International Economic Law Practicum

REGULATORY BURDENS ON MSMEs AND E-COMMERCE IN LEBANON

4/20/2018, Washington D.C.

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To : NudgeCo Lebanon, Oxfam Lebanon

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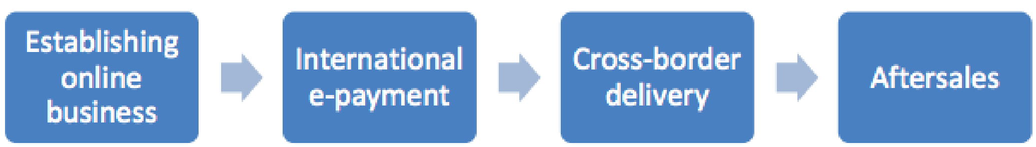
Executive Summary

Micro, small, and medium sized enterprises (MSMEs) represent well over ninety percent of Lebanon's firms and are integral to the success of the nation's economy. These firms have a central role in promoting inclusive, sustainable development and provide jobs for about half of the nation's working population. E-commerce can be a powerful tool for MSMEs because of the visibility its platforms offer to consumers around the world. E-commerce is not, however, a ready-made solution. There remain significant barriers to effective utilization of e-commerce by SMEs in Lebanon.

Applying the framework developed by the International Trade Commission (ITC), which examines the four stages common to all e-commerce transactions, in a legal context, we identify regulatory bottlenecks and challenges particularly relevant to Lebanon. The ITC's four stages are: Establishing an Online Business, International Payment, Cross-border Delivery, and Aftersales.



Source: International Trade Centre

In each of these four areas, several legal and regulatory issues arise, which are summarized below and discussed in the chapters that follow. Recent events highlight that the Government of Lebanon is placing an increasing focus on improving infrastructure and public-private dialogue, making these recommendations timely and well-aligned with policymakers' stated priorities.

1. Establishing an online business

Regulations and fees for formal registration should be streamlined. Currently, an MSME faces a disproportionate obstacle when starting a business because of bureaucratic red tape and unnecessary expenditures. Changes to the legal requirements and minimum capital thresholds for registering a business will promote e-commerce and make it easier for small businesses to transition to the formal economy.

Lack of accessible finance creates a bar to entry for many MSMEs. Inclusion in the financial system is a challenge more broadly, and Lebanon's insolvency procedures are more punitive than necessary, further stifling business activity. Lebanon's insolvency regulation needs to be part of a coherent framework that provides stability and enough flexibility for innovation.

For online platforms, government should work to facilitate the establishment and use of e-platforms. MSMEs usually lack technical and business information needed to establish an effective e-platform. Once established, challenges accessing capital can limit the diversity of products offered on e-platforms. Government can take the initiative to set up or incentivize the creation of e-platforms that cater to market demands, calling for MSMEs to enroll.

Adapting Lebanon's consumer protection law to e-commerce will foster confidence and trust. Lebanese consumers are reluctant to purchase online due to mistrust of online platforms. To ensure the enforcement of the law, policymakers should promote awareness of consumer protection rights, collaborating with the private sector to work toward a common solution. This will ensure that consumers are making transactions fully informed of their rights,

Regulation of consumer data collection and use is necessary. Regulating the behavior of business conduct in the collection and use of consumer data and enforcing service provider safeguard measures and remedies in case of breach will enhance customer's confidence in online shopping.

2. International e-payment

The availability and usage of payment mechanisms for e-commerce are essential. Implementing a regulatory framework in line with several critical components will help facilitate electronic payment: 1) regulatory neutrality and proportionality, 2) risk management, 3) protection of deposits and e-money customer funds, 4) financial customer protection, and 5) financial integrity. In addition, setting up an appropriate risk management system could encourage innovation, without sacrificing safety and stability.

To ensure ease of transactions, regulators must ensure that e-payment systems have a high degree of interoperability. In order to ensure that MSMEs have adequate banking capabilities to conduct cross-border transactions, government must also interact with peer governments to foster correspondent banking relationships.

3. Cross-Border Delivery

Bureaucratic delays and fees greatly impede the delivery process for MSMEs wishing to ship items across borders. Implementing reforms that facilitate trade, as contained in the WTO Trade Facilitation Agreement, would greatly help the MSME community in Lebanon by smoothing out cross-border procedures and improving access to information.

Adopting simpler, cheaper border procedures, as well as creating an electronic single window will speed up cross border clearance. A study by the World Bank found that, on average, each additional day that a product is delayed prior to shipment reduces trade by at least one percent.[1] These border transaction costs can be especially burdensome, both in the context of e-commerce and for MSMEs. E-commerce shipments in general, and especially those of MSMEs, are often of lower value and higher frequency than traditional cross-border trade shipments, increasing the per unit share of fees. There are also high fixed costs of dealing with unpredictable regulations, which again is problematic in the context of lower value shipments.

All border regulations should be notified in advance of adoption, published on the Internet, and updated regularly.[2] Lebanon could also establish a tailored portal to publish laws and regulations as well as complementary explanations. Access to information is especially problematic for MSMEs, because these traders do not generate sufficient income to offset the high fixed cost of acquiring customs information. They are also likely to struggle more with the minutiae of border processes than larger-scale traders and may be more affected by discriminatory practices

4. Aftersales

Effective and accessible dispute settlement procedures must be in place in order to ensure consumer confidence and foster repeated interactions. The interaction between businesses and consumers continues after delivery of the good or

[1] World Bank, *Trading on Time*, (2006).
[2] See World Trade Organization, Trade Facilitation Agreement.

service. For MSMEs to remain competitive when trading across borders, it is imperative that they have transparent and fair policies to increase consumer satisfaction. Preventative measures can be taken to reduce the frequency of resorting to formal dispute settlement procedures. Litigation is expensive and time consuming; therefore, a quick, reliable, and neutral system for Online Dispute Resolution should be implemented by firms or the government.

Conclusion

Lebanon is a country with tremendous opportunity for MSME growth, and e-commerce offers a promising route for such growth. It is imperative that steps be taken to improve the standing of MSMEs within the domestic economy and facilitate their activity in cross-border transactions. Responding to the challenges identified throughout this paper could have a significant impact on Lebanon's MSMEs.

Recommendations

		Legal and Regulatory Reform	Capacity Building and Investment
Starting an online business	Business Registration Requirements	- Reduce business registration fees - Lower minimum capital requirement for business registration - Remove Notary requirement	- Create one-stop shop for business registration
	Access to finance	- Move draft insolvency laws through parliament - Develop a regulatory framework for microfinance	- Monitor the effectiveness of MSME lending programs - Use the World Bank framework to develop a financial inclusion strategy
	E-Platform	- Adapt current Lebanese law to regulate digital customer data - Review current customer protection law in context of e-commerce	- Develop e-commerce platform model tailoring to a specific industry - Public-private cooperation to increase MSME awareness of consumer protection and data security rules
International Payment	Broadening use of transaction accounts	- Develop a regulatory framework for e-payment - Protecting consumer funds, such as establishing clear expectations for the use of funds held in e-money accounts	- Develop capacity and systems for private sector risk management
	Interoperability of Payment Systems	- Require interoperability between payment systems	- Support implementation through government facilitation of cooperation
	Support Correspondent banking relationships	- Ensure that regulation is tailored to the needs of local stakeholders - Encourage regional harmonization of rules	- Promote new approaches to trade finance - Develop the compliance capacity of local banks
Cross border delivery and trade facilitation		- Implement *de minimis* window below which goods enter w/o customs duties - Publish trade information online in an accessible format	- Create a platform for traders to report trade barriers and to comment on proposed requirements - Digitalize and simplify paperwork required for export and import, working towards an electronic single window - Conduct ongoing monitoring and evaluation of trade facilitation
After-Sale	Dispute Resolution	- Improve consumer protection laws - Enact preemptive policies to reduce misinformation	- Implement trustworthy online dispute resolution system

Introduction

Advances in Internet communications technology have fundamentally altered the way the world interacts. With the advent of e-commerce, business interactions are increasingly freed from physical and geographic restraints, offering the opportunity for businesses to reach previously inaccessible markets and customers. One important route for business expansion is through e-commerce.

What do we mean by “e-commerce”? E-commerce refers to any transaction of goods or services that occurs via or is facilitated by the Internet, though payment need not be through digital means. Such a transaction can take place between consumers, businesses, governments, and other organizations or individuals, both domestically and across borders. In cross border e-commerce, the service or good comes from a supplier in one country for consumption in another.

Lebanon has tremendous opportunity for economic growth through e-commerce. The business atmosphere is uniquely entrepreneurial: MSMEs comprise over 90 percent of active enterprises and account for nearly half of all reported employees. A better enabling environment is needed to support MSME engagement in e-commerce, and the time for reform is now. Since the outbreak of hostilities in Syria, Lebanon has become host to a refugee population approaching 2 million. Under these pressures, should Lebanon fail to keep pace in the increasingly interconnected world, the consequences would be devastating.

Entrenched structural barriers stand in the way**.** Adequate infrastructure is *sine qua non* for e-commerce. Rules that enable e-commerce are moot if the public still lacks reliable access to electricity. According to the World Economic Forum’s Global

Information Technology Report in 2013, Lebanon ranked last out of 148 countries in quality of electricity supply.[3] Mobile access is expensive, too: Lebanon ranked 120th out of 137 in prepaid mobile cellular tariffs.[4]

But, there is hope for improvement. Lebanon ranked well in many crucial categories: 33rd in percentage of Internet users, 29th in households with personal computers, 40th in fixed broadband subscriptions. This has the country relatively well-positioned compared to other emerging e-commerce countries.[5] Proper rehabilitation of infrastructure could pay generous dividends.

Such rehabilitation may be in the pipeline: an economic development conference in April of 2018 raised the possibility of an eleven billion dollar public-private partnership devoted to addressing the most intractable infrastructure deficiencies. This could lead to renovation of the Beirut airport, improved water infrastructure, upgrades to highways and roads, railway repair, and other improvements. It could also mean dramatically improved capability for engaging in cross-border trade through e-commerce. Policymakers should be prepared to capitalize on this momentum by putting in place policies and regulations that facilitate MSME participation in e-commerce.

This paper aims to contribute to that discussion. Crucial bottlenecks are identified in: 1.) Starting an Online Business 2.) International Payment 3.) Cross-border Delivery and 4.) Aftersales. Policy and regulatory solutions are then proposed, and good practice examples from around the world are highlighted which may have application in Lebanon.

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[3] The World Economic Forum, The Global Information Technology Report, xxi (2013)
[4] The World Economic Forum, The Global Information Technology Report, 126 (2016). Available at: http://reports.weforum.org/global-information-technology-report-2016/economies/#economy=LBN
[5] *Id.*

1. Starting an Online Business

Lebanon's MSMEs must navigate a number of regulatory barriers just to become formal businesses and enter the online marketplace. Ensuring that these regulatory requirements are directed towards their purpose and are not unduly burdensome could have a significant impact on the ability of MSMEs to reach customers around the world. All businesses in Lebanon must contend with complex business registration requirements, but these processes can be especially challenging for MSME's, which typically have less capital, resources, and legal expertise than large firms.[6] Accessing finance is also a challenge for Lebanon's MSMEs. Regulatory reforms could help broaden financial inclusion, which is crucial for MSMEs to grow and become more productive. Finally, if businesses are to succeed in e-commerce, they must have access to active and effective marketplaces. The government and private sector can work together to develop the infrastructure and policies that underpin thriving digital platforms.

[6] World Bank Doing Business, Understanding Regulations for Small and Medium-Size Enterprises, 24 (2013).

1.1 Business Registration Requirements

Burdensome Bureaucracy

MSMEs faced with burdensome registration processes will often choose to operate informally rather than register as a formal enterprise. Formalization should be encouraged, as it is strongly associated with improved access to electricity and Internet, growth of business, economic performance, efficiency, and access to legal protections. Therefore, MSMEs and government stand to gain from simpler business registration processes that encourage formalization.

Registering a business in Lebanon requires interaction with multiple agencies, including the Commercial Register, the Ministry of Finance, the National Social Security Fund, the Ministry of Labor, and the value added tax (VAT) Department.[7] All told, at least eight steps must be taken at different agencies to register a Socièté a Responsabilité Limitée (SARL), the equivalent of an LLC.[8] Each process can take anywhere from less than a day to more than a week; the median time for the entire process is 15 days.[9]

This acutely affects the MSME community. Barriers to registration deter formalization, and an overly complex business registration process requiring face-to-face interactions will burden MSMEs, especially those located farther from relevant agencies. Therefore, a successful policy to foster MSME growth would involve streamlining the business registration process.

[7] World Bank Doing Business, Country Profile: Lebanon (2018).
[8] *Id*.
[9] *Id*.

Box 1.1: Procedures for Registering a SARL in Lebanon

Source: World Bank Doing Business, Country Profile: Lebanon (2018).

Procedure	Time
1. Designate a Lebanese lawyer Each newly formed company must retain and pay an attorney on an annual basis.	1 day
2. Deposit the capital in a bank	2 days
3. Register at the Company Registry The following documents must be submitted to the company registrar: -Articles of Association -Commercial circulars -Minutes of the first general meeting of the partners -Registration application and a draft of the registration certificate to be issued -Document attesting the capital deposit -Partners' identity cards or passports (copy) -Documents evidencing that the company is entitled to occupy the premises where it exercises its activities	2 days
4. Notify the Ministry of Finance of commencement of business operations	2 days
5. Register at the National Social Security Fund	1 day
6. File internal labor regulations with the Ministry of Labor	1 day
7. Register for VAT	1 week (simultaneous with previous procedure
8. Obtain a company seal *Not mandated by law, but majority of companies prefer to have company stamps.	1 day

Good Practice Example: Niger Implements One-Stop Shop for Business Registration

The requirements for setting up a business in Niger have been simplified tremendously with the implementation of the Centre de Formalités des Enterprises (CFE), a one-stop shop for registering all enterprises.[10] The result is that the entire process in Niger now takes only about seven days from start to finish and requires only

[10] World Bank Doing Business, Country Profile: Niger (2018). Available at http://www.doingbusiness.org/~/media/wbg/doingbusiness/documents/profiles/country/ner.pdf

three procedures. Within the CFE, a company can file documents with the Commercial Registry, as well as obtain a tax identification number, register for social security, and register with the government employment agency.[11]

The number of civil servants encountered and the amount of bureaucratic red tape has been significantly reduced in Niger. (The minimum capital requirement in Niger is XOF 25,000 (47.25 USD))[12]. The World Bank has listed a one-stop shop as a best practice, noting that the time it takes to register a business is nearly twice as fast in countries with one-stop shop than in countries without.[13]

Capital Requirements for Starting a Business

Up-front capital required to start a formal business enterprise in Lebanon can impede MSMEs from formalizing. Retaining an attorney, which is required by law in order to register a business, includes an initial fee of LBP 3,000,000 (1,980 USD), plus annual costs in excess of 9,000,000 LBP (5,940 USD). [14] There are additional registration costs including administrative fees, notarization fees, and paid-in capital requirements.[15] Forming a SARL requires a minimum capital deposit of LBP 5,000,000 ($3,300).[16] These fees are often sufficient to prevent formal registration by MSMEs.

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[11] *Id*.
[12] *Id*.
[13] World Bank Doing Business, Good Practices. Available at http://www.doingbusiness.org/data/exploretopics/starting-a-business/good-practices.
[14] Investment Development Authority of Lebanon, Setting up a Limited Liability Company. Available at http://investinlebanon.gov.lb/en/doing_business/starting_a_business/set_up_a_business
[15] *Id.*
[16] *Id*.

