

UNCITRAL MODEL LAW ON INTERNATIONAL CREDIT TRANSFERS AND M-PAYMENTS: DO THEY MATCH?

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Retail Payment Mechanisms

E-Money ("SVP")		Access	
Prepaid cards ("electronic purse")	Prepaid software products	Transfer of value (funds) from one account to another	
Microprocessor chips embodied in plastic card (turning "memory card" into a "smart-card")	"digital cash"(specialized software installed on a standard personal computer		
Public Access Terminal POS/ATM	Home Banking PC Internet		Public Access Terminal POS/ATM
Value available to consumer is stored on an electronic device in consumer's possession		Value available to consumer is recorded in bank account	

- Single or multi-purpose (closed or open systems)
- Restricted (i.e. geographically) or unrestricted systems
- Single and multi-issue systems

Mobile Payments

Any payment in which a mobile device is used for the purpose of initiation, activation and/or confirmation of the transaction.

Mobile device: mobile phone; PDA (Personal Digital Assistant).

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Use of mobile phones beyond voice calls but rather as digital communication devices facilitating data transfer.

Mobile payments--categories

- Access linking a conventional bank account such as checking, credit card, or debit card.

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- “Mobile phone companies ... act as banks and allow ... customers to deposit and withdraw funds using ... mobile accounts”

[Leyva, 2008, 34 Fall Vermont Bar J. 62,63]

Mobile Account

- ‘Stored-value product’ (“SVP”)
- A sub-account in a pooled conventional account belonging to the scheme operator (‘prepaid’ product)

M-payments to third parties: communication

- SMS-short messaging (text) service
 - NFC- Near field communication*
 - WAP-web-based payments using wireless application protocol
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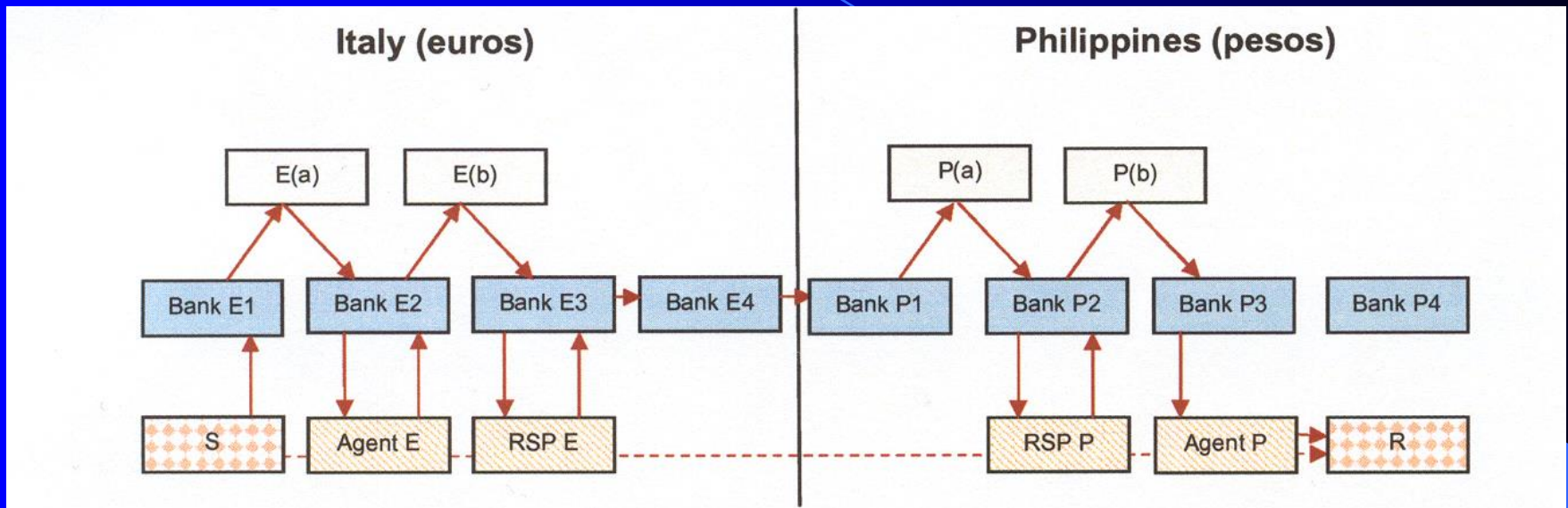
*NFC can be used only for ‘proximity payments’ – SMS and WAP can be used for ‘remote payments’

