittances Working Group, "An International Remittances Customer Charter: A Toolkit for National Action," available at http://go.worldbank.org/SOAZF9BP80.

[15]http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Media-Room/Press-releases/2008/Customer-charter-promises-better-deal-for-families-who-send-money-to-loved-ones-abroad/.

[16]Circular 2016 of the Banco Central del Uruguay, March 26, 2009.

taking institutions.[17] By signing the master agreement, members of the association agree to comply with certain standards for remittance services, including complete disclosure of information on fees and exchange rates, as well as a speed of transfer that may not exceed three business days. In this case, the enforcer of the agreement is the trade association.

One regulator pointed out that in highly concentrated remittance markets with limited competition, statutory regulation may be a better policy option, because RSPs have little pressure from competitors to comply with self-imposed requirements.

Overall, no need for a special law on consumer protection for remittances seems to exist, as the relevant issues can be dealt with in general consumer protection regulation, general regulation of remittance services, or an industry code of conduct.

Suggested Recommendations

6.1 RSPs should be required to communicate contractual terms to customers in a clear and concise manner and in plain language that even consumers with little financial experience or education can understand.

6.2 Prices, exchange rates, and other material terms and conditions should be displayed so as to ensure transparency.

6.3 Consumers should have proper recourse in case of problems with the remittance service, including availability of refunds.

6.4 RSPs using agents for the collection or payment of remittances should ensure that these agents are properly trained and comply with the code of conduct.

[17] This agreement is accessible at www.wsbi.org/template/content.aspx?id=1754.

7. Competition

When RSPs were asked about the major factor driving prices down in recent years, most attributed the decline to increased competition and the entrance of new providers in both sending and receiving countries.

In many markets, only a relatively small number of RSPs exist. This has to do with the size of the market, regulation, and the availability of suitable payment networks and methods for the collection and payment of remittances. Historically, an even smaller number of RSPs existed; they typically play a dominant role in the market today, often having a market share of over 30 percent and in some cases exceeding 50 percent. A number of RSPs reported that, in some countries, the largest MTOs enter into exclusive payment agreements with those banks that have the widest retail network, and that sometimes no other (nonbank) institutions are allowed to pay remittances. The RSPs further reported that if they wish to enter these markets, they are confronted with a situation where the few banks allowed to pay remittances cannot sign an agreement with a new RSP due to an exclusivity agreement; other potential payment partners, such as microfinance institutions or post offices, are not allowed to offer remittance services. Such a market structure was reported for many less mature markets—for example, in parts of West Africa, where the cost of sending money remains very high. In response, regulators in some countries, including Nigeria and Ethiopia, have banned exclusive remittance agreements. They report that a number of new providers have consequently entered the markets, and prices have been reduced.

In mature remittance corridors—such as the United States to El Salvador corridor—RSPs note, that while exclusivity agreements may still be used in some cases by the largest MTOs, many banks have been forced to abandon such agreements because of increased competition from newer banks or nonbank payment pro-

viders, or by regulators. In these markets, a downward trend in remittance fees due to increased competition has been observed.

Large MTOs have registered their concern that exclusivity agreements often have a sound business basis beyond limiting competition. They mention that they often provide equipment or training to the exclusive partner or make large investments in marketing and therefore need to ensure that the correspondent works only with them to ensure payback of the investment.

These responses and examples show that, when drafting rules or overseeing the remittance market, regulators should consider the importance of healthy competition in remittance markets to ensure reasonable prices, provide choice for remitters and recipients, and prevent the dependence of the market—and the country for its remittance inflows—on too few providers.

Suggested Recommendations

7.1 To foster a competitive market for remittances, national authorities should ensure that open access to the remittance market is maintained and that a range of financial and nonfinancial institutions are allowed to provide money transfer services.

7.2 Anticompetitive behavior should be banned. Exclusive correspondent arrangements should only be permitted where sufficient alternative payment channels are available to ensure that the market stays competitive, a good business reason exists, and exclusivity is either mutual or that the contract partner bound by it receives compensation.

8. Cross-Border Coordination

International remittances by definition involve at least two legal systems, giving rise to conflicting regulation of the same transaction by the sending and receiving countries. Market participants stated that receiving countries often appear to have less adequate legal and regulatory frameworks and that they are regularly faced with competing policy objectives related to remittances.

For example, a relatively high number of RSPs responded that foreign exchange regulations in the receiving country conflict with applicable regulation in the sending country. An RSP operating in the California to Ethiopia corridor noted that state law in California (and a number of other U.S. states) requires RSPs to tell the remitter at the time when the remittance is sent the exact amount the beneficiary will receive in local currency in the receiving country. In Ethiopia, however, the central bank sets and mandates the foreign exchange rate to be applied when payment is made. Thus, an RSP may be forced to breach a regulation in one or the other of the countries involved.