A key objective of minimum capital requirements is to protect investors from insolvent firms.[17] Lebanon should address these concerns through reform of its insolvency system. The minimum capital requirement is a blunt instrument that is neither adapted to diverse firms nor based on individualized assessment of the risk posed by a given enterprise; it also ties up much-needed MSME capital.[18] Studies by the World Bank show that higher minimum capital requirements are actually indicative of weaker investor protections.[19] Removing minimum capital requirements facilitates registration of MSMEs, increasing the formalization of the economy.[20]

Good Practice Example: Indonesia Removes Minimum Capital Requirement

Formerly, the Government of the Republic of Indonesia mandated a paid-in minimum capital requirement of IDR 50 million (3789 USD) for limited liability companies.[21] This was nearly identical to the paid-in minimum capital requirement for a SARL in Lebanon. In Indonesia, this requirement prevented many small enterprises from registering to become formally recognized. Effective March of 2016, a new regulation removed the capital requirement entirely.[22]

The response has been significant. Before the change, Indonesia was ranked 109th in overall ease of doing business in the World Bank's *Doing Business* report.[23] This was in contrast to neighboring Malaysia, which required only a single unit of any

[17] *Id*. at 42.
[18] *Id.* at 43.
[19] *Id*. at 44.
[20] *Id*.
[21] Global Legal Monitor, Indonesia: Capital Requirement for Starting a Business Reduced. Available at http://www.loc.gov/law/foreign-news/article/indonesia-capital-requirement-for-starting-a-business-reduced.
[22] Jakarta Globe, *Indonesia Scraps Minimum Authorized Capital* (March 23, 2016). Available at http://jakartaglobe.id/business/indonesia-scraps-minimum-authorized-capital-requirement/
[23] Jakarta Post, *Indonesia Jumps 19 Places in EODB 2018:* WB. Available at http://www.thejakartapost.com/news/2017/11/01/indonesia-jumps-19-places-in-eodb-2018-wb.html.

currency to start a business and was ranked 18th in ease of doing business.[24] Following the change in minimum capital requirement, Indonesia jumped to 91st in 2017 and then to 72nd in 2018.[25] Although such a drastic improvement cannot be solely attributed to the removal of the minimum capital requirement, the change in regulation certainly played a role. Indonesia has not been alone in removing the minimum capital requirement. From 2007–14, 39 countries eliminated minimum capital requirements.[26]

Mandatory Use of Notary

The use of a notary for certain documents and procedures is required to start a business in Lebanon. For instance, company bylaws must be notarized if they are not signed before the Commercial Registry. [27] The costs for this process include LBP 8,500 ($5) per page, a fee of LBP 100,000 ($65), and a notary public tax of 0.1% of the company's capital.[28]

Good Practice Example: OHADA Removes Notary Requirement

In its effort to improve the investment climate among its seventeen member states, the Organization for the Harmonization of Business Law in Africa (OHADA) focused on the cost and time to starting a business.[29] In addition to calling for lowered minimum capital requirements, OHADA also targeted the mandatory use of notaries in

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[24] *Id.*
[25] *Id*.
[26] World Bank Doing Business, Understanding Regulations for Small and Medium-Size Enterprises 41.
[27] World Bank Doing Business, Country Profile: Lebanon (2018).
[28] *Id*.
[29] Foundation for a Unified Business Law in Africa, Uniform Act on Commercial Companies and the Economic Interest Group (Jan. 30, 2014). Available at http://juriafrique.com/eng/wp-content/uploads/sites/2/2017/08/AUSGIE-REVISE-OHADA-en.pdf

business registration.[30] The OHADA Uniform Act on Commercial Companies made use of notaries optional.[31] Data from the World Bank suggest that these changes have significantly increased the number of registered companies.[32]

Recommendations

Reforms should focus on simplifying procedures and making them less cost prohibitive. The following recommendations are in line with that goal and have been proven to be effective in other countries.

- Implement a one-stop shop for business registration in Lebanon. Restrictive bureaucracy should not be an impediment to a motivated entrepreneur. Reducing the number of bureaucracies an MSME has to deal with has to the potential to facilitate activity in the formal economy.
- Remove or decrease the minimum capital requirement for starting a business. The fixed monetary deposit does not take into account unique differences in firm size, and it disproportionately affects MSMEs, which typically have fewer initial funds. Along with other aspects of the business registration process, these practices can push MSMEs into the informal economy.
- Remove the notarization requirement. As evidenced by OHADA, removing notarization requirements may increase business registration. Notarization deters fraud, which is a very compelling interest for Lebanon, but there are other ways

[30] *Id*.
[31] World Bank, Improved Investment Climate Within the Organization for the Harmonization of Business Law in Africa http://documents.worldbank.org/curated/en/149991496386489765/pdf/RES25223-PJPR-REVISED-PUBLIC-OHADA-Restructuring-Paper-OG-P126663-2017-05-25-09-07.pdf
[32] *Id*.

to address fraud and, given that other countries have successfully removed the requirement, Lebanon should consider a similar approach.

1.2 Access to Finance

The ability of MSMEs to access finance is a major determinant of their ongoing role in Lebanon's growth and development, and financial services are necessary for MSMEs to expand through e-commerce. As an enterprise grows, the need for additional capital often does as well. MSMEs compose approximately ninety-six percent of the registered firms in the country and employ approximately fifty percent of the working population; however, they only receive about one fifth of total private sector credit.[33] Financial sector policies shape the fates of MSMEs generally, whether or not they directly engage in international trade. Currently, Lebanon's MSMEs face substantial barriers that are in part due to the legal and regulatory environment.

Increasing the engagement of MSMEs in the financial sector is a complex objective, and this report does not purport to provide a roadmap. Instead, this section will review some key principles embedded in financial inclusion strategies and highlight general resources. From there, it will spotlight two policy issues relevant to financial access for MSMEs in Lebanon—the insolvency and creditor/debtor framework and the regulation of microfinance institutions.

[33] World Bank, Finance Sector Assessment: Lebanon, 34(2016).

Inclusion in the Financial System

Lebanon's banking sector is large: assets exceed 360 percent of the country's GDP.[34] The banking sector has also remained relatively stable despite political and economic upheaval.[35] However, access to finance remains low.[36] To take one indicator, only forty-seven percent of adults have a bank account, relative to an average of seventy percent in upper middle income countries.[37] Out of 190 countries, Lebanon ranks 122nd on the ease of getting credit, 134th for the enforcement of contracts, and 147th for the quality of its insolvency regime.[38] These indicators suggest some of the key regulatory impediments to increased private sector financing.

The government has not been idle, and has devoted notable resources to an array of financial inclusion initiatives. One such program is the Kalafat program, which offers credit guarantees to enable MSMEs to access bank finance.[39] There is also a reserve requirements exemption program and a Banque du Liban subsidized lending program, which are both directed at MSMEs.[40] The Banque du Liban also has a program, known as Circular 331, which offers financing to start-up companies, incubators and accelerators.[41] The World Bank estimates that these programs taken together represent about one-third of the total loans to MSMEs.[42] Unfortunately, there

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[34] Mohamed Ali Beyhum, *Lebanon's banking sector continues to thrive in spite of economic instability*, World Finance, https://www.worldfinance.com/banking/lebanons-banking-sector-continues-to-thrive-in-spite-of-economic-instability.
[35] World Bank, Financial Sector Assessment: Lebanon, *supra* note 1, at 4
[36] *Id.* at 5.
[37] World Bank, Global FINDEX Data Base, accessible at http://www.worldbank.org/en/programs/globalfindex.
[38] World Bank, *Doing Business: Lebanon*, 4 (2018).
[39]World Bank, Financial Sector Assessment: Lebanon, supra note 1, at 35.
[40] *Id.*
[41] *Id.*
[42] *Id.*

has been little monitoring or assessment of the effectiveness of these programs, so their role in achieving sustainable financial inclusion remains unclear.[43]

Lebanon is far from alone in grappling with the challenges of increasing financial inclusion. Related initiatives are supported in policy forums at the highest levels. In 2009, at the Pittsburg Leaders' Summit, the G20 created a Financial Inclusion Experts Group, and in 2010, at the Seoul Summit, they launched the Global Partnership for Financial Inclusion (GPFI).[44] MSMEs are an integral part of this movement. The GPFI is considering creating an "SME Finance Compact."[45] Underpinning all of this work, and associated with the G20, is a set of "Principles for Innovative Financial Inclusion," which were officially adopted at the Toronto Summit in 2010.[46]

The G20 Initiatives have coincided with efforts in an array of other institutions, including: the Alliance for Financial Inclusion,[47] the Association of Southeast Asian Nations,[48] the Center for Latin American Monetary Studies,[49] and the World Bank.[50] Each of these work streams offers helpful examples and lessons learned that could be adapted to the Lebanese context. For example, the World Bank has a database of Financial Inclusion Strategies implemented by dozens of countries.[51]

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[43] *Id.*
[44] World Bank, *Financial Inclusion*, http://www.worldbank.org/en/topic/financialinclusion.
[45] International Finance Corporation, *Assessing the Landscape and County-level Target Approaches*, 29 (2011), https://www.gpfi.org/sites/default/files/documents/WORKINGDATA.pdf.
[46] The Principles are: leadership, diversity, innovation, protection, empowerment, cooperation, knowledge, proportionality, and framework. Available at https://www.gpfi.org/sites/default/files/documents/G20%20Principles%20for%20Innovative%20Financial%20Inclusion%20-%20AFI%20brochure.pdf
[47] Alliance for Financial Inclusion, *Initiatives*, https://www.afi-global.org.
[48] World Bank, *How to Scale Up Financial Inclusion in ASEAN Countries,* http://blogs.worldbank.org/eastasiapacific/how-to-scale-up-financial-inclusion-in-asean-countries.
[49] Center for Latin American Monetary Studies, http://www.cemla.org/english.html.
[50] World Bank, *Financial Inclusion*, http://www.worldbank.org/en/topic/financialinclusion.
[51] http://www.worldbank.org/en/topic/financialinclusion/brief/financial-inclusion-strategies-resource-center

To this end, the World Bank has also developed a useful framework to assist in developing financial inclusion strategies, which has six main components.[52]

Box 1.2: Components of a Financial Inclusion Strategy

1. Stocktaking through data and diagnostics
2. Development of financial inclusion targets and objectives
3. Strategy development and revision
4. Identification and implementation of public sector actions
5. Mobilization of private sector actions
6. Ongoing progress monitoring

World Bank Group, *Financial Inclusion Strategies Reference Framework* (2012).

First, an effective strategy requires initial and ongoing **stocktaking through data and diagnostics**. This component is reiterated in the G20 Principles and is manifested in the Data and Measurement Sub-Group of the GPFI.[53] Some key trends include standardizing data collection methodologies, increasing national statistical capacity, and pushing for increased openness of data.[54] The World Bank has developed the most comprehensive database of global financial inclusion indicators (See Figure 1.3).[55]

[52] World Bank Group, *Financial Inclusion Strategies Reference Framework* (2012), http://documents.worldbank.org/curated/en/801151468152092070/pdf/787610WP0P144500use0only0900A9RD899.pdf.
[53] Global Partnership for Financial Inclusion, *Subgroup on Financial Inclusion Data and Measurement*, https://www.gpfi.org/subgroup-financial-inclusion-data-and-measurement.
[54] *Assessing the Landscape and Country-level Target Approaches*, *supra* note 13, at 6.
[55] Global FINDEX Data Base, *supra* note 5.

Figure 1.3: World Bank Basic Indicators of Financial Inclusion

	CATEGORIES	INDICATORS	EXISTING GLOBAL SOURCE (IF RELEVANT)	DIMENSION OF FINANCIAL INCLUSION MEASURED
1	Formally banked adults	% of adults with an account at a formal financial institution	Global Findex	Access, Usage
		Number of depositors per 1,000 adults OR number of deposit accounts per 1,000 adults	IMF FAS	
2	Adults with credit by regulated institutions	% of adults with at least one loan outstanding from a regulated financial institution	Global Findex	Access, Usage
		Number of borrowers per 1,000 adults OR number of outstanding loans per 1,000 adults	IMF FAS	
3	Formally banked enterprises	% of SMEs with an account at a formal financial institution	WB Enterprise Surveys	Access, Usage
		Number of SMEs with deposit accounts/ number of deposit accounts OR number of SME depositors/number of depositors	IMF FAS	
4	Enterprises with outstanding loan or line of credit by regulated institutions	% of SMEs with an outstanding loan or line of credit	WB Enterprise Surveys	Access, Usage
		Number of SMEs with outstanding loans/number of outstanding loans OR number of outstanding loans to SMEs/number of outstanding loans	IMF FAS	
5	Points of service	Number of branches per 100,000 adults	IMF FAS	Access

World Bank Group, *Financial Inclusion Strategies Reference Framework* (2012)

The second component of the World Bank's financial inclusion framework is **development of financial inclusion targets and objectives**. The World Bank explains that "[w]hen well-defined, publicized, and monitored, targets can have a rallying effect."[56] The International Finance Corporation (IFC), together with the Consultative Group to Assist the Poor (CGAP), prepared a note outlining approaches to target-setting, which includes specific recommendations.[57] Building upon this, the third component moves into **strategy development and revision**. As part of the strategy development process, the World Bank encourages the creation of a coordination council

[56] Consultative Group to Assist the Poor & International Finance Corporation, iii, *Financial Inclusion Targets and Goals*, http://www.gpfi.org/sites/default/files/documents/Financial%20Inclusion%20Targets%20and%20Goals.pdf
[57] *Id.*

Box 1.4: Policy Options for Financial Inclusion

- Regulation, or voluntary private sector commitment, for accessible financial accounts
- Responsible finance, including consumer protection and dispute resolution
- Nonbank financial institution regulation, licensing, and supervision—including for micro finance, leasing, and factoring
- Reforms to enable agents to deliver financial services
- Proportionate regulation and supervision of small depository institutions (e.g. financial cooperatives)
- Laws and regulation underpinning safe and efficient payment systems and enabling the growth of electronic money
- Laws and regulation enabling the operation of a modern and comprehensive credit reporting system

or task force focused on financial inclusion to provide leadership and momentum in interagency cooperation.[58]

The fourth component of the financial inclusion framework is **identification and implementation of public sector actions**, including policies, regulation, and strengthening of financial infrastructure. Here, the approaches are numerous. The World Bank's database of Financial Inclusion Strategies include a number of policy reforms that can consulted as examples.[59] On the regulatory front, the fundamental objective is to ensure "[s]ound legal and regulatory frameworks that are effectively enforced promote market development and competition, while subjecting financial institutions and agents to sound and appropriate prudential regulation and rules of conduct in order to protect consumers and depositors as well as to ensure market stability."[60]

Financial Inclusion Strategies Reference Framework, World Bank, 30 (2012).

The fifth component of the World Bank's financial inclusion framework is to **mobilize private sector actions**. This may involve, "the introduction of financial

[58] *Financial Inclusion Strategies Reference Framework, supra* note 19, at 26.
[59] http://www.worldbank.org/en/topic/financialinclusion/brief/financial-inclusion-strategies-resource-center
[60] Financial Inclusion Strategies Reference Framework, 30

services, new business models, and delivery mechanisms that expand access to and usage of financial services."[61] Finally, the sixth component is **ongoing progress monitoring**. These six components are intended to be open-ended and adaptable to unique circumstances.

The following discussions of the Insolvency and Creditor/Debtor Framework and of the Microfinance Sector primarily focus on potential public sector legal and regulatory responses, so they can be best understood in light of the fourth component of the framework.

