An enabling legal environment for mobile payments and peer-to-peer networks

Context presented by the Moderator

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Why is “mobile” important?

The gap between the numbers of cell phone and formal financial services users suggests that cell phones can be a powerful tool for financial inclusion.

Mobile payments provide scalable transactionality building into a broader range of financial products and services catering to the bottom of the pyramid.

Mobile phones can be used as new transformational channels and not only for additive uses.
Mobil payments are at the cross-section of two aspects of international trade law:

- **the law of electronic transactions**
  - Convention on the Use of Electronic Communications in International Contracts
  - UNCITRAL Model Law on Electronic Commerce with Guide to Enactment
  - UNCITRAL Model Law on International Credit Transfers

- **the law of international payments**

Only 3 countries—Dominican Republic, Honduras, and Singapore—became party to the Convention. Many countries have consulted and incorporated this instrument into their state laws, including in the U.S.

Should UNCITRAL undertake work drafting a new Model Law on Mobile Payments as it was suggested at a 2011 UNCITRAL Colloquium on E-Commerce?
UNCITRAL’s WORK

Convention on the Use of Electronic Communications in International Contracts

- enables cross border e-commerce and m-commerce (definitions of data message and electronic communication already encompasses communications via mobile devices)
- establishes the functional equivalence between electronic communications and paper documents
- establishes the general principle that communications are not to be denied legal validity solely on the grounds that they were made in electronic form.

UNCITRAL Model Law on International Credit Transfers

- This law can cover mobile payments effected through a mobile payment network operator
- It was drafted having in mind banks as handlers of high speed electronic credit transfers but it does not deal specifically with issues of consumer protection.
An enabling legal environment for mobile payments and peer-to-peer networks

A legal environment is enabling when it promotes innovation, fosters fluid market entry and exit by diverse players and facilitates sustainable market development.

“enable legal environment” is a dynamic proposition and adapts and evolves as the market enters different stages.

Initially it must facilitate innovation by removing barriers and ensuring a level playing field, which must grant equal legal standards for diverse players engaging in the same activity.

As innovations are implemented the enabling environment turns to mitigate operational risk and enhance consumer protection.

As consolidation sets in, prudential regulation and systemic risks become more relevant.

A mature market needs to remain competitive and efficient to deliver productivity gains.
Consensus I: Components to build an enabling legal environment for mobile payments

1. Multiple independent regulatory agencies must coordinate their visions to effectively create a legal enabling environment

   1. Competitive Market structure to foster innovation and lower costs

   3. Definitions of deposit, electronic money, and payments

   4. Network of correspondent agents

   5. Risk based AML/CFT proportional to risk

   6. Product design lightens AML/CFT requirements
Consensus II: Main components to build an enabling legal environment for mobile payments

7. New Prudentially Supervised entities are created to manage the e-money
8. These Capital structure entities allow all types of shareholders to enter the e-money market

9. Allocation of the burden of loss concerning mobile payments is borne by the service provider.
   a) Some countries define Correspondent Agent’s responsibilities in case of fraud in their Agent Regulation-defined in the contract between Financial Service provider and the Agent.
   b) Countries where Mobile Financial Services are offered directly by TELECOM agents will require a separate regulation for establishing the responsibilities of their Agents

10. Technological Risks Regulation and mitigation strategies in place prior to e-money becoming operational
Consensus: Recommendation on UNCITRAL’s future work on Mobile Payments and Peer to Peer Networks

UNCITRAL’s existing instruments can accommodate Mobile Payment’s changing technologies

Convention on the Use of Electronic Communications in International Contracts

UNCITRAL Model Law on International Credit Transfers

UNCITRAL WORKING GROUP SHOULD MONITOR MARKET DEVELOPMENTS TO BROADEN SCOPE OF ALREADY EXISTING LEGAL INSTRUMENTS - AVOIDING DUPLICATION WITH OTHER TECHNICAL ENTITIES*. A GUIDE SUMMARIZING THE RECOMMENDATIONS OF ALL INVOLVED INSTITUTIONS WOULD SERVE COUNTRIES AS REFERENCE FOR DESIGNING THEIR OWN STATE LAWS

* BCBS (Basel Committee)
CPSS (Committee on Payments and Settlement Systems)
(Financial Action Task Force)
IAIS (Insurance Supervisors)
IADI (Deposit Insurers)