Other respondents mentioned that restrictive foreign exchange regulations can contribute to driving remittances to the unregulated market and hamper compliance efforts since remitters may be forced to either send their transaction through unregulated channels or break up one larger transaction into several smaller ones (“structuring”).

AML/CFT regulation was also cited as an area of concern by both regulators and the private sector. The inconsistent identification requirements noted earlier particularly seem to cause uncertainty and make it difficult for RSPs to comply and provide the information requested from them by regulators. RSPs operating in neighboring countries with high informal migration between them—for example, the corridor between Costa Rica and Nicaragua—have pointed out that, in some cases, the regulators in the sending country require formal identification papers issued by that country, even though most remitters are informal migrants from the neighboring receiving country who have no

way to obtain such documents but do have suitable identification from their home country.

Tax rules were also mentioned as a source of regulatory conflict. Some RSPs operating in different countries in Latin America that have not signed double-taxation agreements (for example, Bolivia and Uruguay) reported that they are subject to dual taxation—a cost that is ultimately charged to the customer.

Suggested Recommendations

8.1 Regulators benefit from an understanding of at least the general regulatory requirements RSPs operating in their country are subject to in other countries, at least in the most relevant corridors. Bilateral or multilateral cooperation could ensure this. However, any individual agreement between countries with respect to specific remittance corridors needs to ensure that it does not have a negative impact on other corridors.

8.2 The establishment of general standards—or at least of some basic principles—for regulating common remittance services and methods would lead to more consistent regulation. This seems the most effective way to achieve harmonization given the existence of multiple remittance corridors in most countries.

8.3 Harmonized approaches to regulation would be particularly useful in regions with a high level of intraregional remittance flows.

8.4 AML/CFT regulation may particularly benefit from harmonization and bilateral cooperation, particularly with regard to identification requirements between countries in close proximity with high informal intermigration.

Although universal harmonization would be extremely difficult to achieve, common approaches to legal and regulatory issues across countries or regions would benefit RSPs, which could operate more efficiently; customers, who could benefit from lower prices; and regulators, who could ensure that RSPs are fully able to meet the requirements set for them.

CONCLUSIONS

Regulation should follow a functional approach by providing rules for remittance (or money transfer) services in general without regard to variations in type of RSP entities. This approach ensures equal access to the market, appropriate consumer protection, and enforcement of AML/CFT compliance.

Market participants and regulators identified the following main issues regarding regulation:

- **Fair competition—**access to the market for different types of market participants and remittance services, access to clearing and settlement facilities, uncompetitive collusion
- **Consumer protection—**transparency of prices and other terms of service, consumer recourse, industry self-regulation or public rules
- **AML/CFT—**identification of customers, interpretation of rules
- **Harmonization of regulation—**within specific remittance corridors, regions, and members of the same economic or political union

Within this framework, several concrete suggestions for the standardization of remittance regulation can be extracted from the feedback by regulators and the industry and the examples provided. The most relevant of these suggestions can be summarized as follows:

1. Different types of entities, financial institutions, and others are needed to provide efficient remit-

tance services and should be allowed to process remittances directly or operate under correspondent agreements.

2. Regulation should consider new types of remittance services or payment methods used for remittances such as card, mobile, and online payments and remittances.

3. RSPs of all types should have access to banking facilities and be able to access clearing and settlement facilities at least indirectly. The primary responsibility for compliance and transaction monitoring should lie with the RSP. However, banks should be required to undertake due diligence on the RSPs they service and monitor total transaction volume to evaluate institutional and systemic risk.

4. Simplified identification requirements should apply to remittances of small amounts, and identification requirements should be designed so they allow the population most dependent on remittance services to use formal, regulated providers.

5. In remittance markets that have functioning competition, the industry should be given an opportunity to self-regulate certain aspects of consumer protection by adopting a code of conduct that meets certain minimum requirements.

6. Anticompetitive behavior should be banned. Exclusivity agreements should only be permitted where they do not unduly limit competition, a valid operational or business reason exists (other than limiting competition), and the exclusivity is mutual or compensation is paid to the party bound by the exclusivity.

7. Regulators should consider that many RSPs are small companies, sometimes run by migrants themselves. RSPs should therefore be able to access all relevant information about applicable regulation in an easy way, possibly through a "one-stop shop." Regulators should provide guidance on the interpretation of regulation that aids smaller RSPs, which cannot afford large compliance departments. RSPs in turn should ensure that they are reasonably capable to implement applicable regulation.