Insolvency and Creditor/Debtor Framework

As noted above, Lebanon ranks 147th out of 190 for the quality of its insolvency regime.[62] New draft laws have been prepared but have not yet been discussed in the Parliament.[63] The existing law poses significant challenges to various actors engaged in the process.[64] According to the World Bank, the existing law "adopts a punitive approach toward debtors, rather than treating the insolvency framework as a constructive set of measures."[65] The law also lacks pre-insolvency procedures, which limits the ability of regulators to support financially distressed but viable companies.[66] Insolvency procedures are quite slow, totaling around three years after accounting for appeals and requests for extensions.[67] These procedures are also costly, averaging

[61] Financial Inclusion Strategies Reference Framework, 13
[62] World Bank Doing Business 2018, *Doing Business: Lebanon*, 4 (2018).
[63] Lebanon World Bank Financial Sector Assessment, 28
[64] http://ar.jurispedia.org/index.php/قانون_أصول_المحاكمات_المدنية_الجديد_(lb)
[65] Lebanon World Bank Financial Sector Assessment, 28
[66] *Id.*
[67] World Bank Doing Business 2018, 58

fifteen percent of the debtor's estate, and result in a low recovery rate of 31.4 cents on the dollar.[68]

One consequence of this poor framework is that banks have a strong preference for fixed assets as collateral and often require over-collateralization.[69] Lebanon also ranks 102nd out of 190 on the ease of registering property, exacerbating the challenge presented by strict collateralization requirements.[70] Another consequence of the poor insolvency framework is that banks display a strong preference for informal negotiation with borrowers rather than going through official procedures.[71] The Banque du Liban has issued a circular encouraging these informal processes.[72]

Because of inefficiencies in the law and its application, creditors are not sufficiently protected. This means that lending is riskier than in jurisdictions with better insolvency procedures. This directly impacts MSMEs—who are likely to be considered riskier borrowers as a general matter—by increasing the cost of or preventing lending. Put another way, "[t]he willingness of banks and investors to support new businesses depends a great deal on the rules that govern failing businesses."[73]

Good Practice Example: Mexico's Reform of Its Insolvency Laws

In 2000, Mexico undertook a complete overhaul of its insolvency laws in response to widespread critique of the incumbent regime, which had been in place since 1943. The reform was, in part, precipitated by the 1995 financial crisis. The main

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[68] *Id.*
[69] *Id.*
[70] WB Doing Business 2018, 4
[71] Lebanon World Bank Financial Sector Assessment, 28
[72] World Bank Doing Business 2018, 58
[73] Debt Resolution and Business Exit

objections centered on the old laws' advantages for debtors, such as the absence of limits on the terms of procedural stages and on the availability of litigation. The reforms were addressed to different facets of the insolvency system. First, the underlying legal structure was modified. For example, the new law introduced penalties for delays. Second, the reforms strengthened administrative processes by, for example, centralizing the registry of claims. Finally, the new law spurred an array of regulatory reforms. As of 2007, the reforms had reduced the average time spent in bankruptcy from 7.8 to 2.3 years. Average rates of recovery rose from 19 to 32 cents on the dollar, and violations of priority rules fell from 29 to 2 percent of cases.

The structural and administrative reforms to Mexico's bankruptcy law account for about fifty percent of the reduction in the average time spent in bankruptcy, while the subsequent regulatory reforms led to the other fifty percent reduction. The laws have been able to effectively manage litigation. Left unchecked, debtors could use appeals and other litigation procedures to extract concessions from creditors, ultimately destroying much of the value of bankruptcy processes for the creditor. By identifying this key challenge and then using the tools of legal, administrative, and regulatory reform, Mexico's reforms have led to tangible benefits in practice.

Recommendations

The World Bank has proposed a set of Principles for Effective Insolvency and Creditor/Debtor Regimes.[74] The Principles are fairly comprehensive but can be summarized as falling into a few main categories. The first focuses on the development

[74] World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes(2016), available at http://pubdocs.worldbank.org/en/919511468425523509/ICR-Principles-Insolvency-Creditor-Debtor-Regimes-2016.pdf

of the credit environment. The second concerns risk management and informal workout systems. The third relates to the structure of the insolvency law itself. The fourth focuses on institutional and administrative aspects of implementation. Finally, the fifth relates to overarching considerations for promoting sound investment climates.

Box 1.5: Elements of Effective Insolvency Laws

Principles of Effective Insolvency and Creditor/Debtor Regimes, World Bank (2016).

Because this section has emphasized insolvency law, it is worth considering some of the third category principles in greater depth. According to the World Bank, a commercial insolvency system should:

1. integrate with a country's broader legal and commercial systems
2. maximize the value of a firm's assets and recoveries by creditors
3. provide for the efficient liquidation of both nonviable businesses and businesses whose liquidation is likely to produce a greater return to creditors and reorganization of viable businesses
4. strike a careful balance between liquidation and reorganization, allowing for easy conversion of proceedings from one proceeding to another
5. provide for equitable treatment of similarly situated creditors, including similarly situated foreign and domestic creditors
6. provide for timely, efficient, and impartial resolution of insolvencies
7. prevent the improper use of the insolvency system
8. prevent the premature dismemberment of a debtor's assets by individual creditors seeking quick judgments
9. provide a transparent procedure that contains, and consistently applies, clear risk allocation rules and incentives for gathering and dispensing information
10. recognize existing creditor rights and respect the priority of claims with a predictable and established process, and
11. establish a framework for cross-border insolvencies, with recognition of foreign proceedings.

Lebanon's draft insolvency laws have not been made public, so it is unclear if it fulfills each of these principles. The laws were prepared with the assistance of the IFC, though, so it seems likely that they would. Either these draft laws should be moved through parliament, or the government should otherwise work towards legislative reform of insolvency. Once the law is enacted, effectively implementing regulation and administrative policies will be vital, as the Mexican example demonstrates.

Regulation of Microfinance Institutions

Around the world, financial authorities from developing and developed economies continue to devise strategies to bring formal financial services to low-income individuals and enterprises. One set of tools falls within "microfinance." Development practitioners increasingly encourage a broad definition of microfinance that goes beyond the provision of "microcredit" or "microloans" to incorporate other elements of financial inclusion, such as savings, money transfers, and insurance.[75] Nevertheless, there remains a significant association between "microfinance institutions" and microcredit, so it is worth considering microlending in more depth.[76]

Box 1.6: A microloan typically possesses the following attributes:

A Guide to Regulation and Supervision of Microfinance, 5

1. **It is typically much smaller than a conventional bank loan, although there is no universally agreed maximum**
2. **The loan typically has either no collateral or unconventional collateral (which frequently is not sufficient to cover the lender's loss in the case of a payment default)**
3. **The borrower is typically self-employed or informally employed (i.e., not salaried by a formal employer)**
4. **The lender typically uses a variant of the common microlending methodology**

[75] A Guide to Regulation and Supervision of Microfinance, 4

[76] Kuala Lumpur, Revolutionizing Microfinance: Insight from the 2017 Global Symposium on Microfinance (World Bank, 2017) http://pubdocs.worldbank.org/en/332301505318076916/GSM2017-Synthesis-report-draft-August-9th-2017-Final.pdf

Microlending, and microfinance more broadly, has the potential to increase access to finance for MSMEs in Lebanon. Outside the traditional banking sector, microfinance institutions represent significant potential for increasing MSME access to finance. In terms of assets, Lebanon's existing microfinance sector is fairly small, approximately $230 million.[77] However, there are about 230,000 active borrowers, reflecting fairly broad market penetration in a country of six million people.[78] There is not a systematic way of regulating microfinance entities, some of which operate as NGOs and some of which are registered, regulated institutions.[79] Entities that are not registered are often unable to access bank financing or credit information, which can hinder their operations; on the other hand, there is a perception that unregistered entities have several comparative advantages over their regulated peers.[80]

Approaches to Regulating Microfinance

Assuming the proposition that some level of regulation is warranted, several fundamental questions remain.[81] First, who should be regulated? Diverse microfinance services are provided by different types of institutions—ranging from NGOs, to rural credit unions, to large commercial banks. Should the activities of all of these institutions be subject to supervision? Second, should regulation be implemented by amending existing regulations or by creating a new regulatory framework for microfinance? This question essentially turns on whether the regulatory issues are interconnected enough to make a single system of regulations feasible and desirable. Third, how should

[77] Lebanon WB Financial Sector Assessment, 36
[78] *Id.*
[79] *Id*.
[80] *Id*.
[81] The Regulation and Supervision of Micro nance/ Main issues and progress

prudential and non-prudential regulation be adapted to the particular risks and objectives of microfinance? The economic feasibility of microfinance depends on innovation, so it is important that regulation allows for sufficient flexibility.

In a recent symposium, the World Bank explained its current understanding of the role and nature of effective microfinance, explaining:

> "Over the last four decades, our collective understanding of the potential impact of financial services for poor households has evolved from traditional microcredit – the provision of a single basic financial product to the poor by specialized service providers – to financial inclusion, where both individuals and businesses have opportunities to access and use a diverse range of appropriate financial services that are responsibly and sustainably provided by formal financial institutions."[82]

This enhanced mandate compels increased attention to regulatory issues as financial institutions serving the poor engage in a broader set of activities.

There are four main arguments in favor of more coherent regulation of the microfinance sector: 1) the protection of the country's financial system and small depositors, 2) addressing the consequences of rapid growth and fast commercialization of the microfinance sector, 3) consumer protection and the fight against abusive interest rates, 4) the entry of new providers and credit delivery mechanisms in the microfinance sector, 5) lessons from the recent financial crisis; and 6) fraud and financial crimes prevention.[83]

In a guide prepared by CGAP, several helpful principles are laid out. First, regulation should aim to be institution-neutral. With a diverse and ever-changing set of microfinance institutions, it is better to emphasize activity-based regulation.[84] CGAP

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[82] http://pubdocs.worldbank.org/en/332301505318076916/GSM2017-Synthesis-report-draft-August-9th-2017-Final.pdf
[83] The Regulation and Supervision of Microfinance/ Main issues and progress, 3
[84] A Guide to Regulation and Supervision of Microfinance

notes that this both fosters competition and reduces the risk of regulatory arbitrage.[85] Second, definitions of terms like "microfinance" and "microcredit" should be specific and adapted to the unique regulatory objectives in Lebanon.[86]

With respect to prudential regulation, which is only recommended for deposit-taking microfinance institutions, CGAP encourages minimum capital requirements calibrated to cover infrastructure, management information systems, and start-up losses, as well as provide incentives for adequate performance and continued operation.[87] It also argues that minimum capital requirements should be set by regulators and not through legislation.[88] Microloan portfolios should not be limited to a percentage of the lender's equity, and there should not be additional requirements simply because the loans do not have conventional collateral.[89]

For non-prudential requirements, CGAP recommends that boards of deposit-taking MFIs should be independent of management and should include members with experience in finance and banking, as well as members who understand the clients well.[90] Documentation requirements for microloans should be less stringent than for traditional bank loans.[91] CGAP also encourages policies that promote transformation of NGO microfinance institutions into for-profit companies over time.[92] However, they encourage a regulatory framework that permits microlending by both NGOs and for-

[85] *Id*.
[86] *Id*.
[87] *Id*.
[88] *Id*.
[89] *Id*.
[90] *Id*.
[91] *Id*.
[92] *Id*.

profit companies.[93] Authorizing microlending by either type of institution should be simple and involve a public registry.[94] Reporting requirements, again, should be activity-based and narrowly tailored to specific objectives.[95]

CGAP also notes several other related issues. It supports the development of inclusive credit information databases, which will assist microfinance institutions in their lending and will help individuals and MSMEs develop credit. To enhance accessibility to depository institutions, it recommends branchless banking, which relies on mobile phones and other information technology to provide financial services more conveniently and allow for reach into geographically remote areas.[96]

The International Institute for Sustainable Development has also prepared helpful guidance.[97] This guidance, as well as CGAPs, communicates a fundamental principle: regulation should be adapted to promote the development and security of the microfinance sector without imposing requirements that constrain innovation. This principle also accords with the practical experience of regulators.

The World Bank undertook a comparative study of microfinance regulations in Benin, Ghana, and Tanzania in 2005.[98] Each country had a different composition of microfinance institutions, ranging from rural credit unions to microfinance operations of commercial banks to NGOs. The underlying regulatory objectives of each country included balancing the promotion of financial inclusion by means of microfinance with the management of risk, but the countries regulatory regimes varied significantly.

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[93] *Id*.
[94] *Id*.
[95] *Id*.
[96] *Id*.
[97] The Regulation and Supervision of Microfinance
[98] Comparative Review of Microfinance Regulatory Framework Issues in Benin, Ghana, and Tanzania, World Bank (2005).

In Benin, microfinance institutions are supervised by the Ministry of Finance. There are registration requirements, and microfinance institutions must submit annual financial statements. However, there are many indications of pervasive under-enforcement of the laws and regulations. In Ghana, the Bank of Ghana is ostensibly the prudential regulator of credit unions, but most prudential supervision is actually carried out by the Ghana Cooperative Credit Union Association. Commercial banks remain under the supervision of the Bank of Ghana, which has, in fact, carried out enforcement measures. In Tanzania, prudential supervision of banks and non-bank financial institutions is carried out by the Banking Supervision Directorate. There are also regional registration and administrative requirements.

Prudential standards in each country include: minimum capitalization requirements, capital adequacy, asset quality, risk exposure limits, liquidity risk, prudential surveillance, and deposit protection. Regulations also occasionally touch on non-financial issues such as: judicial procedures on ownership, security interest, and collateral issues; tax and fiscal policy issues; and labor laws and regulations.

The World Bank found that across the countries, it was important for licensing processes not to overly limit flexibility. For example, recently introduced prudential requirements in Tanzania had the potential to slow the development of the sector because of the accounting and reporting requirements they imposed. The report also praised Ghana's system for better integrating MFIs into the broader financial system.

1.3 E-Platform

By gathering resources and utilizing a uniform portal, e-platforms provide MSMEs an outlet to sell goods or offer services to remote areas at a low cost. Capital resources have long been regarded as a barrier for MSMEs to grow, and e-platforms help MSMEs increase work efficiency and save operational costs associated with a physical storefront.

This section will examine two aspects pertinent to e-platform establishment in Lebanon. On one hand, this section will assess the legal framework concerning data flows between different e-commerce platforms or even between countries; it will also discuss customer protection laws to ensure the credibility of online trade. Fraud and mistrust raise concerns for using online trade, and a strong legal framework will build customers' trust in e-commerce. Government policies could improve interoperability and bring parties together to work on a common solution to Lebanese e-platform construction.

Fostering customer confidence in e-commerce platforms

Trust and safety are cornerstones in the enabling environment for e-commerce.[99] While operating businesses on an e-commerce platform, large quantities of information are released, exchanged, collected, and stored. A study shows that more than 2100 information incidents occurred in 2013; each could entail millions of pieces of information being stolen.[100] According to a survey, passport, name, email, and address are the most readily exposed forms of data, while exposed credit card information acconted for 10.4% of incidents in 2013.[101] Data protection is important and has been an increasing concern for government and lawmakers.

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[99] Information Economy Report 2015, UNCTAD, 64
[100] Source: Risk Based Security (2014), Information Economy Report 2015, 71
[101] *Id.* at 72

People tend not to trust “virtual” products if they are not from well-known companies.[102] “Virtualization” is one advantages of e-commerce, because it saves time and distance for buyers to review the product and conduct transactions. Without such an advantage, retailers who had been operating off-line business are unlikely to take their business online. Mistrust in the quality of online products and customer service hinders the development of e-commerce in Lebanon.

Data flows are a core issue for e-commerce, especially in cross border transactions. The scope of data examined here is generally related to any information about an identifiable individual, such as name, account number, passport, personal contact and address, email etc. Businesses rely on information exchange to help customers register accounts on their website, make payments, and generally facilitate transactions.

However, Lebanon should be given credit for no “forced data” requirements for foreign online services, and Lebanese businesses are not forced to submit source codes to authorities or offer a channel for authorities for surveillance.[103] To further enhance consumer’s confidence in online business, this section discusses the possible legal response towards such concerns by examining the laws on customer protections in general and data protection specifically.