International Remittance Transfers (IRTs)

- Cross-border person-to-person payments of a relatively low value
- In practice: recurrent payments by migrant workers
- Indistinguishable from other low-value cross-borders transfers – also in payment of debts
- Mostly credit transfers: payment initiated by sender's instruction to the capturing RSP

IRT Participants

- End parties:
 - Sender--payer, originator
 - Receiver--Payee, beneficiary
- Remittance Service Providers (RSPs):
 - Capturing RSP
 - Disbursing RSP
- RSPs' Agents [RSP branches or separate entities with which RSP has a contract]
- Banks



S in Italy transfers to R in the Philippines

- Sender **to** capturing agent; **to** capturing RSP; **to** disbursing RSP.
- Bank transfers: 3 in Italy; 1 international; 3 in the Philippines.
- Disbursing RSP **to** disbursing agent **to** receiver- who may deposit.

Remittance Stages

- Capturing [by Capturing Agent]
- Consolidation/netting: Capturing Agent to RSP; RSP to Bank; Bank-to Bank; Bank to RSP; RSP to Disbursing Agent.
- Disbursement [by Disbursing Agent to Receiver]

Settlement- I

“A remittance transfer is likely to involve a ‘settlement chain’- a series of separate payments- each of which may made differently. ... For each of the payments ... from capturing agent through to disbursing agent ... settlement will normally take place by means of a credit transfer from the payer to the payee’s bank, with one of the payments being cross-border (typically by correspondent banking).”

Settlement- II

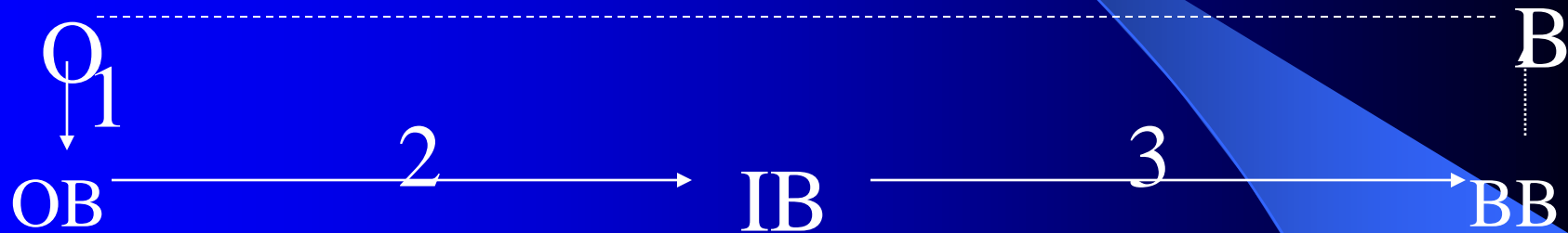
“Unlike payments between users and agents, where each remittance usually requires a separate payment, the **payment between agents and the RSP** may be *batched and possibly netted* ... although the scope for netting may be limited given the largely one way nature of the remittance flow”.

Settlement- III

- “Some RSPs may have bank accounts in both sending and receiving countries, in which case the cross-border payment may be partly ‘internalized’. In this case,
- [i] funds from the capturing agent are credited to the RSP’s account in the sending country,
 - [ii] the funds to the disbursing agent are paid from its account [with that RSP] in the receiving country, and
 - [iii] the RSP records this fact internally.
- However, ... because of the largely one way nature of remittance flows, the RSP may sometimes have to transfer funds from the sending country to top up its account in the receiving country”.