8. Regulators should aim to harmonize national regulation for remittances with rules that apply in the countries where the remittances are sent from or to. They should attempt to harmonize remittance regulation between countries in the same remittance corridor through bilateral cooperation.

APPENDIX

2009 QUESTIONNAIRE TO THE MARKET

Global Remittances Working Group
Global Public-Private Partnership on Remittances
Private Sector Questionnaire on Legal and Regulatory Framework
March 2009

Introduction

General Principle 3. Remittance services should be supported by a sound, predictable, non-discriminatory and proportionate legal and regulatory framework in relevant jurisdictions.

The description of General Principle 3 states that "*the remittance industry should be consulted when designing the regulation of remittances to help ensure that the regulation is proportionate and effective.*"[1] Because Remittance Service Providers (RSPs) are the ones experiencing on a day-to-day basis the limits and constraints of the regulatory frameworks they operate in, and their variations over the several countries they work in, we think that it is necessary to consult you through a questionnaire adapted to the private sector. The information collected through this questionnaire will be strategic in determining standard approaches for regulatory framework. In particular, your answers as RSP can be contrasted with the answers of the regulators. The inclusion of the remittance industry in the process is a factor of success for the future implementation of the reforms that may stem from this exercise.

Please note that this questionnaire is strictly confidential and the World Bank will not make use of any information provided here for any other purpose than research. The name of your company or institution will not be mentioned.

If you feel it too cumbersome to answer each individual question, please provide a general description that takes into consideration the most relevant issues that have been identified through the questionnaire below and any additional element you think we have overlooked. If you are active in several markets and you cannot consequently comprehensively refer to each of them, please choose the most representative to your judgment. Please, indicate the criteria for your selection.

General Considerations on Legal and Regulatory Framework

1. Do you consider there are evident loopholes in legislation or regulations, in the countries where you work that can affect remittance service providers?

2. When your company enters a new market do you find it easy to detect which laws and regulations are relevant? Please state examples and countries where the regulatory framework is not easily accessible.

3. Did you encounter any difficulty in identifying the relevant competent authority/ies?

   Please list the countries where your company found it difficult to identify the competent authority and the reason why you found this difficult?

[1] CPSS–World Bank, "General Principles for International Remittance Services," January 2007.

4. How do you interact with regulatory authorities? And which ones?
5. Do you consider that national legislation or regulations can affect the use of electronic channels, the development of new channels or new methods to transfer money (such as sending remittances with cell-phones)?
6. Do you consider that the regulation on payment systems covers all aspects of clearing and settlement required for remittance services?
7. Do you consider that there are regulatory measures in the framework where you work that may drive formal remittances toward informality? Please state which ones.

Consumer Protection

8. Is there a specific legislation on consumer protection in remittances? Does this include transparency and price comparison? In the negative, is there a general financial consumer protection regulation or official policy?
9. Are the contracts between RSPs and their clients legally defined? How does legislation regulate the relation between the RSP and its client in the lack of a specific contract?
10. Is there a best practices code for the protection of financial services users? Is it applicable to remittance services?
11. What are your corporate procedures in case of consumer complaints/cancellation or modification of a remittance transfer?
12. What are the requirements for customers using your services?

Registration and Approval

13. In the countries where you operate are remittance services subject to any licensing or registration requirement? In that case, which are the minimum legal requirements to provide remittance services?
14. Is there a licensing or registration requirement that you consider a main factor in the costs of remittance services?

Access to the Market for Non-Bank Financial Institutions

15. Is the regulation of remittance services provided on a functional basis (according to the activity), or on an institutional basis (according to the type of operator)?
16. Can non-financial entities provide remittance services?
17. How do banking and non-banking RSPs access the interbank clearing and settlement systems? If so, under which conditions or restrictions?
18. Do regulatory mechanisms exist to prevent barriers to entry for service providers and guarantee free competition in the market for remittances?
19. Do you perceive regulation to be discriminatory for the different types of RSPs (i.e. the regulatory framework tends to privilege Banks, MTOs, MFIs, Cooperatives)? If so please state under which basis and in which countries?
20. Are there any additional legal or regulatory constraints that to your understanding limit competition?

Price Reduction

21. Have you reduced your prices in the last two years? If so, what are the major factors driving this reduction?
22. Which regulatory frameworks do you consider to be the ones most preventing lower costs (if any), those usually adopted in the sending countries or those in the receiving countries?
23. Do you consider that regulatory discrepancies between two corridor countries where you operate might jeopardize an efficient execution of the service?