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[102] E-commerce in Lebanon: An Overview, Feb 14th, 2013, available at https://www.wamda.com/2013/02/overview-of-the-e-commerce-scene-in-lebanon

[103] US Department of State: 2015 Investment Climate Statement – Lebanon, available at https://www.state.gov/e/eb/rls/othr/ics/2015/241629.htm

Customer Protection on E-platforms

Customer protection is essential in e-commerce. Due to the information asymmetry that exists in online trading between sellers and buyers, buyers are susceptible to being misled and defrauded. This section explores ways to address the imbalance along with possible remedies that could be offered to buyers in case of fraud.

For consumer protection, there are two prominent international instruments. One is the *United Nation Guidelines for Consumer Protection*, which is newly revised and adopted by the UN General Assembly in its resolution 70/186. For e-platform particular, UN guidelines proposes three main principles (Box 1.7)

Box 1.7: The UN Guidelines for Consumer Protection Related to E-Commerce

UNCTAD,

1. Guideline 63: Promotes transparency and effectiveness of the relative policies, emphasizing at least an equal level of protection between e-commerce and other forms of commerce.
2. Guideline 64: Calls for reviewing the current consumer protection policies with regard to of ensuring customer and business are informed to their rights as well as obligations.
3. Guideline 65: Suggests considering international standards and adapting those to national status quo in order to enforce them in practice.

Source: http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

Another is the *Recommendation of the Council on Consumer Protection in E-Commerce*, prepared by the Organization for Economic Cooperation and Development (OECD).The Guidelines for Consumer Protection in the Context of Electronic

Commerce, prepared by OECD, provide a helpful reference point.[104] In the OECD guidelines, except for the requirement of transparency and fair business practices, the OECD gives special attention to online disclosure, which involves business information, online goods or services information, or transaction information. **Specifically, with respect to business information**, the OECD recommends that e-commerce businesses should reveal basic identification, provide efficient consumer communication and dispute settlement methods, and establish legal procedure services.[105]

For goods or services information, the OECD suggests that information should be "accurate and easily accessible."[106] Further, an OECD report illustrates an example of complying with such requirement: "an online shop provides static pictures of products, including fabric specifications, color, and sizing charts," which provides essential details regards to the product to customers.[107]

For transaction information, the OECD encourages engaged businesses to provide clear information with sufficient terms and conditions before reaching a deal with the customer. Crucial elements such as cost of the purchase, delivery terms, payment methods, restrictions, and proper instructions for the products should be made known to buyers before decisions are made.[108] However, the OECD Guidelines do not

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[104] OECD: *The Guidelines for Consumer Protection in the Context of Electronic Commerce*, available at http://www.oecd.org/sti/consumer/oecdguidelinesforconsumerprotectioninthecontextofelectroniccommerce1999.htm
[105] *Id.* at 15
[106] *Id.*
[107] OECD Digital Economy Papers No.61: *Best Practice Examples under the OECD guidelines on Consumer Protection in the Context of Electronic Commerce*.
[108] OECD: *The Guidelines for Consumer Protection in the Context of Electronic Commerce*, 17

stipulate that businesses provide information they do not collect, which would be too burdensome.[109]

Apart from information disclosure requirements, the OECD Guidelines address **dispute resolution and redress.** In fact, the OECD Guidelines proposed alternative dispute resolution (ADR) as an option. Since 2000, a number of international organizations, including many in OECD Member countries, have been exploring possible ways to establish online ADR mechanisms, hosting workshops and meetings. As of 2000, there are more than 40 online ADR organizations recorded. In Ireland, the government launched a pilot project to bring the small claims court online, which is an inexpensive, fast, and easy way for solving disputes.[110]

Consumer protection is crucial in building trust for online trading. The characteristics that differentiate e-commerce from traditional commerce make it necessary to set up new mechanisms or adjust existing customer protection laws. The Guidelines for Consumer Protection in the Context of Electronic Commerce provide a useful reference for Lebanon. In order to operationalize these guidelines, Lebanon could 1) amend its national customer protection law; 2) publish it through an official portal; 3) launch a public awareness program; and 4) strengthen relationships with other countries to ensure the enforcement of the law, especially in the context of cross-border dispute resolution.[111]

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[109] OECD Digital Economy Papers No.61: *Best Practice Examples under the OECD guidelines on Consumer Protection in the Context of Electronic Commerce*, 4

[110] Citizen Information, Small Claims Procedure, available at http://www.citizensinformation.ie/en/justice/courts_system/small_claims_court.html

[111] OECD Digital Economy Papers No.61: *Best Practice Examples under the OECD guidelines on Consumer Protection in the Context of Electronic Commerce*, 11

Customer Data Collection and Protection

As mentioned, client data collection and privacy protection are essential for MSMEs and e-platform establishment. Policies that ensure the free flow information between countries are necessary. Since June, 2017, the EU has been devoted to shaping a single digital market in the region. As of 2018, EU is equipped with a single set of rules on data privacy protection and cybersecurity law.[112] The EU General Data Protection Regulation(GDPR) is a uniform data protection regulation across the EU and directly binding on all EU member countries. One of the biggest features of GDPR is its extra-territorial applicability. All companies which process personal data of any EU data subjects, regardless the location of the companies, are subject to this regulation. On the one hand,the harmonized regulation would make it easier for entities, especially foreign companies to comply with the data protection law, on the other hand, GDPR set strict penalties up to 20 million Euro (151 million USD) for breach of the law. Though some still remains principle, GDPR ensures 6 important data subject rights(Box 1.8). Within the GDPR, there is a specific ePrivacy regulation proposal, which would particularize the element of electronic communication, such as the use of cookies, and function as a complement to the GDPR.[113]

[112] European Commision: Shaping the Digital Single Market, available at https://ec.europa.eu/digital-single-market/en/policies/shaping-digital-single-market
[113] *Proposal for e-Privacy Regulation*, https://ec.europa.eu/digital-single-market/en/proposal-eprivacy-regulation

The OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data is another good reference poing.[114] The OECD advocates that countries have the ability to process and re-export information and take reasonable measures to ensure the security and fluency of information transmissions. However, governments could exert several legitimate restrictions, such as national sovereignty, national security, and public policy. These exceptions should be restricted to limited circumstances, however, and published so that they are accessible to the public.[115]

Box 1.8:Key Points of Data Subject Rights in the EU GDPR

EU

The GDPR has recognized a series of important rights for data subject.

1) **Breach Notification: Data processor and data controller are bound to notify the subject of the breach within 72 hours after the breach first becomes noticed.**
2) **Right to Access: this empowers data subjects to get access to their collected information, and to be informed where their information is being process and the purpose of such usage.**
3) **Right to be Forgotten: data subject would have right to require data controller to delete their information, to stop sharing it and potentially prevent the third party from continuing using.**
4) **Data Portability: GDPR requires data controller to make the data available in a format that allows data subject to transfer to another controller. This rule actually strengthens data subjects' power to control their information.**
5) **Data Protection Officer: GDPR repeals those various notification requirements among Member States that data controllers were bound to comply with. And for those large data controller and processor would be required to set a Data Protection Officer to monitor entities to comply with the Regulation and report directly to the highest level of management.**

Source: https://gdpr-info.eu

[114] Available at: http://www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm

[115] OECD guidelines on the Protection of Privacy and Transborder Flows of Personal Data. Under the guidelines, available at: http://www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm#part3

In this regard, APEC Privacy Framework also offers a series of data protection principles (Box 1.9). Unlike EU GDPR, the APEC Privacy Framework does not replace all domestic law within its member countries. Instead, The APEC Cross-Border Privacy Rules System (APEC CBPR) requires participating businesses, like Apple and IBM, to self-implement data protection policies in compliance with APEC.

Box 1.9: The APEC Privacy Framework

The Asia-Pacific Economic Cooperation (APEC) has also realized the importance of free flow of information among member countries. The APEC Privacy Framework was published in 2005 and sets up the following principles to maximize privacy protection and ensure information flows between countries:

1) Preventing Harm: The APEC privacy framework requires recognition of a reasonable expectation of privacy and usage of personal information. Therefore, information collectors should take measures to prevent harm and offer remedies if there are misuses of such information.
2) Notice: This principle requires that individuals be informed of who is collecting what information and the and reason for doing so.
3) Limitations on Collections: Information collection should be limited to legitimate methods and restricted circumstances, with notice to or consent from the individual concerned.
4) Uses of Personal Information: This principle concerns the use of information, i.e.. the purposes of collection and other compatible or related purposes, such as the content of information, the collecting circumstances, and the intended use of the information. Limited interpretation should be given to “other compatible or related purposes” such as establishing a central database for legitimate intentions, such as internal personnel management.
5) Choice: Information collectors should give individuals a “clear, prominent, easily understandable, accessible and affordable mechanism to exercise choice” when collecting, using and disclosing their personal information. However, APEC limits this requirement to apply under “appropriate” situation. There is no definition of “appropriate situation", but they give an example of collecting names and addresses from publicly available resources such as a newspaper.
6) Integrity of Personal Information: Prevents distortion of private information. Information should be the most recent, accurate and complete.
7) Security Safeguards: This principle recognizes that the information controller is obligated to take security measures to protect personal information.
8) Access and Correction: Individuals have the right to access their information in an appropriate manner and to correct inaccuracies with limited exceptions, such as unreasonable financial burden, legal or security reasons, or due to commercial secret and potential violation of a third person’s interest.
9) Accountability: When it comes to transfers between different organizations, information controllers should be accountable and take measures or exercise due diligence to ensure the safety of personal information.

Source: https://www.apec.org/Publications/2005/12/APEC-Privacy-Framework

Recommendations:

Adapt the customer protection and data collection laws in Lebanon to the international standards. The current customer protection law in Lebanon does not specifically target e-commerce issues. Legal support in customer protection is an important motive for business entities to take steps to improve their status quo. Lebanon's government should consider the principles set out by UN and OECD and tailor it to Lebanese national needs.

Promoting awareness of data protection rules as reflected in the EU GDPR and APEC guidelines among different concerned parties, i.e. sellers (the parties that are collecting information) and buyers (the parties whose information is being collected). The government could conduct campaigns to educate stakeholders, e.g. SMEs or online platform service providers, on the requirements for information protection and transfers and educate individuals on the options and methods available to protect their information.

Working with industry-level private groups to build up MSME capability in online information disclosure would improve data collection practices and exchange. Various stakeholders such as industry commissions, customer protection associations or multi-national companies have an interest in pushing for providing more straightforward and complete information online which would also benefit their sales. Working on awareness promotion or carrying out educational programs with different groups in the society could help marshal resources and align efforts, ensuring efficient use of resources and increasing efficiency while creating a society-wide atmosphere.

Providing special schemes for customer remedies.[116] In order to bolster privacy protection, Lebanon should develop a special customer remedy scheme to address violations of information protection obligations. The scheme should include the scope of such violations, how to supervise the information collectors' conduct, how to detect violations, how to stop existing violations, and how to provide redress. In the APEC Privacy Framework, it is recommended that two factors be given consideration when determining the range of remedies: 1) the particular system in the country for providing such remedy, such as possible methods to file a suit in the court or through government authorities or self-regulation associations; and 2) the relation between harm and losses caused from such violations and their remedies.[117]

Government as a Facilitator of E-Commerce

Usually, MSMEs lag behind their counterparts in their ability to attain full knowledge of market opportunities and available technology. There is relatively low Internet usage at the business level in Lebanon, both for B2B and B2C transactions. In addition, the Lebanese Government could potentially play a more involved role in promoting e-commerce transactions, as it ranks 134 out of 139 countries in government implementation for utilizing ICT to improve overall competitiveness.[118]

As early as 2002, Lebanon recognized the importance of e-commerce. An early project, EcomLeb, took aim at the main legal impediments to e-commerce in Lebanon and tried to promote public awareness, with 1.7 million EURO (nearly 2.1 million USD)

[116] APEC Privacy Framework, 33
[117] *Id*. at 33
[118] The Global Information Technology Report (2016), 126

in funding from the European Commission.[119] The project, formally started in 2004,[120] highlighted five obstacles to e-commerce: 1) the high cost of Internet and telecommunications infrastructure; 2) the unavailability of fast Internet connections(broadband); 3) the lack of consumer confidence in Internet transactions; 4) the lack of a regulatory framework; and 5) the high cost of shipping packages.[121] There was a portal for the EcomLeb project to distribute useful and practical information to facilitate e-commerce; however, the portal became defunct when the project ended in 2005, leading to an unclear outcome of the initiative.[122]

A sampling of some of Lebanon's main e-commerce websites illustrates some of these problems. First, some websites lack sufficient description of products. For example, on Souk Orjuwan,[123] which sells various items including crafts, clothing, food, and so on, there are no uniform product descriptions. Some clothing is presented with several pictures as well as comprehensive details, but other products for sale have only one pictures or lack information on size, fabric composition, and other descriptive factors. Second, the available products are extremely limited. Computer Market,[124] an online retailer for selling electronic devices, had no products presented under 21 of 22 categories on the website. Third, technical or ICT barriers abound. In some websites, such as iGrab,[125] a website offers various daily deals, but there are no images of the

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[119]Ministry of Economy & Trade of Republic of Lebanon: E-Commerce, 03,May, 2011, http://www.economy.gov.lb/en/projects/e-commerce
[120] Ecomleb: details of the organization, published by International Telecommunication Union, https://www.itu.int/net4/wsis/stocktaking/projects/Project/Details?projectId=1103385251
[121] Ministry of Economy & Trade of Republic of Lebanon: E-Commerce, 03, May, 2011, http://www.economy.gov.lb/en/projects/e-commerce
[122] Ecomleb informational portal: www.ecomleb.org
[123] *See* Souk Orjuwan, http://www.soukorjuwan.com
[124] *See* Computer Market, http://www.computer-market.net
[125] *See* iGrab, http://igrab.me

products, which directly influence the online-shopping experience and increase customer and business reluctance to do business online.

For now, many MSMEs use Facebook for advertising, marketing, and selling online. AliExpress, which is an affiliate of Alibaba Group, has gained popularity in Lebanon. With the exception of the already advanced online transaction channels, MSMEs and e-platform operators lack necessary experience to operate e-commerce platforms, lack the ability to gather resources to increase the diversity of products offered online, and lack technical support needed for website operations. The following examples from China and Korea demonstrate how government could potentially help MSMEs to solve the aforementioned problems.

Good practice example: Rural E-commerce in Suichang County, Jiangsu, China

With abundant agricultural products in the village, the Suichang county of Jiangsu Province, China, reached a cooperative agreement with Taobao, a giant e-commerce platform in China, under which Taobao would establish a dedicated online portal to facilitate the sale of agricultural products. In 2010, an online shop association was set up by Suichang County government and other private operators in order to train retailers operating in online trade, share supplier information for online trading, integrate resources, and set up uniform product prices.[126] With such an association, e-commerce in Suichang has entered into a new fast developing phase. In 2012, there were over 1200 sellers enrolled in the association, approximately 24 million USD in sales.[127]

[126] Suichang Online Shop Association Portal: http://www.wdxh.org

[127] AliResearch, *Research on Suichang Model*, http://i.aliresearch.com/file/20131030/遂昌模式研究报告 PDF 版本.pdf, 23

Agricultural products such as Bamboo charcoal, sweet potatos, and corn have been sold exceedinly fast and over half of them sold online.[128] With such development, the level of consumption has also improved. In 2012, local residents had consumed approximately 36 million USD online, of which around 20.6 million USD consumption was brought by the e-commerce development[129]

Before the beginning of this development, e-commerce in Suichang county faced many challenges. Lack of communication among online sellers within the region and vicious competition squeezed out profits. Farmers had little knowledge of the Internet and business operations, while young professionals who possessed necessary skills were leaving to work in more advanced cities than Suichang County. Therefore, even though Suichang already had a giant e-platform, lack of knowledge of how to efficiently utilize the e-platform and prioritize its products for customers nation-wide hindered online selling.