MLICT– Selected Aspects

1. Law applicable
2. Cancellation and withdrawal
3. Completion and discharge [upon BB's acceptance]
4. Breach by IB [privity; no consequential losses]
5. Interbank payment: FTS; CR to RB; DB in SB; netting; other means.



	<u>Sender</u>	<u>Receiving Bank</u>
1. First payment order:	O	OB
2. Second payment order:	OB	IB
3. Third payment order:	IB	DB

O = Originator

IB = Intermediary Bank

OB = Originator's Bank

BB = Beneficiary's Bank

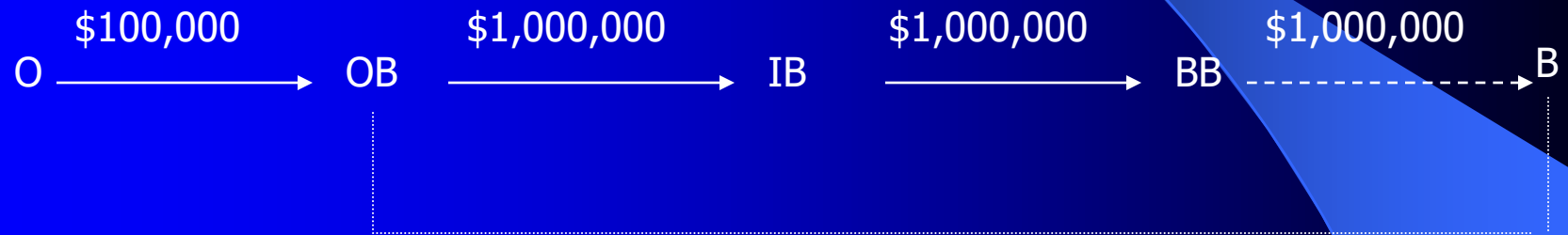
B = Beneficiary

- > Payment order
> Bank-to-customer advice
 ----- Resulting payment/discharge between O and B

MLICT -- Notes

- 1.FN to Art. 1: “ This law does not deal with issues related to the protection of consumers.”
- 2. “Bank” is not specifically defined. It may be taken to mean a deposit-taking institution. However, Art. 1(2) provides that “[t]his law applies to other entities that as an ordinary part of their business engage in executing payment orders in the same manner as it applies to banks.”

Correction of Overpayment



May recover \$900,000 to the extent allowed by the law of the place where destination bank is located

MLICT Article 5(2)

When a payment order ... is subject to authentication other than by means of a mere comparison of signature, a purported sender ... is nevertheless bound if the authentication is in the circumstances a commercially reasonable method of security against unauthorized payment orders, and the receiving bank complied with the authentication.

- “Authentication” is defined to mean “a procedure established by agreement to determine whether a payment order or an amendment or revocation of a payment order was issued by the person indicated as the sender.”

MLICT Article 5(2)-I

- A purported sender is, however, not bound under paragraph (2) if it proves that the payment order as received by the receiving bank resulted from the actions of a person other than
- a present or former employee of the purported sender, or
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- a person whose relationship with the purported sender enabled that person to gain access to the authentication procedure.”

MLICT Article 5(2)-II

- But even then liability may be fastened on the purported sender:
- if the receiving bank proves that the payment order resulted from the actions of a person who had gained access to the authentication procedure through the fault of the purported sender.

Conclusion

- Low-value credit transfers were envisaged as covered by the Model Law and yet were not central in the work leading to it. From this perspective, it is encouraging to find that overall, the Model Law is appropriate to cover them. Consumer aspects, primarily as to disclosures are nevertheless to be added; consumer's liability for unauthorized transfers is to be rethought and redrafted.