Box 1.11: Main Mandates of Suichang Online Association

AliResearch, Research on Suichang Model

1. Assisting online sellers to grow, launching education sessions, and setting up a Technical Consulting Platform for questions from sellers.
2. Integrating resources from product suppliers and wrapping for sellers. At the same time, the Association also assists product suppliers in developing new products.
3. Regulating e-commerce service prices, for example, through negotiating with delivery service providers for lower delivery fees.
4. Aiding communication between sellers and government and helping the government to provide policy support, which could solve the problems faced by sellers, such as access to finance and difficulties with storage.

Source: http://i.aliresearch.com/file/20131030/遂昌模式研究报告 PDF 版本.pdf page 13

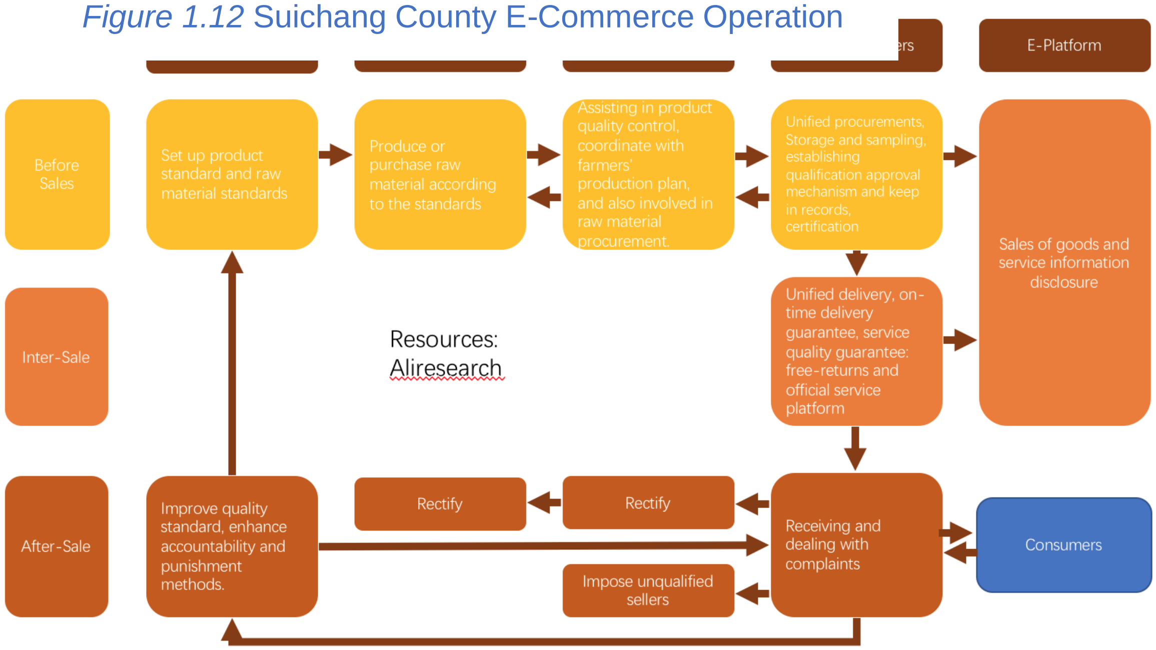
[128] AliResearch, *Research on Suichang Model*, http://i.aliresearch.com/file/20131030/遂昌模式研究报告 PDF 版本.pdf page 6

[129] AliResearch, *Research on Suichang Model*, http://i.aliresearch.com/file/20131030/遂昌模式研究报告 PDF 版本.pdf page 6

With such problems in mind, the government of Suichang County adopted several actions to improve the enabling environment. In 2010, the government initiated a non-profit Suichang Online Association ("the Association") with industry pioneers, which aimed to increase information flow between online member sellers and suppliers.[130]

In 2011, the Association set up Suichang E-Commerce Company ("the Company") and began to operate commercially and Maitelong Distribution Platform was established under the company.[131] The platform extends to farmers to collect goods and package and sell to interested online sellers.[132] With such a mechanism, the company links offline and online resources and solves the skills issues for farmers, while more and more capable individuals are willing to come back to the county and startup an online stores.

Figure 1.12 Suichang County E-Commerce Operation



[130] AliResearch, *Research on Suichang Model*, http://i.aliresearch.com/file/20131030/遂昌模式研究报告 PDF 版本.pdf page 12

[131] AliResearch, Research on Suichang Model, http://i.aliresearch.com/file/20131030/遂昌模式研究报告 PDF 版本.pdf page 22

[132] AliResearch, Research on Suichang Model, http://i.aliresearch.com/file/20131030/遂昌模式研究报告 PDF 版本.pdf page 22

Each year, 3 million RMB (around 476,614 USD)[133] in financial funds have been allocated for a "Startup Support Plan," at least 2 million of which (around 317,743 USD) has been given to the e-commerce sector.[134] The government invested around 490 thousand USD in establishing a Product Testing Center to ensure the safety of goods and allocate 3000 square meters to establish a delivery center.[135] In addition, the government has also come up with a series of supervision mechanism for products selling on Suichang Portal in Taobao e-platform.[136] Under such mechanism, the government is involved in setting product standards, receiving complaints from customers and regulating the behavior of different involved parties (i.e. product suppliers such as farmers, sellers and the association).

Preferential policy support has contributed to the boom in e-commerce. According to an estimate, the county population is around 50,000 people but has over 1500 online shops on Taobao[137]. Suichang has developed its online business since 2005 and experienced rapid development since the establishment of the Suichang Online Shop Association. In the first half of 2013, e-commerce transactions reached 50 million

Box 1.13: E-Commerce Platform tailored to local farmers in Korea

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In 2001, the Republic of Korea passed the Closing the Digital Divide Act, which aims to increase the visibility of agricultural products from rural areas and improve the income of rural residents. Under Korea's Act, the Ministry of Government Administration and Home Affairs launched a platform, known as the Information Network Village (INVIL), which houses agricultural specialties and tourist attractions.

Considering the relatively scarce business and technical knowledge of e-commerce farmers may have, the government strategically set up an online platform and sold safe and high-standard products, which catered to market demands. The counties file applications with the government and are subject to government supervision to realize quality control and uniform regulation. The initiative has proved to be a big success. Initiated in 2001, there were 357 INVILs in Korea as of 2014. In 2013, the INVIL platform had facilitated nearly $40 million in online sales and attracted around 17 million tourists to the website.

RMB.[138] From 2005 to 2012, the GDP of Suichang County increased from 2,812 million RMB[139](around 446 billion USD) to 7670 million RMB (around 1,219 million USD)[140].

Recommendations:

To enable a competitive environment favoring e-commerce development, government can play a role as a facilitator and leader. As the Suichang County example illustrates, Lebanon's government could set up public-private association to encourage information exchanges between sellers, equip involved individuals with e-commerce skills, and collect and address challenges encountered.

It is important for Lebanon's government to develop a strategic plan, which must be tailored to reflect its own local advantages, and government should supervise but not be overly involved in the operation of business. As the Suichang case highlights, the Association began operating commercially in a later stage following initial support from the government. The distribution platform both helped farmers who did not have the necessary business and computer skills to sell their products, (which is also a problem faced by MSMEs in Lebanon) and also attracted more and more young talented individuals to stay in the county and start online selling business.[141] During the whole process, rather than over-suppressing or over-supervising, the Suichang County

[138] AliResearch, *Research on Suichang Model,* http://i.aliresearch.com/file/20131030/遂昌模式研究报告 PDF 版本.pdf page 8

[139] Bureau of Statistics of Suichang Couty: *The Suichang County National Economy and Social Development Statistics Report in 2005*, http://www.cnstats.org/tjgb/201003/zjlssscx-2005-uyg.html

[140]Bureau of Statistics of Suichang Couty: *The Suichang County National Economy and Social Development Statistics Report in 2012*, http://www.cnstats.org/tjgb/201306/zjlssscx-2012-fpt.html

[141] According the statistic presented by AliResearch Center, 432 of 1268 members of Suichang Online Shop Association are College Students in 2013. See AliResearch, http://i.aliresearch.com/file/20131030/遂昌模式研究报告 PDF 版本.pdf page 13

government took a balanced position, giving reasonable support for the development of the Association to the benefit of participating parties. This example could give the Lebanese government insight into how to develop policies to facilitate engagement of MSMEs in e-commerce.

The Lebanese government could also take a more involved role to help MSMEs participate in online trading, just as was done in the Korean case. The Lebanese government could strategically set up a specific online platform which targets an area that concerns MSMEs most and make a strategic plan for developing it while catering to market demands. Gathering widely dispersed individuals together and connecting them with a large population with buying power in urban areas increased farmers' income in Korea, and this example could be applied in Lebanon as well.

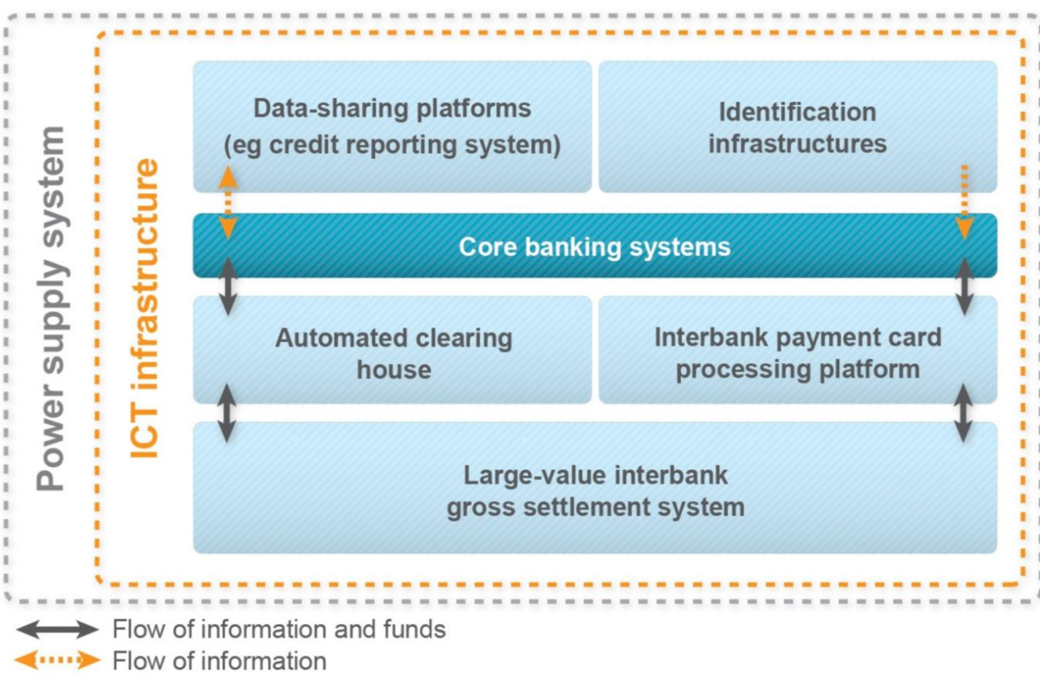
In Lebanon, there are a considerable number of MSMEs with low ICT usage levels. This may be due to lack of awareness of the potential of e-commerce, low skills, and poor resources for utilization. The Lebanese government, which has greater human capital and resources, could help unlock market potential for MSMEs and could take the lead in establishing an e-platform which is tailored to Lebanese SMEs.

2. International Payment

Streamlined payment services are an essential component of every e-commerce transaction. A complex set of issues and challenges underpins these payment services, particularly when transactions cross borders and take place between consumers and MSMEs, which are often less integrated into the financial system than larger firms.

As discussed above, it is important to note that effective infrastructure is fundamental. Figure 2.1 depicts the core elements of payment infrastructure. The different forms of international payment discussed in this section all rely on electronic processing, so reliable ICT infrastructure is to some extent presumed. Instead of covering standard elements of financial infrastructure, this section will focus on the legal and regulatory issues that facilitate, or hinder, the provision of payment services even where ICT infrastructure in place.

Figure 2.1: Fundamental Payments Infrastructure



Developing a National Retail Payments Strategy, World Bank (2012).

The first issue involves financial inclusion, discussed more generally above, in a specific context: increasing the number of transaction account holders in Lebanon. These accounts—which need not be full-service, traditional bank accounts—are the gateway to international e-payment. This section will review innovative ways in which countries have increased transaction account use to facilitate e-payment.

Second, international payment often requires coordination of a number of underlying networked payment functions, performed by different service providers. Each one of these functions must perform smoothly and interface properly for a payment by a customer in country A to make its way to a business in country B. This section will review measures to increase the interoperability of e-payment services.

Finally, foreign regulations and private policies have considerably increased compliance costs for financial firms around the world since the 2008 Financial Crisis. As a result, many financial institutions have adopted a practice of “de-risking.” This has led many international banks to preemptively terminate many of their correspondent banking relationships, which underpin the flow of funds across borders. The MENA region, as a whole, has been hard hit by “de-risking.” This section will examine the practice and assess approaches to maintain financial relationships while managing risks.

2.1 Broadening Use of Transaction Accounts

An individual making a payment could have access to a number of potential instruments. The person may use cash or a prepaid card. They could digitally draw on a deposit account or execute a physical check. Some of these instruments may be more or less appropriate in different contexts given their distinct functionalities. In e-commerce, cash and other physical instruments are ill-suited, and electronically-connected accounts are much better adapted. Account holding also has a number of positive externalities that can promote broader development objectives. Accounts at trustworthy banks and other financial institutions are in general a much safer store of wealth than cash. Also, basic account access and usage can be a gateway to more sophisticated financial services that can increase prosperity and promote income security, such as credit, insurance, savings and investments.[142]

Increased account usage can also contribute to the wellbeing of a country's overall payment system. Account usage makes investment in modernizing and improving payment systems and services more economically viable, benefitting all users.[143] In addition, larger payment volumes increase the efficiency of the overall payments system due to economies of scale and network externalities.[144]

As noted in the sub-section on Access to Finance in Section 1.2, Lebanon has a large financial sector, but only forty-seven percent of adults have a bank account. The financial sector includes: fifty commercial banks, eleven of which are foreign, with a total of 1056 branches; seventeen investment banks; fifty financial institutions;[145] and thirteen financial intermediaries.[146] There are three inter-operable card switches in the country for ATM transactions. These are: CSC Bank, International Payment Network (IPN) and Centre de Traitement Monétique (CTM), which operate ATM switches in Lebanon for

[142] *Payment Aspects of Financial Inclusion*, Bank for International Settlements 2 (2016).
[143] *Id.*, at 6.
[144] *Id.*, at 6 fn. 12.
[145] Defined in the BDL law as any institution other than banks, whose fundamental activity is offering credit.
[146] *Payments and Securities Settlement Systems in Lebanon*, Arab Monetary Fund, 20 (2017), http://www.bdl.gov.lb/files/downloads/BDL_WhiteBook.pdf.

domestic transactions.[147] The Banque du Liban currently restricts the use of mobile phones and fixed electronic devices for transactions among customers of different banks and prohibits the use of electronic money.[148]

Electronic payment instruments can be roughly divided into three categories: 1) electronic funds transfer-based instruments, which involve direct account-to-account credit or debit transfers, 2) payment card-based instruments, i.e. credit, debit, and charge cards, and 3) electronic money-based instruments, which involve pre-funded transaction accounts with payment service providers that are typically non-banks.[149] Each of these categories involve slightly different market dynamics (See Figure 2.2 below) and regulatory considerations.

[147] *Id.*
[148] Basic Decision 7548.
[149] *Payment Aspects of Financial Inclusion*, 13.

Figure 2.2: Payment Services Market Dynamics

Characteristics	
Economies of scale	Reduction in average costs per unit of output with the increase in the scale or magnitude of the output being produced by a firm. Economies of scale positively affect market development, but tend to result in a smaller number of competitors in the marketplace.
Economies of scope	Cost advantages resulting from provision of various services/products rather than specialising in the production of a single service/product. The economies of scope positively affect market development and could result in a more competitive environment.
Network externalities	The value of a payment system increases with the number of its users. In the case of indirect network externalities, complementarities are found between products or services in different markets. Indirect network externalities arise when the value of the product increases as the number of complementary goods or services increases.
Market dynamics	
Switching costs	Such costs exist at the platform level (for platform participants), at the cross-product level (among payment instruments) and within the same type of product. Switching costs may prevent the adoption of better technologies and social optimisation.
Path dependence	The legacy of previous technology developments and implementations typically influences later choices and outcomes, thus restricting investment decisions and possibly negatively affecting innovation and adoption of more efficient technologies.
Tipping point	Once a retail payment system has reached the tipping point, this system tends to emerge as the dominant one. Since the network externalities dictate higher utility for each participant by adding more participants, the participants' individual and group utility can be raised if everybody participates in one single network, and if there are no significant capacity limitations that can give rise to serious congestion effects. Safeguards should be in place to avoid tendencies that restrict competition and innovation of the dominant retail payment service, eg by facilitating interoperability.
Multihoming and stickiness	In mature markets at least, it is common for both sides in a payments market to use several platforms, ie they multihome. Customers have more than one type of payment instrument, and merchants accept several types of instrument. This multihoming also takes place within one type of instrument (eg credit cards). Often, however, consumers favour one specific payment instrument over others, ie their usage is sticky. For example, consumers tie a specific instrument to bill payments, to a social benefit payment or to a bundled financial service account. Loyalty programmes offering rewards can reinforce stickiness.

Economies of scale and scope and network externalities are characteristics of network markets in general.

For additional details, see World Bank (2008, 2012b).

Non-Banks in Retail Payments, Bank for International Settlements (2014).

Comparative Review of E-Payment Systems

In Turkey, the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions from 2013 opened the way for non-banks to serve as PSPs by creating two new categories of financial service providers: PIs and EMIs. PIs can provide transaction services but cannot issue e-money. EMIs, which are subject to higher capital requirements (TRY 5 million compared with TRY 1–2 million for payment institutions) can provide e-money accounts to their customers. The Banking Regulation and Supervision Agency is empowered by the PS law to license and supervise both PIs and EMIs. EMIs are obliged to hold the funds received from their clients in a trust account with a bank. Banks holding those accounts are required to block the funds deposited by the EMI in their accounts held at the Central Bank of the Republic of Turkey.

In India, the Payment and Settlement Systems Act 2007, which came into effect in August 2008, empowers the Reserve Bank of India (RBI) to regulate and supervise payment systems in the country. Under this legislation, no person can operate a payment system in the country unless authorized by the RBI. In April 2009, the RBI, under Section 18 of Turkey's Payment and Settlement Systems Act, issued Policy Guidelines for Issuance and Operation of Prepaid Payment Instruments in India. Based on these amended guidelines, 63 non-banks had been permitted to operate various payment systems in India as of early 2015. Out of these authorized non-bank entities, 33 were authorized for prepaid payment instruments. The non-bank entities issuing payment instruments are required to maintain their outstanding balance in a trust account with a commercial bank, and the balance must only be used to redeem e-money. For the schemes operated by banks, the outstanding balance shall be part of the Net Demand and Time Liabilities for the purpose of maintaining reserve requirements.

Recommendations

The Bank for International Settlements (BIS) has identified five crucial components of an effective regulatory framework for e-payments that both broaden usage and mitigate risk: 1) regulatory neutrality and proportionality, 2) risk management,

3) protection of deposits and e-money customer funds, 4) financial customer protection, and 5) financial integrity.

A key tension in **effective regulation** is to encourage innovation while maintaining safety and stability. An increasing number of non-bank payment service providers are engaging in the sector and developing a variety of innovative approaches. To encourage innovation, the regulatory framework should be "risk-based, provider- and instrument-neutral, and forward-looking."[150]

To do so, regulators must **develop systems for risk management** that are adapted to the circumstances of payment service providers and operators. These systems must be equipped to correctly identify risks, design right-sized risk management requirements, strengthen the capacity of stakeholders to effectively implement measures, and ensure ongoing compliance with the framework.[151]

Box 2.1: Risks associated with financial inclusion and broadened account usage

1) Inability to transact due to network or service downtime
2) Insufficient agent liquidity or float, which also affects ability to transact
3) User interfaces that many find complex and confusing
4) Poor customer recourse
5) Non-transparent fees and other terms
6) Fraud that targets customers
7) Inadequate data privacy and protection[152]

[150] *Payment Aspects of Financial Inclusion,* 24.
[151] *Payment Aspects of Financial Inclusion.*
[152] *Doing Digital Finance Right*. These risks largely track another list prepared by the Bank for International Settlements, which adds the risks in use of third parties as agents and outsourcing of back office and information technology operations (a common practice for some payment service providers). *Payment Aspects of Financial Inclusion,* 25. All of these should be accounted for in risk management operations.

Protection of consumer funds involves several elements of traditional banking supervision, particularly in the case of electronically enabled but otherwise standard deposit accounts. With e-money accounts, it is important to establish clear expectations for the use of funds held in e-money accounts, since non-bank payment service providers will not fall under banking supervision laws.[153]

Financial customer protection involves several different elements. It is important that payment service providers provide transparency on terms, conditions, fees and customer rights.[154] Liability for unauthorized transactions should be provided for credit and debit accounts, as well as for e-money.[155] Regulations should ensure customer support, recourse and dispute resolution.[156] Payment service providers must also protect the privacy of customer transactional and personal data.[157] Finally, there should be protections and due process related to the potential seizure of a customer's funds.[158]

2.2 Interoperability of Payment Systems

There are a growing number of types of payment services—in each of the electronic funds transfer, payment card, and e-money categories—and a growing number of payment service providers. This is likely a good thing, but, as noted in the chart above, there are important network externalities associated with payment

[153] *Payment Aspects of Financial Inclusion,* 26.
[154] *Id.* at 28.
[155] *Id.* at 28.
[156] *Id.* at 28.
[157] *Id.* at 28.
[158] *Id.* at 28.

systems, which can stifle competition.[159] In this context, governments can, broadly speaking, take two paths. First, they can recognize a natural monopoly and imposed regulations that protect the public welfare. Or, second, they can introduce regulations that counteract anti-competitive pressures and otherwise leave the market to operate.

Governments that pursue this second path can limit the effects of network externalities by requiring some level of interoperability between different payment services. In a report on "Developing a Comprehensive National Retail Payments Strategy," the World Bank defines interoperability as: "a situation in which payment instruments belonging to a given scheme may be used in platforms developed by other schemes, including in different countries. Interoperability requires technical compatibility between systems but can only take effect where commercial agreements have been concluded between the schemes concerned."[160]

The Bank for International Settlements explains the benefits of interoperability of payments systems as, "promoting competition, reducing fixed costs, enabling economies of scale that help in ensuring the financial viability of the service, and at the same time enhancing convenience for users of payment services."[161] Conversely, where there is low interoperability, customers will have to deal with poor coverage and the necessity of maintaining multiple services.[162] It also notes that the ways that different types of payments infrastructure is prices and accessed can limit interoperability.[163]

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[159] *Payment Aspects of Financial Inclusion.*
[160] *Developing a National Retail Payments Strategy*, World Bank, Annex VIII (2012).
[161] *Payment Aspects of Financial Inclusion,* 34.
[162] *Id.*
[163] *Id.*

Good Practices Example: Peru's E-Money Law

In 2012 October, Peru's Congress began discussion on a new law to regulate digital money. In 2013 January, it passed the national Law for Electronic Money. Led by the Peruvian Banker's Association (ASBANC), the country's more than thirty financial institutions, including government, four major telecommunications companies and large payers and payees collaborated together to construct a shared instrument for mobile payments. Under this collaboration, they founded a company, known as Pagos Digitales Peruanos (PDP) to design and manage BIM, a special mobile payment platform. At first stage of the implementation, all financial institutions are allowed to offer different financial service through BIM. With an identical outlet for e-payment, they comply with the same terms and standards. At second stage, PDP managed to persuade other non-financial institution to join Modelo Peru. As a result, many institutions have begun using BIM, including the Tax Authority, which is considering using the platform to distribute pensions, and small retailers previously used cash for transactions and are shifting to BIM to reduce the cost of cash and improve safety.

The Peruvian Government acts as a "neutral" party to bring stakeholders together and create an enabling environment for various financial service providers with multiple products through a common brand. The public-private partnership platform was crucial to gather resources and work towards a common solution for e-payment systems and financial inclusion. At same time, it can also create a substantial motive for small retailers to adopt cashless payment methods, for it reduces the substantial amount of cost needed for small retailers to adopt cashless payment methods. Last, but not least, this will also help ensure transparency (e.g., plain-language disclosure of transaction fees before PIN entry) and data security protections for the lower-income consumers it seeks to serve.

Recommendations

The World Bank notes, with respect to retail payments, that there are different levels of interoperability: system-wide, cross-system, and infrastructure level.[164] Payment services can be interoperable on all, none, or any combination of these levels. The World Bank encourages broad interoperability, explaining, "[a] system that is inter-operable on all levels would enable an entity deploying acceptance infrastructure for a particular payment instrument to be confident that customers with that payment instrument—irrespective of their banking/partner affiliation—would be able to use the infrastructure, thereby creating a stronger business case for the entity. This would enable the entities involved in the payment system to compete on quality of services, while collaborating in terms of creation and operation of the underlying system."[165]

That said, certain types of interoperability may be more feasible to achieve with either public regulation or private sector action. Regulators should consider the current state of the market, including the most important existing barriers to competition, to help determine priorities in interoperability. As the Peruvian example demonstrates, payment service providers themselves are crucial to a successful initiative. The government should work collaboratively with the sector and engage on an ongoing basis. There is also a role for government, in addition to industry groups, in promoting the adoption of

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[164] *Developing a National Retail Payments Strategy*, 47.
[165] *Id.*

common technical and usage standards.[166] However governments choose to regulate on this issue, it is important that they set forth clear policy objectives on competition in the retail payments market and make them transparent to stakeholders.[167]

2.3 De-Risking and International Payments

In the past decade, international standards and domestic regulations on anti-money laundering and countering the financing of terrorism have changed dramatically.[168] This transformation has increased compliance costs for financial institutions around the world. The financial industry now spends eighty billion USD on compliance annually, and that figure is expected to rise to 120 billion USD within the next five years.[169] To manage these costs, some financial institutions have moved to broad-brush risk management strategies, known colloquially as "de-risking."[170] The G20's Financial Action Task Force (FATF) defines de-risking as, "situations where financial institutions terminate or restrict business relationships with entire countries or classes of customer in order to avoid, rather than manage, risks in line with the FATF's risk-based approach."[171] A growing number of financial institutions have determined that it is simply not cost effective to evaluate risks on a case-by-case basis.

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166 *Id*, at 43.
167 *Id*. at 54.
168 *International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation: Recommendations*, Financial Action Task Force (2012).
169 Gillian Faichnie, *FinTech and RegTech, Disruption or More of the Same?*, https://d3kex6ty6anzzh.cloudfront.net/uploads/76/7671b71fb1389190c683305de57b434cd6c6aeae.pdf.
170 David Shepherd, *De-Risking: Improving Financial Inclusion in MENA*, https://blogs.thomsonreuters.com/financial-risk/risk-management-compliance/de-risking-improving-financial-inclusion-in-mena/.
171 *Guidance: Correspondent Banking Services*, Financial Action Task Force, 4 (2016).

This phenomenon is doubly problematic for MSMEs in Lebanon. There are larger proportional compliance costs for smaller customers, especially those engaging in international transactions. Moreover, the MENA region has been particularly hard hit by de-risking-related withdrawals from correspondent banking relationships. Correspondent banking relationships (CBRs) involve one (typically larger) bank—the correspondent—providing a deposit account or other liability account to another (typically smaller) bank—the respondent. This account arrangement and regular exchange allow banks to settle many different types of transactions by crediting and debiting each other's accounts.[172] These relationships underpin the ability of financial institutions to provide services such as trade finance, letters of credit, documentary collections, and clearing and settlement and to carry out foreign-currency-denominated capital and current-account transactions.[173] Crucially, they are also fundamental to many international payment services. Ahmad Safa, an executive board member at the Lebanese Banking Control Commission explained:

> "The implications of derisking in the region are a challenge. The impact on financial stability includes greater financial exclusion, the rise of non-bank financial institutions, the inability to attract foreign capital and foreign direct investment as well as making it increasingly difficult for local banks to manage current account transactions."[174]

A report by the International Monetary Fund has highlighted concerns about correspondent banking relationships in Lebanon, explaining that "withdrawal could hurt cross-border payments, trade finance, and remittances."[175] Anecdotal evidence

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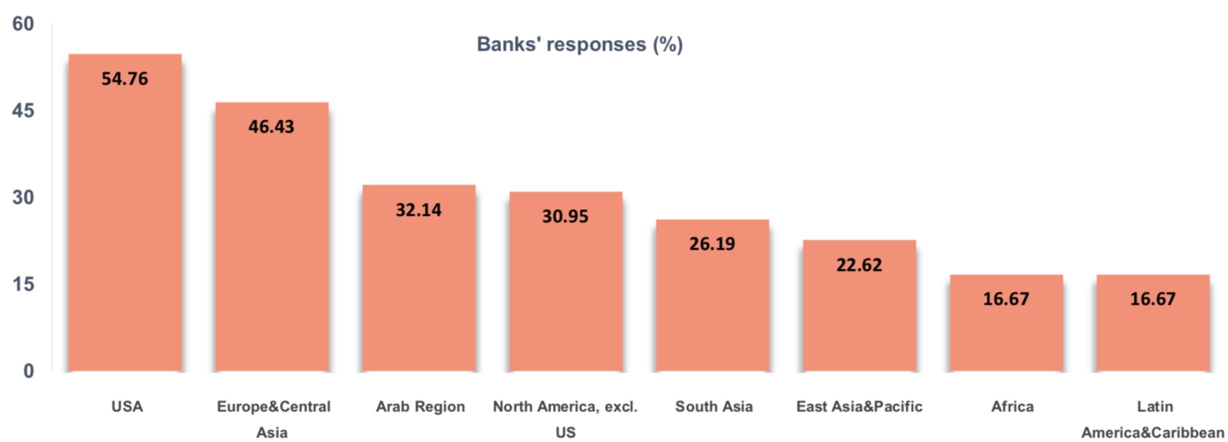
[172] *Recent Trends in Correspondent Banking Relationships—Further Considerations*, International Monetary Fund, 8 (2017).
[173] *De-Risking: Improving Financial Inclusion in MENA.*
[174] James King, *Correspondent Banking: Derisking – Risk Appetite – How Derisking Became a Humanitarian Issue*, The Banker (2017).
[175] *Recent Trends in Correspondent Banking Relationships*, 16.

suggests that banks in the United States regularly block payment transactions from Lebanon.[176] Meanwhile, a survey by the Arab Monetary Fund has found significant levels of correspondent banking relationship withdrawals and restrictions in the MENA region as a whole.[177] The survey covered eighty-four banks in the region, thirty-nine percent of which indicated a significant decline in the scale of correspondent banking relationships.[178] The report also noted a trend of increasing levels of withdrawal.[179] The geographic distribution of affected relationships is shown in Figure 2.3.

Figure 2.3: Withdrawal of Correspondent Banking Relationships in MENA



Withdrawal of Correspondent Banking Relationships (CBRs) in the Arab Region, Arab Monetary Fund 12 (2012).

These withdrawals have had a significant impact on the ability of affected financial institutions to serve MSMEs trading abroad (Figure 2.4).

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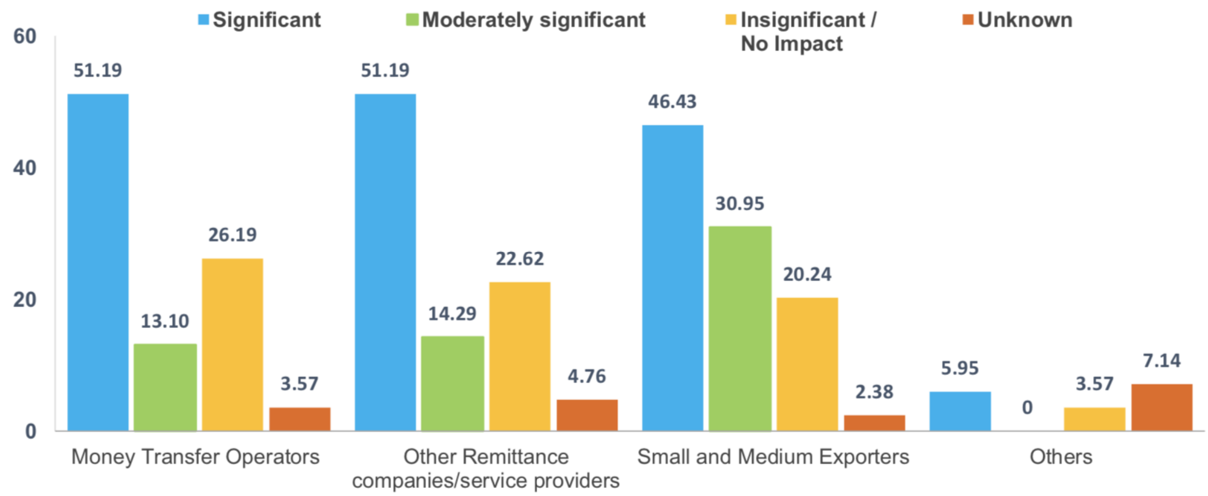
176 Livia Murray, *Lebanon's Payment Gateway* Curse, Executive, http://www.executive-magazine.com/business-finance/business/lebanons-payment-gateway-curse.
177 *Withdrawal of Correspondent Banking Relationships (CBRs) in the Arab Region*, Arab Monetary Fund (2012).
178 *Id.*
179 *Id.*

Figure 2.4: Impact on Clients



Withdrawal of Correspondent Banking Relationships (CBRs) in the Arab Region, Arab Monetary Fund 14 (2012).

Gulf Cooperation Council's Initiatives to Limit De-Risking

The Gulf Cooperation Countries and the U.S. government have been closely engaging with each other at a high level on issues related to CBRs. In 2015, the U.S. Department of the Treasury held a public-private dialogue to discuss trends in illicit finance, correspondent banking, and de-risking at the Federal Reserve Bank of New York. Participants included representatives from the public and private sectors around the world. Discussions covered issues related to financial inclusion and public and private sector perspectives on money laundering and terrorism financing.

This engagement enabled Gulf Cooperation Council authorities, international regulators, and private sector representatives to hear directly from their counterparts about: 1) government expectations of industry, 2) private sector implementation of those expectations, and 3) private sector expectations of foreign counterparts as they manage CBRs.

Recommendations

Recognizing the importance of de-risking practices on international banking relationships, the Financial Stability Board created a Correspondent Banking Coordination Group in March 2016.[180] The group was tasked with implementing an action plan on these issues presented to the G20 in November 2015. The action plan is focused on four areas: 1) further examining the dimensions and implications of the issue, 2) clarifying regulatory expectations, as a matter of priority, including guidance by the Financial Action Task Force and the Basel Committee on Banking Supervision, 3) domestic capacity-building in jurisdictions that are home to affected respondent banks, and 4) strengthening tools for due diligence by correspondent banks.[181]

This high-level action plan is relevant to Lebanon for a few reasons. First, Lebanon is certainly home to many affected respondent banks, so developments related to the third area have direct implications. Second, the action plan, and the initiative more broadly, are evidence that G20 leaders do not support de-risking policies. Lebanon's government can and should invoke this evidence in engaging with their peer governments on these issues. This latter point is important because CBR withdrawals are initiated by financial institutions abroad, Lebanon is constrained in its ability to prevent relevant practices on its own. Much needed policy change must come at the international level or in foreign jurisdictions.

In its engagements at the international level, Lebanon can push for harmonization of Anti-Money Laundering and Countering the Financing of Terrorism legislation, which would help compliance officers in global banks understand domestic

[180] *Action Plan to Assess and Address the Decline in Correspondent Banking*, Financial Stability Board (2017), http://www.fsb.org/wp-content/uploads/P040717-3.pdf.
[181] *Id.*

requirements.[182] The International Monetary Fund also encourages consolidation of supervision on a regional level, as a strategy for smaller countries.[183] Lebanon, which remains an important financial hub, could consider partnering with the Gulf Cooperation Council countries and participating in some of the ongoing initiatives described above. Lebanon should also remain attentive to and engage with the standard setting processes that are ongoing at the Basel Committee on Banking Supervision and the Financial Action Task Force.[184]

Within Lebanon, regulators should keep in mind a key principle: "the ability of a correspondent bank to manage correspondent banking relationship risks depends on its confidence in a respondent bank's internal monitoring system and the general regulatory and supervisory framework."[185] What this means is that an effective strategy will address both capacity-building in Lebanese financial institutions' compliance programs and relevant aspects of Lebanon's overall regulatory environment.[186]

On the capacity building end, this could involve technical assistance and training.[187] Lebanon could facilitate the sharing of best practices between correspondent and respondent banks, as well as between respondent banks themselves.[188] Development banks and the International Monetary Fund could assist with training programs.[189] Lebanon could also encourage and assist with the automation of due

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[182] IMF *Recent Trends in Correspondent Banking Relationships—Further Considerations*, 31
[183] *Id.* at 31
[184] *Id.* at 32
[185] *Id.* at 30
[186] *Id.* at 28
[187] *Id.* at 30
[188] *Id.*
[189] *Id.*

diligence processes.[190] Financing assistance for the compliance costs of financial institutions that serve MSMEs could also help to promote financial inclusion.[191] The IMF also mentions the creation of an Anti-Money Laundering and Countering the Financing of Terrorism utility, based on the “the point of view that access to the international payment system is a public good.”[192]

[190] *Id.*
[191] *Id.*
[192] *Id.*

3. Cross Border Delivery and Trade Facilitation

Bureaucratic delays, fees, and other red tape are considerable barriers to international trade, often surpassing the impact of tariffs. As countries have gradually lowered tariffs through commitments in the World Trade Organization (WTO) or in preferential trade agreements, the relative importance of border procedures and other non-tariff measures has grown. Reform efforts to address some of these measures, in particular customs and border issues for trade in goods, have been broadly categorized as "trade facilitation." The WTO defines trade facilitation as the "simplification, modernization and harmonization of export and import processes."[193] Similarly, the UN defines trade facilitation as "the systematic rationalization of procedures and documents for international trade (trade procedures being the activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade)."[194]

The WTO Trade Facilitation Agreement (TFA), which was signed at the 2013 Bali Ministerial Conference and entered into force in February 2017, reflects emerging consensus on the major issues at play in this reform agenda. While Lebanon is not a WTO member, the TFA remains instructive. The Trade Facilitation Agreement Facility, which collects a growing body of resources, was launched in July 2014 to facilitate implementation of the WTO TFA and help countries benefit from the agreement.[195] The implementation model for the TFA is unique, explicitly providing developing and least developed countries flexibility in prioritizing and staging their commitments, with aid

[193] World Trade Organization, *Trade Facilitation*, https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm
[194] *SMEs and the WTO Trade Facilitation Agreement: A Training Manual*
[195] World Trade Organization, Trade Facilitation Agreement Facility, http://www.tfafacility.org.

encouraged to support implementation capacity.[196] As TFA implementation proceeds, there is a growing body of publicly-available best practices, case studies, guidance documents, and other informative materials. [197]

The broad rubric of trade facilitation provides reforms relevant to the third stage of the e-commerce process chain—cross-border delivery. The objective is to lower transaction costs tied to the time in transit, reduce processing fees, and address lack of transparency and predictability in regulations. A study by the World Bank found that, on average, each additional day that a product is delayed prior to shipment reduces trade by at least one percent. [198] These border transaction costs can be especially burdensome both in the context of e-commerce and for MSMEs. E-commerce customers often expect speedy delivery. E-commerce shipments in general, and especially those of MSMEs, are often of lower value and higher frequency than traditional cross-border trade shipments, increasing the per unit share of fees. There are also high fixed costs of dealing with unpredictable regulations, which again is problematic in the context of lower value shipments.

Effective infrastructure undoubtedly underpins good policies to ensure smooth processing. Well managed ports with sufficient capacity, safe roads, sufficient storage facilities, and other physical infrastructure is vital to enable efficient cross-border delivery. This section will focus, however, on the legal, regulatory, and administrative aspects of trade facilitation. There are a number of practical steps to facilitate trade that do not require a major infrastructure initiative.

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[196] World Trade Organization, Trade Facilitation Agreement.
[197] World Trade Organization, Case Studies, http://www.tfafacility.org/media-resources/case-studies
[198] *Trading on Time*, World Bank (2006).

The discussion begins with a review of the importance of simpler, cheaper border procedures and proposes several recommendations to streamline requirements, including increased digitalization of paperwork and eventually the creation of an electronic single window. Meaningful participation and transparency are crucial to successful regulatory systems, so this report also proposes a few recommendations to further engage with relevant stakeholders. Finally, the law as enacted and the law as applied can frequently diverge, and circumstances change over time. It is therefore important to engage in ongoing monitoring and evaluation of trade facilitation policies to support adaptation.

3.1 Simpler, Cheaper Border Procedures

Currently, customs procedures in Lebanon are slow and expensive. A case study from the World Bank's Doing Business Report found that, in order to export from Lebanon, border compliance took ninety-six hours.[199] Border compliance included customs clearance and inspections, as well as inspections and handling by other agencies at the port or border.[200] In comparison, the average times for border compliance in OECD and MENA countries were approximately thirteen and sixty-three hours respectively.[201] In addition to border compliance, documentary compliance for exportation took forty-eight hours.[202] This was shorter than the regional average, but well below the average for OECD countries, which was only 2.4 hours.[203] The costs for border and documentary compliance to export from Lebanon were 410 USD and 100

[199] WB Doing Business, 49.
[200] *Id*. at 48
[201] *Id*. at 49.
[202] *Id.*
[203] *Id.*

USD, respectively.[204] These costs were each lower than the regional average but were a combined 275% greater than the OECD average.[205]

MSMEs engaged in international trade may very well engage in importation as well as exportation. Import requirements for goods entering Lebanon are even more burdensome. In the case study, border compliance for imports into Lebanon took 180 hours and cost 695 USD.[206] In the region, these benchmarks average 112.3 hours and 540.7 USD, and among OECD countries, the averages were 8.7 hours and 111.6 USD.[207] Documentary compliance in Lebanon required 72 hours and 135 USD.[208] Similar to the export side, Lebanon is ahead of the region but well behind OECD countries where documentary compliance averaged 3.5 hours and cost 25.6 USD.[209]

An array of documents are required to both import and export. In the case study, in order to export, the requirements included a bill of lading, a commercial invoice, a customs export declaration, a packing list, a customs inspection report, and a Safety of Life at Sea (SOLAS).[210] To import, the requirements included a bill of lading, a commercial invoice, a customs import declaration, a packing list, a certificate of origin, a cargo release order, a technical standards certificate, and a SOLAS certificate.[211] These specific requirements are particular to the details of the case study. The goal of outlining them is not to preview the actual documents necessary for a given MSME to comply

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[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] *Id.*
[209] *Id.*
[210] *Id.* at 51.
[211] *Id.*

with customs, but instead to give a sense of the complexity of procedures involved in cross border trade in Lebanon.

Limited transparency, predictability, and accountability exacerbate such regulatory complexity. Recognizing this, the WTO TFA includes provisions on making customs information publicly available, on offering stakeholders opportunities to comment on customs procedures, on issuing advanced rulings, and on providing opportunities for appeal of customs decisions.[212] Lebanon is not yet a member of the WTO, but the TFA reflects principles of trade facilitation supported by a number of countries and international organizations like the World Customs Organization, United Nations Economic Commission for Europe, the UN Conference on Trade and Development, the International Chamber of Commerce, and the International Trade Center.[213] Across these organizations, there is support of digitalization of border procedures, as a means of enhancing transparency and curbing discretion.[214]

Lebanon has begun to implement a digitalization agenda. It has created a customs electronic data interchange system, called NAJM, which allows for electronic processing of customs declarations.[215] In addition to simply converting from paper to digital processing, many countries have begun to use digital systems to streamline and centralize processes with electronic simplification and "single windows."[216] Lebanon has not yet implemented a single window.[217]

[212] TFA, *supra* note 198.
[213] *SMEs and the WTO Trade Facilitation Agreement: A Training Manual*
[214] WCO E-commerce 17
[215] World Bank, Lebanon data.
[216] WCO Report on E-commerce
[217] World Bank, Lebanon data.

Good Practice Example: Senegal's Electronic Single Window

Senegal began to implement computerization in its customs procedures in the 1980s and established an automated system called GAINDE in the 1990s. However, trade-related agencies required non-customs documentation, which was still paper-based. As the Ministry of Finance developed the GAINDE system, the Ministry of Commerce was exploring opportunities to create a single window for trade. Ultimately, this was to take the form of an electronic single window overseen by the Ministry of Finance. In 2004, a public private partnership called GIE GAINDE 2000 was launched.

Senegal implemented its digital transition gradually, which has arguably made it more successful. The first phase, from 1986 to 1990, focused on computerization of customs procedures. Then, from 1995 to 1996, the Senegalese government carried out consultations to arrive at a definition of its single window model. The electronic single window was then developed between 1997 and 2002 and implemented between 2002 and 2004. The single window has been in operation since 2005. In 2008, GAINDE 2000 initiated the Integrated e-Trade Solution and Paperless Trade Project, which aims to eliminate paperwork from the entire clearance process. Beyond this incremental process, Senegal also successfully engaged with an array of stakeholders and ensured consensus for the transition across the government.

Recommendations

One of the most important, albeit long-term, recommendations is the creation of an electronic single window for export and import processing. This concept has gained increasing traction, and, in fact, the WTO's Trade Facilitation Agreement states that

“Members shall endeavour to establish or maintain a single window.”[218] The World Customs Organization defines a single window as “[a]n intelligent facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export and transit related regulatory requirements.”[219] The Trade Facilitation Agreement adds that, “[a]fter the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.”[220] The efficiency benefits of a single window are clear. Traders are not required to submit duplicate information, information sharing is much easier, data collection is centralized, and different agencies share in the investment in improved electronic infrastructure.

Beyond the single window, other countries have implemented additional policies to smooth border processing that may be especially beneficial for MSMEs. Norway has implemented policies to simplify procedures for low-value shipments.[221] China has used its electronic systems to allow for some pre-arrival processing, which streamlines importation.[222] Lebanese MSMEs can take advantage of pre-arrival processing by other countries, but implementation of a pre-arrival processing system in Lebanon could also reduce the costs of importing component goods. International standardization of customs information is also helpful. To this end, Turkey has begun to use the World Customs Organization’s Customs Declaration System.[223] Finally, to facilitate inspections

[218] TFA 10(4)
[219] WCO, 2010
[220] TFA 10(4)
[221] WCO E-commerce 9
[222] *Id.* at 11
[223] *Id*.

and shipping services, the customs authority in the Maldives has signed a memorandum of understanding with the post office to share data.[224]

There are also a number of helpful examples of comprehensive cooperation between countries on border integration. In 2011, the Zambian government presented an update on the development of a One Stop Border Post between Zambia and Zimbabwe.[225] This initiative has focused on streamlining processing, in addition to infrastructure development.[226] Afghanistan and Pakistan also recently entered into the Afghanistan Pakistan Transit Trade Agreement, which has similarly broad regulatory, administrative, and infrastructure goals.[227]

Streamlining of border measures may also provide direct fiscal benefits to the Lebanese government. When Ghana implemented its electronic system, the government increased its revenues by forty-nine percent.[228] Further, the government need not implement reforms alone. It can work with the delivery and processing sectors to support competitive trade logistics services.[229] Mexico and Rwanda have both done so successfully.[230] Electronic single windows can also be effectively implemented through public private partnerships (PPP). The Senegalese system described above relied on a PPP.[231] Ghana also relied on collaboration between a Swiss inspection

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[224] WCO E-Commerce
[225] Zambia Case Study Border Cooperation
[226] *Id*.
[227] Islamic Republic of Afghanistan, *Ministry of Finance, http*://customs.mof.gov.af/en/page/1007/1009/1010
[228] Customs Modernization Initiatives: Case Studies
[229] SMEs in International Economic Law
[230] SMEs in International Economic Law, 54
[231] Senegal's Transition to a Single Window

company, a Ghanaian customs department, a private export association, and two commercial banks to develop and operate its system.[232]

3.2 Better Access to Trade Information

In order for any regulatory environment to be most effective, information should flow both from government to the private sector and from the private sector to the public sector. Simplified processes alone are insufficient if traders are not aware of rules and requirements, and first-hand knowledge acquired by traders who actually use the customs system can inform continual improvement of regulations and administrative processes. Currently in Lebanon, there is limited information flow in both directions.

The Lebanese Customs Agency has a website that provides access to Lebanon's Customs Law, with translations available in English, Arabic, and French, but there is little information about how that law is implemented.[233] The website does include tariff classifications and duties.[234] The website has tabs for trade regulations, trade agreements, and preferential rates; however, many of the pages are blank.[235] There are also no evident mechanisms for traders to share feedback with customs authorities or to participate in the development of rules and procedures.

These information barriers are especially problematic for MSMEs because these traders do not generate sufficient income to offset the high fixed cost of acquiring customs information. They are also likely to struggle more with the minutiae of border processes than larger-scale traders and may be more affected by discriminatory

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[232] SMEs in International Economic Law

[233] Lebanese Customs, Laws & Regulations, *Customs Laws*, http://www.customs.gov.lb/customs/laws_regulations/Customs_law.asp

[234] Lebanese Customs, Tariffs, *National Tariffs, http*://www.customs.gov.lb/customs/tariffs/national/tariff1.asp

[235] *Id*.

practices. Their feedback may be more specific, and thus may be especially helpful for regulators. However, without political clout, they may struggle to pass along their feedback in the absence of reliable communication channels.

Good Practice Example: South Africa Revenue Service Public Comment Portal

Recognizing the importance to regulatory design of consultation with relevant stakeholders, the South Africa Revenue Service developed an electronic platform to solicit comments on various agency actions. The notice for each entry includes: the due date for comments, relevant legislation, a description (which typically includes the draft regulation as well as a brief explanation), and an email address to which comments should be submitted. The portal also includes links to agency documents and Frequently Asked Questions. The website also enables an RSS feed, which allows for notifications on specific topics (i.e. capital gains tax, VAT, etc.). The comments themselves do not seem to be made public, or they are at least not readily accessible from the portal.

Recommendations

The WTO Trade Facilitation Agreement rightly emphasizes the importance of accessible information, transparency in rulemaking, participation, and predictability. Lebanon should ensure that all of its border regulations are notified in advance of adoption, published on the Internet, and updated regularly.[236] MSMEs may struggle to understand the technical language of laws and regulations, so this material should be supplemented with easy-to-understand guides and Frequently Asked Questions.

[236] TFA, *supra* note 198.

Moldova has implemented a Customs Call Center, which allows traders to call in with specific inquiries.[237] Other countries, such as Malawi, have launched trade portals to house relevant information.[238]

Lebanon should also ensure stakeholder participation in developing border measures. The Trade Facilitation Agreement calls on WTO members to adopt consultation processes.[239] There are a variety of potential options for consultation. Online portals, like those of the East African Community (EAC) and South Africa described above, are helpful for flagging specific issues. There are also benefits to broader engagement, such as through regular meetings with industry groups.

3.3 Ongoing Monitoring and Evaluation of Border Processes

Trade facilitation is not a once-and-done project but instead requires continuous evaluation and refinement. This requires regularly collecting and analyzing data about how processes work in practice. There is currently little publicly available data about the efficiency of Lebanon's border processes and there does not seem to be a policy of ongoing monitoring. This makes discerning the most important barriers and targeting recommendations for reforms difficult. The data from the World Bank Doing Business Report case study referred to in the introduction to this section are limited to a single product and shipment size, and so are not very helpful in determining the relative importance of different reforms across sectors.[240] Beyond this, Lebanon's customs

[237] *SMEs and the WTO Trade Facilitation Agreement: A Training Manual*
[238] *See* Malawa Trade Portal, https://www.malawitradeportal.gov.mw
[239] TFA, *supra* note 198, at 2
[240] WB Doing Business, Methodology

authority provides some very basic trade information, which is limited to trade volumes and tariff revenues.[241]

Good Practices Example: Morocco and Tunisia Assessment of Trade and Transport Facilitation

Morocco and Tunisia used the World Bank's Trade and Transport Facilitation Assessment to evaluate their respective barriers to trade. In Morocco, the planning, implementation, and follow-up of the assessment was carried out by a project management unit within the government, and for the most part, the unit did not rely on funding from the World Bank. The Tunisian government was also involved in the planning and implementation of its assessment. Tunisia relied on funding from the World Bank and the European Union for the project.

In Morocco, the assessment found that road transportation investment and services were poor, logistics services were basically non-existent, and ineffective port management resulted in significant delays. There were also issues with clearance procedures, information management, and the use of information technology throughout the trading process. In Tunisia, the assessment found important infrastructure barriers, including: low port capacity, few storage facilities, and poor transport services. It also identified some key procedural bottlenecks. As a consequence of these assessments, Morocco and Tunisia were able to develop targeted action plans to remedy problems in the administration of procedures in practice and to upgrade the most crucial infrastructure.

[241] Lebanese Customs, *Trade Statistics*. http://www.customs.gov.lb/customs/trade_statistics/Indicators.asp

Recommendations

There are a few publicly available guides on assessing trade facilitation issues that Lebanon could use in whole or in part. First, the World Bank has a Trade and Transport Facilitation Assessment Toolkit, which was used by Morocco and Tunisia in the assessments described above.[242] This assessment has a broad scope, examining a variety of trade facilitation and logistics issues.[243] The World Customs Organization also has a Guide to Measure the Time Required for the Release of Goods.[244] This assessment is more narrowly focused on border procedures.[245] Lebanon should implement some form of assessment, whether one of these or another model, to acquire baseline knowledge. It should also implement continuing data collection mechanisms that will facilitate ongoing analysis.

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[242] Trade and Transportation Facilitation Assessment: A Practical Toolkit for Country Implementation. Available at https://openknowledge.worldbank.org/handle/10986/2490
[243] *Id*. at 3.
[244] World Customs Organization, *Time Release Study*. Available at http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/time-release-study.aspx
[245] Guide to Measure the Time Required for the Release of Goods, 5.

4. Aftersales

An e-commerce transaction is not concluded merely upon successful delivery.[246] The consumer must assess the adequacy of the transaction: are the goods as advertised? Damaged? If consumer expectations are not met, what then? Post-sale interactions either reinforce or ruin tenuous consumer-supplier relationships. To maintain a good business relationship, a consumer must have options to fairly resolve a dispute if the good or service delivered is non-conforming.

Initial responsibility to foster an environment in which the consumer feels secure to transact falls upon the entity hosting the transaction, whether it be an MSMEs own website or an e-commerce platform. This is done by informing consumers of their rights and providing transparent policies. Government regulation and oversight is necessary to guide the private sector and also to fill the gaps where it falls short and leads to misbehavior and mistrust.

Aftersales builds upon and derives from many of the foundational elements of e-commerce transactions, such as international payment and cross-border delivery. To illustrate, consider customs procedures. If customs are prohibitive when exporting, customs remain an impediment to the return of non-conforming goods.[247] These issues are addressed previously in this report. This section instead focuses on policies exclusive to aftersales that reduce disagreement and offer redress. Conceptually, policies can be divided into those implemented upfront, to prevent issues from arising, and those implemented after the fact, once a dispute has arisen.

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[246] International Trade Center. *Bringing SMEs onto the E-commerce Highway* 46 (2016).
[247] *Id*. at 49.

4.1 Preventative Policies

Misinformation often leads to disputes; thus the most effective policy is to be as transparent and forthcoming as possible. At the firm level, consumers must be informed of their rights beforehand. Prior to entering into any agreement, the consumer should be made aware of policies pertaining to refunds, warranties, returns, privacy, additional fees, and shipments. Further, consumers should be able to receive a refund or return a product across borders without incurring additional fees. All relevant policies should be openly available and publicized on company websites. The OECD Guidelines summarized in Box 4.1 that follow offer useful practices.

Box 4.1: OECD Guidelines for E-Commerce

Source: OECD [Consumer Protection in E-commerce (2016)]

The OECD Consumer Protection guidelines, referenced previously in Section 1.3.2, offer principles especially useful for aftersales.

Consumers should be provided with meaningful access to fair, easy-to-use transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden. Further:

- Businesses should not attempt to restrict a consumer's ability to make negative reviews, dispute charges, or consult or file complaints with government agencies and other complaint bodies

- Businesses should ensure that any advertising or marketing for goods or services are consistent with their actual characteristics, access and usage conditions

- Business should ensure that advertised prices do not misrepresent or hide the total cost of a good or service

- Businesses should make readily available information about themselves that is sufficient to allow…prompt, easy and effective consumer communication with the business and appropriate and effective resolution of any disputes that may arise

- Businesses should provide details of and conditions related to withdrawal, termination or cancellation, after-sales service, return, exchange, refunds, warranties and guarantees

4.2 Dispute Resolution

Should preemptive measures fail to resolve disputes, fair, effective, and inexpensive redress should follow. Since MSMEs often deal in low-value transactions, resort to the courts is typically not economically feasible. Litigation is expensive and time-consuming, especially so in Lebanon, which ranked 134th out of 190 economies on the ease of enforcing contracts.[248] It takes on average 721 days to resolve a claim.[249]

In lieu of the court system, Online Dispute Resolution (ODR) is an effective forum for resolving e-commerce disagreements; the same medium that enabled the transaction is used to resolve disputes.[250] Examples of effective ODR implemented both at the firm level and at the national level are highlighted below.

Firm Level ODR

AliExpress, an e-commerce platform that has been particularly successful in Lebanon, offers an example of the way in which transparency in consumer protection policies creates institutional trust and establishes positive relationships with consumers. The buyer protection portal is easily available from the landing page of the website.[251] AliExpress offers refund guarantees for non-conforming products. Dissatisfied consumers can open a dialogue with the seller and attempt to resolve issues directly.[252] If unable to reach an agreement, the consumer opens a formal dispute overseen by AliExpress. The platform also offers on-time delivery guarantees and advanced warranties.

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[248] World Bank, *Doing Business: Lebanon* (2018).
[249] *Id*.
[250] Harvard Law school, E-Commerce Session 5 –Disputes (2001). Available at http://cyber.law.harvard.edu/olds/ecommerce/disputes.html.
[251] AliExpress, Buyer Protection Portal.
[252] AliExpress, *How Does Basic Buyer Protection Work?*, Buyer Protection Portal.

National Level ODR

The Austrian Internet Ombudsman is a government agency established as a mechanism for resolving disputes arising from e-commerce.[253] Resort to this forum is not mandatory.[254] Consumers alone can initiate the complaint against a business, and each business can voluntarily accept or refuse resort to this process.[255] It is a two-step process: the first is mediation. If no settlement is reached, in the second step the ombudsman will make a recommendation.[256] The process only moves to step two if both parties agree.[257]

The Austrian Internet Ombudsman dispute resolution center received 3,219 complaints in 2017.[258] Subscription issues, contractual disputes, and delivery issues were the top three reasons for consumer-filed complaints.[259] Two-thirds of the complaints were related to fraud or fraudulent dealings online.[260] This government effort has been an effective enforcement tool for consumers.

Recommendations

For MSMEs, litigation is disproportionately costly. In order to prevent resort to dispute settlement, businesses should be as transparent and forthcoming with their aftersales policies as possible. Informed consumers will be less likely to resort to dispute settlement. In the event disputes do arise, alternate forms of dispute resolution

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[253] Julia Hornle. Cross Border Internet Dispute Resolution 76 (Cambridge University Press 2009).
[254] *Id*. at 77.
[255] *Id*.
[256] *Id*.
[257] *Id*.
[258] Teleceom. *Austrian Internet Ombudsman Releases 2017 Activity Report.* Available at https://www.telecompaper.com/news/austrian-internet-ombudsman-releases-2017-activity-report--1238084.
[259] *Id*.
[260] *Id*.

should be made available, either at the firm level or the national level. Voluntary, non-binding processes with neutral persons to assist will be cheaper, quicker, and more likely to preserve the business relationship than traditional litigation.[261]

Conclusion

Lebanon's MSMEs have the potential to grow and thrive through e-commerce. The government has rightly recognized that what is good for these businesses is good for the country's development as a whole. At present, however, MSMEs face several obstacles to realizing the full opportunities of e-commerce. Improved infrastructure, such as enhanced broadband connectivity and quality and increased power reliability, is an important element of success for the sector. This paper has focused on another element: the rules that govern the economy.

By examining the entire e-commerce transaction, from starting an online business to aftersales, this paper has identified some key legal and regulatory barriers and proposed possible reforms. A few common principles emerge. First, regulatory requirements should be designed to fulfill their objectives with as little burden on MSMEs as possible. Second, where feasible, the government should take a proactive role in including MSMEs in the formal economy through finance, capacity-building, and facilitation of cooperation. Finally, the government should encourage information flows both to and from MSMEs as an integral component of policy-making processes.

[261] Real Business. *Alternative Dispute Resolution for SMEs: What you need to know*. Available at https://realbusiness.co.uk/law/2013/09/30/alternative-dispute-resolution-for-smes-what-you-need-to-know/.

These principles underpin the recommendations for each stage of the e-commerce transaction. To support MSMEs in **starting an online business**, business registration requirements should be streamlined to encourage formalization, the government should develop and implement a comprehensive financial inclusion strategy, and robust e-platforms should be encouraged through effective laws and cooperative initiatives. Facilitation of **international payment** includes both regulatory and capacity-building elements. Rules for e-payment and anti-money laundering and countering the financing of terrorism should be strengthened, and the risk-management and compliance capacity of institutions should be improved. To support **cross-border delivery**, the government should ensure that trade regulations are efficiently designed and that information flows both to and from traders. Finally, to strengthen **aftersales**, consumer protection regulations and dispute settlement mechanisms should be developed, and all stakeholders should have access to information about their rights and responsibilities.

Ultimately, as in the traditional economy, laws and regulations can help or harm e-commerce. Lebanon should seize this opportunity to craft rules for the future that will underpin development and encourage the entrepreneurship and innovation of its MSMEs.